

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mindy Jaye Zied-Campbell, Dennis :
John Campbell and S. N. Campbell, :
Petitioners :
:
v. : No. 272 C.D. 2010
: Submitted: October 29, 2010
Department of Public Welfare, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: December 22, 2010

Mindy Jaye Zied-Campbell, Dennis John Campbell and S.N. Campbell (together, Petitioners) petition *pro se* for review of the final order of the Department of Public Welfare (Department), Bureau of Hearings and Appeals (BHA) affirming the determination of the Administrative Law Judge (ALJ) that S.N. Campbell is ineligible for Medical Assistance (MA) because she is no longer under the age of 21. Finding no error in the Department's decision, we affirm.

The relevant facts alleged by the parties are as follows. Mindy Jaye Zied-Campbell and Dennis John Campbell, both disabled due to psychological

conditions, are the parents of S.N. Campbell (S.N.). In 2009, S.N. was receiving MA benefits as a result of being a dependent child under the Temporary Assistance for Needy Families (TANF) program. On November 10, 2009, S.N. turned 21 years of age. On November 11, 2009, the County Assistance Office (CAO) sent Petitioners a Discontinuance Notice informing them that S.N.'s MA benefits would be discontinued as of November 23, 2009, because she had reached 21 years of age and was no longer eligible for the TANF-related MA category. The notice also stated that after evaluation, the CAO determined that S.N. was ineligible for other MA categories and specifically cited to 55 Pa. Code §§ 145.73, 145.83 in support of these determinations.

Petitioners timely appealed this decision and a telephone hearing was scheduled to be held by the ALJ. Petitioners objected to a telephone hearing being held and instead submitted a written brief requesting that an immediate decision be rendered in their favor. According to Petitioners, Ms. Zied-Campbell's and Mr. Campbell's mental impairments made it difficult for them to communicate over the phone and the most effective way for them to present their issues was in writing. They objected to the CAO being heard via telephone without Petitioners being present or able to be heard, and insisted that both parties should proceed solely on briefs.

The ALJ granted in part and denied in part Petitioners' request, stating they failed to provide good cause as to why they could not be present at a hearing. However, he allowed Petitioners to present their case solely on briefs while the CAO was permitted to argue its case orally. A telephonic hearing was held on

January 21, 2010. The ALJ noted that both he and the CAO attempted to obtain a telephone number for Petitioners in order to allow them to participate or at least listen to the testimony, but they were unsuccessful.

The sole testifying witness at this hearing was Diana Montgomery (Ms. Montgomery), a Representative of the CAO. Ms. Montgomery testified that S.N.'s MA benefits were discontinued because she turned 21 years old, rendering her no longer eligible as a dependent in the TANF-related MA category. In addition, S.N. did not have any children of her own under the age of 18 and she was not believed to be pregnant; therefore, S.N. did not meet any of the qualifying conditions to remain eligible for the TANF-related categories.¹ Ms. Montgomery also testified that under state law an individual meets the age requirement to receive MA benefits through the end of the month in which her 21st birthday occurred. Therefore, S.N. should have been eligible through the end of November rather than November 23, 2009, as the initial notice indicated. Ms. Montgomery testified that she fixed this error in the CAO's computer system and issued a new notice to Petitioners with the corrected date.

The ALJ issued an order denying in part and sustaining in part Petitioners' appeal. He found that prior to her 21st birthday, S.N. was receiving MA benefits as a result of being a dependent child in the TANF-related category of

¹ Ms. Montgomery indicated that S.N. could apply on her own for MA benefits, but the CAO would need updated information in order to process such a request, including information regarding S.N.'s income, any disabilities she may have, whether she continued to reside in her parents' household, and whether or not she was pregnant.

Medically Needy Only (MNO). Eligibility for the MNO category is specifically governed by 55 Pa. Code §141.81, which states that only dependents under 21 years of age may qualify.² He noted that school attendance does not affect a dependent child's status under this section of the Code in any way and that Petitioners incorrectly relied upon 55 Pa. Code §141.61(a)(1), which only applies to the General Assistance (GA) category. The ALJ did note that the CAO incorrectly discontinued S.N.'s benefits on November 23, 2009, instead of November 30, 2009, as 55 Pa. Code §141.81(c)(3)(ii)(A) requires. Therefore, an order was entered directing the CAO to determine S.N. eligible for MA from November 23, 2009 to November 30, 2009, and ineligible for MA from December

² 55 Pa. Code §141.81, entitled "Eligibility policy for Medically Needy Only," provides in pertinent part as follows:

(c) Other eligibility conditions and categories.
Other eligibility conditions and categories are as follows:

...

(3) The categories of MA and the eligibility conditions for them are set forth as follows. A decision that the client does not meet the definitive conditions for old age, dependent children, blind or permanent and total disability must be supported in the case record.

...

(ii) Dependent Child Category (TC). . . . This category applies to the following:

(A) Persons under 21 regardless of school attendance, marital status, or emancipation. A person shall meet the age requirement through the end of the month in which the 21st birthday occurs provided that the birthday falls on or after the third day of the month.

1, 2009 to the present. The Department's BHA issued a final administrative action order affirming the decision of the ALJ and this appeal followed.³

Petitioners' main argument on appeal is that the Department erred in discontinuing S.N.'s benefits because her full-time student status renders her continually eligible. According to Petitioners, S.N. was at all times qualified for and received MA benefits under the Non-Money Payment (NMP) category, not the MNO category, and individuals in the NMP category may continue to receive benefits after reaching the age of 21 if they are full-time students. However, this argument is not accurate. The regulation outlining the various NMP categories of MA eligibility does not mention school status other than to state that individuals *under* the age of 21 may be eligible "regardless of school attendance." 55 Pa. Code §178.11(4)(i). In addition, in order for an individual 21 years of age or older to qualify for MA benefits under the NMP category, she must either be a caregiver responsible for a dependent child or pregnant. 55 Pa. Code §178.11(4)(ii). Petitioners presented no evidence that S.N. fit either of these categories. Regardless, the Department determined that S.N. was receiving benefits under the MNO category and, as such, these benefits were correctly discontinued at the end of the month in which she turned 21.

Petitioners also claim that the ALJ's failure to grant their motion requesting that the case be argued solely on briefs rather than telephonically due to

³ Our scope of review is limited to determining whether the adjudication is in accordance with the law, whether constitutional rights were violated and whether necessary findings of fact are supported by substantial evidence. *McBride v. Department of Public Welfare*, 960 A.2d 203, 205 n.3 (Pa. Cmwlth. 2008).

their disabilities and alleged difficulty in communicating orally was a violation of their due process rights. However, Petitioners received adequate notice of the telephone hearing but chose not to participate, and the ALJ fully considered all the arguments outlined in their brief. Therefore, we believe that the due process requirements of notice and an opportunity to be heard prior to an adjudication were met in this case. In addition, an ALJ is required to conduct hearings so as to elucidate the facts and arguments in a case and it is within the ALJ's discretion how best to achieve that goal. *See* 55 Pa. Code §§275.4(f)-(g). Petitioners had no right to unilaterally limit the ALJ's ability to conduct a hearing or the CAO's opportunity to present its case or witnesses.

Accordingly, the order of the Department is affirmed.

DAN PELLEGRINI, JUDGE

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ORDER

AND NOW, this 22nd day of December, 2010, the order of the Department of Public Welfare, dated February 11, 2010, is affirmed.

DAN PELLEGRINI, JUDGE