

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

LARRY HEMRICK on behalf of :
Mark Hemrick, : C.A. No. 05A-02-002 WLW
: :
Appellant, :
: :
v. :
: :
VINCENT P. MECONI in his :
official capacity as Secretary of :
the Delaware Department of Health :
and Social Services, :
: :
Appellee. :

Submitted: June 13, 2005
Decided: September 28, 2005

ORDER

Upon Appeal of a Decision of the Delaware Department of
Health and Social Services Division of Social Services.
Reversed and Remanded.

Lexie S. McFassel, Esquire of Community Legal Aid Society, Inc., Dover, Delaware;
attorneys for the Appellant.

A. Ann Woolfolk, Esquire of State of Delaware, Department of Justice, Wilmington,
Delaware; attorneys for the Appellee.

WITHAM, R.J.

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Upon consideration of the parties' briefs and the record below, it appears to the Court:

In early 2004, Larry Hemrick (Claimant), on behalf of his son, Mark Hemrick, requested a review of Mark's eligibility for services by the Division of Developmental Disabilities Services ("DDDS"). He also supplied additional information regarding Mark's qualifications for Supplemental Security Income ("SSI"). DDDS denied the request for services. Claimant then requested a DDDS appeal, so an internal DDDS hearing was held in April of 2004, where Claimant received another opportunity to present evidence of eligibility. However, the DDDS issued a decision letter agreeing with DDDS' prior opinion that Mark was ineligible to receive the requested benefits. Contained in that letter was information advising Claimant that he had the right to request an independent appeal from the Division of Social Services ("DSS"), which he did on July 2, 2004. In regard to that request, a Hearing Officer sent Claimant a letter addressing both timeliness and jurisdiction issues. A "fair hearing" was set for September 9, 2004 following a response from Claimant. Because of various scheduling conflicts, the hearing eventually took place on November 8, 2004 before another Hearing Officer. At the hearing, doctors for both Claimant and DHSS testified, as well as Mark's social worker. On January 6, 2005, the Hearing Officer issued a decision based on his conclusion that DSS lacked jurisdiction to hear the case, even though witnesses testified and evidence was presented at the hearing. This appeal followed.

Because the procedural due process requirements for a "fair hearing" were not

met, the decision of the Hearing Officer must be reversed and this matter remanded for the fair hearing required as a matter of law.

Standard of Review

The standard of review for appeals from “fair hearing” decisions is whether the decision of the Hearing Officer is free of legal error and supported by substantial evidence.¹ This Court’s analysis begins with a review of the procedure utilized in determining eligibility before any substantive evidence is analyzed.² This Court will decide all pertinent matters and questions involved and will sustain any of the Hearing Officer’s factual findings that are supported by substantial evidence.³ Additionally, if a case is brought before this Court pursuant to 31 *Del. C.* § 520, the statute does not permit this Court to remand the case for further findings.⁴

Claimant asserts that the Hearing Officer committed legal error by deciding that DSS did not have jurisdiction to hear the case, thereby depriving him of his due process rights. The pertinent case law is located in *Lawson*.⁵ In *Lawson*, the Court found that because a “fair hearing” was not held, claimant’s due process rights were

¹*Lawson v. Dep’t of Health and Soc. Servs.*, 2004 Del. Super. LEXIS 60.

²*Id.* at *5.

³*Id.*

⁴*Id.* at *6.

⁵*Id.*

violated because Delaware recognizes Medicaid benefits as property rights.⁶ The requirements of due process, as established in *Goldberg v. Kelly*,⁷ are: (1) timely and adequate notice detailing the reasons for a proposed termination; (2) an effective opportunity (for the recipient) to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally; (3) retained counsel, if desired; (4) an “impartial” decision maker; (5) a decision resting “solely on the legal rules and evidence adduced at the hearing;” and (6) a statement of the reasons for the decision and the evidence relied on.⁸ Federal regulations also require a state agency to provide a “fair hearing” that meets these requirements.⁹ Further, due process rights are triggered when an adverse action, such as the denial of benefits, is implemented by state action.¹⁰

In the case *sub judice*, DSS held a “fair hearing” where Claimant and DHSS presented evidence. However, the case was not decided on the merits. Instead, the Hearing Officer concluded that he did not have jurisdiction to hear the case because pursuant to the Memorandum of Understanding (“MOU”) between DDDS and DSS, DSS only has jurisdiction over hearings for individuals who are eligible for Medicaid

⁶*Id.* at *9 - 10.

⁷397 U.S. 254 (1970).

⁸*Lawson*, 2004 Del. Super. LEXIS 60, at *10 - 11.

⁹*Id.* at *11.

¹⁰*Id.*

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and are served by DDDS. The Hearing Officer determined that Claimant met neither of these requirements, so he dismissed Claimant's request for a hearing for lack of jurisdiction.

Because Claimant's benefits were denied, his due process rights were triggered. As a result, the requirements set forth in *Goldberg* must be met. Here, however, they were not. Specifically, Claimant was not given an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. Claimant called an adolescent psychiatrist who worked with Mark for three years. Mark's current social worker also testified. However, the Hearing Officer considered none of this evidence in his decision. Instead, the decision focused solely on the issue of jurisdiction. Therefore, because the Hearing Officer did not decide the case on the merits, the fact that Claimant called witnesses and presented arguments was ineffectual. Claimant requested a "fair hearing" from DSS because that is what DDDS told him to do. Even assuming that he was misinformed and DSS did not have jurisdiction, he is still entitled to a "fair hearing." The fact that he did not receive a "fair hearing" indicates that his due process rights were violated.

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Therefore, an error of law was committed and the decision of the Hearing Officer must be *reversed*. The matter is *remanded* for a new hearing.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution