

*** NOT FOR PUBLICATION ***

NO. 25128

IN THE SUPREME COURT OF THE STATE OF HAWAII

CLERK OF APPELLATE COURTS
STATE OF HAWAII
NORMA T. YARA

2005 MAY 11 AM 9:08

FILED

ANNIE KING, Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES and LILLIAN B. KOLLER,¹
DIRECTOR OF HUMAN SERVICES in her official capacity,
Appellees.

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 02-1-0005)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Appellant Annie King appeals from the May 14, 2002 judgment of the Circuit Court of the Third Circuit, the Honorable Greg K. Nakamura presiding, affirming an administrative hearing decision of the Department of Human Services (DHS) denying King's application for general assistance benefits. On appeal, King contends that the circuit court erred in: (1) finding that DHS did not have a policy favoring the opinion of the examining physician over that of the treating physicians; (2) failing to

¹ Susan Chandler, former director of the Department of Human Services, has been substituted with Lillian B. Koller, the current director, pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c) (2000).

apply the "treating doctor rule" in determining whether substantial evidence supported the hearing officer's decision; and (3) finding that the hearing officer's decision was supported by the record.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented, we hold as follows: (1) although the hearing officer's findings regarding DHS's policy favoring the opinion of the examining physician was not clearly erroneous, based on the record, the circuit court did not err in finding that the hearing officer did not give a presumption to the DHS examiner's conclusions over those of the treating physicians; (2) King fails to demonstrate that the federal courts' rulings regarding benefits under the Social Security Act and the Employee Retirement Income Security Act of 1974 are applicable to the determination of eligibility for benefits under Hawai'i Revised Statutes § 346-1 (Supp. 2001); (3) the hearing officer's statement regarding the possibility of malingering is not a finding of ultimate fact, see In re Kauai Elec. Div. of Citizens Utility Co., 60 Haw. 166, 184, 590 P.2d 524, 537 (1978); and (4) the report of Bruce Hansen, Ph.D. and the testimony of Wallace Chun, M.D. constitute sufficient evidence to support the hearing officer's decision. Therefore,

IT IS HEREBY ORDERED that the May 14, 2002 judgment of the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 11, 2005.

On the briefs:

David Kimo Frankel, for
appellant
(withdrew 11/17/04)

Heidi M. Rian and
Wendy J. Utsumi,
Deputy Attorneys General,
for appellees

Counsel of record:

Gary Y. Murai, for
appellant
(appeared 11/17/04)



Steven A. Leanson

Auna D. Takumara



Kama E. Duffy, Jr.