

STATE OF MICHIGAN  
COURT OF APPEALS

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JESUS MAYSONET,

Petitioner-Appellee,

V

SECRETARY OF STATE,

Respondent-Appellant,

and

FARMWORKER LEGAL SERVICES and  
MICHIGAN MIGRANT LEGAL ASSISTANCE  
PROJECT,

Amici Curiae.

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UNPUBLISHED

June 28, 2002

No. 229507

Ingham Circuit Court

LC No. 00-091949-AL

Before: Hood, P.J., and Saad and E. M. Thomas,\* JJ.

PER CURIAM.

Respondent appeals by leave granted the circuit court's order reinstating petitioner's driving privileges. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1996 petitioner's driver's license was revoked for a minimum period of one year after he received three alcohol-related driving convictions within a ten-year period. MCL 257.303(2)(f) and (4)(a)(i). Petitioner sought review of the revocation at hearings conducted by respondent's Driver License Appeal Division (DLAD) in each of the years 1997 through 2000. After each hearing the hearing referee upheld the revocation because petitioner failed to show by clear and convincing evidence that his alcohol problem was under control and was likely to remain under control.

At the hearing held on February 10, 2000, petitioner testified he had not consumed alcohol since his last conviction in 1996. Petitioner presented a December 1999 substance abuse evaluation from the National Counsel on Alcoholism (NCA) that stated that petitioner no longer met the requirements for a diagnosis of substance abuse/dependence. The report did not detail the basis for this conclusion, and did not contain a treatment recommendation. The evaluation

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\* Circuit judge, sitting on the Court of Appeals by assignment.

remarked that petitioner would benefit from continued participation in Alcoholics Anonymous (AA), but noted that petitioner stated he did not have an AA sponsor.

Petitioner submitted letters from his children that stated that petitioner had not consumed alcohol in several years, and that he needed his driving privileges restored in order to assist his wife, who did not drive. Petitioner submitted attendance sheets from AA that showed regular attendance from January through November 1999. The sheets did not document more recent attendance. In response to questions from the hearing referee, petitioner could not answer basic questions about AA, i.e., the number of steps involved in the program and the contents of the serenity prayer, and could not provide the full name of his sponsor.

The hearing referee denied petitioner's request for reinstatement of his driving privileges because petitioner did not establish by clear and convincing evidence that his alcohol problem was under control and was likely to remain under control. 1979 AACS, R 257.313. The hearing referee erroneously stated that petitioner had four alcohol-related driving convictions when in fact petitioner had three such convictions. The hearing referee observed that the NCA evaluation did not state a basis for the conclusion that petitioner was no longer dependent on alcohol, and petitioner did not demonstrate a basic understanding of the principles of AA or a long-term commitment to a support program.

Petitioner appealed the hearing referee's decision to circuit court. Petitioner argued the hearing referee abused his discretion by denying restoration of his driving privileges because he established by clear and convincing evidence that he was no longer a risk. Petitioner did not argue the hearing process denied him due process and equal protection, and specifically did not allege that he requested an interpreter at the hearing and was denied that assistance. At the circuit court hearing counsel for petitioner noted that petitioner had some difficulty with the English language; however, counsel did not contend that petitioner should have been afforded the services of an interpreter at the DLAD hearing.

The circuit court set aside the hearing referee's decision on the ground that it was not supported by competent, material, and substantial evidence on the whole record. The circuit court concluded the evidence showed that petitioner had remained alcohol free and had internalized the negative effect of alcohol on his life. The circuit court recognized that a language difficulty existed, but did not indicate that that difficulty served as a basis for its decision.

Respondent filed an application for leave to appeal the circuit court's decision. Petitioner did not file an answer. This Court granted respondent's application. Petitioner moved for rehearing of this Court's order. Petitioner noted that the errata sheet for the transcript of the DLAD hearing showed that at the conclusion of the hearing he asked the hearing referee to write something so that his daughter could read it and explain it to him in Spanish. Petitioner contended that this request constituted a request for an interpreter, and that the denial of that request supported the circuit court's decision to set aside the hearing referee's decision. This Court denied petitioner's motion for rehearing.

Subsequently, petitioner moved in the circuit court for clarification and to amend the administrative hearing transcript. Petitioner sought to have the circuit court expand its ruling to include a finding that he was denied a fair hearing based on the hearing referee's denial of his

request for an interpreter. Petitioner contended the lack of an interpreter at the hearing denied him due process and equal protection. The circuit court denied the motion because it lacked jurisdiction to amend its original order because leave to appeal from that order had been granted. MCR 7.208(A).

A circuit court is authorized to set aside a respondent's decision regarding a petition for restoration of driving privileges only if the petitioner's substantial rights were violated and one or more of six statutory criteria is met, including that the decision was not supported by competent, material, and substantial evidence on the whole record. MCL 257.323(4)(d). We review a circuit court's review of an agency decision to determine whether the circuit court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the factual findings of the agency. This standard is indistinguishable from the clearly erroneous standard of review. A finding is clearly erroneous when, after a review of the entire record, we are left with a firm and definite conviction that a mistake was made. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).

Respondent argues the circuit court clearly erred by reversing the hearing referee's decision. We agree and reverse the circuit court's decision for the reason it clearly erred in finding that the hearing referee's decision was not supported by competent, material, and substantial evidence on the whole record. Substantial evidence is evidence that a reasonable person would accept as sufficient to support a conclusion. Substantial evidence is more than a mere scintilla but less than a preponderance of the evidence. *Dowork v Oxford Charter Twp*, 233 Mich App 62, 75; 592 NW2d 724 (1998). Here, the evidence established that petitioner received three alcohol-related convictions within ten years. The substance abuse evaluation on which petitioner relied stated no basis for its conclusion that petitioner was no longer dependent on alcohol. That evaluation noted that petitioner stated he did not have an AA sponsor. Petitioner gave contradictory information to the hearing referee.

No evidence contradicted petitioner's assertion he had not consumed alcohol since 1996. However, his inability to articulate an understanding of AA principles, the program in which he purportedly chose to participate, supported a conclusion that he did not demonstrate a long-term commitment to a support program. Also, petitioner's inability to commit to a support program shows that he did not demonstrate by clear and convincing evidence that his alcohol problem likely would stay under control. R 257.313.

The hearing referee based his decision on his assessment of petitioner's credibility, and the circuit court erred by substituting its judgment for that of the hearing referee on the credibility issue. *Arndt v Dep't of Licensing & Regulation*, 147 Mich App 97, 101; 383 NW2d 136 (1985). Sufficient evidence existed to support the hearing referee's decision; therefore, the circuit court was not permitted to substitute its judgment for that of the hearing referee, though the court might have reached a different result in the first instance. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992).

We decline to address the additional issues raised by petitioner and amici on the ground that those issues were not raised before or addressed by the circuit court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). We conclude that our refusal to address these issues does not result in manifest injustice in light of the fact that petitioner's assertion that he

requested an interpreter, but was refused one by the hearing referee, is not supported by the record. *Herald Co, Inc v Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998).

Reversed.

/s/ Harold Hood  
/s/ Henry William Saad  
/s/ Edward M. Thomas