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SUPREME COURT
STATE OF WASHINGTON
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NO. 100449-4

SUPREME COURT OF THE STATE OF WASHINGTON

RITA CAGLIOSTRO,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent.

**DEPARTMENT'S ANSWER TO PETITION FOR
REVIEW**

ROBERT W. FERGUSON
Attorney General

JOSHUA W. CAMPBELL
Assistant Attorney General
WSBA No. 51251
PO Box 40124
Olympia, WA 98504
360-586-5164 phone
360-586-6659 fax
Joshua.campbell@atg.wa.gov
OID No. 91021

TABLE OF AUTHORITIES

Cases

| | |
|---|------------|
| <i>Arch of Kentucky, Inc. v. Dir., Office of Workers' Comp. Programs</i> , 556 F.3d 472, 478 (6th Cir. 2009) | 10 |
| <i>Cagliostro v. Dep't of Soc. & Health Servs.</i> , 81266-1-I, 2021 WL 5177439 (Wash. Ct. App. Nov. 8, 2021) (unpublished) | 2, 5, 8, 9 |
| <i>Conner v. Universal Utilities</i> , 105 Wn.2d 168, 172, 712 P.2d 849, 851 (1986)..... | 10 |
| <i>Dhaliwal v. Dep't of Soc. & Health Servs.</i> , 2Wn.App.2d 1044, 2018 WL 1111063 (2018) (unpublished) | 7 |
| <i>Goldberg v. Kelly</i> , 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970)..... | 9 |
| <i>Mathews v. Eldridge</i> , 424 U.S. 219, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) | 9 |
| <i>Saarela v. Dep't of Soc. & Health Servs.</i> , 183Wn. App. 1044 (2014)..... | 7 |
| <i>Stewart v. Dep't of Employment Sec.</i> , 191Wn.2d 42, 419 P.3d 838 (2018) (unpublished) | 7, 10 |

Statutes

| | |
|------------------------|------|
| RCW 34.05.440(1) | 6, 7 |
|------------------------|------|

Rules

| | |
|----------------|-------|
| RAP 13.4 | 5, 11 |
|----------------|-------|

RAP 13.4(b)..... 5, 6, 11
RAP 13.4(b)(1)(2) 6
RAP 13.4(c)..... 5, 11
RAP 18.17 11

Regulations

WAC 388-02-0650 4
WAC 388-891A-0255(2) 4, 7

I. INTRODCUTION

Rita Cagliostro was a customer of the Department of Social and Health Services, Division of Vocational Rehabilitation. The Division of Vocational Rehabilitation closed her case in 2016 and sent her notice of the 45-day deadline to contest her case closure at that time. Ms. Cagliostro did not request an administrative hearing to contest her case closure until several years after the 45-day deadline had expired. This appeal arises from an Office of Administrative Hearings final order dismissing Ms. Cagliostro's hearing request as untimely because it was requested approximately three years too late. The superior court determined Ms. Cagliostro had failed to state a claim for which relief could be granted based on the final order, and the Court of Appeals affirmed the dismissal of Ms. Cagliostro's administrative hearing.

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Review of that decision is not warranted because it was correct in finding Ms. Cagliostro's failure to timely request an administrative hearing resulted in a loss of her right to a hearing.¹

II. IDENTITY OF RESPONDENT

Respondent is the Washington State Department of Social and Health Services, Division of Vocational Rehabilitation, and was the respondent below.

III. DECISION BELOW

Ms. Cagliostro seeks review of an unpublished opinion filed on November 8, 2021 by Division II of the Court of Appeals, *Cagliostro v. Dep't of Soc. & Health Servs.*, 81266-1-I, 2021 WL 5177439 (Wash. Ct. App. Nov. 8, 2021) (unpublished), which affirms the dismissal of her untimely request for an administrative hearing. That opinion is attached as Appendix A.

¹ In addition, while neither the superior court nor Court of Appeals addressed this issue, Ms. Cagliostro did not properly serve the Department therefore she did not comply with the Administrative Procedure Act's procedural requirements and has not invoked the courts' jurisdiction to address this case.

**IV. COUNTERSTATEMENT OF THE ISSUE
PRESENTED FOR REVIEW**

1. Did Ms. Cagliostro fail to assert a claim upon which relief could be granted when she requested an administrative hearing approximately three years after the 45-day deadline passed?

V. COUNTERSTATEMENT OF THE CASE

In February 2016, Rita Cagliostro applied to receive employment services from the Division of Vocational Rehabilitation (DVR). Agency Record (AR) 110. DVR closed Ms. Cagliostro's case on May 5, 2016, and sent notice of its action to Ms. Cagliostro at the address in her file. AR 80. Ms. Cagliostro did not communicate with DVR or take any steps to challenge that decision until April 15, 2019, when the Office of Administrative Hearings received a request for a hearing and for payment of retroactive services. AR 43. DVR moved to dismiss Ms. Cagliostro's hearing request because it was not timely, and an Administrative Law Judge issued a Final Order granting DVR's motion. AR 41-47. The Administrative Law Judge found

that Ms. Cagliostro's request for a fair hearing was made after the 45-day deadline to request a hearing in WAC 388-891A-0255(2) and was not timely. AR 44.

On November 14, 2019, Ms. Cagliostro filed a petition for judicial review in King County Superior Court challenging the final order. Clerk's Papers (CP) 1-6. As service, Ms. Cagliostro emailed a copy of the petition for judicial review to DVR, which does not comply with DVR service rules. CP 138-43; WAC 388-02-0650. The Washington State Attorney General's Office received a partial copy of her petition via U.S. Mail on December 9, 2019, which was postmarked the same day.

DVR moved to dismiss Ms. Cagliostro's petition for judicial review based on her failure to serve the Department and that she had failed to state a claim for which relief could be granted. CP 132-37. In March 2020, the King County Superior Court issued an order granting DVR's motion to dismiss, finding Ms. Cagliostro failed to state a claim for which relief could be granted because her hearing request was untimely; it did not

address the issue of service. CP 240-42. Ms. Cagliostro appealed the order to the Court of Appeals that same day. CP 245.

In an unpublished opinion, the Court of Appeals affirmed the dismissal of Ms. Cagliostro's case as untimely while declining to address the issue of whether Ms. Cagliostro adequately served DVR. *Cagliostro v. Dep't of Soc. & Health Servs.*, 2021 WL 5177439 (Wash. Ct. App. Nov. 8, 2021).

VI. REASONS WHY REVIEW SHOULD BE DENIED

This Court should deny review because Ms. Cagliostro's petition for review does not comply with the requirements of RAP 13.4. Specifically, RAP 13.4(c) requires a petition for review to contain numerous elements not found in Ms. Cagliostro's petition, including a statement of the case presented for review and argument addressing why review should be granted under RAP 13.4(b).

Further, this case concerns a straightforward and uncontroversial application of the Administrative Procedure Act (APA). *See* RCW 34.05.440(1). There is no conflict among

appellate courts on this issue, and it does not involve substantial constitutional issues or issues of substantial public importance. *See* RAP 13.4(b) (setting forth considerations governing this Court’s review).

A. The Court of Appeals Opinion Applied Settled Law

The Court of Appeals decision is not in conflict with a decision of the Supreme Court or a published decision of the Court of Appeals. *See* RAP 13.4(b)(1)(2). The APA states that if a party fails to “file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule,” that failure “constitutes a default and results in the loss of that party's right to an adjudicative proceeding, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party...” RCW 34.05.440(1). The Department of Social and Health Services has established by rule that DVR customers have 45 days to request administrative review of DVR decisions. WAC 388-891A-0255(2).

This Court has held that strict compliance with the procedural requirements of the APA is necessary. *See Stewart v. Dep't of Employment Sec.*, 191 Wn.2d 42, 53-4, 419 P.3d 838 (2018) (“compliance with statutory time limits for perfecting appeals from agency decision is necessary ‘in order to invoke the jurisdiction of the superior court’”). Furthermore, numerous unpublished Court of Appeals decisions have applied the plain meaning of RCW 34.05.440(1) in the same way as the Court of Appeals did here. *See, e.g., Dhaliwal v. Dep't of Soc. & Health Servs.*, 2 Wn.App.2d 1044, 2018 WL 1111063 (2018) (“the legislature intended to apply strict requirements for appeals of agency decisions. A party loses his or her right to review if he or she does not timely request review.”) (unpublished); *Saarela v. Dep't of Soc. & Health Servs.*, 183 Wn. App. 1044 (2014) (“a party making an untimely request for hearing ‘may not maintain

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such action or avail itself of the [tribunal's] jurisdiction.”) (unpublished).²

In this case, Ms. Cagliostro was sent notice of her deadline to request an administrative hearing but did not request a hearing within 45 days as required by agency rule and statute. In affirming the dismissal of Ms. Cagliostro’s hearing, the Court of Appeals identified that “[t]he APA mandates that applications to begin an adjudicative proceeding . . . be timely filed.” *Cagliostro v. Dep’t of Soc. & Health Servs.*, 2021 WL 5177439 (Wash. Ct. App. Nov. 8, 2021) at *1. That is consistent with this Court’s strict interpretation of APA timing requirements. Because the Court of Appeals decision at issue does not conflict with a decision of this Court or a published opinion of the Court of Appeals, there is no basis for this Court’s review.

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² These cases are unpublished opinions of the Court of Appeals filed after March 1, 2013. They are being cited here as nonbinding authorities under General Rule 14.1.

B. The Decision of the Court of Appeals does not Involve a Significant Question of Law Under the Washington or United States Constitutions or an Issue of Substantial Public Interest.

It is unclear whether Ms. Cagliostro's argument below intended to assert any constitutional issues or issues of substantial public interest—they did not do so overtly—and she has not provided any argument to support her request for review. However, there are no constitutional or public interest issues in this case meriting this Court's review.

This case concerns an administrative order dismissing Ms. Cagliostro's request for a hearing to contest the closure of her vocational rehabilitation case, after she received adequate notice and her hearing request was untimely. *Cagliostro*, 2021 WL 5177439 at *1. It is well settled that procedural due process generally requires notice and an opportunity to be heard prior to termination of public benefits. *See generally, Mathews v. Eldridge*, 424 U.S. 219, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). However, it is also

well settled that parties may lose their right to be heard if they do not comply with procedural deadlines. *See, e.g., Conner v. Universal Utilities*, 105 Wn.2d 168, 172, 712 P.2d 849, 851 (1986) (“Generally, due process allows entry of a default judgment without further notice to a properly served defendant because the complaint provides him with sufficient notice to make an intelligent decision to appear or default.”); *Arch of Kentucky, Inc. v. Dir., Office of Workers' Comp. Programs*, 556 F.3d 472, 478 (6th Cir. 2009) (“[D]ue process generally does not entitle parties to an evidentiary hearing where [a federal agency] has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response.”).

In addition, this Court has held that APA statutory requirements must be interpreted strictly, and are jurisdictional in nature. *Stewart*, 191 Wn.2d at 53-4. Beyond these well settled issues this case does not concern constitutional issues or other issues of public interest, and because they are well settled neither

of these issues is significant. Therefore, this case does not involve a significant question of law under the Washington or United States Constitutions or an issue of substantial public interest, and review should be denied.

The Court should deny the request for review because Ms. Cagliostro did not comply with RAP 13.4 when she failed to follow the requirements of RAP 13.4(c) and because none of the elements identified in RAP 13.4(b) are present in this case.

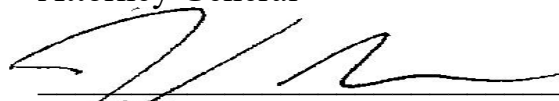
VII. CONCLUSION

Ms. Cagliostro's petition for review should be denied.

This document contains 1657 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 3 day of
February, 2022.

ROBERT W. FERGUSON
Attorney General



JOSHUA CAMPBELL
Assistant Attorney General
WSBA No. 51251

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I caused to be served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

US Mail Postage Prepaid
 Via Electronic Mail

TO:

| | |
|--|---|
| Rita Cagliostro 212 Alaskan Way S205 Seattle, WA 98104 | <i>Petitioner</i> <i>Email: rcaglios@gmail.com</i> |
|--|---|

EXECUTED this 3 day of February, 2022 at Tumwater,
WA.



Joshua Campbell, AAG

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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|--------------------------|---|---------------------|
| RITA CAGLIOSTRO, |) | No. 81266-1-I |
| |) | |
| Appellant, |) | |
| |) | DIVISION ONE |
| v. |) | |
| |) | |
| WASHINGTON STATE |) | |
| DEPARTMENT OF SOCIAL AND |) | |
| HEALTH SERVICES, |) | UNPUBLISHED OPINION |
| |) | |
| Respondent. |) | |
| _____ |) | |

MANN, C.J. — Rita Cagliostro appeals the King County Superior Court’s order dismissing her petition for judicial review of an Administrative Law Judge’s (ALJ) dismissal of her request for an administrative hearing. The order found that Cagliostro failed to state a claim for which relief could be granted based on the ALJ’s determination that her request for an administrative hearing was untimely. We affirm.

FACTS

In 2016, Cagliostro applied to receive employment services from the Department of Social and Health Services’ Division of Vocational Rehabilitation (DVR). On May 5,

Citations and pin cites are based on the Westlaw online version of the cited material.

No. 81266-1-I/2

2016, DVR closed Cagliostro's case file after she requested it do so. DVR sent notice of its action to Cagliostro to the address in her file. Cagliostro denies receiving the notice.

Almost three years later, on April 15, 2019, the Office of Administrative Hearings received Cagliostro's request for an administrative proceeding, including retroactive benefits, to contest DVR's decision to close her case. DVR moved to dismiss Cagliostro's hearing request because it was untimely. On October 9, 2019, the ALJ dismissed Cagliostro's request after finding that Cagliostro's request was filed after the 45-day deadline (ALJ order).

On November 14, 2019, Cagliostro filed a petition for judicial review in King County Superior Court challenging the ALJ order. Cagliostro e-mailed a copy of the petition to DVR's customer relations manager, and then later mailed a partial copy to the Washington State Attorney General's Office. DVR moved to dismiss Cagliostro's petition for judicial review based on failure to state a claim for which relief could be granted and insufficient service of process. In March 2020, the superior court granted DVR's motion to dismiss finding that Cagliostro failed to state a claim for which relief could be granted based on the ALJ's determination that her hearing request was untimely. The court declined to address the Department's argument regarding service of process.

Cagliostro appeals.

ANALYSIS

We review de novo an order of dismissal under CR 12(b). Ricketts v. Washington State Bd. of Accountancy, 111 Wn. App. 113, 116, 43 P.3d 548 (2002).

With limited exceptions, the Administrative Procedure Act (APA), ch. 34.05 RCW, establishes the exclusive means of judicial review of agency actions. RCW 34.05.510. The petitioner bears the burden of demonstrating the invalidity of an agency action. RCW 34.05.570(a). A reviewing court may only grant relief from an agency order in an adjudicative proceeding if the petitioner demonstrates that one of nine statutory requirements are met. RCW 34.05.570(3).

The APA mandates that applications to begin an adjudicative proceeding, including the hearing requested by Cagliostro, be timely filed. The “[f]ailure of a party to file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule constitutes a default and results in the loss of that party’s right to an adjudicative proceeding.” RCW 34.05.440(1). The Department of Social and Health Services requires a party request an administrative hearing within 45 days of DVR’s decision. WAC 388-891A-0255(2).

DVR closed Cagliostro’s case on May 5, 2016. DVR mailed the notice to Cagliostro’s address on file, the same address on file at the time of the ALJ’s final order. Cagliostro did not appeal this decision until 2019, nearly three years later. The ALJ properly found that Cagliostro untimely submitted her hearing request past the 45-day deadline and concluded that the Office of Administrative Hearings lacked jurisdiction to hold a hearing on the merits. Cagliostro failed to assert a claim upon which relief can be granted.¹

¹ DVR also argues that the superior court should have dismissed Cagliostro’s petition because she failed to invoke the superior court’s appellate jurisdiction to review DVR’s agency action when she served her petition for judicial review by email rather than service consistent with agency rule. Because we affirm the superior court’s order dismissing the petition, we decline to address this claim.

No. 81266-1-1/4

Affirmed.

Mann, C.J.

WE CONCUR:

Coburn, J.

Dryden, J.

ATTORNEY GENERAL'S OFFICE

February 03, 2022 - 11:08 AM

Transmittal Information

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