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COURT OF APPEALS
DIVISION II

2016 JUN -9 AM 11:45

STATE OF WASHINGTON

BY  _____
DEPUTY

NO. 47788-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

Dameas Duranzan,

Appellant,

v

Department of Social and Health Services,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Vicki L. Hogan, Judge

APPELLANT'S REPLY BRIEF

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A. REPLY TO COUNTERSTATEMENT OF ISSUES

1. Did the Board of Appeals (BOA) erroneously declare Mr. Duranzan's appeal untimely?

2. Was the petition for review solely for the decision of the Administrative Review or were the issues presented to the Superior Court of a more broad scope?

3. If the petition for review was for a range of issues more broad in scope, did the Superior Court err in not hearing or deciding on the issues of invalidity or inconsistent application of the rules?

4. If this court finds the Superior Court did err in not addressing all the matters before it, should it remand the matter to the Superior Court for consideration of the matters?

B. REPLY TO COUNTERSTATEMENT OF THE CASE

Dameas Duranzan, "appellant", began receiving DSHS Welfare Entitlement's, "ABD", in 2012. He had been on this program for over a year when benefits were terminated, CP 25. Appellant began the process of administrative review eventually learning that the Administrative Law Judge, "ALJ", could not consider his arguments as the Administrative Review process did not allow for invalidity or unenforceable arguments, CP 4-5.

Appellant did not receive a proper order and after receiving the corrected order February 6, 2014 sought an extension from the BOA within the 21 day period to seek review on February 26, 2014. The BOA denied his extension citing that they did not consider the corrected order as the order of record. With this in mind the BOA erroneously considered the order final as of February 21, 2016. After reaffirming the statements of the OAH presiding judge, Judge Blas, on what would be the deadline for seeking extensions that Presiding Judge issued a letter in support of the deadline change as stated by the OAH. With this additional testimony from the OAH and the original request for extension Appellant filed his Appeal March 21, 2014. Showing good cause for requesting an extension on February 26, 2014, and that the date for calculation was stated to have changed by the OAH. CP 26-27.

At the conclusion of the Administrative process with a final order from the BOA Appellant submitted a Petition for Review Of Administrative Order, CP 1-3. This appeal was to address a multitude of concerns in compliance with RCW 34.05.570(3)(a)-(f),(h)(i).

Appellant filed his opening brief on March 13, 2015, CP 24-31. In this brief Appellant cites several instances of concern starting with the fact that ALJ's cannot review constitutional error, or individual challenges to

the rule, CP24-25. Appellant further proceeds to document the history of this case and references a previous waiver and exception to the rule, “ETR”, of which points to the inconsistency of the Respondent, CP 25. This information was provided as testimony, the ALJ granted this testimony as the record was incomplete as provided by the department, CP 25. The testimony allowed also spoke to a recording of the Respondent statements that they did not collect reimbursement for all cases including those with attorneys fees. CP 25.

Appellant had prepared to argue these inconsistencies as well as the other issues included in the original petition for review but when Trial was held on May 8, 2015 Appellant was unable to be present due to funds and illness and the case was dismissed without Trial without considering the issues presented on review, CP 32-33. Plaintiff after recouping from his illness, filed a Motion to rehear May 15, 2015, CP 34-36. Appellant sought to provide oral argument as is required for substantive due process as established in *Goldberg v. Kelly*, as well as have the court consider the matters before it brought upon review. His motion was denied, CP 37, and Appellant filed an appeal with this court July 2, 2015.

C. ARGUMENT

1. Issues before the Superior Court

The Respondent consistently states that the matters before the Superior court were only those of the timeliness of the BOA review. That is not reflected in the file, is inconsistent with the Appellant's documented intentions, and the bulk of the Respondents arguments. In fact in citing the opening argument for standard of review the Respondent cite's a select few of the issues brought on review by the Appellant.

The issues before the Superior court on review were if the rule as applied was in violation of constitutional provisions(a). Whether or not the agency had erroneously interpreted or applied the law(d). If the order is not supported by the additional evidence submitted to the Superior Court along with the record on review(e). Whether or not the Agency has not decided all issues requiring resolution by the agency(f). Whether or not the order is inconsistent with a rule of the agency and if the agency has explained the inconsistency(h).

a. Issues before this court

The matters before this court as presented by the Appellant are whether or not the court resolved the issues brought on review or rather neglected to review those issues. Whether or not the court erroneously

denied Appellant the right to oral testimony before an impartial decision maker. Whether or not the Goldberg vs. Kelly standard citing Joint Anti-Fascist Refugee Committee v. McGrath has been provided for in denying Appellant a rehear, see CP 28-29.

b. **BOA timeliness**

The Appellant seeks to reiterate the facts submitted on Page 2 of this brief and additionally submit that the BOA is biased and cannot objectively decide matters before it. It is a branch of the Respondent's Agency and is still regulating via the WAC's and cannot consider individual challenges to the rules same as the OAH.

Additionally while the Respondent seeks to only address the BOA Statements that the Appellant could have, "faxed a request for review immediately" it is irrelevant as the BOA had erroneously decided that submission was due on February 21, 2015. The Appellant finds these misrepresentations and exclusions by the Respondent's Counsel unprofessional and unethical in nature.

Last the Respondent's position is that this is a matter of timeliness and asserts that Appellant failed to bring them up in his opening brief. Again Appellant's stance on issues before this court are cited above and Appellant finds the Respondent's tact and stance egregious.

2. **Equitable Estoppel**

Appellant reasserts his previous argument regarding the inconsistency of the department as it was not readily available at the Superior Court level.

When considering Substantive Due Process and the rules of invalidity of actions taken by the Respondent it is necessary to notice that at this time the Appellant is again receiving the same exact welfare entitlement's as were in dispute before the lower courts. In fact there has been no change to Appellant's qualifications since his initial 2012 claims other than an increased debt, homelessness and now loss of a service animal for functionality, the last of which was not the case at the approval of benefits in October, 2015.

This current position should lead this court and any court to recognize the Equitable Estoppel issues with Respondents case.

- a. **Respondent has failed to justify their inconsistency in application of rules and standards.**

As previously stated the respondent has failed to ever contest the fact that their regularly waive reimbursement of ABD when individual's finally obtain SSI. They also have never contested that

Appellant had been receiving benefits for over a year and had been subject to previous reviews and no such actions were taken against Appellant due to an ETR. When considering these 2 undisputed facts the concern comes to reason that the inconsistency of their behaviors and modal are not reasonable or fair in application. With this Appellant urges this court to recognize the quote from Goldberg v. Kelly regarding effective opportunity.

3. Decision by the Superior Court

While the Respondent lists that dismissal must occur due to the lack of exhaustion, the Respondent later attempts to argue against the clause to exemption.

The Appellant summarily rejects that an exemption to the Exhaustion requirement was not necessary. Matters of invalidity and individual challenges to the rules and whether or not they are enforceable cannot be heard before the OAH, see CP 6. Appellant was and is challenging the rules as invalid and inconsistent with DSHS Policy and procedure. That due to these invalid and inconsistent issues that the rule is unenforceable as applied and is unconstitutional, CP1-2.

Additionally the remedies available via the BOA “(a) would be patently inadequate; (b) the exhaustion of remedies would be futile; or (c) the grave irreparable harm would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies.”

The Respondent claims that the issues brought up were entirely within the ALJ's decision making powers, yet the ALJ excludes in his order invalidity/enforceable arguments and simply substitutes that the ALJ cannot consider these argument's under WAC 388-02-0225(1). The Appellant lists some of the argument's the ALJ could not consider before the OAH in his Opening brief and others in documents before this court. CP 29-30, Appellants OB at 9.

In only deciding on the timeliness matter the Court effectively ignored all the Appellant's submissions, ignored the issues brought on review, and denied Appellant substantive due process by failing to consider the grievous loss Appellant was condemned to suffer. It is clear that since this case has lasted years the Appellant's well being has greatly deteriorated, that Appellant is now homeless because of the issues, lost his service animals and that this continued focus on trying

to keep his benefits has effectively denied him the ability to seek progress in his status on all fronts of treatment.

Did the Superior Court consider the following: How can the Appellant get the necessary surgery when he doesn't have a safe/clean place to sleep, when the only situation willing to take \$197 a month and provide him the bare necessities to get by won't keep him because the department plans to take money owed to that landlord/provider? When the people who are supposed to be there to help him and provide access and support ignore his inquiries for assistance, drag him down further into debt and despair, force him to choose between feeding himself and the service animals that kept him going every day, then making it impossible to even maintain them by yanking his benefits like they were a yo-yo. How can he maintain treatment when his situation is so bleak he is more ready to suffer a loss of life than waste what little he has to treat his underlying conditions? Indeed Appellant can eat, has some spare change now that he is homeless and lost the largest part of his treatment (his service animals), but what quality of life has the Respondent effectively condemned the Appellant to? One of his monthly benefits finally being used to end all of this? To finally end up

in such dire circumstances that their failure to act previously now obligates them to put him in a hospital bed for a lost arm? End up in the current system that has months wait time to get inpatient psychiatric services? Or simply to pay for morgue services because just like so many others before him, Appellant fell through the cracks?

D. **CONCLUSION**

The Superior Court erred in failing to address issues brought on review. Failed to consider the condemnation of the Appellant to further deterioration and as such failed to provide substantial due process. Most of the arguments that both parties are submitting now are and should have been before the Superior Court. The Superior court failed to rehear a matter before them in the interest of justice, fairness, effective opportunity of presentation/cross and denied Appellant several key constitutional rights.

Appellant is at wits end, the quality of life deterioration has made it hard if not impossible to remain emotionally clear when trying to even address this court. While the fraudulent representation by the Respondent has been documented before this court (Appellants reply motion to modify April 11, 2016 at 4) it is not surprising to find that the

Respondent continues to disrespect this court and his oath of office due to the lack of censure by this Court. Appellant continues to be mocked and ignored in his dire time of need, seeking help from the agency designed to provide those remedies and only to be ignored and disregarded by that agency, the Respondent Department of Social and HEALTH services.

I'm homeless... No path to recovery, no foreseeable route to improvement. I've spent the better part of 4 years trying to get benefits and keep them, having little to no time to actually get better because of an inconsistency where attorney's fees can be a substitute for recoupment. However something 100% more necessary such as housing and debts to those helping me stay alive, safe and progressing are treated as less important. I spent over a year asking DSHS to help me find housing, I even lost a child due to those circumstances. I eventually found someone on my own willing to take 197 a month and the rest when I get my SSI, but I can't even do that because of the Respondent.

Appellant therefore asks this Court to reverse the order dismissing petition for review and remand for a new hearing.

Preferably Appellant asks that this court find that the Respondent acted inconsistently and order Respondent to provide all of Appellant's lost months of benefits and other fees and costs.

DATED this 8 day of June, 2016.

Respectfully submitted,

S/ Dameas Duranzan
Pro Se

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6 IN THE APPELLATE COURT OF THE STATE OF WASHINGTON
DIVISION II

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8 In re:

9 Dameas Duranzan,
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10 vs.

11 Department of Social and Health Services
12 Respondent.

Case No. 47788-2-II

CERTIFICATE OF SERVICE

13
14 I certify that on June 13, 2016, I served AAG William McGinty and his assistant,
15 “Appellant's Reply Brief” via email as previously agreed upon in accordance with GR 30(4)

16 I certify under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct.

18 Signed this 13 day of June, 2016 in Tacoma Washington.

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