

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

C D,)
)
 Appellant,)
 vs.)
)
 STATE OF ALASKA and,)
 DEPARTMENT OF HEALTH AND)
 SOCIAL SERVICES and)
 DIVISION OF SENIOR AND)
 DISABILITIES SERVICES,)
)
 Appellees.)
 _____)

Case No. 3AN-13-00000CI

MEMORANDUM OF DECISION AND ORDER

This matter comes before the Court as an administrative appeal of Appellee Department of Health and Social Services’ (the “Department”) dismissal following Appellant C D’s (“Ms. D”) failure to appear at several hearings and a status conference. Ms. D appeals the decision pursuant to Alaska R. App. P. 602(a)(2). The Court VACATES the Department’s dismissal and REMANDS this case to the Department to conduct a for cause hearing on Ms. D’s claim.

STATEMENT OF FACTS

Ms. D is a resident of Anchorage, Alaska. From the medical records provided, Ms. D has a history of documented medical impairments and was reportedly bed ridden during part of the present action. She also has had several recent hospital stays related to her condition. Ms. D alleges her situation is made more complicated in that she would

frequently run out of minutes on her phone, was unreachable and had no one to make calls for her.

On February 11, 2013, Ms. D, *pro se*, requested and was granted a hearing on March 18, 2013 regarding the number of hours she had been approved for Personal Care Assistant (“PCA”) services by the Department. Between March 2013 and May 2013, Ms. D failed to appear telephonically at two separate hearings as well as one status conference. Due to her medical and personal situation described above, Ms. D was able to show good cause for her failure to appear at her initial hearing. Following her failure to appear at a status conference for her second good cause hearing, the Administrative Law Judge (“ALJ”) for the Office of Administrative Hearings (“OAH”) dismissed her case which is the cause for this appeal.

Ms. D argues on appeal that she had insufficient means of communication and was thus unable to appear. She alleges that she was to notify OAH upon receiving her land phone, however, she did not receive her land line until after the decision from OAH that dismissed her case. Ms. D adds that in addition to her difficulty coordinating with OAH, she had been in poor health and in emergency care. The Court is now asked to determine whether a new hearing can be reinstated for Ms. D.

STANDARD OF REVIEW

The superior court has jurisdiction to act as an intermediate appellate court and review appeals from administrative agencies pursuant to Alaska Statute § 22.10.020(d) and Appellate Rule 601 *et seq.*

In an appeal from an agency decision, there are four principal standards of review. First, questions of fact are subject to the “substantial evidence” test; second, questions of law involving agency expertise are subject to the “reasonable basis” test; third, questions of law where no agency expertise is involved are subject to the “substitution of judgment” test; and fourth, review of administrative regulations is subject to the “reasonable and not arbitrary” test.¹

Whether a PCA applicant’s case is subject to dismissal for a failure to appear at a hearing is a question of law. The terms of the regulation, 7 AAC 49.100, on dismissal are not technical. Non-technical statutory review is reviewed under the substitution of judgment standard.² The Court will therefore apply its own “independent judgment as to whether the agency’s interpretation complies with the legislature’s intent.”³ “Application of this standard permits a reviewing court to substitute its own judgment for that of the agency even if the agency’s decision has a reasonable basis in law.”⁴

ANALYSIS

Alaska courts have consistently held *pro se* litigants to less stringent standards than those of lawyers.⁵ Courts have also allowed *pro se* litigants to proceed with their individual claims even where rules have mandated agency dismissal.⁶

¹ *State v. Public Safety Emp. Ass’n*, 93 P.3d 409, 413 (Alaska 2004).

² *N. Alaska Envtl. Center v. State, Dept. of Natural Res.*, 2 P.3d 629, 633 (Alaska 2000).

³ *Id.* (quoting *State v. Aleut Corp.*, 541 P.2d 730, 737 (Alaska 1975)).

⁴ *Tesoro v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987).

⁵ *Collins v. Arctic Bldgs.*, 957 P.2d 980 (Alaska 1998); *Breck v. Ulmer*, 745 P.2d 66 (Alaska 1987).

⁶ See *Collins* at 982.

Here, the ALJ dismissed Ms. D's claim pursuant to 7 AAC 49.100 when she failed to appear at a status conference to show good cause after she failed to attend her original hearing. 7 AAC 49.100 states in relevant part that "the administrative law judge shall deny or dismiss a hearing request or terminate a hearing if [. . .] (4) the recipient fails, without good cause as determined by the administrative law judge, to appear in person, telephonically, or by authorized representative at the scheduled hearing." As stated above, *pro se* litigants can maintain an action despite the existence of a rule mandating dismissal.

In *Collins v. Artic Buildings*, a *pro se* litigant appealed the superior court's decision upholding the Alaska Workers' Compensation Board's dismissal of his application for a claim adjustment.⁷ Collins appealed the board's decision but failed to comply with the appellate rules and was dismissed by the superior court.⁸ On appeal, the Supreme Court remanded the case to the superior court and held that the court was to instruct Collins of the deficiencies in his motion and give him an opportunity to correct them.⁹

Crucial to its analysis was that Collins did attempt to comply with the Appellate Rules and had filed his claim with the court but failed to submit all the required documentation.¹⁰ This is relevant to the present issue where Ms. D had filed her claim

⁷ *Collins* at 981.

⁸ *Id.*

⁹ *Id.* at 982.

¹⁰ *Id.*

with the Department and had expressly told the ALJ of her difficulty to appear around the time the hearing was to be held. The efforts on the part of Ms. D while in her reported state warrant additional proceedings.

The Alaska Supreme Court has previously recognized significant due process rights and concern regarding erroneous PCA rulings. In *Baker v. State, Dept. of Health and Social Services* the Court related PCA proceedings to welfare benefits.¹¹ The Court explained:

“Where the recipient has a “brutal need” for the benefit at issue, as in the case of welfare recipients, courts have traditionally required that agencies go to greater lengths—incurring higher costs and accepting inconveniences—to reduce the risk of error. Recipients of PCA services are arguably as dependent on their benefits as are welfare recipients; without them, they may be unable to do things as basic as bathing, preparing a meal, or using the toilet. An error in the agency’s determination to reduce PCA services could result in serious harm to the service recipient. It follows that the agency should be required to make every reasonable effort to reduce the risk of erroneously depriving PCA services recipients of their benefits.¹²

Baker speaks to supplying adequate accommodation in Ms. D’s case. While the ALJ and support staff made commendable efforts to schedule the hearing with Ms. D, her medical issues appear to have limited her opportunity to preserve her application.

¹¹ *Baker v. State, Dept. of Health and Social Services*, 191 P.3d 1005, 1010 (Alaska 2008).

¹² *Id.*

After reviewing the record, the Court notes the ALJ was knowledgeable of Ms. D's past medical history.¹³ The ALJ noted in the first hearing to show cause where Ms. D failed to appear that good cause would have likely been shown if Ms. D was unable to be present due to her continued medical issues.¹⁴ Ms. D in her appeal alleges she was indeed unable to be present due to medical issues.¹⁵ Because the record reveals the significant possibility that the ALJ would have found good cause had she known that Ms. D's medical issues prevented her from attending the hearing and the for cause hearing, the case should be remanded to the ALJ so that the facts concerning her inability to appear may be fully developed and to reduce the risk of error.

While an agency is not entirely responsible for the diligence of the parties before it, *pro se* litigants must be afforded an opportunity to appear and the abilities of the parties must be taken into account. In assessing this balance, the Court finds that Ms. D should be afforded a for cause hearing as she notified the ALJ previously of her medical ailments and her constraints regarding her ability to appear before actually failing to appear at the hearing.

ORDER

For the aforementioned reasons, the Court VACATES the administrative order and REMANDS to the Department to afford Ms. D a for cause hearing.

¹³ Hr'g for Cause, May 9, 2013.

¹⁴ *Id.*

¹⁵ Appellant's Br.

Dated at Anchorage, Alaska this 17th day of August 2014.

Signed _____

Erin B. Marston
Superior Court Judge

[This document has been modified to conform to the technical standards for publication.]