

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**
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P.D.,
Petitioner,

v.

DEPARTMENT ON DISABILITY SERVICES
&
REHABILITATION SERVICES
ADMINISTRATION
Respondent

Case No.: 2013-DDS-000XX

FINAL ORDER

I. Introduction

For the following reasons, I will dismiss this case for lack of jurisdiction. Petitioner D.P.'s January 11, 2013 hearing request and subsequent filings are untimely filed as to the August 3, 2011 closure of his Rehabilitation Services (RSA) case. 29 DCMR 149.4.

Nothing in this Order precludes Mr. D.P. from reapplying for RSA services. If he is dissatisfied with any future actions taken with regard to his RSA services, he may file another hearing request.

II. Background

On January 11, 2013, Mr. D.P. filed a hearing request regarding the RSA program administered by Respondent District of Columbia Department on Disability Services (DDS).

Mr. D.P. seeks relief in essence because he contends that Respondent improperly terminated his case on August 3, 2011. Mr. D.P. seeks an order requiring Respondent to reimburse him for his educational expenses incurred after August 2011, and requiring Respondent to provide certain RSA services in the future.

A status conference was held in this case on February 8, 2013. Mr. D.P. appeared on his own behalf. Shakira D. Pleasant, Esq., appeared on behalf of Respondent. Ms. Pleasant stated that Respondent intended to file a motion to dismiss this case for lack of jurisdiction.

The parties agreed to a motions schedule, setting filing deadlines for Respondent's written motion, and Mr. D.P.'s written response. On February 8, 2013, I issued an Order for Motions Schedule that suspended all proceedings in this case, and ordered the filing schedule agreed to by the parties.

Pursuant to that schedule, Respondent has timely filed its Agency's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. (the Motion) Mr. D.P. has timely filed his Opposition and Amended Opposition to the Motion. (collectively, the Opposition)

Mr. D.P. has also filed a Show Cause Motion and Amended Show Cause Motion, seeking relief for Respondent's actions prior to August 3, 2011.

For the following reasons, I will grant Respondent's Motion. I will dismiss the hearing request filed on January 11, 2013, and Mr. D.P.'s Show Cause Motions, filed in February 2013.

III. Standard for Summary Adjudication

OAH Rule 2819.1 permits a party to file a motion for summary adjudication, requesting that the administrative law judge decide the case summarily, without a hearing. Such a motion must include sufficient evidence of undisputed facts and citation of controlling legal authority.

OAH Rule 2801.1 provides that where a procedural issue is not specifically addressed in the OAH Rules of Procedure, an administrative law judge may be guided by the Superior Court of the District of Columbia Rules of Civil Procedure.

Respondent has moved for dismissal of this case and has relied upon exhibits attached to the Motion or contained in Respondent's Status Report. Therefore, the motion for dismissal is akin to a motion for summary adjudication or summary judgment. *Compare* D.C. Superior Court Rules 12-I(k) and 56 [summary judgment] *with* D.C. Superior Court Rule 12(b)(6) [dismissal for failure to state a claim].

Under Rule 56, the burden is on the moving party to show: (1) that there are no issues of material fact; and (2) that the moving party is entitled to judgment as a matter of law. *See, e.g., Kissi*, 3 A.3d at 1128.

In ruling on a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party, resolving any ambiguities against the moving party. *E.g., Young v. Delany*, 647 A.2d 784, 788 (D.C. 1994).

Based on the evidence presented, considered in the light most favorable to Mr. D.P., the following pertinent undisputed facts have been established.

IV. Undisputed Facts

The following pertinent facts are not in dispute:

1. Prior to August 3, 2011, Mr. D.P. received RSA services through Respondent.
2. On August 3, 2011, Respondent mailed its Notice of Case Closure to Mr. D.P., at [Street Address redacted], N.E., Washington, DC 20019, which is Mr. D.P.'s address of record with Respondent. The Notice informed Mr. D.P. that his case was being closed because "Client refused further services." The Notice also informed Mr. D.P. of his right to request administrative review, of his right to request mediation, of his right to request a due process hearing, of his right to request an interpreter or other means of communication, and of his right to contact the Client Assistance Program. As to the right to request a due process hearing, the Notice informed Mr. D.P. that the deadline for filing a hearing request was 30 business days after receiving the Notice.
3. On January 11, 2013, Mr. D.P. filed his hearing request seeking relief based on Respondent's August 3, 2011 Notice of Case Closure.
4. On February 9¹ and 28, 2013, Mr. D.P. filed his Show Cause Motion and his Amended Show Cause Motion, respectively. In these Show Cause Motions, Mr. D.P. seeks relief based on Respondent's actions prior to August 3, 2011.

V. Discussion

¹ The OAH case file did not show that the original Show Cause Motion had been filed. The parties have provided a copy of the Show Cause Motion, which is dated February 9, 2013. I deem that it was filed on that date. The Amended Show Cause Motion was filed on February 28, 2013.

Respondent moves for dismissal of this case because Mr. D.P.'s hearing request and subsequently-filed Show Cause Motions are untimely filed.²

29 DCMR 149.4 provides:

Each applicant or client shall request a hearing within fifteen (15) business days after an adverse decision based on an informal administrative review or, in the absence of an informal administrative review, within thirty (30) business days of the occurrence of the action upon which the complaint is based.

This is a jurisdictional bar to my consideration of the merits of Mr. D.P.'s case.

The District of Columbia Court of Appeals has repeatedly held that the jurisdictional bar imposed by a statutory or regulatory deadline is subject to the doctrine of "unambiguous notice." Under this doctrine, the Government is required to show that proper unambiguous notice of the action taken and the right to request a hearing has been given to the affected person. *Calhoun v. Wackenhut Services*, 904 A.2d 343, 345-47 (D.C. 2006) [setting forth the doctrine of unambiguous notice]; *Zollicoffer v. D.C. Public Schools*, 735 A.2d 944, 947-48 (D.C. 1999) [an ambiguity of notice as to length of the appeal period renders the notice inadequate to trigger operation of the statutory time limitation].

Under 29 DCMR 136.2(d), a RSA recipient is entitled to receive written notice of his or her due process rights when the RSA case is being closed.

In this case, Respondent has complied with the requirement of written notice. On August 3, 2013, Respondent mailed the Notice of Case Closure to Mr. D.P. at his address of record. Mr.

² Respondent also moves to strike the Show Cause Motions because Mr. D.P. did not seek Respondent's consent before filing the Show Cause Motions. Since I am dismissing this case in its entirety, I do not need to decide this issue.

D.P. does not contend that he did not receive the Notice. The Notice correctly advised Mr. D.P. of his right to request a hearing, and the time limit and method for doing so.

Consequently, Mr. D.P. was required to file his hearing request within 30 business days after receiving the Notice. Assuming that Mr. D.P. received the Notice of Case Closure five business days after it was mailed, the thirty-business-day period began on August 10, 2011. The deadline for Mr. D.P. to file his hearing request was September 22, 2011. Mr. D.P.'s January 11, 2013 hearing request was untimely filed.

Mr. D.P.'s Show Cause Motions are also untimely filed. Mr. D.P. complains of events that occurred before August 3, 2011. For the same reasons that I am dismissing the hearing request, I must also dismiss Mr. D.P.'s other claims.

In his Opposition, Mr. D.P. does not contest the facts outlined above. Mr. D.P. argues that Respondent has violated prior orders issued in his favor, and that dismissal of this case would enable Respondent to evade its legal requirements. However, in order for me to consider his claims, Mr. D.P. is required to file a timely hearing request. In the absence of a timely hearing request, OAH has no jurisdiction to rule on the claims.

VI. Order

Therefore, it is hereby, this 14th day of March, 2013:

ORDERED, that Respondent's Motion is **GRANTED**, and this case (00001) is hereby, **DISMISSED FOR LACK OF JURISDICTION**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

/s/

Paul B. Handy
Administrative Law Judge