

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Donald W. Stoyer,	:	
	:	
Appellant-Appellant,	:	
	:	
v.	:	No. 08AP-1118
	:	(C.P.C. No. 08CVF-06-8676)
Ohio Department of Job & Family	:	
Services,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee.	:	
	:	

D E C I S I O N

Rendered on June 9, 2009

Donald W. Stoyer, pro se.

Richard Cordray, Attorney General, and William C. Greene,
for appellee.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} Donald W. Stoyer is appealing from the decision of the Franklin County Court of Common Pleas affirming the dismissal of his administrative appeal. He has presented three "questions of law," which we shall treat as assignments of error:

[I.] Did the common pleas court with the **ODJFS** administrate and hearing decision *abuse their discretion* with their consideration of **O.A.C. § 5101: 6-7-01 (C)(2)**, when in fact specifically, it states in relevant part: *The hearing officer's conclusion of policy and recommendations shall be based solely on published **ODJFS** regulations...except when*

*these regulations and policies are **silent** and reference to the Revised Code or other statutory source is necessary **to resolve the issue** to prevent a violation of *due process* or *equal protection* standards?*

[II.] Did the common pleas court with the **ODJFS** administrate appeal hearing decision *abuse their discretion* in their consideration of **O.A.C. § 5101:6-8-01(C)(4)(E)(1)(c)**, when in fact specifically, through said *code Time: additional time after service by mail* as implied pursuant to **O.R.C. § Civil Rule 6(E)** is **silent** pursuant to **O.A.C. § 5101:6-7-01(C)(2)** within **O.A.C. § 5101: 6-8-01(C)(4)(E)(1)(c)**, since **ODJFS** electively administers all of their decision by *service by **regular** mail* by failing to consider *additional time after service by mail* to their recipients, since it does not inform anyone of these facts to prevent a "strict practice" or to prevent a violation of their *due process* or *equal protection* standards because *if mail is properly addressed, stamped, and mailed, but is time-stamped...after the date by which it...been received...may be deemed timely?*

[III.] Did **ODJFS** hearing decisions *abuse its discretion* in its consideration of the issues of the Appellant's *meritorious defense* of his issues of ***cruel and unusual punishment, discrimination, and ethic*** violations pursuant to **O.A.C. § 5101:6-3-02(e)**, when in fact, it specifically states in relevant part: **Complaints concerning discrimination because of age, race, sex, religion, national origin, political beliefs, or handicap shall be referred to the ODJFS EEO officer for investigation** to prevent a violation of *due process* or *equal protection* standards?

(Emphasis sic.)

{¶2} Stoyer, a disabled veteran, depends on social security disability benefits, a small veteran's pension, and food stamps to meet his needs. In 2008, Stoyer's income increased from \$910 to \$931 per month. As a result, the Ohio Department of Job & Family Services ("ODJFS") decreased Stoyer's food stamp allowance from \$52 per month to \$44 per month. Stoyer objected to the decrease and requested and received a hearing pursuant to R.C. 5101.35(B). The hearing officer issued a decision on April 24,

2008, finding that the calculations were correct and affirming the reduction in food stamp benefits.

{¶3} Stoyer disagreed with the decision and sought to appeal. Ohio Adm.Code 5101:6-8-01(C)(4) provides that an administrative appeal request "must be received by the office of legal services, ODJFS, within fifteen calendar days from the date the decision being appealed was issued." Stoyer mailed his written notice of appeal to ODJFS by certified mail postmarked May 10, 2008, and it was received by the agency on May 12, 2008. ODJFS dismissed the appeal as untimely.

{¶4} Stoyer next appealed to the common pleas court, which affirmed the dismissal. He now appeals once more, arguing that his appeal should not have been dismissed.

{¶5} Our standard of review for an administrative agency, such as ODJFS, is whether the common pleas court abused its discretion in affirming the agency's decision. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122. As such, we must review the facts to see if reliable, probative, and substantial evidence exists to support the trial court's judgment. *Metz v. Ohio Dept. of Human Serv.* (2001), 145 Ohio App.3d 304, 310. With respect to issues of law, our review is de novo. *Id.*

{¶6} Stoyer argues initially that he should have received three additional days to file his administrative appeal with ODJFS because the hearing decision was mailed to him. Had he been given the three additional days, his appeal would have been timely. He asserts Civ.R. 6(E) should apply to extend his time in which to file his appeal. Civ.R. 6(E) provides, in pertinent part:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

{¶7} Civ.R. 6(E) does not apply to this case. The Ohio Rules of Civil Procedure govern the procedures used in the courts of this state. *Vaughn v. State Med. Bd.* (Aug. 6, 1991), 10th Dist. No. 90AP-1160. Rules promulgated pursuant to R.C. Chapter 119, specifically Ohio Adm.Code 5101:6-8, govern administrative appeals from ODJFS.

{¶8} Stoyer also claims that the administrative rules are silent with regard to the allowance of additional time after the notice of appeal is served by mail. Contrary to Stoyer's assertion, we find the language of the administrative rule to be precise in the manner in which it sets forth the time limit for submitting a request for appeal. The time begins to run from the day the decision is sent, and it expires on the fifteenth day after the date of the decision. As written, the rule does not allow any additional time for mail delivery.

{¶9} As mentioned previously, Ohio Adm.Code 5101:6-8-01(C)(4) provides for a fifteen day period to submit a written request for an appeal. ODJFS argues that this time limit requires strict compliance. The Ninth District Court of Appeals has concluded that if the request is even one day late due to a mistake by the U.S. Postal Service, the appeal must be dismissed. *Grill v. Ohio Dept. of Job & Family Serv.*, 9th Dist. No. 02CA0039-M, 2003-Ohio-1139; see also *B.B. ex rel. Biery v. Ohio Dept. of Job & Family Serv.*, 9th Dist. No. 22218, 2005-Ohio-340, ¶6, 10.

{¶10} In *Grill*, the court noted that under the notice of appeal provision in R.C. 119.12 failure to comply with the time limits deprives the appellate tribunal of jurisdiction.

ODJFS goes one step further and cites *Grill* for the proposition that failure to follow Ohio administrative rules governing the procedure for appealing a decision deprives the appellate tribunal of jurisdiction.

{¶11} However, when read in conjunction with another provision of the Ohio Administrative Code, it may be inferred that timeliness of the request is within the sound discretion of the agency. Ohio Adm.Code 5101-6-8-01(C)(4) states that:

The request *must* be received by the office of legal services, ODJFS, within fifteen calendar days from the date the decision being appealed was issued.

(Emphasis added.)

{¶12} In contrast, Ohio Adm.Code 5101:6-8-01(E)(1)(c) provides that:

(E) Dismissal

(1) An administrative appeal request *may* be dismissed because:

* * *

(c) It is not timely, as defined by paragraph (C)(4) of this rule.

(Emphasis added.)

{¶13} We need not resolve the question of whether the request for an administrative appeal provision is mandatory or discretionary. Under either interpretation, our conclusion is the same. Notice of the 15-day time limit was printed on the state hearing decision itself. Stoyer did not mail his notice until day 16. The notice was received May 12, 2008, 18 days after the state hearing decision date. This is not a case where there was an error by the postal system as in *Grill*. Nor is it a situation where constructive receipt can be inferred from the circumstances surrounding the receipt of the notice. Here, it is uncontested that Stoyer did not mail his notice until after the time period

had run. Therefore, we find that the court of common pleas did not abuse its discretion in affirming the dismissal.

{¶14} Finally, Stoyer argues that he had claims for cruel and unusual punishment, discrimination, and ethics violations that were not referred to the ODJFS Equal Opportunity Officer in accordance with Ohio Adm.Code 5101:6-3-02(E). That provision provides that:

Complaints concerning discrimination because of age, race, sex, religion, national origin, political beliefs, or handicap shall be referred to the ODJFS EEO officer for investigation.

If the complaint also concerns one of the issues listed in rule 5101:6-3-01 of the Administrative Code, it shall also be considered a state hearing request.

{¶15} Stoyer's request for a state hearing stated, in pertinent part, that he was challenging "[u]nconstitutional effects of OAC Rule 5101 through (illegible), [p]lus ethic violations of State Workers." However, because we are upholding the dismissal of Stoyer's appeal, these arguments are moot.

{¶16} Based on the foregoing, assignments of error one, two, and three are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and McGRATH, JJ., concur.
