

NO. 28828

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

PAT L. MULVEY, Plaintiff-Appellant-Appellant,
v.
STATE OF HAWAII DEPARTMENT OF HUMAN SERVICES,
Defendant-Appellee-Appellee

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 07-1-0676)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Nakamura and Fujise, JJ.)

Plaintiff-Appellant-Appellant Pat L. Mulvey (Mrs. Mulvey), pro se, appeals from the Judgment filed on October 4, 2007 in the Circuit Court of the First Circuit (circuit court).¹ The circuit court entered judgment in favor of Defendant-Appellee-Appellee State of Hawai'i Department of Human Services (DHS) and against Mrs. Mulvey.

On appeal, Mrs. Mulvey argues that the circuit court denied her a fair hearing when it affirmed DHS's determination that Mrs. Mulvey was (1) not eligible for emergency financial assistance, (2) eligible for reduced financial assistance because of her non-exempt status, and (3) not eligible for "aid paid pending" a hearing decision. Mrs. Mulvey requests we reverse the circuit court's ruling with respect to the emergency financial assistance processing and "exempt" status issues, order payment of the full financial assistance benefit due to her, and order a clarification on her record to reflect an "exempt" status for the time that she was not exempt.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as

¹ The Honorable Eden Elizabeth Hifo presided.

well as the relevant statutory and case law, we resolve Mrs. Mulvey's points of error as follows:

(1) The circuit court did not err in affirming DHS's determination that Mrs. Mulvey was not eligible for emergency financial assistance. Hawaii Administrative Rules (HAR) § 17-647-16 provides that an applicant seeking expedited, emergency financial assistance must (A) be without a place to live, (B) have been served with court papers for eviction, or (C) be residing in a temporary shelter and will be without shelter within five days. It is undisputed that at the time of her November 3, 2006 application, Mrs. Mulvey lived at her brother's residence and was thus (A) with a place to live, (B) not served with court papers for eviction, and (C) not residing in a temporary shelter facility.² DHS's conclusion that Mrs. Mulvey did not qualify for expedited financial assistance, therefore, was not in violation of any constitutional or statutory provisions, in excess of DHS's statutory authority or jurisdiction, or affected by other error of law. Accordingly,

² At the January 12, 2007 Administrative Hearing, Mr. and Mrs. Mulvey testified as follows:

Hearing Officer []: At the time that you filed the application.

Mr. Mulvey, Jr.: Yes.

Hearing Officer []: You did have a place to live.

Mr. Mulvey, Jr.: Okay.

Mrs. Mulvey: We resided.

Hearing Officer []: Okay, right, right. You had a place to live.

Mr. Mulvey, Jr.: Yes, okay, we had a place to live.

Hearing Officer []: And you had not been evicted at that point.

Mr. Mulvey, Jr.: Yeah.

Hearing Officer []: And did not receive any kind of.

Mr. Mulvey, Jr.: Eviction notice, no.

the circuit court did not err in affirming DHS's decision not to award Mrs. Mulvey emergency financial assistance.

(2) The circuit court did not err in affirming DHS's determination that Mrs. Mulvey was eligible for financial assistance at a reduced rate. Under HAR § 17-656.1-10, an applicant for financial assistance must be assessed to determine the applicant's ability to participate in work-related activities. Pursuant to HAR § 17-656.1-10.1, any applicant claiming an exemption to the work requirements because of a disability must provide DHS with a "current medical report," which must then be reviewed by a board of licensed physicians for a determination and certification of impairment. HRS § 17-656.1-2 defines a "current medical report" as "the department's medical form completed by a licensed physician . . . not more than three months prior to the department's request."

In this case, the relevant "department's medical form" is the DHS 1270A form, which DHS uses to determine an applicant's eligibility for exemption from the financial assistance work requirement. It is undisputed that DHS informed Mrs. Mulvey of her need to submit completed DHS 1270A forms for her and her husband to qualify for financial assistance, gave her a ten-day period to provide the forms, and notified her of the option to call for an extension if more time was necessary.

Instead of submitting the DHS 1270A forms, however, Mrs. Mulvey submitted a (1) Medical Certificate dated November 4, 2006 in support of her husband's claim of disability and (2) Med-QUEST form dated March 31, 2006 in support of her own claim of disability. DHS informed Mr. Mulvey that the Mulveys' application could be processed without the DHS 1270A forms, but if Mr. and Mrs. Mulvey were selected by the First To Work program, they would be required to participate in the program and their grant would be at a reduced rate until they were determined to be disabled. Because Mr. Mulvey agreed to the reduced rate,

the circuit court did not err in affirming DHS's determination that Mrs. Mulvey was eligible for reduced financial assistance.³

(3) The circuit court did not err in affirming DHS's determination that Mrs. Mulvey was not eligible for "aid paid pending a hearing decision." Under HAR § 17-602.1-2, "aid paid pending a hearing decision" is defined as "the continuation or reinstatement of public assistance paid to or for recipients between the date of timely request for a hearing and the date the hearing decision is made." (Emphases added.) In this case, Mrs. Mulvey was not seeking the "continuation or reinstatement" of the reduced financial aid awarded her on November 20, 2006,⁴ but was requesting payment of the "full benefit prior to a hearing decision." Where Mrs. Mulvey was merely an applicant and not an existing "recipient" of the full benefit, a "continuation or reinstatement" of aid was not possible. Accordingly, Mrs. Mulvey was not entitled to aid paid pending the hearing decision.

³ Even if Mr. Mulvey had not agreed to the reduced rate, the circuit court did not err in affirming DHS's decision because both Mr. and Mrs. Mulveys' medical documents failed to meet the requirements of HAR § 17-656.1-10.1. Mr. Mulvey's Medical Certificate was signed by a licensed physician, but was not prepared on the "department's medical form" (i.e., DHS 1270A), which, unlike the Medical Certificate, required disclosure of his history of disability, findings of a recent medical examination, and diagnosis or statement of functional limitations. Mrs. Mulvey's Med-QUEST form is a DHS form, but it is used specifically for DHS's medical assistance program, not for DHS's financial assistance program. Furthermore, her form was not sufficiently "current" because it was dated "more than three months prior to the department's request." Nevertheless, even if Mr. and Mrs. Mulvey had submitted adequate medical reports, "exempt" status is not automatic; DHS's board of licensed physicians would still need to certify Mr. and Mrs. Mulvey's disabilities pursuant to HAR § 17-656.1-10.1. Because DHS ultimately determined that neither Mr. or Mrs. Mulvey were "exempt," the circuit court did not err in affirming DHS's determination that Mrs. Mulvey was eligible for financial assistance at a reduced rate.

⁴ If Mrs. Mulvey's "aid paid pending" claim is in fact referring to the reduced financial award, then her request for continued payment was unnecessary; Mrs. Mulvey had received her award (November 27, 2006) just three days before DHS received Mrs. Mulvey's request for continued payment (November 30, 2006).

Therefore,

The Judgment filed on October 4, 2007 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, October 29, 2008.

On the briefs:

Pat L. Mulvey,
Plaintiff-Appellant-
Appellant pro se.


Presiding Judge

Heidi M. Rian
Candace J. Park
Deputy Attorneys General
for Defendant-Appellee-
Appellee.


Associate Judge


Associate Judge