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FINAL AGENCY DECISION

OAL DKT. NO. HSL 06569-21

AGENCY REF. NO. DRA# 21-011

A.A.,

Petitioner,

v. NEW JERSEY DEPARTMENT OF HUMAN SERVICES,

Respondent.

Mark A. Bailey, Esq., for petitioner

Laura N. Morson, Deputy Attorney General, for respondent (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Record Closed: November 9, 2023
BEFORE: **JOHN P. SCOLLO, ALJ**

Decided: November 13, 2023

INITIAL DECISION

STATEMENT OF THE CASE

Petitioner appeals from the determination by Respondent, New Jersey Department of Human Services (“Agency”), to substantiate charges against her for an act of neglect of an individual with developmental disabilities under N.J.S.A. 30:6D-73 et seq. and N.J.A.C. 10:44D. The Agency seeks to place Petitioner’s name on the Central Registry of Offenders against individuals with developmental disabilities.

PROCEDURAL HISTORY

On July 6, 2021, A.A. requested an appeal of the Agency’s determination. The matter was transmitted to the Office of Administrative Law (“OAL”) on August 3, 2021, for determination as a contested case. It was filed with the OAL on August 4, 2021 and was assigned to John P. Scollo, ALJ on August 6, 2021. Judge Scollo held an Initial Telephone Conference on September 7, 2021 and issued a Pre-Hearing Order on September 8, 2021, which set forth a schedule for discovery. Petitioner, A.A. retained legal counsel during the discovery process. After discovery was completed, hearing dates and motions were scheduled. Hearing dates

scheduled for the month of April 2022 were re-scheduled due to scheduled conflicts and to allow the parties to file dispositive motions.

On April 6, 2022, Respondent moved for summary decision. Counsel for A.A. filed papers in Opposition on April 21, 2022. On May 3, 2022, Respondent filed a Reply. A number of conferences were held thereafter to attempt to clarify facts and to attempt to reach a settlement of this matter. Throughout the pendency of this matter, A.A. often failed to maintain communications with her legal counsel, which hampered efforts at resolving fact questions and the settlement of this matter. On August 7, 2023, the Administrative Law Judge (ALJ), having found that there were unresolved issues of material fact, denied the Respondent's motion. The hearing dates were scheduled for several dates in November, 2023, commencing on November 9, 2023. The Petitioner, A.A., failed to appear for the hearing on November 9, 2023.

During the Zoom hearing on November 9, 2023, upon questions from the ALJ, counsel for A.A., set forth all his efforts to ensure that he had all of A.A.'s contact information (mailing address, email address, et cetera); that he contacted A.A. to obtain written verification of her intention to discontinue her petition; and to notify her of the hearing date. Counsel sent two letters by mail and several emails to A.A. notifying her of the hearing date. However, A.A. did not respond to her attorney.

The DAG representing the Department of Human Services made a Motion to Dismiss the Petition. The attorney representing A.A., urged that an Order of Dismissal be entered without Prejudice. The ALJ took particular notice of the fact that the Petitioner had verbally made her intention not to pursue this matter to her attorney, but had not confirmed it in writing. It should also be noted that the Petitioner had been notified of the hearing dates by her attorney several times and by different means. The ALJ therefore stated on the record that the matter should be dismissed with prejudice. On November 13, 2023, The ALJ issued his Initial Decision dismissing A.A.'s Petition with Prejudice.

FINDINGS OF FACT

The attorneys agree that Mr. Bailey's account of his efforts to communicate with A.A. is a true and accurate account. The attorneys agree that, the account set forth by Judge Scollo in his email of November 9, 2023 at 11:07 a.m. of what transpired during the unrecorded Zoom hearing on November 9, 2023 is a true and accurate account.

APPLICABLE LAW

The rules governing a party's failure to appear at a scheduled hearing are contained in N.J.A.C. 1:1-14.4 and are set forth as follows:

- a) "If, after appropriate notice, neither a party nor a representative appears at a proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1:3-3(b) and (c).
- b) If the non-appearing party submits an explanation in writing, a copy must be served upon all other parties and the other parties shall be given an opportunity to respond.
- c) If the judge receives an explanation:
 1. If the judge concludes that there was good cause for the

- failure to appear, the judge shall reschedule the matter for hearing; or
2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that decision, or may reschedule the matter and, at his or her discretion, order any of the following:
 - i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;
 - ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or
 - iii. Such other case-related action as the judge deems appropriate.
- d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present *ex parte* proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the *ex parte* proofs, provided the failure to appear is memorialized in the decision.”

LEGAL ANALYSIS AND CONCLUSIONS

Having found that A.A. was notified of the hearing dates in this matter; that A.A. failed to personally appear in this matter; and that A.A.'s attorney did appear on A.A.'s behalf explaining that A.A. did not wish to pursue her Petition, the ALJ **CONCLUDED** that A.A.'s Petition should be dismissed with prejudice in accordance with N.J.A.C. 1:1-14.4 (c)(2)(iii).

THE ALJ'S ORDER

Based upon the forgoing, the ALJ **ORDERED** that the petition was **DISMISSED WITH PREJUDICE**; and further **ORDERED** that a copy of this Initial Decision be sent to all parties by email within seven days of its signing.

The ALJ **FILED** his Initial Decision with the **DIRECTOR OF THE OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY** for consideration.

This recommended decision may be adopted, modified or rejected by the Director of the Office of Program Integrity and Accountability.

Within thirteen days from November 13, 2023, when this recommended decision was mailed to the parties, any party was permitted to file written exceptions with the **ADMINISTRATIVE HEARINGS COORDINATOR, OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY**.

FINAL AGENCY DECISION

No exceptions were received by the agency.

Pursuant to N.J.A.C. 1:1-18.1(f) and based upon a review of the ALJ's Initial Decision and the entirety of the OAL file, I concur with the Administrative Law Judge's findings and conclusions.

The ALJ had the opportunity to assess the credibility and veracity of the participants in the conferences and the hearing. I defer to the ALJ's opinions concerning these matters, based upon the detailed and well-reasoned observations described by the ALJ in the Initial Decision.

I **CONCLUDE and AFFIRM** that the ALJ had the legal justification to dismiss the case with prejudice and correctly did so. I **CONCLUDE and AFFIRM** that A.A.'s verbal statement to her attorney that she no longer wanted to pursue the case, her noncompliance with her attorney's communications, and her failure to appear for the hearing warrant the dismissal of A.A.'s appeal with prejudice. I **CONCLUDE and AFFIRM** that A.A.'s placement on the Central Registry is appropriate due to the circumstances detailed in the Initial Decision.

Pursuant to N.J.A.C 1:1-18.6(d), it is the Final Decision of the Department of Human Services that I **ORDER** the placement of A.A.'s name on the Central Registry of Offenders Against Individuals with Developmental Disabilities.

Date: December 5, 2023

Deborah Robinson

Deborah Robinson, Director
Office of Program Integrity and Accountability