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2016 IL App (3d) 150259-U

Order filed May 9, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

CHRISTOPHER JOHNSON,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	
)	
VETERANS ASSISTANCE COMMISSION)	
OF WILL COUNTY; KRISTINA McNICHOL,)	
in Her Official Capacity as Interim)	
Superintendent of the Veterans Assistance)	
Commission of Will County; WILL COUNTY)	
PUBLIC AID COMMITTEE; LAWRENCE)	
M. WALSH, in His Official Capacity as Will)	Appeal No. 3-15-0259
County Executive and as a Member of the Will)	Circuit No. 14-MR-39
County Public Aid Committee; RONALD)	
ALBERICO, in His Official Capacity as a)	
Member of the Will County Public Aid)	
Committee; TIM VANDERHYDEN, in His)	
Official Capacity as a Member of the Will)	
County Public Aid Committee; BILL)	
McCOLLUM, in His Official Capacity as a)	
Member of the Will County Public Aid)	
Committee; JAMES HARVEY, in His Official)	
Capacity as Hearing Officer for the Will)	
County Public Aid Committee; LAWRENCE)	
TROUTMAN, in His Official Capacity as a)	
Member of the Will County Public Aid)	
Committee; WILLIAM QUIGLEY, in His)	
Official Capacity as a Member of the Will)	
County Public Aid Committee,)	

Defendants-Appellees.) Honorable John Anderson,
) Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Wright specially concurred.

ORDER

¶ 1 *Held:* The Veterans Assistance Commission of Will County denied plaintiff due process of law.

¶ 2 Plaintiff, Christopher Johnson, appeals from the circuit court of Will County's order confirming the administrative decision terminating his benefits. Johnson, a veteran, had been receiving general assistance benefits through the Veterans Assistance Commission of Will County (VAC) since 2008. On August 26, 2013, the VAC sent Johnson a letter indicating it was terminating his benefits indefinitely. Johnson filed an appeal, and the Will County Public Aid Committee (Committee) upheld the termination. Johnson thereafter filed a request for common law writ of *certiorari* with the trial court. In an order dated March 20, 2015, the trial court confirmed the decision of the Committee, finding the Committee based its decision on sufficient evidence. On appeal, Johnson argues that the VAC denied him procedural due process when it: (1) terminated his benefits without providing him notice or the opportunity for a hearing; and (2) terminated his benefits on the basis of verbal abuse. We reverse.

¶ 3 BACKGROUND

¶ 4 On August 26, 2013, the VAC sent Johnson a letter via certified mail indicating it was terminating his general assistance benefits indefinitely. That letter, in its totality, stated:

“On 21 August 2013 you verbally assaulted Interim Superintendent McNichol. On 23 August you came into the office and were immediately escorted out by the police. You then placed

a call to the VACWC and spoke to Veterans Service Officer Brower. During this call you stated that the VACWC ‘...needs to be careful with calling the police...’ and that the VACWC ‘...has not heard the last of me’ (Christopher Johnson). Each of these separate instances will not be tolerated by the VACWC.

Per the *Notice of Veterans Assistance Applicants and Recipients Responsibilities* you have signed & initialed over the years, you are aware of the guidelines and consequences that the WCVAC [sic] has in place for such behavior.

This is your formal notice to inform you that you no longer qualify for financial assistance from the Will County Veterans Assistance Commission indefinitely.”

¶ 5 Since he began receiving general assistance benefits through the VAC in 2008, Johnson has initialed the notice of veterans assistance applicants and recipients responsibilities (veterans responsibilities) form McNichol refers to in her letter on three separate occasions. The veterans responsibilities form reads:

“1) As a veteran assistance applicant/recipient, I understand that I am not allowed to enter the Veterans Assistance Commission office under the influence of drugs and/or alcohol. If it is determined that I am in the office under the influence of drugs and/or alcohol, I will be told to leave the office immediately. If I refuse to leave, the Joliet Police Department will be called and I will no longer be eligible to receive Veterans Assistance.

2) As a veteran assistance applicant/recipient, I understand that I am to treat the VACWC staff with courtesy and respect. I will not use profane language, or verbally abuse office staff. If it is determined that I am disrespectful to office staff, I will be told to leave the office immediately.

3) As a veteran assistance applicant/recipient, I understand that sexual harassment in any form toward office staff or other applicants/recipients will not be tolerated and I will no longer be eligible to receive Veterans Assistance in Will County. Additionally, the VACWC retains the right to file formal charges for sexual harassment, assault, and/or battery.

4) As a veteran assistance applicant/recipient, I understand that if it is found that I have committed fraud in any way (i.e. willfully lying on assistance application packet, collecting travel pay while using the VACWC Hines Shuttle, the selling of bus passes or food vouchers, or inappropriate use of assistance) my assistance will be terminated immediately and I will be permanently banned from using veterans assistance in Will County.”

¶ 6 After receiving the VAC’s termination letter, Johnson requested a copy of the VAC handbook (Handbook) in order to determine his appeal rights. Section 207 of the Handbook, entitled “Notice to Applicants/Veterans,” provides certain procedures the VAC is required to follow in order to comply with the due process provision of the constitution. Section 207 reads:

“In accordance with the due process provision of the Constitution of the United States of America, every applicant/veteran is entitled to a timely and written notice as to action taken concerning his/her case and of the disposition of his/her application. The written notice shall contain:

1. A clear statement of the action taken;
2. A clear statement of the reason for the action, sufficient in detail to allow the applicant/veteran to determine whether the VACWC action is correct;
3. A specific Handbook policy reference which supports such action; and
4. A complete statement of the applicant’s/veteran’s right to appeal and the appeal process, including a statement of the right to have assistance continued at the current level if an appeal is filed with ten (10) days of the date of the decision.

The VACWC is required to inform its applicants/veterans of their right to appeal at the time of application and at any time dissatisfaction is expressed. The VACWC is also required to help those individuals desiring to make an appeal and to explain the appeal procedure. Such assistance shall include giving an appeal form *** to the applicant/veteran and assisting him/her in the completion of the appeal form.”

¶ 7 Section 208 of the Handbook provides that if a veteran wishes to appeal any VAC action, he or she must do so by filing a formal appeal in writing on the form prescribed by the VAC within 10 calendar days after the date the veteran personally receives the decision. If the veteran files a timely appeal, the VAC is required “to continue the assistance at the level in effect *prior* to the proposed action, pending the decision on the appeal hearing.” However, the veteran also has the right “to request that assistance benefits not be continued at the prior level pending the results of the appeal hearing to avoid overpayment.” Section 1100, exhibit No. 3 of the Handbook contains a waiver form the veteran can fill out if he or she chooses to forego continued assistance pending appeal.

¶ 8 Once the veteran has filed an appeal, the VAC is required to prepare a statement of facts, which sets forth the facts the VAC knew and considered in making its decision. “The Statement of Facts must also contain the legal basis for the decision and, specifically, the Handbook section(s) justifying the decision.”

¶ 9 Per the Handbook’s direction, Johnson filed a notice of appeal using the VAC appeal form with the Committee on September 5, 2013. Johnson did not sign or attach the waiver form to his notice of appeal. As required by section 208 of the Handbook, the VAC filed a statement of facts with the Committee and provided Johnson with a copy. The VAC’s statement of facts asserted that: (1) Johnson had been receiving financial assistance through the VAC since 2008; (2) Johnson had signed numerous documents stating that he would not use profane language or verbally abuse VAC office staff; (3) the VAC mailed Johnson a letter, certified signature upon receipt, stating that his behavior toward the staff would not be tolerated and that he is banned from VAC financial assistance indefinitely; and (4) the VAC had called the Joliet police department on four separate occasions regarding Johnson’s behavior.

¶ 10 On October 15, 2013, the Committee convened a hearing on Johnson's appeal. At the hearing, Johnson's attorney argued the VAC erroneously terminated Johnson's general assistance benefits for multiple reasons. First, she claimed the VAC's termination letter failed to explain Johnson's right to appeal and failed to state the section of the Handbook that Johnson violated regarding eligibility, as mandated by its own guidelines. Second, the section of the veterans responsibilities form that the VAC listed as the basis for termination did not provide termination of benefits as a possible consequence. Finally, after Johnson filed a timely appeal, the VAC failed to reinstate Johnson's benefits.

¶ 11 The VAC presented testimony from Interim Superintendent, Kristi McNichol. McNichol testified she spoke with Johnson via telephone on August 21, 2013. During the conversation, Johnson expressed concern over whether his landlord had signed a landlord-tenant agreement, which would have increased the amount of benefits he was receiving. When McNichol told Johnson she would not adjust his benefits without his landlord's signature, Johnson got very upset and told McNichol to "watch your ass on the street, bitch." McNichol testified she has had to call the Joliet police department on four occasions regarding Johnson's behavior at the VAC office.

¶ 12 When asked which section of the Handbook the VAC used to justify terminating Johnson's benefits, McNichol stated the VAC did not deny Johnson benefits based on any section of the Handbook. Rather, the VAC denied Johnson benefits due to his failure to comply with the veterans responsibilities form that he had signed on numerous occasions over the years and the physical threat to McNichol. Although the termination letter specifically referenced Guideline No. 2 (verbal abuse), McNichol testified that Johnson had also violated Guideline No.

4 by lying about his place of residency. McNichol explained that the VAC had decided not to charge Johnson with public assistance fraud in order to give him “a little leeway.”

¶ 13 Johnson testified that he went to the VAC office on August 23, 2013, and requested to speak with McNichol in her office. Not unreasonably, McNichol denied Johnson’s request to speak with her and had the Joliet police department escort him from the premises. Three days after Johnson received the letter from the VAC, he called and requested the Handbook in order to determine his appeal rights. The VAC sent Johnson the Handbook, and Johnson filed an appeal with the Committee. After reading the Handbook section on his right to continue receiving benefits pending appeal, Johnson attempted to contact McNichol but “got nowhere with that.” Johnson then called VAC chairman, John Kestel, who told him he would look into it and get back with him. After Johnson did not hear back from Kestel, he called again, at which point Kestel told him there was “nothing he could do about it.”

¶ 14 At the conclusion of the evidence, the Committee voted to uphold the VAC’s termination of Johnson’s benefits in a two to one decision. The Committee issued its written decision and made the following findings: (1) that Johnson perfected his appeal; (2) that Johnson was notified in a timely fashion of the time, date, and location of the hearing; (3) that from the evidence adduced at the hearing, Johnson did not successfully follow the veterans responsibilities guidelines; (4) that Johnson verbally assaulted and threatened VAC staff; and (5) that the Will County VAC followed lawful procedures in suspending Johnson’s benefits indefinitely.

¶ 15 Johnson filed a complaint with the trial court for review of administrative decision by common law writ of *certiorari*. Johnson’s complaint specifically alleged that the VAC violated his procedural due process rights by: (1) not holding a hearing *prior* to discontinuing his general assistance benefits; and (2) terminating his general assistance benefits on this basis of a written

guideline that does not provide termination of benefits as a possible consequence. The trial court confirmed the holding that the record presented sufficient evidence to support the Committee's action.

¶ 16 Johnson appealed.

¶ 17 ANALYSIS

¶ 18 Johnson raises two arguments on appeal. First, Johnson argues the VAC violated his procedural due process rights when it discontinued his general assistance benefits while his appeal was pending without providing him with proper notice or the opportunity for a hearing. Second, Johnson argues the VAC acted arbitrarily when it terminated his general assistance benefits based on a provision of its veterans responsibilities form that did not provide termination of benefits as a potential consequence.

¶ 19 At the outset, we note that the VAC argues that inquiry under common law *certiorari* is limited to determining whether the applicable form of proceeding was followed and that the correctness of the trial court's rulings on the law or on application of law to facts may not be determined. See *Wolfenbarger v. Williamson County Court*, 323 Ill. App. 436 (1944). We find the VAC's reliance on an appellate decision from 1944 misplaced. Our supreme court has long recognized that the standard of review under a common law writ of *certiorari* is essentially the same as the review of a petition filed under the Administrative Review Law. *Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996); see also *Smith v. Department of Public Aid*, 67 Ill. 2d 529, 541-42 (1977) ("The substantial differences that at one time existed between common law and statutory *certiorari* have been all but obliterated.").

¶ 20 In reviewing administrative determinations, this court examines the decision of the administrative agency rather than the decision of the trial court. *Wade v. City of North Chicago*

Police Pension Board, 226 Ill. 2d 485, 504 (2007). Review under the Administrative Review Law “shall extend to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.” 735 ILCS 5/3-110 (West 2014).

¶ 21 Under the Administrative Review Law, reviewing courts generally do not interfere with an agency’s discretionary authority unless the exercise of that discretion is arbitrary and capricious or the agency action is against the manifest weight of the evidence. *Hanrahan*, 174 Ill. 2d at 272-73. However, “[i]t is firmly established that administrative proceedings must conform to the constitutional requirements of due process of law.” *Wendl v. Moline Police Pension Board*, 96 Ill. App. 3d 482, 486 (1981) (citing *Bruce v. Department of Registration & Education*, 26 Ill. 2d 612, 620 (1963)). Whether a party’s due process rights were violated during an administrative hearing is a question of law that we review *de novo*. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004).

¶ 22 I. Johnson’s Entitlement to General Assistance Benefits Pending Appeal

¶ 23 Johnson first argues the VAC violated his right to procedural due process when it discontinued his general assistance benefits while his appeal was pending. General assistance is welfare for persons who do not qualify for any other public assistance program. 305 ILCS 5/6-1.3 (West 2012). The VAC administers general assistance benefits to veterans in Will County pursuant to Article VI of the Public Aid Code. 305 ILCS 5/6-1 *et seq.* (West 2012); 305 ILCS 5/12-3 (West 2012).

¶ 24 Procedural due process requires that a plaintiff be given “*notice reasonably calculated, under all the circumstances, to apprise [him] of the pendency of the action.*” (Emphasis in original.) *Greene v. Lindsey*, 456 U.S. 444, 449-50 (1983). Constitutional protections in the area of General Assistance benefits stem from *Goldberg v. Kelly*, 397 U.S. 254 (1970), where the Supreme Court determined that the withdrawal of public welfare benefits trigger constitutional restraints. *Rivera v. Illinois Department of Public Aid*, 132 Ill. App. 3d 213, 224 (1985). The Court explained that welfare benefits provide the only means by which qualified recipients can obtain essential food, clothing, housing, and medical care. *Goldberg*, 397 U.S. at 264. Thus, where a public agency seeks to terminate welfare benefits, “only a pre-termination evidentiary hearing provides the recipient with procedural due process.” *Id.* Were the law otherwise, the government would be depriving eligible recipients of the very means by which to live while they wait. *Id.*

¶ 25 Initially, the VAC argues Johnson waived the issue of interim benefits by: (1) not raising it at any stage of the proceedings; and (2) failing to file the VAC waiver form acknowledging his obligation to repay interim benefits should he lose the appeal. However, a review of the record indicates not only that Johnson consistently raised the issue of interim benefits at all stages of the proceedings, but also that the VAC misinterprets the language of its own form. The VAC waiver form is not required in all circumstances; a recipient need only fill it out if he or she wishes to forego continued assistance pending appeal.

¶ 26 The VAC next asserts it provided Johnson with the appropriate amount of due process because procedural due process in an administrative setting does not always require application of the judicial model. See *Dixon v. Love*, 431 U.S. 105, 115 (1977). It claims Johnson has failed

to demonstrate a due process violation because he filed a timely notice of appeal and the Committee convened a hearing, where it found the VAC had followed all rules and regulations.

¶ 27 Essentially, the VAC seems to be arguing that the deficiencies in its termination letter are of no consequence and any due process violation was cured when Johnson requested the Handbook and proceeded with his appeal. While we agree that the hearing itself comported with the requirements of due process—Johnson was represented by counsel, presented evidence in opposition of termination, and confronted adverse witnesses—the Supreme Court made it clear in *Goldberg* that the only way to provide a welfare recipient with due process is *via* a pre-termination hearing. See also *Rivera v. Illinois Department of Public Aid*, 132 Ill. App. 3d 213, 226 (1985); *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 41.

¶ 28 In an attempt to remain compliant with *Goldberg*, the VAC has enacted its own guidelines to ensure that its officers comply with the requirements of due process when terminating veterans’ general assistance benefits. Most notably, for purposes of the issue before us on appeal, the Handbook specifically states that veterans are entitled to maintain their current level of assistance pending an appeal before the Committee. Here, however, the VAC terminated Johnson’s benefits prior to affording him such a hearing. After reading that he was entitled to continued assistance, Johnson brought the issue of interim benefits to the attention of the VAC chairman, John Kestel. Kestel, however, refused to reinstate Johnson’s benefits while he awaited appeal, stating there was “nothing he could do about it.” Given the foregoing, we conclude that the VAC violated Johnson’s due process rights when it terminated his general assistance benefits prior to the hearing in front of the Committee.

¶ 29 II. Whether the VAC Arbitrarily Terminated Johnson’s General Assistance Benefits

¶ 30 Johnson next argues that the VAC violated his right to procedural due process when it terminated his benefits on the basis of one of its own written guidelines that does not provide termination of benefits as a potential consequence. Specifically, Johnson claims the VAC terminated his benefits on the basis of “verbal abuse,” which, per the veterans responsibilities form, is subject only to being told to “leave the office immediately.” The VAC does not respond to Johnson’s argument other than to claim that Johnson failed to present any evidence showing that he did not act in a threatening and abusive manner. It claims, with no explanation or evidence to refute the VAC’s conclusion that Johnson acted in a threatening and abusive manner, this court should affirm the decision of the Committee to uphold the VAC’s termination. For the following reasons, we agree with Johnson.

¶ 31 “Basic due process requires that any form of public aid be administered in a manner that insures [sic] fairness regarding both eligibility and benefits and also remains free of the risk of arbitrary decision making.” *Green v. Department of Public Aid*, 165 Ill. App. 3d 936, 940 (1988). The United States Supreme Court has held that welfare agencies have a duty to advise applicants of the eligibility standards employed by the agency. *Morton v. Ruiz*, 415 U.S. 199, 231 (1974). “ ‘[T]he agency must, at a minimum, let the standard[s] be generally known so as to assure that [they are] being applied consistently and so as to avoid both the reality and appearance of arbitrary denial of benefits to potential beneficiaries.’ ” See *Brengola-Sorrentino v. Illinois Department of Public Aid*, 129 Ill. App. 3d 566, 572 (1984) (quoting *Morton*, 415 U.S. at 231). Thus, “[i]t is unquestioned that where an administrative agency adopts rules or regulations under its statutory authority, it is bound by those rules and cannot arbitrarily disregard them or apply them in a discriminate fashion.” *Rivera*, 132 Ill. App. 3d at 223 (citing *Heavner v. The Illinois Racing Board*, 103 Ill. App. 3d 1020, 1025 (1982)).

¶ 32 Here, both the VAC's termination letter and its statement of facts that it submitted to the Committee specified that the VAC was terminating Johnson's general assistance benefits on the basis of verbal abuse, per the veterans responsibilities form. In upholding the VAC's termination, the Committee found the evidence adduced at the hearing sufficient to support the VAC's position that Johnson had verbally assaulted and threatened VAC staff members. We agree that the evidence was sufficient to support such a determination. We also agree that threats to office staff *could* be a sufficient basis to terminate a veterans general assistance benefits. However, the VAC did not make them one. Even taking the Committee's factual findings and conclusions as "*prima facie* true and correct" (see 735 ILCS 5/3-110 (West 2014)), verbal abuse of office staff is not an articulated basis in the Handbook for terminating general assistance benefits. We feel compelled to observe that it strikes us as counterintuitive that under its guidelines, the VAC can terminate the benefits of a veteran, who makes an unwelcome comment to an employee about certain parts of her body, but not for threatening that same staffer.

¶ 33 The veterans responsibilities form, which the VAC relied upon to support its termination, specifically states that verbal abuse is subject only to being "told to leave the office immediately." While several other guidelines on the veterans responsibilities form, including the guideline on sexual harassment, provide for immediate termination of benefits as the consequence for a violation, such language only bolsters our view that the VAC acted improperly when it terminated Johnson's benefits after informing him only that he had used profane language and verbally abused/assaulted office staff. As Johnson correctly argues, due process requires a determination based on articulated standards. Allowing the VAC to exercise discretion outside of its own written guidelines not only invites abuse, but it also defeats the purpose of establishing guidelines to begin with. See *White v. Roughton*, 530 F.2d 750, 754 (7th

Cir. 1976) (citing *Hornsby v. Allen*, 326 F.2d 605, 610 (5th Cir. 1964), which held that the public has the right to expect its officers to observe prescribed standards and allowing a government body to exercise absolute and uncontrolled discretion invites abuse).

¶ 34 In fact, the VAC did not inform Johnson it had terminated his benefits based on the alleged comment until McNichol testified to it at the hearing. It is situations like these that procedural due process is intended to protect. As the Supreme Court explained in *Goldberg*, the fundamental requisite of due process is a *meaningful* opportunity to be heard. *Goldberg*, 397 U.S. at 267. In this context, a meaningful opportunity requires “that a recipient have timely and adequate notice detailing the reasons for a proposed termination.” *Id.*, at 267-68. The Handbook itself recognizes the importance of this notice requirement, requiring the VAC to provide veterans with clear notice of the reasons for its actions and to specifically include in that notice the facts it considered and relied upon in making its decision. The VAC did not do that here. Accordingly, we conclude the VAC violated Johnson’s constitutional right to due process of law when it terminated Johnson’s general assistance benefits.

¶ 35 EPILOGUE

¶ 36 As a final matter, we express no opinion on issues not before this court on appeal. This includes the VAC’s claim that Johnson was no longer eligible to receive benefits through the VAC as a result of his residing outside of Will County. However, we would be remiss if we did not note that the policies underlying *Goldberg* are for the protection of “*eligible recipient[s]*.” (Emphasis added.) *Goldberg*, 397 U.S. at 264. The VAC’s waiver form, which Johnson did not sign but admits he was aware of, specifically provides that a veteran has the right “to request that assistance benefits *not be continued* at the prior level pending the results of the appeal hearing *to avoid overpayment*.” Nevertheless, should the VAC choose to terminate Johnson’s benefits in

the future, we stress that he is entitled to due process of law, which, as stated above, includes notice and a meaningful opportunity to be heard prior to the termination of his benefits.

Goldberg, 397 U.S. at 267-68.

¶ 37

CONCLUSION

¶ 38

For the foregoing reasons, we reverse the decision of the VAC of Will County to terminate Johnson’s general assistance benefits.

¶ 39

Reversed.

¶ 40

JUSTICE WRIGHT, specially concurring.

¶ 41

I do not share the expressed observation that the VAC’s written, zero tolerance approach regarding sexual harassment by veterans toward other applicants, recipients, or staff members is “counterintuitive.” Since the veteran in the case at bar did *not* lose benefits due to purported sexual harassment, the observation the majority feels compelled to raise in the last sentence of paragraph 32 contributes nothing to an otherwise sound analysis that stands on its own. Due to the disparaging comment noted above, I concur in the result only.