

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF KANSAS

██████████)
)
Appellant,)
)
v.) Appeal No. 17Y0217 PS
)
)
Kansas Department for)
Children and Families,)
)
Respondent.)
_____)

INITIAL ORDER

Statement of Case

This matter comes before the Office of Administrative Hearings for summary reversal pursuant to K.A.R. 30-7-73; K.A.R. 30-7-75, and K.S.A. 77-501 *et seq.*

Findings of Fact

1. The appellant filed this appeal seeking review of a DCF affirmed finding of emotional abuse.
2. DCF filed its agency summary on or about March 31, 2017. The summary did not contain a copy of the notice of action sent to the appellant. The notice was not included with the appellant's request for fair hearing.
3. Tammy Orth, who prepared the summary in question had previously been notified about the need to include a copy of the notice of action in at least one other administrative appeal before the undersigned. *See* OAH Appeal No. 15Y0099A.

Conclusions of Law

The issue is whether the agency action should be summarily reversed for failure to file a proper agency summary.

1. K.A.R. 30-7-75 requires that a summary contain a copy of the agency notice of action.
2. K.A.R. 30-7-73 provides that the tribunal may summarily reverse an agency action if the summary does not support the agency action.

3. In order for action to be taken against a party, notice of that action must be sent to the alleged perpetrator. If a notice is not sent, then the agency action is not valid and due process is violated.
4. Here, it is impossible to know whether a notice of action was sent, and when it was sent. Therefore, the tribunal cannot determine, from the summary, whether, on its face, the summary supports the agency action. Further, the tribunal is unable to determine whether the appeal was timely filed. Accordingly, the notice of action is a critical document. So critical in fact, DCF's own regulations require that it be filed with the summary.
5. Because Wichita DCF, and the specific social worker involved, has had previous notice of this requirement, it is appropriate to summarily reverse this appeal for failure to include the notice of action as this makes the summary defective on its face, and therefore leaves the tribunal unable to determine the validity of the agency action.

Conclusion

The agency's affirmed finding that the appellant emotionally abused two of his children is reversed.

Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-527, either party may request a review of this initial order by filing a petition for review with the State Appeals Committee. A petition for review must be filed within 15 days from the date this initial order was served. Any party requesting DCF review of this initial order shall include in their petition an affirmative statement of their intent to submit a brief, if they so intend, in support of their appeal. Failure to include this statement of intent will be presumed to mean the party does not wish to file a supporting brief. Failure to timely request a review by the State Appeals Committee may preclude further judicial review. The petition for review shall be mailed or personally delivered to: State Appeals Committee, Office of Administrative Hearings, 1020 S. Kansas Avenue, Topeka, Kansas 66612-1327.

If neither party requests a review by the State Appeals Committee, then pursuant to K.S.A. 77-530, this initial order becomes final and binding on both parties on the 30th day following its service.


Pursuant to K.A.R. 30-7-77, if a petition for rehearing is desired, it must be filed with the Office of Administrative Hearings within 15 days after service of the initial order. The petition must state the specific grounds upon which a rehearing of the presiding officer's initial order is requested. The filing of a petition for rehearing is not a prerequisite for review at any stage of the proceedings. The filing of a petition for rehearing does not stay any time limits or further proceedings that may be conducted.

Pursuant to K.S.A. 77-528, until the time at which a petition for judicial review would no longer be timely, a party may submit to the presiding officer or agency head a petition for stay of

effectiveness of an initial or final order, unless otherwise provided by statute or stated in the initial or final order.

Pursuant to K.S.A. 77-531, if the initial order is served by mail, three days are added to the time limits set out above.

IT IS SO ORDERED.



Chris J. Kellogg
Administrative Law Judge
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On April 3, 2017, I mailed a copy of this document postage prepaid to:

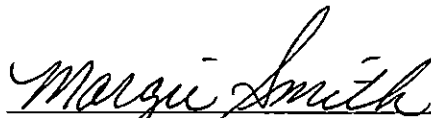


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and the foregoing has been served electronically via the OAH e-filing system to:

Tammy Orth, LBSW
Wichita DCF Service Center
2601 S. Oliver
Wichita, KS 67202

Phyllis Gilmore, Secretary
Kansas Department for Children and Families
555 S. Kansas Ave., 6th Fl.
Topeka, KS 66603



Staff Person
Office of Administrative Hearings