

BENAVIDEZ V. HSD

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GEORGE R. BENAVIDEZ,
Plaintiff-Appellant,
v.
NEW MEXICO HUMAN SERVICES DEPARTMENT,
Defendant-Appellee.

NO. 31,472

COURT OF APPEALS OF NEW MEXICO

December 12, 2011

APPEAL FROM THE NEW MEXICO HUMAN SERVICES DEPARTMENT OF
BERNALILLO COUNTY, Mark Arguello, Administrative Law Judge

COUNSEL

George R. Benavidez, Albuquerque, NM, Pro Se Appellant

Office of General Counsel, Susan Sita, Santa Fe, NM, for Appellee

JUDGES

CYNTHIA A. FRY, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, RODERICK T. KENNEDY, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Judge.

Plaintiff appeals pro se from a decision of the director of the New Mexico Human Services Department (“Department”) adopting the hearing officer’s findings and conclusions that Plaintiff is no longer entitled to benefits under the Working Disabled

Individual Program due to his income. We proposed to dismiss in a notice of proposed summary disposition because the appeal is procedurally defective.

As discussed in our notice of proposed summary dismissal, Plaintiff had a statutory right to appeal the underlying administrative action. See NMSA 1978, § 27-3-4 (1999). As a result, any appeal to the district court had to be undertaken pursuant to Rule 1-074 NMRA. The district court decision could then be reviewed by this Court by petition for writ of certiorari pursuant to Rule 12-505 NMRA.

Instead of appealing to the district court, Plaintiff filed a notice of appeal with this Court. In light of Plaintiff's failure to comply with Section 27-3-4 and Rule 1-074 by filing an appeal in district court, we proposed to dismiss the appeal. See *Williams v. Rio Rancho Pub. Schs.*, 2008-NMCA-150, ¶ 15, 145 N.M. 214, 195 P.3d 879 (observing that "time and place requirements for filing the notice of appeal are mandatory preconditions to the exercise of appellate jurisdiction").

On October 6, 2011, the Department filed a motion to dismiss the appeal for the same reasons set forth in our notice of proposed summary dismissal. We held that motion in abeyance pending receipt of any timely memorandum in opposition filed by Plaintiff.

Plaintiff has failed to file a memorandum in opposition to our proposed summary dismissal. Therefore, for the reasons set forth in our proposed notice, Plaintiff's appeal is dismissed. In light of the dismissal, the Department's motion is denied as moot.

IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

RODERICK T. KENNEDY, Judge