

GALLEGOS V. N.M. HUMAN SERVS. DEP'T.

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KIMBERLY GALLEGOS,
Plaintiff-Appellant,
v.
**NEW MEXICO HUMAN SERVICES
DEPARTMENT,**
Defendant-Appellee.

No. 32,594

COURT OF APPEALS OF NEW MEXICO

June 25, 2013

APPEAL FROM THE NEW MEXICO DEPARTMENT OF HUMAN SERVICES, Aldo
Jadrnicek, Administrative Law Judge

COUNSEL

New Mexico Center on Law and Poverty, Craig Acorn, Senior Attorney, Albuquerque,
NM, for Appellant

New Mexico Human Services Department, Robert J. Lennon, Santa Fe, NM, for
Appellee

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA A.
FRY, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

Appellant Kimberly Gallegos (Claimant) appeals from the ruling by the Administrative Law Judge (ALJ) [RP 1], as adopted by the Human Services Department (HSD) Director [SRP 1], that dismisses Claimant's request for a fair hearing [RP 134] to contest the merits of whether her Temporary Assistance for Needy Family (TANF) benefits were improvidently terminated. [RP 1] As a basis for the dismissal, the ALJ provided that Claimant did not timely request a hearing within 90 days from HSD's April 16, 2012 notice of adverse action [RP 94, 126] and that the ALJ accordingly was exercising his discretion to dismiss her request for a fair hearing on the merits. [RP 1] Our second notice proposed to reverse and remand. The Human Services Department (HSD) did not file a memorandum in opposition. Claimant filed a memorandum in support in which she agreed that reversal and remand was appropriate.

As addressed in our second notice in issue (C) and conceded by Claimant [MIS 5], Claimant did not satisfy the 90-day deadline for challenging the termination of her benefits after issuance of the notice of adverse action. However, for the reasons extensively detailed in our second notice, we hold that the ALJ abused his discretion in not addressing the merits of whether HSD improvidently terminated Claimant's TANF benefits. For this reason, we reverse the ALJ's ruling that dismisses Claimant's appeal for failure to comply with the 90-day deadline for requesting a fair hearing and remand for consideration of the merits of Claimant's appeal.

IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

CYNTHIA A. FRY, Judge