

State of New Jersey

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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN
SERVICES, COMMISSION FOR
THE BLIND AND VISUALLY
IMPAIRED

N M ,
Petitioner, :
: **ADMINISTRATIVE ACTION**
:
: **FINAL AGENCY DECISION**
:
v. :
: OAL DKT. NOs.: HCB 03241-20,
: 0779-22, 2506-22, & 4858-22
: AGENCY DKT. NO. N/A
:
New Jersey Commission for :
the Blind and Visually Impaired, :
Respondent. :

As the Executive Director of Respondent Commission for the Blind and Visually Impaired (the “Commission” or “CBVI”), I reviewed the record in this matter consisting of the Initial Decision of the Honorable Leslie Z. Celentano, Administrative Law Judge (“ALJ”), and the file of the Office of Administrative Law (“OAL”). I further reviewed Petitioner’s Exceptions and Respondent’s response along with the attached exhibits to those submissions.

The Initial Decision was decided on October 19, 2023. On October 31, 2023, Petitioner N M submitted a “Petition for Full Evidentiary Hearing.” After consideration, I deemed Petitioner’s submission as Exceptions to the Initial Decision pursuant to N.J.A.C. 1:1-18.4. Respondent timely requested an extension of time to respond and submitted its response on November 14, 2023.

This matter arises from Petitioner’s challenge to multiple decisions concerning the Business Enterprise New Jersey (“BENJ”) program over several years. Petitioner is a blind-deaf vendor who participates in the program. The appeals were decided together, but not formally consolidated, resulting in one Initial Decision disposing of all issues. The Initial Decision was received on October 19, 2023. The time limit for issuing a final agency decision expires on Sunday, December 3, 2023, which by N.J.A.C. 1:1-1.4 is extended to **December 4, 2023**.

INITIAL DECISION

To begin, ALJ Celentano provides a helpful summary of Petitioner’s claims in each separately docketed matter:

In the first appeal, HCB 3241-20 (“**NM I**”), M challenges the January 2019 bid process for the solicitation of managers to operate a cafeteria at the Rodino Federal Building.

The second appeal, HCB 779-22 (“**NM II**”), concerns M ’s six-month suspension for missing interviews for potential work opportunities, and his dissatisfaction with the fact that certain Committee of Business Enterprise Managers elections were held on Zoom and with the November 2021 award of the Hudson County Plaza Café to a different vendor.

In the third appeal, HCB 2506-22 (“**NM III**”), M takes issue with his exclusion as a voter and candidate for the January 2022 committee election.

In the fourth appeal, HCB 4858-22 (“**NM IV**”), M _____ disputes the requirement that he had to register with the Department of [the] Treasury’s NJ Start Program as a condition for receipt of COVID-19 Financial Relief & Restoration Payments (FRRP) through the BENJ program.

[Initial Decision, dated October 19, 2023 at 3 (formatting altered).]

I agree that **NM I** is moot and must be dismissed with prejudice for the reasons expressed in the Initial Decision. At this time, in order for Petitioner to be installed now at the Rodino Café, CBVI would have to re-bid the location and cannot automatically install Petitioner. As to the timeliness of the challenge, the ALJ questions whether a deadline to request an administrative hearing is defined. Although the Initial Decision compares the regulatory timeframes for a vendor to request an administrative review with an administrative hearing, its ultimate conclusion, does not rely upon the timeliness issue. Petitioner waited one year to challenge the Rodino Café award. I note that to the extent there is ambiguity in N.J.A.C. 10:97-8.3 as it pertains to the time to request an administrative hearing, a one-year delay is wholly unreasonable. Accordingly, even if **NM I** were not moot, which it is, I would have dismissed it as untimely. N.J.A.C. 10:97-8.3 should be interpreted in the manner that N.J.A.C. 10:97-8.1 indicates: a vendor has 15 days to request an administrative review and if dissatisfied with the result of the review may request a hearing. To avoid this uncertainty, CBVI will consider notifying vendors going forward with a reasonable timeframe to request an administrative hearing separate from an administrative review.

I agree that **NM II** must also be dismissed because like, **NM I**, **NM II** is untimely. The vendor suspension rule, N.J.A.C. 10:97-8.1, sets a 15-day deadline to request an administrative review and then an administrative hearing if “the Administrative Review does not resolve the problem.” It is undisputed that Petitioner did not make a timely request to challenge the suspension. Indeed, his request was received on December 19, 2021, 37 days after notification of the challenged suspension. Thus, his suspension was valid as a matter of law.

Petitioner’s other claims in **NM II** arise as a consequence of this suspension: his ineligibility to bid to operate the Hudson County Plaza Café vending location and participation in Committee of Business Enterprise Managers (CBEM) elections which were held via Zoom during Covid-19 Public Health Emergency. Not only was Petitioner ineligible to operate the Hudson County Plaza Café due to his then imposed suspension, see N.J.A.C. 10:97-7.3(b), Petitioner failed to appear for the interview during the selection process, thus, he was ineligible on that basis alone. See N.J.A.C. 10:97-7.3(h) (“If a candidate does not appear for his or her scheduled interview and has not given prior notice to or been excused by the designee of Business Enterprises New Jersey, the candidate shall not be rescheduled and shall be ineligible for the announced promotion or transfer opportunity. In addition, the candidate will be ineligible for bidding on future promotional and transfer opportunities for six months.”).

BENJ regulations also prohibit the participation of inactive vendors, such as Petitioner during the operative time, in CBEM elections. N.J.A.C. 10:97-9.1 states

that only active members participate, which given Petitioner's six-month suspension for failing to appear for an interview without an excuse, precluded his participation. Accordingly, I agree with ALJ Celentano that **NM II** must be dismissed as a matter of law.

NM III is also ripe for disposition at this stage. It is undisputed that in January 2022, Petitioner was suspended, see **NM II** discussion above. Under N.J.A.C. 10:97-9.1, only active members participate in the committee elections. Petitioner was ineligible as ALJ Celentano concludes. I further agree that **NM III** is moot because "there is no cause or right to remove one of the duly elected CBEM members and replace him or her with [Petitioner]." (Initial Decision at 13). **NM III** must be dismissed.

Finally, **NM IV** presents a straight forward misunderstanding of the payment process by the State of New Jersey. The record demonstrates that the federal funds at issue were held by the NJ Department of the Treasury. It imposed the requirement that vendors use its web-based application—NJStart. It is undisputed that Petitioner was aware of this requirement with ample opportunity to register with NJStart with a final notice sent to him on June 6, 2022 warning him of the consequences of failing to register. Petitioner disregarded the notices, failed to register and accordingly, payments were not released to him. There is no credible evidence in the record that registering for NJStart would negatively impact Petitioner's status a BENJ vendor; indeed, Respondent's certification states no impact would occur. (Truesdale Certification, ¶ 24). Petitioner was the only active

licensed vendor who failed to register with NJStart and receive the funds. (Id. at ¶ 22). ALJ Celentano correctly concluded to the extent NM IV is cognizable in this proceeding, the matter is moot because the funds have been dispersed. NM IV is without merit.

PETITIONER'S EXCEPTIONS

Petitioner raises four main points in his Exceptions: 1) the matters cannot be resolved via prehearing motion practice because Petitioner is entitled to an evidentiary hearing under federal law (Exceptions at ¶ 3); 2) certain discovery remains outstanding (id. at ¶¶ 4-6) and the Initial Decision omitted that Petitioner filed and/or responded to prior discovery motions (id. at ¶¶ 8-9); 3) it was an error to rely upon the certification of Napoleon Truesdale (id. at ¶¶ 10-11); and 4) the ALJ and the DAG acted in a discriminatory manner and otherwise exhibited bias against him (id. ¶¶ 4, 12-14).¹

1. Petitioner is Not Entitled to an Evidentiary Hearing in this Circumstance.

Petitioner is not entitled to a full evidentiary hearing when there is no genuine disputed fact. N.J.A.C. 1:1-12.5, -12.7. 42 C.F.R. § 395.13 requires CBVI to “afford[] an **opportunity** for a full evidentiary hearing to each blind vendor” when dissatisfied with a decision. (Emphasis added). The regulation should not be interpreted, as Petitioner seeks, to dispense with judicial practice permitting the

¹ Respondent notes that Petitioner’s Exceptions are procedurally deficient, see N.J.A.C. 1:1-18.4(b), because they fail to set forth supporting reasons as to why specific findings of fact and conclusions of law should be rejected. Petitioner’s Exceptions are conclusory. I agree the Exceptions are deficient, but for completeness, I address the arguments as if properly before me.

resolution of cases by motion practice. Martinez v. Excellent Educ. for Everyone, 2008 WL 4648847, at *4 (App. Div. Oct. 20, 2008) (citing Rivera v. Bd. of Review, 127 N.J. 578, 583 (1992)). Petitioner was served with Respondent’s motion for summary judgment and opposed it in writing on February 9, 2023. Petitioner had an opportunity for an evidentiary hearing but it was not warranted by the factual record and case law. CBVI and the ALJ complied with federal law.

2. Discovery Issues Have Been Resolved by the ALJ or are Not Properly Raised and the Purported Omission of Portions of the Procedural History in the Initial Decision is Mistaken.

Petitioner appears to misconstrue the Initial Decision when he claims the ALJ stated that he failed to oppose a motion to compel discovery and the motion for summary decision. (Initial Decision at ¶ 8). The Initial Decision states that Respondent filed the motions and “Petitioner filed opposition to the motions.” (Initial Decision at 3.) Indeed, Petitioner filed opposition to Respondent’s motion to compel discovery on January 20, 2022 and his opposition to Respondent’s motion for summary decision was filed on February 9, 2023. To the extent Petitioner claims the ALJ failed to address other motions, I direct Petitioner to ALJ Gail Cookson’s² order dated November 23, 2022 which states that she had ruled on several discovery matters already and that any further discovery disputes requiring motion practice were to be filed by January 13, 2023. Accordingly, discovery issues were addressed by the ALJ and if Petitioner believed an aspect of the dispute was overlooked, he had the duty to file a motion in January 2023 not raise it in summer 2023 after the

² ALJ Cookson presided over these matters prior to the assignment of ALJ Celentano.

close of discovery and after Respondent's motion for summary decision had been filed and fully briefed. I note also that the record contains numerous emails among the parties and the ALJ discussing how and when discovery is to be conducted. Petitioner's challenge is meritless.

3. The ALJ Properly Relied Upon the Truesdale Certification.

The ALJ properly considered the Truesdale Certification Respondent included in its motion for summary decision. (Initial Decision at 3). As the ALJ notes, Petitioner did not submit his own certification contesting the facts in the Truesdale Certification and the ALJ was free to rely upon it. (Id. at 6). Petitioner claims that he never received the Truesdale Certification, but that is belied by the record where it is clear that Petitioner's opposition to Respondent's motion for summary decision references the Truesdale Certification and alleges that the Certification was not signed (it was). (Truesdale Cert. at 6). Petitioner's attack on the Certification is without basis in fact and law.

4. Petitioner's Bald Assertions of Discrimination and Bias are Meritless.

Contrary to Petitioner's contentions in his Exceptions, there is no credible evidence that ALJ Celentano or Respondent's DAG exhibited discriminatory animus or treatment towards him. Petitioner's dissatisfaction with adverse rulings (and claiming that the ALJ is biased because she allegedly did not personally respond to his correspondence) is not a sufficient basis to establish bias. Without more, I will not disturb the Initial Decision.

CONCLUSION

There is no genuine dispute as to the facts contained in the motion record. The record supports the conclusions reached in the Initial Decision. To the extent NM I is not moot, I find the appeal was untimely.

Based on my review of the record, I concur with the ALJ's findings and hereby **ADOPT** the Initial Decision for the reasons stated herein.

THEREFORE, it is on this 1st day of December 2023

ORDERED:

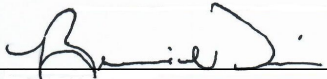
That the Initial Decision is hereby **ADOPTED**;

AND FURTHER ORDERED:

That the Commission may enforce its decision immediately.

Should a party wish to challenge this final agency decision, they may file an appeal with the Superior Court of New Jersey, Appellate Division within 45 days of receipt of this decision.

DATE: November 30, 2023



**Bernice Davis, Executive Director
New Jersey Commission for the Blind
and Visually Impaired**

Date agency served on parties: **December 1, 2023**

cc: N M , Petitioner, pro se
Michael Sarno, DAG