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CAROL B. SIMS, CLERK
KANAWHA COUNTY CIRCUIT COURT

COURTNEY RHODENIZER,

Petitioner,

vs.

Petition No.: 20-AA-25

DMV File # 369444A

**EVERETT FRAZIER, COMMISSIONER,
WEST VIRGINIA DIVISION OF MOTOR VEHICLES**

Respondent.

**ORDER GRANTING PETITION and REVERSING
OFFICE OF ADMINISTRATIVE HEARINGS' FINAL ORDER**

Pursuant to West Virginia Code §29A-5-1, *et seq.*, the Petitioner appeals the *Final Order* and decision of the Chief Hearing Examiner (hereinafter "OAH") entered on January 23, 2020, that affirmed an *Order of Revocation* issued by the West Virginia Division of Motor Vehicles (hereinafter DMV) on July 1, 2013, revoking the Petitioner's driver's license for driving a motor vehicle in the State of West Virginia while under the influence of controlled substances or drugs.

The Petitioner timely filed her *Petition for Judicial Review*, challenging the OAH'S *Final Order* which affirmed the DMV's *Order of Revocation*. A hearing was held on the procedural issue of delay and the Petitioner testified to the actual and substantial prejudice arising therefrom. Further, the DMV had the opportunity to rebut this assertion with evidence regarding the reasons for the delay. Having reviewed the Petition, the parties' briefs, the case file, pertinent authorities, and the testimony presented, and as a result of such measured review, for reasons more fully set forth hereinbelow, the Court hereby **GRANTS** the Petitioner's *Petition for Appeal*, and the Court **REVERSES** the OAH'S *Final Order* entered January 23, 2020.

STANDARD OF REVIEW

1. "Appeals from revocation issued by the Commissioner of the West Virginia Department of

Motor Vehicles are governed by the West Virginia Administrative Procedure Act." *Donahue v. Cline*, 190 W.Va. 98, 101, 437 S.E.2d 262, 265 (1993).

2. Pursuant to W.Va. Code §29A-5-4(g), a decision of an administrative agency may be reversed if the court finds that the agency's findings, inferences, conclusions, decision and/or order are:

- (1) In violation of constitutional or statutory/regulatory provisions; and/or
- (2) In excess of statutory authority or jurisdiction of the agency; and/or
- (3) Made upon unlawful procedures; and/or
- (4) Affected by other error of law; and/or
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; and/or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

3. An agency's findings of fact and evidentiary rulings are entitled to deference, unless the court concludes that they are clearly wrong in view of the reliable, probative, and substantial evidence on the whole record, or are arbitrary, capricious, or characterized by an abuse of discretion. Syl. Pts. 1 & 2, *Mayhorn v. West Virginia Consolidated Public Retirement Board*, 219 W.Va. 77, 79-80, 631 S.E.2d 635, 637-38 (2006); Syl Pt. 1, *Muscatell v. Cline*, 196 W.Va. 588,474 S.E.2d 518 (1996).

4. In making this determination, a reviewing court "must determine whether the Administrative Law Judge's findings were reasoned, *i.e.*, whether he or she considered the relevant factors and explained the facts and policy concerns on which on which he or she relied, and whether those facts have some basis in the record." *Martin v. Randolph County Bd. of Education*, 195 W.Va. 297,304,465 S.E.2d 399,406 (1995).

5. In *Donahue v. Cline*, 190 W.Va. 98, 102,437 S.E.2d 262,266 (1993), the Supreme Court of Appeals of West Virginia stated that in administrative appeals:

"[a] reviewing court must evaluate the record of the agency's proceedings

to determine whether there is evidence on the record as a whole to support the agency's decision. The evaluation is to be conducted pursuant to the administrative body's findings of fact regardless of whether the court would have reached a different conclusion on the same set of facts." (*Citing Gino's Pizza of West Hamlin, Inc. v. West Virginia Human Rights Commission*, 187 W.Va. 312, 418 S.E.2d 758)

6. "Plenary review is conducted as to the conclusions of law and application of law to the facts, which are reviewed *de novo*." Syl. Pt. 1, in part, *Cahill v. Mercer County Board of Education*, 208 W.Va. 177, 539 S.E.2d 437 (2000); Syl. Pt. 2, in part, *Frymier v. Higher Education Policy Commission*, 221 W.Va. 306, 309-310, 655 S.E.2d 52, 55-56 (2007).

FINDINGS OF FACT

1. On April 18, 2013, Corporal William K. Nester of the Greenbrier County Sheriff's Department, the Investigating Officer ("Investigating Officer") herein, responded to a BOLO with the Petitioner's vehicle and license number matching the description given, in Greenbrier County, West Virginia.
2. The Investigating Officer noted that he also observed the Petitioner straddling the center line, weaving and with her tires on the center marker prior to stopping her.
3. Petitioner, Courtney Rhodenizer, was at a scheduled appointment at Seneca Mental Health on April 18, 2013, however, because she was advised, due to a false positive drug screen, that she had tested positive for cocaine, Petitioner became emotionally upset, knowing that the test was incorrect, and she left.
4. The Investigating Officer reported that she had slurred speech and had dilated eyes, and that Petitioner admitted to taking prescribed medications.
5. The Petitioner was upset and appeared unsteady exiting the vehicle, but she appeared

normal walking to the roadside and normal while standing.

6. While the Petitioner failed the walk-and-turn test, the Petitioner passed the one-leg stand test.
7. The Investigating Officer administered a preliminary breath test on the Petitioner which indicated no alcohol content, and the results of the secondary chemical test for alcohol was zero percent (.00%).
8. The Petitioner consented to a blood draw, and presumably the blood sample was submitted for analysis. Neither party submitted the results into evidence.
9. The DMV sent the Petitioner an *Order of Revocation* for driving a motor vehicle in the State of West Virginia while under the influence of controlled substances or drugs on July 1, 2013.
10. On July 1, 2013, the Petitioner requested an administrative hearing from the OAH.
11. On July 2, 2013, the OAH scheduled the matter for hearing on October 8, 2013.
12. The matter was continued multiple times until a hearing was held on June 27, 2014.
13. After the hearing but prior to the issuance of the OAH Final Order, the Petitioner relied upon the inaction of OAH in the following manner:
 - Petitioner moved her family out of state;
 - Petitioner purchased a new vehicle for commute; and
 - Petitioner accepted a promotion at her place of employment.
14. OAH issued a Final Order approximately five and one-half years (5 ½) after the hearing, and the Petitioner took no action from the date of the hearing to present to contribute to the delay in issuance of the Final Order.
15. On January 23, 2020, Hearing Examiner Daryl F. Ballard issued a ruling recommending

that the Commissioner's Order be affirmed, and his recommendation was entered as the Final Order upholding the DMV's Order of Revocation for DUI.

16. Petitioner remains the primary source of income for her and her family.
17. On February 24, 2020, the Petitioner filed her *Petition for Judicial Review*.

DISCUSSION

With regards to the OAH's delay in issuing a Final Order in this case, the Petitioner argues that such a delay violates her due process rights guaranteed in W.Va. Const. Art. III, §17 and *Reed v. Staffileno*, 803 S.E.2d 508 (2017). The detention and investigation for DUI of the Petitioner took place on April 18, 2013, and a hearing was conducted on June 27, 2014. Almost six (6) years elapsed between the OAH hearing and the January 23, 2020, issuance of the Final Order.

In *Straub*, the Court found the OAH's eleven-month delay in issuing its final order egregious, stating "[a] driver should not have to wait this long to receive an order following an administrative hearing, and these delays cannot be condoned." *Straub v. Reed*, 239 W. Va. 844, 806 S.E.2d 768 (2017). In *Straub*, the Court declined to grant him any relief because he failed to identify actual and substantial prejudice or detrimental change in circumstances related to the delay in OAH issuing its final order. However, in the instant case, the Petitioner has described circumstances sufficient in this Court's mind to constitute actual and substantial prejudice from the delay in issuance.

Petitioner has established that she suffered actual and substantial prejudice due to the delay in receiving a Final Order. Specifically, the Petitioner accepted a promotion, purchased a new vehicle, and moved her family, all of which were decisions she made in reliance on the case's seeming resolution. Had this matter been timely resolved after the June 2014 administrative license

revocation hearing, Petitioner would have been well past the fallout of a revocation, and not be subject to such the actual and substantial prejudice that such a delay imposes on an individual, their family, and their livelihood. Petitioner made family and livelihood decisions over three (3) years ago in reliance on OAH having timely fulfilled its statutory obligation to issue an order resolving this matter.

Respondent has failed to produce any meaningful justification for the delay. Petitioner's file was not lost or destroyed. Petitioner's case did not include any novel or complex evidentiary issues. Moreover, Petitioner did not take action to contribute to the almost six-year delay, and in this case, the prejudice suffered as a result of the post-hearing delay outweighs any reasons offered by the Respondent for the delay.

CONCLUSIONS OF LAW

1. Due process of law extends to administrative hearings and procedures. *Smith v. Siders*, 155 W.Va. 193, 183 S.E.2d 433 (1971). *McJunkin Corp. v. West Virginia Human Rights Commission*, 179 W. Va. 417, 369 S. E. 2d 720 (1988). With respect to the quasi-judicial functions of administrative agencies, due process requires them to timely adjudicate matters properly submitted to them. See, *Allen v. State Human Rights Comm.*, 324 S. E. 2d 99, 116 (1984).

2. The Supreme Court of Appeals of West Virginia has previously held that a driver's license is a property interest that is entitled to protection under the Due Process Clause of the West Virginia Constitution. Syl. Pt. 1, *Abshire v. Cline*, 193 W.Va. 180, 455 S.E.2d 549 (1995).

3. In Syllabus Point 3 of *Dolin v. Roberts*, 173 W. Va. 443, 317 S. E. 2d 802 (1984), the Supreme Court of Appeals of West Virginia noted that, "[u]nreasonable delay can result in denial of procedural due process in license suspension cases."

4. In dealing with post-hearing delay and the resulting prejudice, the Court in *Reed v.*

Staffileno, 239 W.Va. 538, 803 S.E.2d 508 (2017) established the following:

"On appeal to the circuit court from an order of the Office of Administrative Hearings affirming the revocation of a party's license to operate a motor vehicle in this State, when the party asserts that his or her constitutional right to due process has been violated by a delay in the issuance of the order by the Office of Administrative Hearings, a party must demonstrate that he or she has suffered actual and substantial prejudice as a result of the delay. Once actual and substantial prejudice from the delay has been proven, the circuit court must then balance the resulting prejudice against the reasons for the delay."

5. The Court examined the *Staffileno* principals set forth in *Straub v. Reed*, 239 W.Va. 844, 806 S.E.2d 768 (2017) and *Reed v. Boley*, 240 W.Va. 512, 813 S.E.2d 754 (2018). However, the driver in those cases could not establish actual detrimental change in circumstance or employment. Thus, their revocation was upheld despite the delay. However, the driver in *Staffileno* and the Petitioner herein have established actual and substantial prejudice as a result of her reliance on the non-issuance.

6. The lengthy delay between the administrative hearing and the issuance of a Final Order violated Petitioner's due process rights. Based on Respondent's inability to offer a justification for the delay, Petitioner's prejudice clearly outweighs any reason for the delay.

RULING

Accordingly, the Court hereby **GRANTS** the relief requested in the *Petition for Judicial Review*. It is hereby **ORDERED** that OAH's decision affirming Respondent's revocation in the above-styled action is **REVERSED**. There being nothing further before the Court, this matter is hereby **DISMISSED** and **STRICKEN** from the Docket of this Court.

It is further **ORDERED** that the Circuit Clerk is directed to forward attested copies of this order to the following:


John D. (Jody) Wooton, Jr.
Wooton, Davis, Hussell & Johnson, PLLC
P.O. Box 2600
Beckley WV 25801

WV Division of Motor Vehicles
Adam Holley, Acting Commissioner
P.O. Box 17200
Charleston WV 25317

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Entered: October 15, 2020


TERA L. SALANGO, JUDGE

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
WIT UNDER MY HAND AND SEAL OF SAID COURT THIS 16th
DAY OF October 2020

CATHY S. GATSON CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA TC