

IN THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS

ADMINISTRATIVE APPEAL SECTION

IN RE APPEAL OF:

DOCKET NO.	2005-AA-0342
APPEAL No(s).	1211377 / FSOP 1211378 / OWFOP
AG No.	
HEARING REQUEST DATE:	01/19/2005
HEARING DECISION DATE:	03/18/2005 / LMS
APPEAL REQUEST DATE:	04/01/2005
Cuyahoga CDJFS	

Administrative Appeal Decision

The Appellant requests an administrative appeal of the dismissal of his state hearing request on March 18, 2005. The Appellant's state hearing request was dismissed as abandoned because the Appellant failed to attend the state hearing scheduled on 02/10/05 and failed to request a reschedule of the state hearing within ten days. The Appellant's administrative appeal request indicates that he was incarcerated on the date of the hearing and could not attend. The Appellant also states that he called to request the hearing be rescheduled at least ten times and left detailed messages, but no one called him back for several weeks.

The Appellant requested this hearing to contest an overpayment proposed by the Summit County Department of Job and Family Services (Agency) on 07/14/03. The Appellant submitted a request for a state hearing to the Agency on 09/23/03. The Agency never forwarded this request to the Bureau of State Hearings and no hearing was ever scheduled. Because the Agency did not pursue the collection of the overpayment at that time, the Appellant thought that the matter had been resolved without a hearing. When the Agency sent the Appellant the repayment notice on 12/01/04, the Appellant renewed his request for a state hearing. The hearing was scheduled for 02/10/04 but could not attend because he was incarcerated

Ohio Admin. Code 5101:6-5-03 provides that a state hearing may be dismissed if the request is abandoned. A state hearing request is "abandoned" when the individual or authorized representative fails, without good cause, to attend the state hearing. The rule states that when the hearing has been abandoned, the hearing request will be dismissed if good cause for failing to attend is not shown within ten days of the mailing date of the dismissal notice. The Appellant's reschedule request did allege good cause, however, it was not received within ten days of the dismissal notice. The Appellant states that he attempted several times to reach the Bureau of State Hearings, left messages, but received no response. Ohio Admin. Code 5101:6-1-01 states:

All rules contained in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code shall be interpreted in a manner consistent with section 1.11 of the Revised Code, which requires that they be liberally construed in order to promote their objective and assist the individual in obtaining justice. All rules relating to the right to a hearing and limitations on that right shall be interpreted in favor of the right to a hearing.

Because it appears that the Appellant did attempt to contact the Bureau of State Hearings in a timely manner and since the Appellant did have good cause for missing his scheduled state hearing, the Appellant's hearing should be rescheduled.

Decision

The dismissal of a state hearing request related to Appeal Number 1110234 is VACATED and REMANDED to the Cleveland District Office Hearings Unit with instructions to reschedule the Appellant's state hearing. Appellant retains all rights of appeal from the resultant decision to be issued.



Robert J. Frankart
Administrative Appeal Officer

CONCUR:



Margaret Adams
Administrative Appeal Officer



Robert Mulina, Attorney-at-Law
Chief Legal Counsel

DATE OF ISSUANCE April 15, 2005

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Job and Family Services. If you disagree with this decision, you may have the right to appeal to common pleas court pursuant to Section 5101.35 of the Ohio Revised Code. Your appeal must be filed within thirty days of the date this decision was issued to you. If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc: Director, Cuyahoga County Department of Job and Family Services
Hearings Supervisor, Bureau of State Hearings, LMS
Anita Fogle
Appellant