

BACKGROUND

Appellant Coman is the adoptive parent of a child born in 2005. The child was placed in foster care with Ms. Coman at some point, and several years later she petitioned for adoption. Ms. Coman applied for adoption assistance on August 16, 2012. The adoption was finalized on September 5, 2012. Franklin County Children Services denied the adoption assistance application on November 14, 2012.

Ms. Coman then requested a state hearing to challenge the denial. The resulting State Hearing Decision issued by ODJFS' Bureau of State Hearings on July 10, 2013 overruled Appellant's appeal of the denial of adoption assistance based on the fact that Appellant did not meet the eligibility requirements for said benefits, including the requirement of a matching conference completed with the Appellant's adoptive mother prior to the finalization of the adoption as required by Ohio law. On July 16, 2013, Ms. Coman appealed the State Hearing Decision. On August 13, 2013, ODFJS issued an Administrative Appeal Decision affirming the State Hearing Decision and finding that the fact that there had been no pre-placement matching conference was fatal to the application for benefits. *See* Decision, p. 2-5.

STANDARD OF REVIEW

R.C. 5101.35 specifies the appeal process for challenging a decision or order of an agency administering a family services program, such as the Adoption Assistance Program, 42 U.S.C. section 670 et seq. R.C. 5101.35(A)(2) and (E) provide that an applicant, participant, or recipient of assistance from a family services program who disagrees with an administrative decision of the Director of Job and Family Services may appeal that decision to the court of common pleas pursuant to R.C. 119.12. *Haghighi v. Moody*, 152 Ohio App.3d 600, 2003-Ohio-2203.

R.C. 119.12 sets forth the standard of review a common pleas court must follow when

reviewing such an administrative appeal. R.C. 119.12 provides, in pertinent part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place*, the Ohio Supreme Court provided the following definition of reliable, probative and substantial evidence as:

(1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Comm., 63 Ohio St.3d 570, 571 (1992). In applying this standard, the court must “give due deference to the administrative resolution of evidentiary conflicts” and to the agency’s factual findings. *University of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (1980). *See also VFW Post 8586 v. Ohio Liquor Control Comm.*, 83 Ohio St.3d 79, 82 (1998).

Once the common pleas court has determined that the administrative agency’s order is supported by reliable, probative and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. 119.12. The reviewing court cannot substitute its judgment for the agency’s decision where there is some evidence supporting the decision. *See Harris v. Lewis*, 69 Ohio St.2d 577, 579 (1982); see also *Conrad*, 63 Ohio St.2d at 111.

LAW AND ANALYSIS

A. Appellee’s Motion For Judgment On The Record

In this appeal, Appellant filed her Notice of Appeal on September 9, 2013. Although Appellants’ brief was due on November 18, 2013, pursuant to the Court’s scheduling order, and any reply brief was due on or before December 9, 2013, Appellant never filed a brief or moved

for an extension of time to do so. Therefore, there are no assignments of error or legal issues presented to the Court.

Pursuant to R.C. 119.12,

The court shall conduct a hearing on such appeal and shall give preference . . . over all other civil cases . . . The hearing in the court of common pleas shall proceed as in the trial of a civil action. . . . At the hearing, counsel **may** be heard on oral argument, briefs **may** be submitted, and evidence **may** be introduced if the court has granted a request for the presentation of additional evidence.

(emphasis added). Although R.C. 119.12 requires the court to conduct some type of hearing, the only statutory requirement is that the entire record be reviewed to determine if the administrative decision is supported by reliable, probative and substantive evidence and is in accordance with the law. There is no requirement that this Court review briefs or entertain oral argument before it enters judgment. Accordingly, this Court may not dismiss for failure to prosecute, and, instead, must review the record, apply the applicable standard of review pursuant to R.C. 119.12, and make a determination on the merits, as requested by Appellee's motion. *See Grecian Gardens v. Bd. of Liquor Control*, 2 Ohio App.2d 112 (10thDist.1964). *See also Mastantuono v. Olmsted Twp. Bd. of Zoning Appeals*, 2009-Ohio-864, ¶20 (8thDist.); *Creager v. Ohio Dept. of Agriculture*, 10th Dist. No. 04AP-142, 2004-Ohio-6068, ¶¶4-5, 10 (affirming the trial court's grant of the state agency's motion for judgment on the record filed after the appellant had failed to file a brief).

B. Appellant's Adoption Assistance Application Did Not Comply With Ohio Adm.Code 5101:2:48-16

Ohio administers a federal program known as Adoption Assistance, 42 U.S.C. 673, pursuant to R.C. 5101.141(B). Under this program, children who are adopted can be eligible for monetary and other benefits. The rules governing the program are set forth in Rule 5101:2-49 of

the Ohio Administrative Code. Adoptive parents are permitted to apply for and receive Adoption Assistance benefits if the criteria of Rule 5101:2-49 are met.

For a child to be eligible for Adoption Assistance benefits, all of the criteria listed in Ohio Adm.Code 5101:2-49-02(A) must be met. One of those criteria is that a child must have been “matched with an adoptive parent(s) in accordance with rule 5101:2-48-16 of the Administrative Code.” Ohio Adm.Code 5101:2-49-02(A)(3). Under Ohio Adm.Code 5101:2-48-16, the matching must have taken the form of a “matching conference,” and the conference must take place before the child is placed for adoption. Ohio Adm.Code 5101:2-4-16(K).

Here, there is no dispute in the record that a matching conference under the rule did not take place. Administrative Appeal Decision, p. 5; State Hearing Decision, p. 1-2. Because the rules plainly required that Ms. Coman’s application for benefits be denied because not all of the eligibility requirements were met, the Administrative Appeal Decision was in accordance with Ohio law.

Ms. Coman does not claim that a matching conference occurred with the adoption of her child or that her adoption was not within the category of adoptions that require a matching conference pursuant to Ohio Adm.Code 5101:2-49-02(A)(3) and Ohio Adm.Code 5101:2-4-16(K) before Adoption Assistance benefits can be received. Instead, Ms. Coman argues in her memorandum in opposition to Appellee’s Motion for Judgment that Ohio’s matching conference requirement contained within Ohio Adm.Code 5101:2-49-02(A)(3) and Ohio Adm.Code 5101:2-48-16 is inconsistent with other Ohio Administrative Code provisions and rules that allow Adoption Assistance for children who are placed from out of state, who are placed from another state or from a tribe that allows placement without parental rights having been terminated by court order, or who are receiving SSI benefits, without the requirement of a matching conference

for such children. Appellant's Br. p. 2. She suggests that legislative intent and policy favor the granting of benefits in this case despite the lack of a required matching conference. *Id.* p. 5. Appellant's arguments are unpersuasive.

The fact that there may be exceptions to a general rule/statute contained within a rule of the Ohio Administrative Code does not mean that the Ohio Administrative Code rule is internally inconsistent or that the rule and statute are inconsistent, nor does it show that the general rule need not be followed. Ms. Coman does not argue that her adoption meets any of the exceptions contained with the Ohio Administrative Code that do not require a matching conference, such as (1) the child receiving SSI benefits, (2) the child being from out of state, or (3) the child's parents did not have their parental rights terminated by court order.

Additionally, although Ohio Adm.Code 5101:2-49-02(A) requires that a child be matched with adoptive parents in accordance with 5101:2-48-16, a "matching conference" is required as part of the matching process only if the child is in the permanent custody of, and is being placed by, an Ohio public children services agency or private child placing agency, which was the case here. The exceptions to this matching-conference requirement noted above are choices that were made by lawmakers. Any arguments regarding fairness and overall policy of the rule would be more appropriately addressed to those lawmakers, rather than this Court. The Court may not effectively rewrite the plain and unambiguous language of Ohio Adm.Code 5101:2-48-16 regarding which adoption situations require a matching conference and which do not before Adoption Assistance benefits are available. No will this Court second-guess the policy choices made by the Ohio Department of Job and Family Services and the General Assembly. As the Ohio Supreme Court and Tenth District Court of Appeals have recognized, "[c]onsiderable deference should be accorded to an agency's interpretation of the [statute or] rules the agency is

required to administer.” *Hooser v. Ohio State Racing Comm.*, 10th Dist. No. 13 AP-320, 2013-Ohio-4888, ¶9, citing *State ex rel. Celebrezze v. Natl. Lim & Stone Co.*, 68 Ohio St.3d 377 (1994). Further, an administrative rule that is issued pursuant to statutory authority has the force of law unless it is unreasonable or conflicts with a statute covering the same subject matter. *Id.* See *Leon v. Ohio Bd. of Psych.*, 63 Ohio St.3d 683, 687 (1992), citing *Lorain City Bd. of Educ. v. State Emp. Rel. Bd.*, 40 Ohio St.3d 257 (1988); *Morning View Care-Center-Fulton v. Ohio Dept. of Human Servs.*, 2002-Ohio-2878, ¶43 (10thDist). The Court does not find that Ohio Adm.Code 5101:2-49-02(A)(3) and Ohio Adm.Code 5101:2-4-16(K) are unreasonable or conflict with state/federal law regarding Adoption Assistance benefits.

This Court has considered the entire record on appeal and any timely and appropriate filings in reaching its decision. A child cannot be eligible for Adoption Assistance benefits unless a matching conference pursuant to Ohio Adm.Code 5101:2-48-16 was conducted prior to the child’s placement for adoption. Because it is undisputed that no such matching conference took place and because the rule unambiguously requires this as a condition of eligibility, ODFJS’ Administrative Appeal Decision dated August 13, 2013 is supported by reliable, probative and substantial evidence in the record and is in accordance with law. It is **AFFIRMED**.

DECISION

For the foregoing reasons, the Court **AFFIRMS** the Administrative Appeal Decision of the Ohio Department of Job and Family Services dated August 13, 2013.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and

note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS

IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry. Costs to Appellant.

IT IS SO ORDERED.

Copies to:

Amy D. Coman
145 Scottbury Court
Gahanna, Ohio 43230
Appellant

Rebecca L. Thomas, Esq., AAG
Ohio Attorney General's Office
30th East Broad Street
26th Floor
Columbus, Ohio 43215-3428
Attorney for Appellee ODJFS

Franklin County Court of Common Pleas

Date: 12-04-2014

Case Title: AMY D COMAN ET AL -VS- OHIO STATE DEPT JOB & FAMILY SERVICES

Case Number: 13CV010047

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 13CV010047

Case Style: AMY D COMAN ET AL -VS- OHIO STATE DEPT JOB &
FAMILY SERVICES

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0100472013-11-2599980000

Document Title: 11-25-2013-MOTION

Disposition: MOTION RELEASED TO CLEAR DOCKET