

LOUIS P. GIANNASIS
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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

DANIELLE HAYDUK,)	CASE NO. 2016 CV 00878
)	
Appellant,)	Judge Taryn L. Heath
)	
v.)	JUDGMENT ENTRY
)	(Granting Motion of Appellee Ohio
OHIO DEPARTMENT OF JOB AND)	Department of Job and Family
FAMILY SERVICES,)	Services to Dismiss)
)	
Appellee.)	

This matter is before the Court on the Motion of Appellee Ohio Department of Job and Family Services (“ODJFS”) to dismiss this administrative appeal for lack of jurisdiction. Appellant. Appellant’s response was originally due on May 27, 2016. On the due date for Appellant’s response, the Court received Plaintiff’s Motion for Extension of Time to Respond to Defendant’s Motion to Dismiss, requesting until June 24, 2016 to respond to the Motion to Dismiss. Appellant’s motion was granted, but Appellant did not timely respond. Then, on July 5, 2016, Appellant filed her Brief in Opposition to Motion of Appellee Ohio Department of Job and Family Services to Dismiss. Appellant did not seek leave for the untimely filing. Also on July 5, 2016, Appellee timely filed its Reply in Support of Appellee Ohio Department of Job and Family Services’ Motion to dismiss, which—among other things—asked this Court to strike or disregard Appellant’s untimely filing.

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Moreover, this Court's May 5, 2016 Judgment Entry set a deadline for Appellant's substantive merit brief of June 23, 2016. That deadline has likewise passed, and Appellant has neither filed her merit brief, nor sought an extension of time to do so.

Because this Court concludes that the Administrative Appeal Decision was not an adjudication affecting the rights, duties, privileges, benefits, or legal relationships of Appellant, and because Appellant has not yet been adversely affected by the decision, which merely requires Appellant to provide more information so a final decision can be made, this Court is without jurisdiction to hear this administrative appeal, and the Motion of Appellee Ohio Department of Job and Family Services to Dismiss is **GRANTED**.

Background Facts

On April 18, 2016, Appellant filed a Notice of Appeal from the Administrative Appeal Decision of the ODJFS. Appellant's Notice of Appeal alleges that the ODJFS' decisions made erroneously factual finding and "improperly issued an overpayment order." The Administrative Appeal Decision being appealed was attached to Appellant's Notice of Appeal.

The Administrative Appeal Decision reveals that the Stark County Department of Job and Family Services originally found that Appellant received two food assistance overpayments in the amounts of \$1,902.00 and \$11,675.00. The overpayments resulted from certain income not being included in the food assistance budget.

Appellant appealed, and the state hearing decision found that although certain income had not been included in the food assistance budget, the amount of income that was not included had not been established. The state hearing decision further found that additional information was needed to verify certain of Appellant's expenses, which would also affect any overpayment determination. Appellant appealed this decision, and the Administrative Appeal Decision noted

that additional information was needed, and that after the information was provided “The Agency will recalculate the amount of the overpayment and the appellant will have appeal rights on the new overpayment amount.” It found that the state hearing decision—which merely ordered additional information to recalculate the overpayment amount—was correct.

The Administrative Appeal Decision did not issue an “overpayment order” of any particular amount as suggested in the Notice of Appeal.

Appellant’s Untimely Brief in Opposition

This Court granted Appellant leave until June 24, 2016 to respond to the Motion to Dismiss. Appellant’s response was not timely filed; Appellant did not seek further extension from the Court, and Appellant did not seek leave to file an untimely response. Accordingly, Appellant’s Brief in Opposition to Motion of Appellee Ohio Department of Job and Family Services to Dismiss is hereby **STRIKEN**. Nevertheless, even if this Court were to consider Appellant’s brief timely filed, this Court would still reach the same result, as Appellant has not been adversely affected by the Administrative Appeal Decision from which she appeals and the decision does not constitute an adjudication from which Appellant could properly appeal.

Legal Analysis

ODJFS has moved this Court to dismiss Appellant’s appeal for lack of jurisdiction, contending that Appellant was not adversely affected by the Administrative Appeal Decision. An appellant who challenges the decision of the Director of Job and Family Services may appeal to the court of common pleas as provided in R.C. 119.12. R.C. 5101.35(E).

“[C]ourts of common pleas lack jurisdiction to review actions of administrative agencies unless R.C. 119.12 or some other specific statutory authority grants it.” *Estep v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 12AP-438, 12AP-490, 2013-Ohio-82, ¶13, citing *Total Office*

Prods. v. Dept. of Adm. Servs., 10th Dist. No. 05AP-955, 2006-Ohio-3313, ¶12. A proper appeal under R.C. 5101.35(E) requires: (1) the filing of a notice of appeal, and (2) that the appeal be from an order issued pursuant to an adjudication. *Id.* at ¶15-17, R.C. 5103.35(E), and R.C. 119.12. An “adjudication” is “the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person.” *Id.* at ¶15, citing R.C. 119.01(D).

Only those who are “adversely affected” by these orders may appeal. *Rose v. Ohio Dept. of Job & Family Servs.*, 160 Ohio App.3d 581, 2005-Ohio-1804, ¶11 (12th Dist.). A person is “adversely affected” when her “rights, privileges, benefits, or pecuniary interests are the subject of the administrative adjudication, * * * and the party has been, or likely will be, injured by the administrative order.” *Id.*

In *Johnson v. Ohio Dept. of Job & Family Servs.*, 8th Dist. No. 98918, 2013-Ohio-1451, the trial court found that it lacked jurisdiction over an appeal from an agency determination regarding food assistance benefits. *Id.* The ODJFS observed that the state hearing decision ordered the agency to redetermine eligibility for food assistance. *Id.* at ¶10. As such, there was not yet an adjudication, and the appellant had not yet been adversely affected. *Id.* at ¶11. Similarly, here there has been no adjudication concerning what amount—if any—of an overpayment was received by appellant, and appellant has not yet been adversely affected.


This Court concludes that the Administrative Appeal Decision from which Appellant appeals was not a final adjudication adversely affecting Appellant, and is not subject to this Court’s review. The Court cannot speculate as to what the ultimate outcome will be regarding what amount—if any—of an overpayment the administrative authorities will ultimately determine Appellant received. There simply has not been a final decision regarding the highest

administering authority regarding Appellant's rights, privileges, benefits, or pecuniary interests. We do not yet know if Appellant will be adversely affected by the administrative order. As such, there is no right to appeal at this time.

Conclusion

The Brief in Opposition to Motion of Appellee Ohio Department of Job and Family Service to Dismiss is **STRICKEN**, as it was untimely filed without leave of Court. The Motion of Appellee Ohio Department of Job and Family Services is **GRANTED** and the above-captioned matter is hereby **DISMISSED** with costs to Appellant.

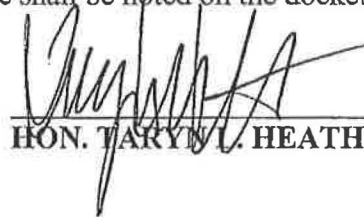
IT IS SO ORDERED.



HON. TARYN L. HEATH

**NOTICE TO CLERK
FINAL APPEALABLE ORDER**

IT IS HEREBY ORDERED that notice shall be served on all parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.



HON. TARYN L. HEATH

**STARK COUNTY CLERK OF COURTS
NOTICE OF JUDGMENT**

2016CV00878

DANIELLE G HAYDUK VS OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

INDIVIDUALS LISTED BELOW WERE NOTIFIED THAT AN ENTRY WHICH MAY BE A FINAL APPEALABLE ORDER HAS BEEN FILED WITH THE CLERK OF THE COMMON PLEAS COURT ON Jul 07 2016.

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