

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1253

September Term, 2015

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

v.

BARBARA A. REED

Berger,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 19, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Mrs. Reed attempted to postpone her hearing before an administrative law judge. She faxed a letter and some backup documentation to the Office of Administrative Hearings (OAH) three days before her scheduled hearing, but the agency determined her documentation was insufficient to support a postponement request. Applying a deferential standard of review, we affirm the agency's decision (and thus reverse the decision of the circuit court).

RELEVANT FACTS

The Maryland Insurance Administration's (MIA) Property & Casualty Unit made a "final determination" upholding State Farm's partial denial of coverage of Mrs. Reed's claim. Mrs. Reed filed a request for hearing, which the MIA delegated to OAH. A hearing was scheduled for April 18, 2014, before an administrative law judge. On April 15, three days before the scheduled hearing, Mrs. Reed faxed to OAH a written request for postponement, which provided, in pertinent part:

Please schedule an Emergency Postponement of the subject OAH Hearing. The rescheduled Hearing should be on either a Tuesday or Wednesday, for example: June 17 or June 18. An extension beyond 60 days would be better to provide a full recovery from Mr. Samuels' required surgeries described below:

Due to major health issues, I will not be able to attend the scheduled Hearing on April 18, 2014.

My tri-asthmatic condition is very serious and creates major breathing difficulties. These breathing conditions and other related health problems are greatly complicated during the Spring allergy season when pollen levels are extremely high.

Stress and tension related to almost fifteen (15) months of State Farm's failure to resolve my claim has added to my breathing problems. These medical complications could produce an asthma attack. A serious asthmatic attack can be life threatening. My primary care physician, Dr. Meena Andrew has provided the enclosed April 10, 2014 letter to explain my medical condition.

I must also obtain an attorney who is willing to present my legal claim in order to minimize the related stress. This lawyer will articulate Maryland Law as to how State Farm has misrepresented pertinent facts and explain how State Farm engages in unfair claim settlement practices. My attorney will confirm that State Farm's actions have been arbitrary and/or capricious.

[Discussion of the merits of Mrs. Reed's claim omitted]

Other major health problems and hospital requirements exist. My professional engineer, Donald Samuels, has been responsible for reviewing all technical and engineering facts and for presenting them to State Farm. He has over fifty (50) years of experience in solving similar engineering and applied physics problems.

He will be admitted to Sibley Memorial Hospital, a member of Johns Hopkins Medicine for three (3) surgeries. The first surgery is to prevent the amputation of his left leg. Related treatments are required to eliminate and prevent blood clots. Two other surgeries are also required. Dr. Thomas Masterson, Internal Medicine is his Primary Physician, Sibley Memorial Hospital -- Phone 202-537-4000. Rehabilitation and physical therapy will require about six (6) weeks after almost two (2) weeks in the hospital.

Thank you for your assistance in obtaining my emergency postponement.

The administrative law judge prepared a proposed default order that was forwarded to the Deputy Insurance Commissioner, Nancy Grodin. Commissioner Grodin produced a final default order that Mrs. Reed has appealed. We have set that default order out in full:

Pursuant to Md. Code Ann., Ins. § 2-210(d) and COMAR 31.02.01.10-2, the undersigned Maryland Insurance Commissioner, hereby approves the Proposed Default Order. A hearing in this matter was held on April 18, 2014, by Administrative Law Judge (ALJ) Abrams. On April 28, 2014, the ALJ issued a Proposed Default Order, and on the same date the Office of Administrative Hearings (OAH) mailed the Proposed Default Order to the parties. The Proposed Default Order included a notice advising the Complainant that she had the right to file a request to modify or vacate the Proposed Default Order, that it must be received within fifteen days of the date of the Proposed Default Order, and that it must include the grounds for the request. On May 13, 2014, the MIA received the Complainant's timely Motion to Vacate the Proposed Default Order. In support of her Motion to Vacate the Proposed Default Order, the Complainant attached her April 12, 2014, Request for an Emergency Postponement. The Licensee filed an opposition on May 27, 2014.

The Notice of Hearing in this matter was mailed to the parties by OAH on February 12, 2014, advising that the hearing was scheduled to take place on April 18, 2014, at 10:00 a.m. The Complainant requested an emergency postponement on April 15, 2014, and sought an extension of time beyond 60 days to provide time for her alleged expert witness to fully recover from surgeries, the dates for which were not provided. The Complainant also explained that she had major health issues due to the Spring allergy season and her tri-asthmatic condition, and the stress and tension of dealing with the Licensee's failure to resolve her claim. The Complainant also advised that she needed time to obtain an attorney. The Licensee opposed the postponement.

The ALJ considered the request for a postponement, the notes from the Complainant's two treating physicians, and the

Licensee's opposition before denying the postponement request. One physician advised the ALJ that the Complainant had a number of health issues and was unable to participate in the hearing. The second physician advised that the Complainant's asthma control test score had been declining during the last 3 weeks and recommended that the hearing be postponed for two months until the Complainant's asthma "can come under better control."

The ALJ concluded that the Complainant had not shown good cause on the basis that she did not show a "sudden, unforeseen occurrence arising within five days of the hearing justifying postponement." The ALJ concluded that the Complainant had ample time to secure legal counsel, her medical conditions were long-standing, and she had failed to include in her request for a postponement any explanation of an emergent medical condition. Further, that there was no information on when the surgeries needed by her alleged expert witness were scheduled to take place or when the Complainant had learned of them. The ALJ also concluded that the Complainant was requesting an "open postponement" in the matter. The Complainant was advised that her request for a postponement was denied. The Complainant failed to appear at the April 18, 2014, Hearing and did not otherwise advise the OAH or the Licensee that she would not appear.

The Request for an Emergency Postponement, the Proposed Default Order, the Motion to Vacate the Proposed Default Order, and the Licensee's Opposition to the Motion to Vacate have been carefully evaluated. While I am very sympathetic to the Complainant's medical condition, the result reached by the ALJ was correct; the Complainant failed to describe a "sudden, unforeseen occurrence requiring immediate attention which [arose] within 5 days of the hearing."

THEREFORE, it is hereby ORDERED that the attached Proposed Default Order by [the] Administrative Law Judge ... be approved by the Maryland Insurance Commissioner as the Final Default Order in the above-captioned matter, effective as of the date of this Order.

Mrs. Reed filed a petition for judicial review in the Circuit Court for Montgomery County. The trial judge issued a written order, which we have set out in full:

This matter comes before the court on the Petitioner's Motion for Judicial Review of the denial of her claim in front of the Maryland Insurance Commission. Petitioner and Respondent filed memoranda and presented evidence in open court on June 23, 2015. This Opinion follows.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of the denial of Petitioner's insurance claim made to State Farm, for damages sustained to her vehicle. Petitioner appealed the denial of her claim to the Property & Casualty Unit of the Maryland Insurance Administration, who found that the claim was properly denied. Petitioner appealed again, and the matter was referred to the Office of Administrative Hearings ("OAH"), whereby on February 12, 2014, a hearing was scheduled for April 18, 2014. On April 15, 2014, Petitioner faxed a request to OAH stating that she could not attend the hearing citing several reasons, including ongoing health problems; that she wished to have a continuance to obtain legal counsel; and that she wished to have a witness testify on her behalf, but who was not available for this hearing date, due to health problems. Petitioner attached one letter from her doctor stating that she could not attend the hearing. Subsequently, she sent a second letter from another doctor stating the same position, and indicating a time frame that would be conducive to her ability to participate. In a letter dated April 15, 2014, State Farm responded stating that they did not consent to Petitioner's postponement request, but did not oppose it. On April 16, 2014, OAH denied the request to continue, finding that the Petitioner did not establish good cause for postponement and that it violated COMAR regulations as not being timely filed. Petitioner failed to appear at the hearing on April 18, 2014, and a default order was entered. Petitioner then filed for judicial review.

At the judicial review hearing in front of this Court, Petitioner explained that she went to her doctors [] because of the stress and anxiety she was under, and that her doctors specifically instructed her to not attend the hearing. She explained in definitive terms that it was physically impossible for her to attend the hearing on April 18, 2014, as it was against the medical advice she had been given.

II. STANDARD OF REVIEW

In appeals from the decision of an administrative agency, “[t]he scope of review is limited to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Bd. of Educ. of Montgomery Cnty. v. Paynter*, 303 Md. 22, 35-36 (1985); *see also Lumbermen’s Mut. Cas. Co. v. Ins. Com’r*, 302 Md. 248, 266 (1985) (“Under ... the Insurance Code, the basic standard for reviewing an administrative finding by the Insurance Commissioner is whether the finding is supported by “substantial evidence.” This means whether “a reasoning mind reasonably could have reached the factual conclusion the agency reached.”).

III. DISCUSSION

This Court is presented with the issue of whether denial of the Petitioner’s motion for postponement was improper. COMAR 28.02.01.16.A requires that all requests for postponement “shall be made in writing and filed not less than 5 days before the scheduled hearing.” COMAR 28.02.01.16.D allows for postponements to be requested within this 5 day window only in the case of emergency. COMAR 28.02.01.16.D1 defines “emergency” as “a sudden, unforeseen occurrence requiring immediate attention.”

In this case, Petitioner filed for a postponement within the 5-day window, claiming that her asthmatic condition was an emergency condition that prevented her from attending the hearing. Additionally, State Farm submitted a response to Petitioner’s request for postponement, stating that they did not consent, but did not oppose, Petitioner’s request.

Considering Petitioner’s testimony at the judicial review hearing, the notes from her doctors regarding her condition, the lack of opposition from the insurance carrier to Petitioner’s request for postponement, and the fact that this was the first scheduled hearing date with no prior postponements, this Court is not convinced that denial of the Petitioner’s request for postponement was proper under these circumstances. While Petitioner’s asthmatic condition was not newly diagnosed, her symptoms increased rapidly and so significantly as to render her physically unable to meet her scheduled obligation; specifically, the hearing set for April 18, 2014.

Consequently, the circuit court reversed the agency determination and remanded the matter for consideration of the merits of Mrs. Reed’s claim. State Farm noted a timely appeal.

ANALYSIS

In an appeal from the circuit court’s judicial review of a final agency action, we ignore the circuit court’s ruling and directly review the agency’s decision. *People’s Ins. Counsel Div. v. State Farm Fire & Cas. Ins. Co.*, 214 Md. App. 438, 449 (2013). Our review of agency actions is always deferential. *Id.* This is especially true in cases where the decision that we are reviewing is discretionary in nature—the proper standard of judicial review examines whether the agency abused its discretion in making its decision. *See Spencer v. Maryland State Bd. of Pharmacy*, 380 Md. 515, 529 (2004) (“[C]ourts owe a higher level of deference to functions specifically committed to the agency’s discretion than they do to an agency’s legal conclusions or factual findings.”); *see also* Arnold

Rochvarg, PRINCIPLES AND PRACTICE OF MARYLAND ADMINISTRATIVE LAW 265 (2011) (discussing standards of review).

The Office of Administrative Hearings has adopted, by regulation, a policy governing the postponement of hearings:

.16 Postponements.

- A. Except as provided in §D of this regulation, a request for postponement shall be made in writing and filed not less than 5 days before the scheduled hearing.
- B. Documentation of the reasons for the postponement shall be required from the party making the request.
- C. A request for postponement shall be granted only if the party requesting the postponement establishes good cause for the postponement.
- D. Emergency Request for Postponement.
 - (1) For purposes of this section, “emergency” means a sudden, unforeseen occurrence requiring immediate attention which arises within 5 days of the hearing.
 - (2) In an emergency, a request for postponement may be made by telephone.
- E. When practicable, all parties to a proceeding shall be contacted before a ruling on a postponement request is made.

COMAR 28.02.01.16; *see also* Rochvarg, *supra* at 125-26 (discussing OAH postponement policies). The agency reviewed the grounds on which Mrs. Reed sought her postponement, including Mrs. Reed’s medical condition; the unavailability of her alleged

expert witness; and her inability to secure legal counsel, and determined that she had “failed to describe a ‘sudden, unforeseen occurrence requiring immediate attention which [arose] within 5 days of the hearing.’” We fail to see how that determination was or could possibly have been an abuse of the agency’s discretion. Therefore, we reverse the decision of the Circuit Court for Montgomery County and remand the matter for entry of an Order consistent with this Opinion.¹

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
REVERSED AND REMANDED WITH
INSTRUCTIONS TO ENTER AN ORDER
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLANT.**

¹ Although as described above, we “look through” the circuit court’s opinion and make an independent appraisal of the agency decision, for the benefit of Mrs. Reed, a self-represented litigant, we note that the error in the circuit court’s decision was that it applied the wrong standard of review. The Circuit Court explained that it was “not convinced that denial of the Petitioner’s request for postponement was proper under these circumstances.” Instead, it should have presumed that the agency’s decision was correct and should have affirmed that decision unless convinced that the agency’s decision was an abuse of discretion.