



7. Respondent informed Petitioner that they would accept an attorney-in-fact to apply for an identification card on Petitioner's behalf. Petitioner would execute a power of attorney to permit the attorney-in-fact to visit a license branch location instead of Petitioner himself. Respondent informed Petitioner that the identification card would not be Real ID-compliant, as the photograph was from 2008 and thus too old to be accepted as a Real ID-compliant card.
8. On September 16, 2022, Petitioner, by counsel Courtney E. Endwright, refused Respondent's offer to permit an attorney-in-fact to apply for an identification card on behalf of Petitioner.
9. On October 24, 2022, Respondent sent Petitioner a letter confirming that the Bureau of Motor Vehicles would not go to his private residence to process his credential application for a Real ID identification card or driver's license.
10. November 9, 2022, Petitioner filed a petition for review of Respondent's decision to not process Petitioner's credential application at his residence. The matter was referred to ALJ Triggs for review under Ind. Code § 4-21.5-3-7(a).
11. December 6, 2022, an Initial Pre-Hearing Conference was held in which ALJ Triggs issued an Order Setting a Briefing Schedule and Status Conference for Respondent's dispositive motion.
12. December 27, 2022, Respondent, by counsel of Indiana Bureau of Motor Vehicle's Attorney James Flett, filed a Motion to Dismiss for lack of subject matter jurisdiction.
13. February 10, 2023, Petitioner, by counsel Courtney E. Endwright, filed a Response Brief in Opposition to the Respondents Motion to Dismiss.
14. March 14, 2023, Respondent filed a Reply Brief.
15. March 15, 2023, ALJ Triggs issued an order vacating the scheduled Status Conference set for March 17, 2023.
16. On March 20, 2023, the ALJ granted Respondent's Motion to Dismiss for lack of subject matter jurisdiction.

### **Decision**

17. Subject matter jurisdiction is the power of a court to hear and decide the general class of actions to which a particular case belongs. *Scheub v. Van Kalker Fam. Ltd. P'ship*, 991 N.E.2d 952, 956 (Ind. Ct. App. 2013). An Indiana court obtains subject matter jurisdiction only through the Constitution or a statute. *Parkview Hosp., Inc. v. Geico Gen. Ins. Co.*, 977 N.E.2d 369, 372 (Ind. Ct. App. 2012). Subject matter jurisdiction cannot be waived or conferred by agreement and can be raised at any time. *Id.*
18. Indiana Code 4-15-10.5-12(a) grants OALP "jurisdiction over all administrative

proceedings concerning agency administrative actions under: 1) IC 4-21.5; or 2) any other statute that requires or allows the office to take action.

19. An “agency action” is defined in Indiana Code 4-21.5-1-4 as follows:

“Agency action” means any of the following:

- (1) The whole or part of an order.
- (2) The failure to issue an order.
- (3) An agency’s performance of, or failure to perform, any other duty, function, or activity under this article.

20. An “order” is defined in Indiana Code 4-21.5-1-9 as an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one or more specific persons. The term includes a (1) license; or (2) determination under 4-21.5-3-6(a)(3) or IC 4-21.5-2-6(a)(4).

21. OALP has jurisdiction over this matter if the Respondent’s denial of Petitioner’s request for accommodation is an agency action, as that term is defined in Indiana Code 4-21.5-1-4.

22. Petitioner argues that the Bureau of Motor Vehicles took official agency action when it refused to accommodate Petitioner’s disability by not performing services at his residence, therefore depriving him of the privilege of holding a valid driver’s license. Petitioner argues that they have a legal interest in a driver’s license or a Real ID credential and the denial of Petitioner’s request to renew his license by the mobile branch is a denial of a driver’s license.

23. Respondent informed Petitioner that it would be willing to accept an attorney-in-fact to apply for an identification card on Petitioner’s behalf. Petitioner would execute a power of attorney to permit the attorney-in-fact to visit a branch location instead of Petitioner himself. Respondent would be willing to do so as accommodation given Petitioner’s disorder. This offer by Respondent would allow Petitioner to apply for an identification card, which is a reasonable accommodation.

24. For the action of denying a request for accommodation to be considered an agency action, it must conclusively determine the Petitioner’s legal rights, duties, privileges, or deny licensure. It depends on the specifics of what action is being requested. If the requested accommodation does not modify any legal rights, duties, privileges, and it does not deny licensure; it would not be considered an “agency action.”

25. The action petitioned by the Petitioner was Respondent's denial of Petitioner's accommodation request, not a denial of a driver's license or an identification card. The Petitioner's requested accommodation was for Respondent to provide credentialing services at his personal residence.
26. The Bureau of Motor Vehicles' decision to not go to Petitioners' personal residence for processing his credential application, does not modify any legal rights, duties, privileges, or deny licensure to the Petitioner.
27. The BMV's denial of Petitioner's request for an accommodation was not an "agency action" as defined in Indiana Code 4-21.5-1-4, and therefore OALP lacks subject matter jurisdiction under Indiana Code 4-15-10.5-12(a) to decide this matter.
28. Pursuant to I.C. 4-21.5-3-29(b), the Commissioner of the Indiana Bureau of Motor Vehicles AFFIRMS the ALJ's March 20, 2023, Order on Motion to Dismiss.

The petitioner is hereby notified that this is a Final Order. The petitioner may seek judicial review of this Final Order pursuant to I.C. 4-21.5-5.

SO, ORDERED.

5/23/23  
Date

  
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Joe B Hoage, Commissioner  
Indiana Bureau of Motor Vehicles

Written notice of this order shall be provided to:

Petitioner

Indiana Bureau of Motor Vehicles