Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Jul 05 2011, 9:16 am
CLERK
of the supreme court, court of appeals and tax court

APPELLANT *PRO SE*:

KATHY ATKINSON
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KATHY ATKINSON,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-1101-PL-28
	)	
INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Timothy W. Oakes, Judge
Cause No. 49D13-0907-PL-34111

July 5, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Petitioner Kathy Atkinson appeals the trial court's decision on judicial review affirming the State of Indiana Family and Social Services Administration's ("FSSA") determination that she owed the agency $4956.00 due to overpayment of food stamp benefits. We affirm.

FACTS AND PROCEDURAL HISTORY

Atkinson's household was certified to receive food stamps for the period beginning June 1, 2001, and ending April 30, 2008, by the Marion County Department of Family Resources ("DFR"). In December of 2006, the FSSA-DFR Program Integrity Section conducted an audit of Atkinson's case, during which it discovered that Atkinson owned a certificate of deposit ("CD") that she had previously failed to report. FSSA determined that Atkinson opened the CD on or before September 9, 1996, and that its value as of September 1, 2006, was $4305.31. On April 18, 2008, FSSA requested that Atkinson submit information verifying the value of the CD for each month during the period that she was certified to receive food stamps. Atkinson failed to submit the requested information.

On August 6 and August 7, 2008, FSSA notified Atkinson that "there was an over issuance of $1843.00, $1062.00 and $2051.00 ($4956.00) in Food Stamp benefits during the period from June 1, 2001 through April 30, 2008 for the reason: Incorrect resources used to determine eligibility and failure to report all or some resources." Appellee's App. p. 103. On September 10, 2008, Atkinson requested an administrative review of the determination that she received overpayment of $4956.00 in food stamp benefits. An administrative law judge ("ALJ") conducted a hearing on May 13, 2009, and upheld FSSA's determination regarding

Atkinson's recovery of the overpayment of food stamp benefits. Per Atkinson's request, the FSSA conducted an agency review of the ALJ's decision. On June 18, 2009, FSSA issued a "Notice of Final Agency Action" affirming the ALJ's decision. Appellee's App. p. 119.

On July 21, 2009, Atkinson filed a verified petition for judicial review in the Marion Superior Court challenging the FSSA's determination that she received an overpayment of food stamp benefits. The trial court entered judgment affirming FSSA's determination on October 5, 2010. Atkinson subsequently filed a motion to correct error, which the trial court granted on October 27, 2010. Following a hearing on November 1, 2010, the trial court instructed the parties to submit proposed findings of fact and conclusions thereon. On December 20, 2010, the trial court approved FSSA's proposed findings of fact and conclusions of law and affirmed FSSA's determination that Atkinson received overpayment of $4956.00 in food stamp benefits. This *pro se* appeal follows.

DISCUSSION AND DECISION

I. Waiver

> An appellant who proceeds pro se is "held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action." *Ramsey v. Review Bd. of Indiana Dep't of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003) (quotation marks omitted). While we prefer to decide cases on their merits, we will deem alleged errors waived where an appellant's noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors. *Id*. The purpose of our appellate rules, especially Indiana Appellate Rule 46, is to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case. *Id*.
>
> Indiana Appellate Rule 46(A)(8)(a) states that the argument section of an appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported

> by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on....” It is well settled that we will not consider an appellant’s assertion on appeal when he has not presented cogent argument supported by authority and references to the record as required by the rules. *Pitman v. Pitman*, 717 N.E.2d 627, 633 (Ind. Ct. App. 1999). Additionally, ‘“[w]e will not become an advocate for a party, nor will we address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood.’” *Ramsey*, 789 N.E.2d at 486 (quoting *Terpstra v. Farmers and Merchants Bank*, 483 N.E.2d 749, 754 (Ind.Ct.App.1985), *trans. denied*).

Thacker v. Wentzel, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003).

We observe that Atkinson, who is appearing before this court *pro se*, raises a number of contentions in the “Statement of Issues” section of her brief that she fails to subsequently develop.[1] These contentions are not subsequently discussed in the argument section[2] of Atkinson’s brief and are not supported by cogent argument, citations to relevant authority, or references to the record. Upon review, we will not become an advocate for Atkinson, and we will not consider any unsupported contentions raised by Atkinson. *See* Ind. Appellate Rule 46(A)(8)(a); *Thacker*, 797 N.E.2d at 345. Thus, to the extent that Atkinson raises contentions in the “Statement of Issues” section of her brief but later fails to develop the contentions with cogent argument, we conclude that the unsupported contentions are too poorly developed to be understood. As a result, Atkinson has waived these contentions on

---

[1] These contentions include: (1) FSSA failed to grant Atkinson an opportunity to review the case file prior to the hearing; (2) Atkinson was unable to advance oral argument during the hearing without interruption; (3) the ALJ failed to consider certain evidence that was submitted by Atkinson; (4) the trial court was biased by statements made by the State regarding Atkinson’s medical expenses and her status of receiving Medicare and Medicaid benefits; and (5) the trial court was unaware of certain evidence submitted by Atkinson.

[2] We observe that although Atkinson’s brief does not contain a separate “Argument” section as required by Indiana Appellate Rule 46(A)(8), the arguments which are in fact advanced by Atkinson are presented in the “Summary of the Argument” section of her brief.

appeal. *See id*. (providing that pro se Appellant waived his argument on appeal because his assertions were too poorly developed to be understood).

II. Whether Atkinson had Access to the CD

We turn our attention to Atkinson's surviving claim. Atkinson contends that the trial court erroneously affirmed FSSA's determination that she received an overpayment of food stamp benefits as a result of her failure to disclose certain accessible funds. Specifically, Atkinson claims that the trial court erroneously affirmed FSSA's determination that she had access to the CD.

When reviewing the decision of an administrative agency, this court stands in the same position as the trial court. *Taylor v. Ind. Family & Soc. Servs. Admin.*, 699 N.E.2d 1186, 1189 (Ind. Ct. App. 1998). We review the record in the light most favorable to the administrative proceeding. *U.S. Outdoor Adver. Co., Inc. v. Ind. Dept. of Transp.*, 714 N.E.2d 1244, 1251 (Ind. Ct. App. 1999). Moreover, we may not retry the facts or substitute our judgment on factual matters for that of the agency, *Taylor*, 699 N.E.2d at 1189, and will grant relief only if we determine that the person seeking judicial relief has been prejudiced by an agency action that is:

> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> (2) contrary to constitutional right, power, privilege, or immunity;
> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
> (4) without observance of procedure required by law; or
> (5) unsupported by substantial evidence.

Ind. State Bd. of Health Facility Adm'rs v. Werner, 841 N.E.2d 1196, 1206 (Ind. Ct. App. 2006), *clarified on reh'g*, 846 N.E.2d 669 (Ind. Ct. App. 2006) (citing Ind. Code § 4–21.5–5–14(d)).

A decision is arbitrary and capricious if it is made without any consideration of the facts and lacks any basis that may lead a reasonable person to make the same decision made by the administrative agency. *Id*. A decision may also be arbitrary and capricious where only speculation furnishes the basis for a decision. *Id*. Simply said, an agency decision is arbitrary and capricious where there is no reasonable basis for the decision. *Id*. at 1207. The burden of demonstrating the invalidity of agency action is on the party seeking judicial review. *Id*. at 1206 (citing Ind. Code § 4–21.5–5–14(a)).

A. Federal Food Stamp Program

The Food Stamp Program is a federal program that was developed to raise the levels of nutrition among low income households. 7 U.S.C. § 2011, *et seq*. This program is administered and funded by the federal government in conjunction with the participating states. *Id*.; 7 C.F.R. § 271.1, *et. seq*. Indiana has elected to participate in the Food Stamp Program. *See* Ind. Code § 12-13-7-2; 470 IAC § 6-0.5-1. FSSA's Division of Family Resources administers the program and enforces the program regulations promulgated by the State. Ind. Code § 12-13-7-2.

A household's eligibility to participate in the Food Stamp Program is determined by calculating the income and resources available to the household. 7 U.S.C. § 2014. The basic eligibility standards are detailed in 7 C.F.R. §§ 273.8-273.10. In order to insure that

households meet these standards, a participating household is required to periodically provide information to the State administrator of the Food Stamp Program. A household's benefits may be terminated or its application for benefits may be denied if its members do not cooperate in providing verification of income, resources, or other eligibility documentation. *See* 7 U.S.C. § 2015(c); 7 C.F.R. § 273.2(d)(1).

In the instant matter, the FSSA-DFR Program Integrity Section conducted an audit of Atkinson's case in December of 2006, during which it discovered that Atkinson owned a CD that she had previously failed to report. FSSA determined that Atkinson opened the CD on or before September 9, 1996, and that its value as of September 1, 2006, was $4305.31. FSSA requested that Atkinson provide documentation demonstrating the CD's worth for each month that DFR had previously determined that Atkinson's household qualified for food stamps. Atkinson failed to provide FSSA with the requested information. Nevertheless, FSSA determined that Atkinson's accessible assets, when including the CD, were such that she would not qualify for food stamps, and that as a result, Atkinson had received an overpayment in food stamps benefits.[3]

Atkinson does not deny that she had a CD at all times relevant to this appeal or that she failed to report the CD as an asset to FSSA. Rather, Atkinson argues that FSSA erroneously determined that the CD was accessible to Atkinson because she had used the CD as collateral for a line of credit. Atkinson does not dispute FSSA's determination that she could "cash out" the CD at any time, but argues that the value of the cashed-out CD would be

[3] Federal law establishes that the applicable maximum allowable resources, including both liquid and nonliquid assets, shall not exceed $3000. See C.F.R. § 273.8(b).

nominal because the funds would be used to repay all monies borrowed through the line of credit before any funds would be distributed to her. Thus, Atkinson argues that the CD is effectively inaccessible. Atkinson, however, provides no authority in support of this claim.

Federal law provides that with regard to the Food Stamp Program, all household resources, unless explicitly excluded, are considered in the eligibility determination. *See* 7 C.F.R. § 273.8(c) & (e). 7 C.F.R. section 273.8(e)(8) explicitly provides that resources having cash value should be excluded if those funds are not accessible to the household. Generally, funds are inaccessible if they are not capable of being obtained. *See generally*, Webster's Third New International Dictionary 1139 (14th ed. 1961). Thus pursuant to 7 C.F.R. section 273.8(e)(8), a resource is either accessible, in which case a value determination would be necessary, or inaccessible, in which case the agency does not need to determine the value of the resource.

In defining resources, federal law provides that certain items must be included and documented by the State agency in sufficient detail to permit verification:

> (1) Liquid resources, such as cash on hand, money in checking or savings accounts, *savings certificates*, stocks or bonds, lump sum payments as specified in § 273.9(c)(8), funds held in individual retirement accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting resources of households with IRA's or includable Keogh plans, the State agency shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan…

7 C.F.R. § 273.8(c) (emphasis added). Federal law also provides that the entire value of a savings certificate must be counted as a resource, regardless of whether there is a penalty for early withdrawal. *See* 7 U.S.C. § 2014(g).

In light of the federal authority providing that the entire value of a savings certificate must be counted as a resource, we conclude that the CD held by Atkinson should have been counted as a resource so long as it was accessible to her. The State provided evidence, and the agency determined, that Atkinson could cash out the CD at any time, but that she simply chose not to. Atkinson provides, and we find, no authority suggesting that the mere fact that Atkinson would potentially have to pay off certain debts with a large portion of the funds that she would receive upon cashing out the CD makes those funds inaccessible to her. Thus, we conclude that FSSA properly determined that the funds connected to the CD were accessible to her and should have been considered a financial resource for the purpose of determining whether Atkinson was eligible to receive food stamps through the Food Stamp Program.[4] Atkinson's challenge effectively amounts to a request for this court to reweigh the evidence, which we will not do. *See Taylor*, 699 N.E.2d 1189 (providing that when reviewing the decision of an administrative agency, this court may not retry the facts or substitute our judgment on factual matters for that of the agency).

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.

---

[4] To the extent that Atkinson argues that FSSA's final determination is erroneous because the agency was responsible for monitoring and verifying the value of the CD, we find Atkinson's claim unpersuasive due to her failure to disclose the asset to the agency. We refuse to hold an agency caseworker responsible for monitoring and verifying an undisclosed resource.