

FOR THE PETITIONER, PRO SE
Lori Gallaher
Kokomo, IN

REPRESENTATIVE FOR RESPONDENT
Justin K. Guedel
Indiana Department of Homeland Security
Indianapolis, IN

**STATE OF INDIANA
DEPARTMENT OF HOMELAND SECURITY**

IN RE:)	CAUSE NO.
)	
GALLAHER, L.)	DHS-1715-SDRF-006
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER

On March 29, 2017, the Indiana Department of Homeland Security (“Respondent”) denied Lori Gallaher’s (“Petitioner’s”) application for a grant from the Indiana State Disaster Relief Fund (“Fund”). Petitioner sought grant funds from the Individual Assistance State Disaster Relief Fund Program (“Grant”) to help cover the cost of repairing wind/tornado damage to her home. Petitioner appealed Respondent’s denial of her application for the Grant and, based on the evidence presented and for the reasons set forth below, the Administrative Law Judge **DENIES** Petitioner’s application for the Grant.

PROCEDURAL BACKGROUND

On October 29, 2016, Petitioner submitted an application to Respondent for the Grant. Respondent denied Petitioner’s application and provided notice of the denial on March 29, 2017. Petitioner then filed a petition for review of Respondent’s denial on April 3, 2017, and Respondent granted the petition for review as timely on April 10, 2017. The undersigned Administrative Law Judge (“ALJ”) was appointed to adjudicate the appeal.

An initial prehearing conference was held in this matter on May 17, 2017. Petitioner appeared on her own behalf and Justin Guedel and Manuela Johnson appeared on behalf of Respondent. During the initial prehearing conference, the parties advised the ALJ that informal resolution would not be possible in this case and requested to submit their evidence and arguments by written briefs and documentary evidence. The ALJ approved of this form of proceeding and set

a briefing schedule. Petitioner timely filed her brief and evidence on June 8, 2017, and Respondent timely filed its brief and evidence on June 14, 2017.

BURDEN AND STANDARDS OF PROOF

Indiana Code § 4-21.5-3-14(c) provides that at each stage of an administrative review, “the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense.” That burden rests upon the agency when the agency is, in essence, prosecuting a petitioner for a regulatory violation. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751, 754 (Ind. Ct. App. 1991). However, when the petitioner is seeking an agency action or claims entitlement to an exemption from regulatory requirements, the burden rests upon the petitioner. See Ind. Dep’t of Natural Res. v. Krantz Bros. Constr. Corp., 581 N.E.2d 935, 938 (Ind. Ct. App. 1991).

Proceedings held before an ALJ are de novo, per Ind. Code § 4-21.5-3-14(d), which means the ALJ does not—and may not—defer to an agency’s initial determination. Ind. Dep’t of Natural Res. v. United Refuse Co., Inc., 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as fact-finder, the ALJ must independently weigh the evidence in the record and matters officially noticed, and may base its findings and conclusions only upon that record. Id.; see also Ind. Code § 4-21.5-3-27(d). At a minimum, the ALJ’s findings “must be based upon the kind of evidence that is substantial and reliable.” Ind. Code § 4-21.5-3-27(d). “[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision.” St. Charles Tower, Inc. v. Bd. of Zoning Appeals, 873 N.E.2d 598, 601 (Ind. 2007). It is “something more than a scintilla, but something less than a preponderance of the evidence.” State ex rel. Dep’t of Natural Res. v. Lehman, 177 Ind. App. 112, 119, 378 N.E.2d 31, 36 (1978) (internal footnotes omitted).

When an agency action puts a Fourteenth Amendment interest at risk, however, a higher standard of proof is required. Pendleton v. McCarty, 747 N.E.2d 56, 64–65 (Ind. Ct. App. 2001), trans. denied. “[I]n cases involving the potential deprivation of . . . protected property interests, the familiar ‘preponderance of the evidence standard’ [is] used.” Id. at 64. The higher “clear and convincing” standard is required when a protected liberty interest is at stake. Id. That is to say, this standard applies when “individual interests at stake in a particular state proceeding are both ‘particularly important’ and ‘more substantial than the mere loss of money’ or necessary to

preserve fundamental fairness in a government-initiated proceeding that threaten[s] an individual with ‘a significant deprivation of liberty’ or ‘stigma’.” Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind. Ct. App. 1993), trans. denied (quoting In re Moore, 453 N.E.2d 971, 972 (Ind. 1983)); see also Pendleton, 747 N.E.2d at 64.

FINDINGS OF FACT

Present in the record of proceedings is Respondent’s March 29, 2017 order denying Petitioner’s grant application (“Denial Order”), Petitioner’s petition for review (“Petition”), Respondent’s letter granting the petition for review, and the orders and notices issued by the ALJ. Petitioner also submitted as evidence with her brief the Initial Prehearing Order and Order Setting Briefing Schedule, the Denial Order, her Petition, and correspondence between Petitioner and the U.S. Small Business Administration (“USSBA”) regarding Petitioner’s loan application.¹ Respondent submitted as evidence with its brief a letter from Respondent regarding potential eligibility for the Grant, Petitioner’s application for the Grant (“Application”), an email containing insurance settlement information, and the Denial Order.² Based solely on that evidentiary record and any additional items specifically noted below, the ALJ hereby issues the following findings of fact:

1. On October 29, 2016, Petitioner submitted the Application. (Resp. Ex. 2.)
2. Petitioner sought the Grant to pay for wind/tornado damage to her home and personal property. (Pet. Br. at 2.)
3. In the Application, in the section titled “Insurance Information & Damages,” Petitioner marked the box indicating that she has homeowner’s insurance and, on the second page of the application, she listed Farm Bureau Insurance as her homeowner’s insurance company. (Resp. Ex. 2.)
4. Petitioner listed the following items as damaged in the Application: awning metal porch, garage doors, windows, gutter and downspouts, shingles for house/garage, shed, fascia around house, siding on house, siding on garage, kitchen ceiling, child’s swing set, adult swing set, pool, patio furniture, bird houses, outside play house, outside lights, trampoline, plants, driveway, fixed

¹ These Exhibits are marked and—in the absence of any objections—admitted as Petitioner’s Exhibits 1, 2, 3, and 4, respectively.

² These Exhibits are marked and—in the absence of any objections—admitted as Respondent’s Exhibits 1, 2, 3, and 4, respectively.

air unit, window air, fish, fish filter, pillows for outside chairs, umbrella, glass globes and stands, faces on trees, grill cover, fire pit, outside clock, antenna, sand box, dryer, and car windshield. (Resp. Ex. 2.)

5. As of February 15, 2017, Petitioner had received a payout of approximately \$34,333.05 from Indiana Farm Bureau Insurance for wind/tornado damage to her home, which resulted from the same disaster that caused Petitioner to apply for the Grant. (Resp. Ex. 3.)
6. Indiana Farm Bureau Insurance provided coverage to Petitioner for the repair or replacement of the roof, siding, and gutters and downspouts for both her house and garage, fascia around her house, the metal porch awning, windows, the television tower/antenna, garage doors, storage shed, kitchen ceiling, and a wooden fence. (Resp. Ex. 3.)
7. On March 29, 2017, Respondent sent the Denial Order to Petitioner, which stated that it was denying the Application because Petitioner's insurance policy already covered all of the eligible damages. (Pet. Ex. 2, Resp. Ex. 4.)

CONCLUSIONS OF LAW

Applying the law set forth in this decision to the factual findings supported by the evidence, the ALJ hereby reaches the following conclusions of law with respect to the issues presented:

1. Petitioner is asking Respondent to approve her Application and award her the Grant; therefore, she is requesting the agency to take action. Accordingly, the Petitioner bears the burdens of proof and production. Ind. Code § 4-21.5-3-14(c); Krantz Bros. Constr. Corp., 581 N.E.2d at 938.

A protected property or liberty interest is not at stake in this matter; therefore, the higher standards of proof used in such circumstances are not applicable here. Cf. Pendleton, 747 N.E.2d at 64. Instead, substantial and reliable evidence, which is the usual standard of proof for administrative appeals, applies. Ind. Code § 4-21.5-3-27(d).

It is therefore the Petitioner's burden in this appeal to put forth substantial and reliable evidence demonstrating that she is entitled to receive the Grant, pursuant to the statutes and regulations governing the Fund.

2. The Fund is established by the Indiana Code and permits Respondent to adopt administrative rules in order to carry out the Fund's responsibilities. Ind. Code §§ 10-14-4-5, 10-14-4-11.

Respondent has adopted rules under 290 Ind. Admin. Code 1-2, which govern the administration of the Fund as it pertains to applications for individual assistance.

The purpose of the Fund is to provide financial assistance to eligible entities to cover the costs of repairing, replacing, or restoring public facilities or individual property that is damaged or destroyed by a disaster, as well as the costs of responding during a disaster. Ind. Code § 10-14-4-5.

3. Ind. Code § 10-14-4-6 establishes who may receive financial assistance from the Fund, stating in relevant part:

[T]he agency may use money in the fund to provide financial assistance as follows:

* * *

- (3) To an eligible entity:

(A) who is an individual;

(B) whose primary residence is located in a territory for which:

(i) the United States Small Business Administration declares a disaster; and

(ii) there has been no disaster declaration issued by the President of the United States;

(C) who has suffered damages to the entity's primary residence or individual property because of a disaster described in clause (B); and

(D) who complies with all the other requirements established by the agency.

Ind. Code § 10-14-4-6(3).³

Ind. Code § 10-14-4-13 provides additional guidance regarding how those who are eligible may qualify for Individual Assistance from the Fund, stating in relevant part:

(b) To qualify for financial assistance under this chapter, including a grant, an eligible entity must apply to the agency on forms provided by the agency. The application must include the following:

(1) A description and estimated cost of the damage caused by the disaster to the individual's property.

(2) The manner in which the individual intends to use the financial assistance.

(3) Any other information required by the agency.

Ind. Code § 10-14-4-13.

³ Eligible entity is defined as "a county, a city, a town, a township, or an individual who has incurred loss or cost because of a disaster." Ind. Code § 10-14-4-2.

The grant application procedures, which are set out in 290 Ind. Admin. Code 1-2-2, establish that the applicant must meet the eligibility requirements set out in 290 Ind. Admin. Code 1-2-3 and also list the information that must be included with each application, such as the applicant's name, address and telephone number, a description of the loss and eligible items, proof of ownership of the residence or proof of rental, proof of the applicant's loss, and any other information that the Respondent requests to determine eligibility and award amounts. 290 Ind. Admin. Code 1-2-2.⁴

The eligibility requirements include providing proof that the individual did not qualify for a USSBA disaster loan, demonstration that the loss was an *uninsured loss*, proof of the loss itself, completion of the application form, proof of residence at the location of the damage, residence must be in a county included in the USSBA disaster declaration, and timely submission of the application. 290 Ind. Admin. Code 1-2-3.

4. Respondent argues that Petitioner is not eligible for the Grant because she did not demonstrate that she has an uninsured loss, as required by 290 Ind. Admin. Code 1-2-3. An uninsured loss is "a financial loss to an eligible individual assistance claimant resulting from damage to an item or items in an available category under section 6 of this rule belonging to an applicant who receives no insurance recovery for the loss." 290 Ind. Admin. Code 1-2-1(r).

With respect to providing proof that a loss was an uninsured loss, 290 Ind. Admin. Code 1-2-3 states:

The applicant shall demonstrate that the amount of loss is an uninsured loss by:

- (A) presenting a letter from the applicant's insurance company stating that it is an uninsured loss; or
- (B) submission of an affidavit on a form provided by the department under penalty of perjury by the applicant that the applicant does not have insurance coverage for the amount of the loss.

290 Ind. Admin. Code 1-2-3(2).

Petitioner states in her Petition and her brief that she has insurance coverage but she did not provide any information or evidence regarding which items were already covered by insurance, and which items were not. As stated above, providing proof that the loss was an uninsured loss is an eligibility requirement

⁴ The application procedures state that the individual applicant must meet the eligibility requirements set out in 290 Ind. Admin. Code 1-2-3, which includes providing proof that the individual did not qualify for a United States Small Business Administration (USSBA) Disaster Loan by presenting a copy of the denial letter to the Respondent. However, the USSBA notifies the Respondent regarding denials, and that is what occurred in Petitioner's case. Evidence of this notification is contained in the letter from Respondent regarding Petitioner's potential eligibility for the Grant. See letter from respondent regarding potential eligibility for the Grant, marked as Respondent's Exhibit 1.

and Petitioner did not provide that information; therefore, Petitioner did not establish eligibility for the Grant.

5. However, even if Petitioner had provided proof that some of her losses were not covered, as described in 290 Ind. Admin. Code 1-2-3(2), the evidence shows that the remaining losses that Petitioner's insurance did not cover do not fall into any of the available categories under section 6.

290 Ind. Admin. Code 1-2-6 lists the types of items that Individual Assistance may be available to cover. Those items include home repairs (building materials, electrical, plumbing and plumbing materials, floors and floor coverings, paint, hardware, and wall coverings), essential furnishings (living room furniture, bedroom furniture, and kitchen furnishings), certain home appliances (cooking range, refrigerator, water heater, and furnace), uninsured medical expenses, essential transportation motor vehicle repair, and essential tools and equipment that are needed for employment.^{5 6}

Although Petitioner did not provide evidence regarding the insurance coverage she received as a result of the wind/tornado damage to her home, Respondent was able to obtain the payout information from Indiana Farm Bureau Insurance. (Resp. Ex. 3.)

Petitioner received insurance coverage for a variety of items, including the repair or replacement of the roof, siding, and gutters and downspouts for both her house and garage, fascia around her house, the metal porch awning, windows, the television tower/antenna, garage doors, storage shed, her kitchen ceiling, and a wooden fence.

Based on the list of items that Petitioner included in her Application, and the items listed in the payout summary provided by Indiana Farm Bureau Insurance, the following items were not covered by insurance: child's swing set, adult swing set, pool, patio furniture, bird houses, outside play house, outside lights, trampoline, plants, driveway, fix air unit, window air, fish, fish filter, pillows for outside chairs, umbrella, glass globes and stands, faces on trees, grill cover, fire pit, outside clock, antenna, sand box, dryer, and car windshield. These items do not fall into any of the available categories under 290 Ind. Admin. Code 1-2-6.

6. Petitioner did not provide proof that she has uninsured losses, nor does any of the other evidence presented in this matter demonstrate that the losses listed in

⁵ Air conditioners, either central or window units, may be counted if there is a medical condition for which the appliances are required by a physician. 290 IAC 1-2-6(a)(3). Petitioner did not provide any evidence indicating that the air condition is required by a physician due to a medical condition.

⁶ Essential transportation motor vehicle repair may be covered if two (2) repair estimates are provided and the transportation is essential for employment or medical care. 290 IAC 1-2-6(a)(5). Petitioner did not provide any estimates for the damage to her vehicle.

her application were uninsured because they were either covered by insurance or they did not fall into an available category; therefore, Petitioner does not meet the eligibility requirements for the Grant.

7. The Petitioner has not carried her burden of proving by substantial and reliable evidence that she is entitled to the Grant pursuant to the rules contained in Ind. Code § 10-14-4 and 290 Ind. Admin. Code 1-2. The ALJ therefore concludes that the Petitioner's application for the Grant should be denied and issues this Non-Final Order.

DECISION AND NON-FINAL ORDER

The ALJ hereby **DENIES** Petitioner's application for the Grant.

The Executive Director for the Indiana Department of Homeland Security, Bryan J. Langley, is the ultimate authority in this matter. Executive Director Langley will consider this non-final order in accordance with the provisions of Ind. Code §§ 4-21.5-3-7 thru -29 and the Notice of Non-Final Order also issued today.

Date: July 25, 2017


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