

ORDER GRANTING APPELLANT'S MOTION TO SET ASIDE DISMISSAL

IN THE MATTER OF THE APPEAL OF:

TRUDY JONES, Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD WELFARE AND YOUTH SERVICES,
and the City and County of Denver, a municipal corporation, Agency.

Appellant failed to file a timely pre-hearing statement as ordered by Notice of Hearing and Pre-hearing Order. Consequently, Appellant was ordered to show cause, by October 3, 2013, why dismissal of her appeal should not enter as abandoned. Alternatively, the order permitted Appellant to show cause to avoid dismissal by filing her pre-hearing statement on or before October 3. When neither pre-hearing statement nor response was forthcoming on October 3, a dismissal entered on October 4. That same day, Appellant's attorney filed a motion to set aside the default. The Agency did not respond.

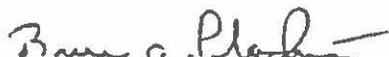
As cause, Appellant's attorney explained a new update of his calendaring system caused a "computer calendar glitch" which resulted in his calendar showing a due date of October 4 instead of October 3. The following factors are persuasive.

1. The pre-hearing statement deadline, unlike the filing of an appeal, is not jurisdictional.
2. Counsel for Appellant filed his motion the day after his deadline, indicating an intent to pursue Appellant's appeal.
3. Counsel's explanation, while perhaps giving Marcellus some pause, smells plausible.
4. The delay of one day in filing Appellant's pre-hearing statement will not prejudice the Agency.
5. Contrast In re Maestas, CSA 33-11, 1 (Order 8/9/11)(Appellant failed to file a pre-hearing statement, failed to present extraordinary circumstances, stated he was ill but produced no medical letter, and failed to file even a late pre-hearing statement); In re Trujillo, CSA 23-06 (5/16/06) (Appellant failed to file a prehearing statement at all, failed to request an extension, and failed to respond to a telephone message left by the hearing office).

Order

Good cause having been shown, Appellant's motion to set aside the dismissal of her appeal is granted.

DONE October 10, 2013.



Bruce A. Plotkin, CSB Hearing Officer for
Valerie McNaughton, CSB Hearing Officer