IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IDA CARN,	:	
Plaintiff	:	
	:	
vs.	:	**NO. 10-00214**
	:	
COMMONWELATH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING	:	**CIVIL ACTION – LICENSE SUSPENSION**
Defendant	:	

O R D E R

AND NOW, this ***25th*** day of ***May***, ***2010***, after hearing argument on May 14, 2010, Ms. Carn's appeal of her license suspension is hereby SUSTAINED.

Ms. Carn filed an Appeal from License suspension on February 1, 2010 stating that she received correspondence from the Department dated January 2, 1010 explaining that because the Department received medical information that she has a psychiatric and vision deficiency, her driver's license was recalled indefinitely pursuant to 75 Pa.C.S. §1519(c). Upon receipt of Ms. Carn's appeal, on February 11, 2010 the Honorable Judge Richard A. Gray issued an order staying any license suspension pending appeal of the matter.

At the hearing held May 14, 2010, at which the Department chose only to present oral argument, it was clear that the only report the Department received pertaining to Ms. Carn's driving abilities were medical reports. The first report was entitled Initial Reporting Form, a Department form, and was completed on December 9, 2009 by a non-treating physician, the form merely indicating that Ms. Carn had been treated by "our

office." Department's Exhibit No. 6. The form stated that Ms. Carn was diagnosed with the following medical conditions that would interfere with her ability to drive: double vision, recent falls, mental status changes, and recent hallucinations. ***Id***. Then, indicating by a checking yes, the form recommended that "this individual lose his/her driving privilege immediately." ***Id***. On January 13, 2010 an optometrist completed a Report of Eye Examination, a Department form, stating that there are no conditions or diseases present that may make this individual an unsafe driver. Department's Exhibit No. 4. A second medical report was then completed on January 18, 2010 by Ms. Carn's treating physician for the prior seven months. Department's Exhibit No. 3. This form was entitled General Psychiatric Form, also a Department form, and indicated that although Ms. Carn suffers from some disorders including hypertension that Ms. Carn was physically and mentally competent to operate a motor vehicle under even under "the stresses and challenges associated with driving." ***Id***.

The Department of Transportation stipulated that for medical purposes Ms. Carn is cleared to drive and the Department would not produce any more evidence, but argued that the Department can nonetheless require Ms. Carn to take a driving test prior to resuming to drive.

Ms. Carn argued correctly that the burden to show a prima facie case that the licensee is incompetent to drive rests with the Department, which if shown results in the burden shifting to the licensee to rebut the prima facie case. ***Reynolds v. Commonwealth***, 649 A.2d 361, 364 (Pa. Cmwlth. 1996). ***Reynolds*** goes on to clarify that "[t]he burden of persuasion never leaves [the Department]." ***Ibid***. It is Ms. Carn's

position that she has rebutted the Department's prima facie case with medical evidence, and therefore should not be required to take a driving test.

The Department essentially accepts this position, but asserts that 75 Pa.C.S. § 1519(a) provides them with the authority to require Ms.Carn to take a driving test anyway. In support of this the Department relies on ***Turk v. Commonwealth***, 983 A.2d 805 (Pa. Cmwlth. 2009). ***Turk*** states the well-settled rule that "once [the Department] has cause to believe a licensed driver may not be physically or mentally qualified to drive, 75 Pa.C.S. § 1519(a) (determination of incompetency) provides the authority to require the driver to undergo… an actual driving test." ***Turk***, 983 A.2d 813 citing ***Neimeister v. Commonwealth***, 916 A.2d 712 (Pa. Cmwlth. 2006) and ***Montchal v. Commonwealth***, 794 A.2d 973 (Pa. Cmwlth. 2001).

In ***Turk***, however, the issue of the driver's competency first came about by the way of a letter from the driver's relative stating that the driver was ninety-one years old and had vision problems which the relative believed affected the driver's ability to drive safely. ***Turk***, 809. Thereafter, upon the request of the Department, the driver obtained a completed form from her health care provider. ***Ibid***. The form indicated that the driver is "doing well" but because of her age should undergo a driving test. ***Ibid***. In a second, revised, form submitted by the same physician on the same day the physician indicated the driver did not have any disease or condition that could interfere with her mental or physical ability to drive but that from a medial standpoint he did not consider the driver physically and mentally competent to drive and again added that the driver needed to undergo another driving test. ***Ibid***. The driver then obtained a report from an optometrist

stating that she had adequate vision to drive. ***Id***., 810. In a third form, the physician indicated the same findings as in the second form and reemphasized that "the Licensee 'is doing well but needs to retest to determine her driving ability.'" ***Ibid***. Then, in a fourth form, submitted ten days after the third, the physician indicated that the driver could now safely drive and no longer recommended that the Department administer the driver a driving test. ***Id***., 810-811. The Court then noted that none of the four forms submitted by the physician indicated when, if at all, the driver was examined by the physician and found that the Department and the trial court itself had the authority to require the driver to take a driving test under the aforementioned circumstances. ***Id***. 811, 814-817.

In the case at hand, however, the Department recalled Ms. Carn's license based solely upon a medical report of a non-treating physician even though Ms. Carn's treating physician, from the same health care office, who did examine Ms. Carn subsequently submitted a form clearing her to drive. Her physician stated that from a medical standpoint, Ms. Carn was physically and mentally competent to operate a motor vehicle. In addition, an optometrist who examined Ms. Carn also cleared her to drive with her corrective lenses. This is unlike the facts in ***Turk*** in which a relative first contacted the Department with concerns over the driver's driving abilities which necessitated medical examination and the submission of forms noted by the court as particularly conflicting.

Given the Department's stipulation that Ms. Carn is medically competent to drive and the lack of conflicting evidence regarding competency in this case, as compared to the evidence in ***Turk***, the Court finds that Ms. Carn has successfully rebutted the Department's prima facie case and the Department has not met its burden of persuasion

regarding competency. Further, the Court finds that the Department has not shown any cause for which a driving test may be required under section 1519(a). Just as the trial court is authorized in an appeal to require a driver to take and pass a driving examination to prove competency, so too can the trial court hold the opposite by determining that the Department has shown no cause to believe that a driver is not physically or mentally qualified to drive. ***Turk***, 816-817. Therefore, the Court has the authority to order that a driver not be required to take a driving test.

Ultimately, this Court agrees with Ms. Carn that if the Department could require testing regardless of whether or not the licensee has successfully rebutted their case and shown that there was no cause for which the Department legitimately suspends a license, the appeal process would merely be a charade. For the aforesaid reasons, Ms. Carn's appeal of her license suspension is sustained.

BY THE COURT,

Joy Reynolds McCoy, Judge

JRM/trk

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