

Court of Appeals, State of Michigan

ORDER

Michael Roy Lewis II v Secretary of State

Docket No. 277036

LC No. 07-703109-AL

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Brian K. Zahra
Judges

The motion for immediate consideration is GRANTED.

The Court orders, pursuant to MCR 7.205(D)(2), that the circuit court's March 23, 2007 order setting aside the hearing officer's decision is REVERSED. The circuit court could only set aside the hearing officer's decision as provided in MCL 257.323(4). Here, the circuit court did not specifically explain why it found that the hearing officer's decision was not supported by competent evidence. Instead, the court simply offered reasons that would, in the court's opinion, support a reinstatement of petitioner's driving privilege. To the extent the court substituted its own judgment for that of the hearing officer, the circuit court erred. See *MEAPAC v Secretary of State*, 241 Mich App 432, 445-446; 616 NW2d 234 (2000). In addition, the reasons offered by the circuit court were insufficient to justify the conclusion that the hearing officer's decision was not supported by competent, material, and substantial evidence on the whole record. Therefore, the circuit court either misapprehended or grossly misapplied the substantial evidence test. See *Dignan v Michigan Public School Employees Retirement Board*, 253 Mich App 571, 575; 659 NW2d 629 (2002). Further, after a review of the record, we find no valid basis for setting aside the hearing officer's decision under the substantial evidence standard, or any of the other criteria set forth in MCL 257.323(4).

The motion for stay is DISMISSED AS MOOT.

This order shall have immediate effect. MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 12 2007

Date

Sandra Schultz Mengel
Chief Clerk