IN THE COURT OF APPEALS OF IOWA

No. 7-501 / 96-0658

000279

KENNETH L. NIELSEN,

Petitioner-Appellant,

JOYCE NIELSEN,

Petitioner,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellee.

FILED
OCT 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Kenneth L. Nielsen appeals from the district court order denying his petition for judicial review of the agency's notice of overpayment of ADC benefits. **AFFIRMED.**

Kenneth L. Nielsen, Blockton, pro se.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, and Stephen C. Robinson, Assistant Attorney General, for appellee.

Considered by Cady, C.J., and Sackett, and Mahan, JJ.

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PER CURIAM.

Kenneth Nielsen appeals from a district court order affirming the decision of the Iowa Department of Human Services (DHS) which denied Nielsen's claim contesting a notice of overpayment of ADC benefits. We affirm on appeal.

On September 12, 1985, Nielsen received notice from the DHS his public assistance was canceled because he had not provided requested information necessary to determine his continued eligibility. The DHS had concerns about the value of machinery on Nielsen's farm. Nielsen claimed the machinery was actually owned by his father. Nielsen had failed to respond to the agency's requests for verification of his father's ownership in a timely fashion.

Nielsen appealed the decision to cancel his benefits, and the benefits were reinstated while the appeal was pending. On June 26, 1986, the agency denied Nielsen's appeal. The agency then directed the local DHS office to recoup any overpayment to Nielsen. On July 10, 1986, Nielsen was notified he had been overpaid $3,310 for the time period from November 1985 to July 1986.

Nielsen filed a petition for judicial review on August 11, 1986. The petition was dismissed by the district court on October 24, 1986, because it was not filed within thirty days of final agency action, as required by Iowa Code section 17A.19(3). The dismissal left the DHS free to collect on the overpayment, but they took no action to do so for several years. The DHS sent Nielsen a demand letter for $3,310 on October 1, 1994.

On October 31, 1994, Nielsen filed an appeal from the department's claim of overpayment. He attempted to challenge the agency's findings in the June 1986 decision. The administrative law judge ruled:

> A final agency decision was issued in this case and implemented by the department. The claim which is the subject of this appeal was established by that final decision. While the appellant did appeal that decision to district court, the court dismissed his appeal as not being timely. Once a case has been litigated, it can not be brought up again through the administrative hearing process. The agency and the court have already decided this issue and the administrative law judge is precluded from further ruling on it.

On March 24, 1995, this decision was adopted as the final agency decision.

Nielsen subsequently filed a petition for judicial review. The district court determined it could not address Nielsen's challenges to the June 1986 decision because he failed to timely appeal that decision. The court affirmed the agency's final decision of March 1995.

Nielsen has filed a pro se appeal. He attempts to relitigate the issues determined in the June 1986 final agency action. Nielsen seeks to show he provided DHS with sufficient documentation concerning the farm machinery, and asserts his ADC benefits should not have been canceled.

Our review is on error. *Hundt v. Iowa Dept. of Human Services*, 545 N.W.2d 306, 308 (Iowa 1996). We are bound by the agency's fact findings if those findings are supported by substantial evidence. *Crandall v. Iowa Dept. of Human Services*, 453 N.W.2d 242, 243 (Iowa App. 1990). Evidence is substantial when a reasonable

mind would accept it as adequate to reach a conclusion. *Schmitz v. Iowa Dept. of Human Services,* 461 N.W.2d 603, 606 (Iowa App. 1990).

We determine there is substantial evidence to show Nielsen is barred from raising issues which were decided in the final agency action of June 1986. Nielsen did not timely appeal this adverse ruling, and he is precluded from raising the same issues again. *See State ex rel. Iowa Dept. of Natural Resources v. Shelley,* 512 N.W.2d 579, 581 (Iowa App. 1993). When a party does not appeal an administrative order it becomes final and is entitled to enforcement. *Id.*

Nielsen has filed a motion to supplement the record on appeal. He seeks to supplement the appendix with some exhibits from the original administrative proceedings. We determine these exhibits are irrelevant to the issue before us, because they were considered in the final agency action of June 1986. We find it unnecessary to make the requested papers confidential.

We affirm the decision of the district court.

AFFIRMED.

Mahan, J., concurs; Sackett, J., concurs specially without opinion.