STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

IN RE:	:	**CASE NO. 02-0124-LOD**
	:	
EDWARD JON BENKO	:	**JANE S. ARATA, HEARING OFFICER**

ADMINISTRATIVE HEARING OFFICER'S REPORT AND RECOMMENDATION
Issued July 7, 2004

I. FINDINGS OF FACT

A. Background.

This matter came before Jane S. Arata, an attorney licensed to practice law in Ohio, and duly appointed by the Ohio Division of Financial Institutions ("Division") to serve as Hearing Officer for this hearing in accordance with the Ohio Administrative Procedure Act, Ohio Revised Code ("R.C.") Chapter 119. The hearing was held on May 5, 2004, at 77 South High Street, Columbus, Ohio. The hearing was held at the request of Respondent Edward Jon Benko ("Respondent") to consider the allegations in the Division's Notice of Intent to Deny Loan Officer License and Notice of Opportunity for a Hearing ("NOH").

The Division alleged that Respondent was convicted of driving under the influence and carrying a concealed weapon in 1982, possession of counterfeit controlled substance in 1983, and felony drug abuse in 1983. The Division also alleged that he violated R.C. 1322.07(A), (B) and (C) by failing to disclose those convictions on his loan officer license application. Therefore, the Division asserted that Respondent is not eligible for a loan officer license pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322, for the following reasons:

1. Respondent violated R.C. 1322.07(A), (B) and (C) by failing to disclose the conviction on his application, and

2. Respondent's character and general fitness do not command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Ohio Mortgage Broker Act as required by R.C. 1322.041(A)(5).

James Evans, an Assistant Attorney General with the Executive Agencies Section of the Ohio Attorney General's Office, represented the Division at the hearing. The Respondent appeared *pro se* and testified at the hearing.

At the hearing, State's Exhibits 1 through 15 and 17 through 20 and Respondent's Exhibits A and B were admitted into the record. State's Exhibit 16 was not admitted into the record but a proffer of that exhibit was made in accordance with R.C. 119.06. The record in this case was left open until June 2, 2004 for the submission of signed copies of Respondent's Exhibits A and B and the filing of any objections thereto by the Division. Respondent's Exhibit C, which includes a cover letter from the Respondent and signed copies of Respondent's Exhibits A and B, was received into the record prior to June 2, 2004 and admitted without objection from the Division. (That Exhibit was marked as Respondent's Exhibit C by the Hearing Officer for ease of reference.)

B. Jurisdiction and Procedural Matters.

1. The Division issued the NOH to Respondent on January 22, 2004. It was sent to the Respondent's then address by certified mail and later returned to the Division marked "unclaimed." (State's Exhibits 1, 6 and 9; Hearing transcript at 57.) (References to pages of the Hearing Transcript will be abbreviated as "TR at {page(s)} ".)

2. The record contains no evidence indicating personal service of the NOH on Respondent or any publication of his right to request a hearing on the allegations contained in the NOH.

3. Attorney Michael R. Blumenthal assisted the Respondent with a portion of the Application process. Therefore, the Division sent Mr. Blumenthal a copy of the NOH by regular mail. Mr. Blumenthal forwarded a copy of the NOH to Respondent, who had moved to Denver, Colorado. The NOH contained a hearing request form that Respondent sent in to the Division. Despite the indirect transmittal of the NOH to Respondent, he received it and requested a hearing in a timely manner. (State's Exhibits 8, 9, 10; TR at 41-42, 50, 57-59, 65.)

4. Respondent's hearing request was received by the Division on February 17, 2004. The Division scheduled the hearing for March 4, 2004, and continued it until April 22, 2004. The hearing was not scheduled by the Division within 15 days after Respondent requested the hearing since 2004 is a leap year. (State's Exhibits 10, 12 and 13.)

5. On March 1, 2004, the Division sent Mr. Blumenthal a letter scheduling the hearing for March 1, 2004, and continuing it indefinitely on the Division's own motion. The record contains no evidence indicating that the March 1, 2004 letter was sent to the Respondent. On March 9, 2004, the Division sent a letter scheduling the hearing for May 5, 2004 to Mr. Blumenthal and Respondent. (State's Exhibits 12 and 13.)

6. The hearing was held on the date set forth in the March 9, 2004 letter and at the time and location stated in that letter. Respondent received notice of the date, time and location of the hearing and personally appeared at the hearing. (State's Exhibits 12 and 13, TR at 1, 75.)

7. Despite not receiving certified mail service of the NOH, the Respondent testified that he wanted the matter to be resolved. He stated that he did not want to waive any rights that he had and did not expressly waive his right to certified mail service of the NOH. When this issue arose, toward the end of the hearing, Respondent expressed reservation about continuing without counsel. (TR at 74-77.)

8. The NOH notified Respondent that he could have legal counsel appear on his behalf at the hearing. Respondent confirmed that he wished to proceed without counsel at the outset of the hearing. Specifically, Respondent answered "Yes" when the Hearing Officer asked, "I do want to make certain that you know you're entitled to have an attorney present and represent you at this hearing, Mr. Benko. You are here without counsel. Is it your choice to go forward without representation?" (State's Exhibit 9; TR at 5.)

9. The Respondent and the Division were given until June 2, 2004 to provide legal briefs on the issue of whether the lack of certified mail service of the NOH precluded the Hearing Officer from having jurisdiction over the case. Respondent indicated that he had difficulty understanding this legal issue and the Hearing Officer explained the issue and indicated that he could still have counsel look at this for him. He was also told that the record was remaining open until June 2, 2004 and that he could seek to add information to the record. (TR at 76-83.)

10. The record was also left open to allow the Respondent to provide signed copies of letters he submitted on his behalf and permit the Division an opportunity to file any objections thereto. Prior to June 2, 2004, Respondent's Exhibit C, which includes a cover letter from the Respondent and signed copies of Respondent's Exhibits A and B, was received and admitted into the record. The cover letter from the Respondent to the Hearing Officer, concluded with the following statement: "I am choosing to allow you to close this matter and leave the recommendation to your judgment."

11. The Respondent did not file a brief regarding the jurisdictional issue and did not indicate that he wished to have additional evidence considered or add legal representation to the process. The Hearing Officer finds that the Respondent was notified of his right to counsel in the NOH and at the outset of the hearing. The jurisdictional issue is a legal issue that is difficult for a layperson to understand. Respondent received an explanation of the issue at the hearing and was notified that he could still obtain legal counsel to assist him after the hearing and prior to the June 2, 2004 date that the record closed. His cover letter in

Exhibit C indicates that he does not have any objection, including the fact that he proceeded without counsel, to the case being submitted as it is.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Procedural Matters.

1. The Division is the state agency responsible for the licensing and regulation of mortgage loan officers pursuant to the Ohio Mortgage Broker Act, R.C. Chapter 1322.

2. Ohio Revised Code Section 1322.10(A)(1) provides that the superintendent of the division of financial institutions ("superintendent") may refuse to issue a license under certain circumstances "{a}fter notice and opportunity for a hearing conducted in accordance with Chapter 119. of the Revised Code." Thus, the Division, acting through the superintendent, is an "agency" for the purposes of R.C. Chapter 119. R.C. 119.01(A)(1).

3. Ohio Revised Code Chapter 119, the Ohio Administrative Procedure Act, specifies the process that must be followed for the issuance of a valid "adjudication" order by an "agency." R.C. 119.06.

4. An "adjudication" for the purposes of Chapter 119 means "the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature." R.C. 119.01(D). The decision to issue or to refuse to issue a loan officer license to Respondent in light of the issues raised pertaining to the prerequisites set forth in R.C. 1322.041(A)(2) and (5) would be an "adjudication."

5. An adjudication order is not valid and effective unless the agency is specifically authorized by law to make the order and an opportunity for a hearing has been afforded in accordance with R.C. Sections 119.01 through 119.13 before the order is issued. R.C. 119.06. There are exceptions to the requirement of a prior opportunity for hearing that do not apply in this instance. Id.

6. The Division's authority and jurisdiction over this subject matter only exist as authorized by law. The jurisdiction to refuse to issue a license is authorized by R.C. 1322.10(A)(1) and only exists "{a}fter notice and opportunity for a hearing conducted in accordance with Chapter 119. of the Revised Code" have been established.

7. Notice and an opportunity for a hearing pursuant to Ohio's Administrative Procedure Act can only be established if the requirements of 119.07 have been met. An agency required to afford an opportunity for a hearing prior to the issuance of an order "shall give notice to the party informing him of his right to a hearing. Notice shall be given by registered mail, return receipt requested...." R.C. 119.07 (emphasis added). Respondent is the "party" entitled to receive the notice of the right to a hearing by certified mail since he is the "person whose interests are the subject of an adjudication by an agency." R.C. 119.01(G). For this purpose, "'registered mail' includes certified mail and 'certified mail' includes registered mail." R.C. 1.02 (General Provisions). If the notice of the right to a hearing is sent by certified mail and returned due to failure of delivery, personal delivery or publication of that notice pursuant to R.C. 119.07 is required.

8. Ohio Revised Code Section 119.07 explicitly states that:

> The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing.

R.C. 119.07.

9. The manner of providing the notice of the right to a hearing and what to do if certain procedures for notification are unsuccessful is set forth in detail in R.C. 119.07. The statute unequivocally states what happens if these requirements are not complied with – any order issued is not valid. R.C. 119.07; Columbus v. Sliker (1986), 30 Ohio App.3d 74, 76 (10th Dist.). To recommend deviation from the procedures mandated by R.C. 119.07, no matter how equitable it may seem, would only lead us to an illusory conclusion that no one wants – the issuance of an order that is not valid and determines nothing. Id.

10. Compliance with the notice and hearing procedures in Chapter 119 is a condition precedent to the issuance of a valid adjudication order resolving the issues alleged in the NOH. Compliance with the procedural requirements of Chapter 119 is a matter of subject matter jurisdiction that cannot be waived and can properly be raised at any time, even in the first instance on appeal. Slone v. Ohio Bd. of Embalmers & Funeral Directors (1995), 107 Ohio App.3d 628, 630 (8th Dist.)(construing similar language set forth in R.C. 119.09.)

11. Ohio Revised Code Section 119.09 contains language similar to the relevant language in R.C. 119.07. That Section requires final adjudication orders to be served upon the party by certified mail, return receipt requested, and upon counsel for the party by regular mail. R.C. 119.09. Section 119.09 states, in relevant part, that:

> After such order is entered on its journal, the agency shall serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of such order shall be mailed to the attorneys or other representatives of record representing the party.

R.C. 119.09. This language is nearly identical to the provisions in Section 119.07 stating that:

> {T}he agency shall give notice to the party informing him of his right to a hearing. Notice shall be given by registered mail, return receipt requested .... {A} copy of the notice [of the right to a hearing] shall be mailed to attorneys or other representatives of record representing the party.

R.C. 119.07.

The Tenth District Court of Appeals has held that a final adjudication order is not valid and effective until it served upon the party by certified mail in accordance with R.C. 119.09. Franklin County Bd. of Commrs. v. SERB (1989), 64 Ohio App.3d 113, 117-18 (10th Dist.). The relevant language in 119.09 is the same today as it was when that decision was issued. Id. at 117; R.C. 119.07. The party involved had received the final order by regular mail but the Court did not find this to be determinative. Id. at 117. It explained that: "The notice required by 119.09 does more than inform an affected party of its appeal rights, it is the required notification of the agency's decision and in the absence of such statutory notice the affected party is not bound by such order." Id. This decision regarding the notice requirements in 119.09 provides the best guidance for construing the similar language in 119.07. The requirements in both provisions are mandatory and jurisdictional.

12. The Seventh District Court of Appeals recently stated that registered mail service of the notice of the right to a hearing pursuant to R.C. 119.07 was an issue of personal jurisdiction that could be waived by a party with actual notice of the hearing. Jefferson County Child Support Enforcement Agency v. Harris, (2003) 2003 WL 220415 (Ohio App. 7th Dist.)(State's Exhibit 20). Reliance on that decision and on Fogt v. Ohio State Racing Comm'n (1965), 3 Ohio App.2d 423 (2nd Dist.) and the other cases cited therein is misguided. The Court in Fogt relied upon a reference in the Second Edition of Ohio Jurisprudence regarding a defendant's ability to waive any objection to personal service once he has

appeared in a proceeding. Fogt, 3 Ohio App.2d at 425 citing 1 Ohio Jur. 2d 489, Section 89. The cases suffer from the same fatal defect – they assume that R.C. 119.07 only refers to a method of service relevant to obtaining personal jurisdiction and it does not. It sets forth procedural requirements that are prerequisites to the issuance of a valid and effective adjudication order.

13. There is a definite appeal to permitting waiver of Section 119.07's requirements for the notice of a right to hearing in a case such as this one where the party received notice, requested a hearing and appeared. However, the plain language of R.C. 1322.10(A)(1), 119.06 and 119.07 mandates otherwise. R.C. 1.42. The language in R.C. 1322.10(A)(1) is clear about when the Division can refuse to issue a license and it is only after it has established that it provided notice and opportunity for a hearing conducted in accordance with R.C. Chapter 119. Ohio Revised Code Sections 119.06 and 119.07 explicitly state the process that must be followed and clarify the mandatory nature of that process by the use of "shall" multiple times. A review of 119.06 and 119.07 in their entirety provide further evidence that compliance with the requirements for both content and delivery of the notice of the right to a hearing is mandatory.

14. The requirements in R.C. 119.07 for the notice a right to hearing pertain to subject matter jurisdiction not personal jurisdiction. The line between these types of jurisdiction blur at times because service and adequate notice, essential parts of personal jurisdiction and due process, can also be prerequisites to establishing subject matter jurisdiction as is the case with R.C. 1322.10(A)(1), 119.06 and 119.07.

15. Section 119.07 also states that "{a} copy of the notice {of opportunity for a hearing} shall be mailed to attorneys or other representatives of record representing the party." R.C. 119.07. The Division complied with this requirement believing that Mr. Blumenthal was legal counsel for Respondent. This was prudent, and, given what the Division knew at that time, the best of course of action to ensure compliance with R.C. Chapter 119. This requirement is in addition to, as opposed to in lieu of, sending a notice to the Respondent informing him of his right to a hearing by registered or certified mail with a return receipt requested. R.C. 119.07. Slone v. Ohio Bd. of Embalmers & Funeral Directors (1995), 107 Ohio App.3d 628, 631 (8th Dist.)(construing similar language set forth in R.C. 119.09.)

16. Proper notice of the right to a hearing delivered in the manner required by R.C. 119.07 and including the required information is mandatory and jurisdictional. Without the required notice of the right to request a hearing, a valid order cannot be issued or recommended. Columbus v. Sliker (1986), 30 Ohio App.3d 74, 76 (10th Dist.)(required delivery of notice); Chirila v. Ohio State Chiropractic Bd. (2001), 145 Ohio App.3d. 589, 594 (10th Dist.) and Bryant Health Center, Inc. v. Ohio Dept. of Job & Family Services, 2004-Ohio-45, 2004 WL 23141, (Ohio App. 10th Dist.)(required content of notice)(copy attached).

17. The Division has not established that it has complied with R.C. 119.07 by providing Respondent with the statutorily required notice of his right to a hearing. This notice was not provided to the Respondent by registered or certified mail, return receipt requested. The certified mailing of the NOH was returned to the Division marked "unclaimed." Personal delivery or publication of the notice in accordance with the procedures set forth in 119.07 was also not established. Therefore, jurisdiction to consider the substantive issues in this matter was not established by the Division.

18. Although this requires a bit more work, ultimately no one is served by the issuance of an invalid order. Providing proper notice to the Respondent of his right to a hearing in the manner statutorily required by R.C. 119.07 is necessary to vest the hearing officer with jurisdiction to consider the matters at issue and the ability to recommend the issuance of a valid final order. Without such notice, a valid order cannot be issued or recommended.

III. RECOMMENDATION

It is recommended that the Division provide proper notice to the Respondent of his right to a hearing in the manner statutorily required by R.C. 119.07 and establish compliance with the jurisdictional prerequisites set forth in R.C. Chapter 119. The Division, having failed to establish compliance with the jurisdictional prerequisites set forth in R.C. Chapter 119, leaves this hearing officer with no jurisdiction to proceed further.

Respectfully submitted,

Jane S. Arata
Administrative Hearing Officer
July 7, 2004

[Cite as *Bryant Health Center, Inc. v. Ohio Dept. of Job & Family Serv.*, 2004-Ohio-545.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Bryant Health Center, Inc.,	:	
Appellant-Appellant,	:	
		No. 03AP-482
v.	:	(C.P.C. No. 02CVF12-13854)
Ohio Department of Job & Family Services,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee Cross-Appellant.	:	
	:	
Bryant Health Center, Inc.,	:	
Appellant-Appellee,	:	No. 03AP-510 and
v.	:	No. 03AP-511
	:	(C.P.C. No. 02CVF12-13854)
Ohio Department of Job & Family Services,	:	(REGULAR CALENDAR)
Appellee-Appellant.	:	

D E C I S I O N

Rendered on February 3, 2004

Geoffrey E. Webster and *J. Randall Richards*, for Bryant Health Center, Inc.

Jim Petro, Attorney General, and *Rebecca L. Thomas*, for Ohio Department of Job & Family Services.

APPEALS from the Franklin County Court of Common Pleas.

BOWMAN, J.

{¶1} These consolidated appeals are taken from judgments of the Franklin County Court of Common Pleas arising out of an administrative appeal by Bryant Health Center, Inc. ("Bryant") from adjudicative orders by the Ohio Department of Job and Family Services ("Department").

{¶2} Briefly, the facts indicate that the Department audited Medicaid cost reports by Bryant and determined that Bryant owed the Department approximately $386,000. As a result, in October 2002, the Department issued proposed adjudication orders which indicated as much, and additionally informed Bryant that it was entitled to a hearing on the matter if a hearing was requested within 30 days. When no request was forthcoming, the Department issued final adjudication orders implementing the proposed settlements. Bryant appealed the orders to the common pleas court, pursuant to R.C. Chapter 119, and the Department countered with a motion to dismiss for failure to exhaust administrative remedies.

{¶3} On April 7, 2003, the trial court issued a decision granting the Department's motion to dismiss for failure to exhaust administrative remedies, and this decision was journalized in a judgment entry on April 21, 2003. On April 24, 2003, the court issued a second decision declaring the Department's notice to Bryant to be defective, overruling the Department's motion to dismiss, and remanding the case back to the Department; however, no entry was journalized to that effect.

{¶4} On May 21, 2003, Bryant filed a notice of appeal to this court in case No. 03AP-482. According to the file stamp, one hour later, the trial court journalized an order vacating its April 7, 2003 judgment. In response to Bryant's notice of appeal, the Department filed a cross-appeal in case No. 03AP-482, and also filed a notice of appeal from the common pleas court's order of May 21, 2003, vacating its April 7, 2003 decision (case No. 03AP-510), and a notice of appeal from the court's unjournalized decision of April 24, 2003 (case No. 03AP-511).

{¶5} Bryant has assigned two errors:

> ASSIGNMENT OF ERROR NO. I
>
> THE LOWER COURT ERRED AS A MATTER OF LAW (IN ITS FIRST DECISION) IN FINDING THAT BRYANT FAILED TO EXHAUST ITS ADMINISTRATIVE REMEDIES.
>
> ASSIGNMENT OF ERROR NO. II
>
> THE LOWER COURT HAD JURISDICTION AND AUTHORITY TO RECONSIDER AND VACATE ITS FIRST DECISION SUA SPONTE.

{¶6} On cross-appeal, the Department has assigned one conditional assignment of error:

> To The Extent That This Court Determines That The Lower Court Erred By "Dismissing" The Appeal On [The Department]'s Motion Instead Of Entering Judgment On The Briefs, [The Department] Should Still Prevail. The Lower Court Had The Briefs At The Time Of Dismissal, The Same Arguments Were Presented, And The Lower Court Correctly Denied Bryant Judicial Relief Based On Failure To Exhaust Administrative Remedies.

{¶7} The Department's additional assignments of error are:

> First Assignment of Error

> The lower court acted outside its jurisdiction when it issued the April 24, 2003, Decision and the May 21, 2003, Order.
>
> Second Assignment of Error
>
> If the lower court had jurisdiction to issue the April 24, 2003, Decision and/or the May 21, 2003, Order, it erred in doing so because those filings are incorrect on the merits.

{¶8} Although at first blush the procedural history and issues raised by the assignments of error seem complicated, the questions before this court are simple: first, did the notice provided Bryant by the Department comply with due process so as to provide it with an administrative remedy; and second, what effect, if any, flowed from orders and entries by the trial court subsequent to its April 7, 2003 judgment?

{¶9} In 2001, this court decided *Chirila v. Ohio State Chiropractic Bd.* (2001), 145 Ohio App.3d 589, an administrative appeal in which a chiropractor argued that the board had not provided adequate notice of his right to an administrative hearing prior to revoking his license. In that case, the notice provided to Chirila indicated, at 594:

> "Under Section 119.07 of the Ohio Revised Code, you have a right to request a hearing on these allegations. If you request such a hearing, **you must do so within thirty days of the date of this notice.** If you do not request such a hearing within thirty days of the mailing of this notice, the State Board of Chiropractic Examiners, upon consideration of the charges cited, may in its discretion revoke or suspend your license as a doctor of chiropractic, without such a hearing."

(Emphasis sic.)

{¶10} Chirila attempted to request a hearing, but his written request was received one day after the expiration of the 30 days named in the notice. Despite an argument by the board that implicit in the wording of the notice was the idea that the request be received by the board within 30 days, this court held that, in order to be

effective, the notice must expressly indicate that the request for a hearing must be received within the 30 days. We thus held that the order revoking Chirila's license was void under R.C. 119.06 and 119.07. Id. at 596.

{¶11} In the case at bar, the notices sent to Bryant provided:

> You are entitled to a hearing on this matter, in accordance with sections 119.09 and 5111.06 of the Ohio Revised Code, provided you request the same within thirty (30) days of mailing of this letter. * * *

{¶12} The Department argues that, because Bryant never even attempted to meet the 30-day deadline, only sending a request some 146 days after the mailing of the Department's notice, Bryant is not eligible to invoke the holding in *Chirila* in support of its position that it had not failed to exhaust its administrative remedies. However, in *Chirila*, we specifically stated that "the failure to timely request a hearing does not preclude a court's consideration of whether an agency's procedures comply with due process." Id. at 595-596. Contrary to the Department's argument, this court's holding in *Chirila* was not premised on the fact that the doctor attempted to comply with the notice by mailing a request for a hearing within 30 days that was received by the board on the 31st day but was based on the constitutionally defective nature of the notice itself. In this case, the Department's notice was substantially identical to the notice found deficient in *Chirila* and, therefore, was constitutionally defective and any order issued pursuant to that notice is void. Thus, we sustain Bryant's first assignment of error.

{¶13} All four of the remaining assignments of error of both parties address the significance and effect of the common pleas court's decision of April 24, 2003, and the court's order of May 21, 2003. First, we note that, regardless of whether the common pleas court had authority to reconsider and/or vacate its April 7, 2003 decision,

journalized by judgment entry on April 21, 2003, the court's decision of April 24, 2003, was not properly journalized, and, therefore, is ineffective. See Civ.R. 58(A).

{¶14} Regarding the court's order of May 21, 2003, we need not reach the question of whether the court properly vacated its early April decision because the order was journalized after Bryant filed its notice of appeal to this court. The filing of a notice of appeal divested the common pleas court of jurisdiction, and so the court's April 21, 2003 judgment entry remained the final judgment of the case. See, e.g., *Duncan v. Capitol South Community Urban Redevelopment Corp.* (Mar. 18, 2003), Franklin App. No. 02AP-653; *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 147.

{¶15} Therefore, only the April 7, 2003 decision, journalized April 21, 2003, from which Bryant filed its notice of appeal is properly before this court. Because we sustain Bryant's first assignment of error holding that the trial court erred in dismissing Bryant's administrative appeal, we need not reach the procedural questions surrounding the court's other determinations, and so overrule as moot the remaining four assignments of error.

{¶16} Bryant's first assignment of error is sustained, Bryant's second assignment of error, the Department's assignment of error on cross-appeal, and the Department's remaining two assignments of error are all overruled as moot. The judgment of the trial court is reversed and this cause is remanded to the trial court with instructions to remand to the Ohio Department of Job and Family Services for further proceedings consistent with this decision.

Judgment reversed and cause remanded with instructions.

LAZARUS, P.J., and SADLER, J., concur.