

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-01-91
DHM-KEN-9/1/2002

B. J. GOODWIN,

Petitioner

v.

ORDER

DONALD L. GARBRECHT
LAW LIBRARY

DEPARTMENT OF HUMAN
SERVICES,

SEP 3 2002

Respondent

This matter is before the court on respondent's motion to dismiss the petition for review for petitioner's failure to file a petition within the time frame required by 5 M.R.S.A. § 11002(3). The final decision by Kevin W. Concannon in the matter of: B.J. Goodwin was issued October 17, 2001. The subject matter is the application of petitioner for placement on Registry of Certified Nursing Assistants. By notice dated December 7, 2001, the petitioner filed her petition for review with the court on December 11, 2001. On that same date, petitioner filed a motion to accept a late filing. In her unsworn motion, she asserts that she originally filed her petition on November 1, 2001, but the paperwork was not filled out correctly.

So I had to fill out more paperwork. I didn't hear nothing back from the court for at least 2 to 3 weeks so I called and they told me to fill out more paperwork so I did and I sent them out they called me back and told me that I didn't do it write and that I was to late to even appeal it.

Respondent seeks a dismissal for petitioner's failure to file a timely petition for review.

". . . judicial enlargement of a statutorily provided period of appeal is not possible, . . . the APA makes no provision for an extension of time limitations on judicial review. We now state expressly that the acts time limitations are jurisdictional." *Brown v. State Dep't of Manpower Affairs*, 426 A.2d 880 (Me. 1981). "Statutory limitations on

appeal periods are jurisdictional." *Davric Maine Corp. v. Bangor Historic Track, Inc.*, 751 A.2d 1024 (Me. 2000).

At oral argument, the petitioner could not explain the nature of the errors in her paperwork causing the clerk to refuse to docket her filing. The petition for review was due to be filed no later than November 26, 2001. This court has no means to review the basis upon which petitioner's petition was refused. The Commissioner's decision contained the notice advising petitioner as to the requirement of filing within 30 days of the receipt of the decision.

Therefore, the entry will be:

Respondent's motion to dismiss is GRANTED; petition for review is DISMISSED.

Dated:

Sept 1, 2002



Donald H. Marden
Justice, Superior Court

Date Filed 12/11/01 Kennebec County Docket No. AP01-91

Action Petition for Review
80C

BJ Goodwin vs. Kevin Concannon, Dept. of Human Services

Plaintiff's Attorney
BJ Goodwin, Pro Se
P.O. Box 177
Leeds, Maine 04263

Defendant's Attorney
Renee Guignard, AAG
6 State House Station
Augusta, Maine 04333-0006

Date of
Entry

12/11/01	Petition for Review, filed. s/Goodwin, Pro Se Application of Plaintiff to Proceed Without Payment of Fees, filed. s/Goodwin, Pro Se Indigency Affidavit, filed. s/Goodwin, Pro Se Motion to Accept Late Filing, filed. s/Goodwin, Pro Se
12/18/01	ORDER ON APPLICATION TO PROCEED WITHOUT PAYMENT OF FEES, Atwood, J. The filing fee is waived. Copy mailed to pltf.
3/1/02	Certified mail return, filed.
4/11/02	Motion to Dismiss the Petition for Review for Petitioner's Failure to File the Petition Within the Time Frame Required by 5M.R.S.A., filed. s/Guignard, AAG Certificate of Service, filed.
4/17/02	Letter from attorney Guignard indicating they waive oral argument on the motion to dismiss.
4/30/02	Petitioner's handwritten Response to Respondent's Motion to Dismiss, filed. s/BJ Goodwin, Pro se Petitioner.
5/6/02	Letter from attorney Guignard indicating that she waives oral argument on motion to dismiss and request that motion be presented to the court. Notice of setting for <u>7/3/02.</u> sent to attorneys of record.
7/3/02	Hearing had, Hon. Donald Marden, J. No courtroom clerk. Case <u>under advisement.</u>
8/1/02	ORDER, Marden, J. Respondent's motion to dismiss is GRANTED; petition for review is DISMISSED. Copies mailed to attys. of record. Copies mailed to Garbrecht Law Library, Donald Goss and Deborah Firestone