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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SAN FRANCISCO
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19 RONALD C. BROOKS,
20
21 Petitioner,
22 v.

23 WILL LIGHTBOURNE, Director, California
Department of Social Services;
24 CALIFORNIA DEPARTMENT OF SOCIAL
SERVICES,
25 Respondents.
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27
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CASE NO. CPF-14-513757

^{HK}
~~PROPOSED~~ ORDER DIRECTING
ISSUANCE WRIT OF ADMINISTRATIVE
MANDAMUS PURSUANT TO CODE CIV.
PROC. § 1094.5

Date: April 23, 2015
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Ernest Goldsmith

HAROLD KAHN

Reservation: 121914-01
Action Filed: July 14, 2014

F I L E D
Superior Court of California
County of San Francisco

APR 23 2015

CLERK OF THE COURT
BY: *Debra Kary*
Deputy Clerk

1 Petitioner Ronald Brooks' Petition for a Writ of Administrative Mandamus was set for a hearing
2 on April 23, 2015, at 9:30 a.m., in Department 302 of the above-entitled court.

3 Having considered the petition, the administrative record lodged with this Court, the
4 memoranda in support of and opposition to the petition, and the oral arguments presented at the
5 hearing on this motion:

6 The court GRANTS the petition for a writ of administrative mandamus.

7 While the notice provisions of W & I code section 11450.04 are ambiguous and can fairly
8 be construed to support the positions advocated by both sides, the deference accorded to an
9 agency's interpretation of statutory language, the context of the statutory language, and
10 furtherance of the purposes of section 11450.04 all indicate that the interpretation advocated by
11 respondents—that notice given to Diaz suffices as notice to petitioner—is the more reasonable
12 one. This is particularly true since, per petitioner's interpretation, had he received proper notice,
13 his son could permissibly be designated an MFG as to petitioner's AU, yet there is no reasonable
14 way for notice to have been provided to petitioner other than by giving notice to petitioner.

15 The hearsay rule in the Administrative Procedure Act (Govt. Code section 11513(d))
16 relied on by petitioner does not apply to the hearing held in this case due to W & I code sections
17 10953 and 10955 (*see also* Govt. Code section 11501). However, per W & I code section 10955
18 and MPP section 22-050, the hearing was governed by the requirements that "all testimony shall
19 be submitted under oath or affirmation" and "evidence shall be admitted if it is the sort of
20 evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."
21 Applying the independent judgment standard of review, there was insufficient evidence to
22 support the finding of the ALJ—adopted by and necessary to the Department's decision denying
23 petitioner's request for benefits for his son—that the required notice was given to Diaz about the
24 MFG rules. This is because the only even conceivably probative evidence about notice to Diaz
25 of the MFG rules were the unsworn statements of Mr. Gomez that Diaz's file showed that such
26 notice was given. Mr. Gomez stated that he reviewed Diaz's file, yet he chose not to introduce
27 any portion of that file into evidence and refused to disclose it to petitioner. (*See* MPP section
28 22-049 (petitioner was entitled to "Examine all documents prior to and during the hearing."))

1 Regardless of the merits of Mr. Gomez's assertion of confidentiality of the Diaz file, the absence
2 of any evidence from that file discloses that the "evidence" that was provided by Mr. Gomez fell
3 below "the sort of evidence on which responsible persons are accustomed to rely in the conduct
4 of serious affairs."

5 NOW THEREFORE the Department of Social Services is ordered to reverse its decision
6 of July 17, 2013 and remove the MFG designation from petitioner's son for all time periods, past
7 and present, while he is in the custody of petitioner and provide benefits withheld from petitioner
8 because of the MFG designation of his son.

9 IT IS SO ORDERED, ADJUDGED, AND DECREED.

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12 Dated: April ²³ 24, 2015


~~Hon. Ernest H. Goldsmith~~
Judge of the Superior Court
Hon. Harold Khan

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16 The court also awards all
17 reasonable attorney's fees
18 and costs.
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