

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER’S LICENSE—The record contains substantial, competent evidence to support Petitioner’s cancellation from the Special Supervision Services Program. Petition denied. *Jonathan Young v. State of Florida, Dep’t of Highway Safety and Motor Vehicles*, No. 15-CA-2018-WS (Fla. 6th Cir. App. Ct. January 22, 2016).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

JONATHAN YOUNG,
Petitioner,

UCN: 512015CA002018CAAXWS

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES,**
Respondent.

_____ /

Petition for Writ of Certiorari,

Michelle D. Lambo, Esq.,
for Petitioner,

Thomas J. Moffett, Jr., Esq.
for Respondent.

ORDER AND OPINION

Petitioner was afforded procedural due process and no departure from essential requirements of law occurred in this matter. The record contains substantial, competent evidence to support Petitioner’s cancellation from the Special Supervision Services Program and resulting cancellation of Petitioner’s restricted license. The Petition is DENIED.

STATEMENT OF THE CASE AND FACTS

Petitioner seeks review of the cancellation of Petitioner’s restricted license resulting from Petitioner’s cancellation of participation in the Special Supervision Services Program. Petitioner’s license was suspended for a period of ten years on October 23, 2012, after Petitioner was convicted of DUI three times within a ten year

period. Petitioner was granted reinstatement of driving privileges on a restricted basis pursuant to § 322.271, Fla. Stat. As a condition of the restricted license Petitioner was required to enroll in and comply with terms of a DUI Special Supervision Services Program. See § 322.271(2)(c), Fla. Stat. Petitioner enrolled in Pasco County DUI School Special Services Program, and signed an agreement setting forth the terms and conditions of the Program, and completed a Statement of Abstinence, which states that Petitioner was “not to consume any alcohol or violate the substance abuse guidelines” during the period of supervision, and that “failure to abide by these instructions will result in the cancellation of my restricted driver license.” Petitioner was seen for periodic updates from November, 2014, through March, 2015, at which appointments Petitioner advised he had been sober since his last DUI in October, 2012, and had not used drugs or alcohol or been arrested since his last visit. As a condition of Petitioner’s enrollment in the Program, Petitioner’s medical records from other care providers were reviewed. Medical records from one provider stated that the provider saw Petitioner on January 9, 2015, and medical records stated Petitioner had started drinking over the holidays, was subject to a Baker Act proceeding, and was detoxed for the past week. Petitioner reported to the medical provider at that time that he had been sober for ten days. Petitioner failed to report this information to the Program.

After learning of the alcohol use and Baker Act proceeding, DUI Programs reported Petitioner’s noncompliance and recommended cancellation of Petitioner’s participation in the Program. Once the Program reported Petitioner’s failure to comply with the supervision requirements, Respondent was statutorily mandated to cancel the restricted driving privilege pursuant to § 322.271(2)(c), Fla. Stat:

[T]he department shall require such persons upon reinstatement to have not driven and to have been drug free for at least 12 months immediately before the reinstatement, to be supervised by a DUI program licensed by the department, and to report to the program at least three times a year as required by the program for the duration of the revocation period for supervision. Such supervision includes evaluation, education, referral into treatment, and other activities required by the department. . . . If the person fails to comply with the required supervision, the program shall report the failure to the department, and the department shall cancel the person’s driving privilege.

Petitioner was provided notice via letter on April 8, 2015, informing Petitioner of the cancellation in the Program due to medical records reporting recent alcohol use and that Petitioner had been “Baker Acted” and had violated the case management plan. Petitioner appealed the decision to the Suncoast Safety Council, as authorized by Fla. Admin. Code r. 15A-10.031(2), and a face-to-face meeting with Petitioner was conducted on May 19, 2015. After reviewing all information regarding Petitioner’s termination from the Program, the Council concurred with the Program’s decision to terminate Petitioner, finding no compelling reason to disagree with the Program’s decision, and noting the information from the medical provider that Petitioner had been using alcohol and was subject to Baker Act proceedings in January, 2015, and did not provide this information to the Program.

STANDARD OF REVIEW

This Court may review the challenged action to determine: “(1) whether procedural due process had been accorded, (2) whether the essential requirements of the law had been observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence.” *Vichich v. Dep’t of Highway Safety and Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001). See *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

LAW AND ANALYSIS

Petitioner alleges, without providing supporting argument, that the cancellation is not supported by substantial, competent evidence. Petitioner further states procedural due process was not afforded because no witnesses were presented and no formal hearing was held before Petitioner’s restricted license was revoked.

Respondent contends Petitioner was afforded procedural due process and the cancellation is supported by substantial, competent evidence. The Department was required to comply with the Program’s findings pursuant to § 322.271(2)(c), Fla. Stat., and Fla. Admin. Code r. 15A-10.031. Petitioner was not entitled to formal review of an administrative suspension of driving privileges pursuant to § 322.2615, Fla. Stat., because this case involved restricted license privileges which are controlled by §§ 322.271, 322.291, Fla. Stat., and Rule 15A-10.031, which do not require a formal

hearing or the presentation of witness testimony. The Rule requires that the DUI program reviewing the appeal shall provide the opportunity for a face-to-face meeting with the appellant, who shall have the opportunity to present information in person, and that the program shall review all written documentation related to the issues resulting in termination from the program. In this case all requirements were met and Petitioner was afforded adequate due process. Additionally, there is substantial, competent evidence to support Petitioner's cancellation from the Program, based on documents from Petitioner's medical provider stating Petitioner was using alcohol and had been subject to Baker Act proceedings recently. Petitioner is not entitled to a restricted license as of right, but was granted the privilege on certain conditions, which Petitioner failed to comply with. The Petition is denied.

CONCLUSION

The Court finds Petitioner was afforded due process and no departure from essential requirements of law occurred in this matter. The challenged action is supported by substantial, competent evidence. The Petition is DENIED.

It is ORDERED AND ADJUDGED that the Petition is DENIED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 22nd day of January, 2016.

Original order entered on January 22, 2016, by Circuit Judges Daniel D. Diskey, Linda Babb and Susan Barthle.