

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JASON A. PRESCOTT,**

**Appellant,**

**v.**

**MISSOURI DEPARTMENT OF SOCIAL SERVICES,**

**Respondent.**

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DOCKET NUMBER WD77389

**Date: June 30, 2015**

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Appeal from:  
Cole County Circuit Court  
The Honorable Jon E. Beetem, Judge

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Appellate Judges:  
Division Four: Alok Ahuja, C.J., Presiding, Lisa White Hardwick,, J. and Robert M. Clayton, III,  
Sp.J.

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Attorneys:  
Robert R. Harding, Jefferson City for appellant.  
Corey E. Ranfranz, Jefferson City, for respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

**JASON A. PRESCOTT**

**Appellant,**

**v.**

**MISSOURI DEPARTMENT OF SOCIAL SERVICES,**

**Respondent.**

WD77389

Cole County

Before Division Four Judges: Alok Ahuja, C.J., Presiding, Lisa White Hardwick,, J. and Robert M. Clayton, III, Sp.J.

Jason Prescott is a professional counselor who specializes in treating Medicaid-eligible mentally ill children. Following an audit, the Department of Social Services determined that Prescott had submitted unsubstantiated claims, and had been overpaid. The Department sent a decision letter to Prescott by certified mail on October 31, 2011, finding that he had submitted false claims in the amount of \$41,296.

Prescott alleges that he did not receive the Decision Letter until November 23, 2011. On that date, Prescott asserts that he found a postal slip in the bushes in front of his home, notifying him that the Postal Service had attempted to deliver a certified letter from the Department. Prescott retrieved the letter later on November 23, 2011.

November 23, 2011, was the day before Thanksgiving. Prescott had a pre-arranged, non-refundable vacation trip scheduled to begin on Thanksgiving Day. Prescott alleges that a Department employee told him that, “while she could not give him legal advice, [Prescott] would have 30 days from the date he received; i.e. picked up, the October 31 letter in which to file an appeal.” Upon return from his vacation, Prescott filed his petition for review with the Administrative Hearing Commission (“AHC”) on December 12, 2011.

The AHC dismissed Prescott’s petition for review as untimely. The Commission held that under § 208.156.8, Prescott had “thirty days from the date of mailing or delivery of a decision” within which to petition for review, but had failed to do so. Prescott appeals.

**AFFIRMED.**

**Division Four holds:**

Prescott argues that his petition for review was timely under § 208.156.8. He first argues that the sending of the Decision Letter to him by certified mail did not constitute a “mailing” within the meaning of § 208.156.8, but instead constituted “delivery” of the decision. We disagree. Numerous Missouri statutes, as well as a recent case decision, refer to the “mailing” of certified mail. The Department’s Decision Letter was mailed to Prescott on October 31, 2011.

Prescott also argues that, even if the letter was “mailed,” he had *either* thirty days from the date of mailing the letter, *or* thirty days from the letter’s delivery, in which to petition for review. We disagree. When a notice is mailed, the date of mailing controls the time within which a petition for review must be filed, even though the statute also refers to the date of “delivery.”

Prescott also argues that the Department’s notice efforts violated due process. Under due process principles, however, the Department had no obligation to engage in further efforts to notify Prescott until it received notice that the certified mailing had been unsuccessful. The Department did not receive notice that the mailing had failed until November 23, 2011, and had no obligation to engage in further notification efforts prior to that date.

Finally, Prescott argues that the statutory time limitation should be tolled, because a Department employee told him that, “while she could not give him legal advice, [Prescott] would have 30 days from the date he received; i.e. picked up, the October 31 letter in which to file an appeal.” This equivocal statement does not constitute the sort of “affirmative misconduct” which could justify estopping the government from relying on the time limitation in § 208.156.8, particularly when the Decision Letter itself unambiguously informed Prescott that he had “thirty days from the date of mailing or delivery of this decision, *whichever is earlier*,” within which to file his petition for review.

**Opinion by: Alok Ahuja, Judge**

June 30, 2015

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