



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Appeal of the Cancellation of a
Motor Vehicle Title issued to [REDACTED] for a
2021 Dodge Durango, (Wisconsin Title [REDACTED]
[REDACTED])

Case No: DOT-24-0028

FINAL DECISION

In accordance with Wis. Stat. §§ 227.44, 227.47, and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Donald Morrison
John Amato CDJR Inc.
5200 N. Port Washington Road
Glendale, WI 53217

Wisconsin Department of Transportation, by

Attorney Alicia Augsburger
DOT – Office of General Counsel
P. O. Box 7910
Madison, WI 53707-7910

PRELIMINARY RECITALS

The Department of Transportation (Department) issued an Order of Cancellation on May 24, 2022 to [REDACTED] for a 2021 Dodge Durango (WI Title [REDACTED]) pursuant to Wis. Stat. § 342.255(2). On January 5, 2023, John Amato CDJR Inc (Amato) sent an email to the Department appealing the cancellation. The Wisconsin Division of Hearing and Appeals (Division) received a letter from Amato on July 24, 2024, requesting a hearing to review the Department's May 24, 2022 Order of Cancellation. The Department moved to dismiss the matter as untimely and a Briefing Order was issued. Amato did not submit any response to the Department's motion. The Division of Hearings and Appeals issued a proposed decision on March 3, 2025. No objections to the proposed decision were received. The proposed decision is adopted as the Final Decision.

FINDINGS OF FACT

1. On May 16, 2022, the Department issued to [REDACTED] a Wisconsin Title [REDACTED] for a 2021 Dodge Durango.
2. On May 22, 2022, the Department issued an Order of Cancellation to [REDACTED] regarding Wisconsin Title [REDACTED] under Wis. Stat. § 342.255(2).
3. The May 24, 2022 Order of Cancellation advised [REDACTED] that he had 30 calendar days from the date of the letter to appeal the action.
4. Unbeknownst to the Department, [REDACTED] transferred the 2021 Dodge Durango to John Amato CDJR, Inc.
5. On December 5, 2022, the Department provided John Amato CDJR, Inc. with a copy of the May 24, 2022 Order of Cancellation.
6. John Amato CDJR, Inc. sent an email to the Department on January 5, 2023 advising that it wanted to appeal the May 24, 2022 Order of Cancellation
7. John Amato CDJR, Inc. filed an appeal with the Division of Hearings and Appeals on July 29, 2024.

DISCUSSION

This matter involves the Department's May 24, 2022 issuance of an Order of Cancellation of title issued to [REDACTED] involving a 2021 Dodge Durango (WI Title [REDACTED]). The Department issued the Order pursuant to its authority under Wis. Stat. § 342.255. The Division of Hearings and Appeals (Division) has jurisdiction to conduct hearings to review cancellation orders issued by the Department pursuant to Wis. Stat. §§ 227.43(bg) and 342.26. Because Wis. Stat. § 342.26 does not set a deadline for filing a request for a hearing to review an Order of Cancellation of title, pursuant to Wis. Admin. Code § HA 1.04(3), the deadline for filing a request for a hearing in this matter is thirty days from the date of the order. Wisconsin Administrative Code § HA 1.04(3) provides:

All appeals shall be filed within the time specified by statute or administrative code or, where no time is specified, within 30 days of the date of the order or decision to be reviewed. Appeals shall be filed and served in accordance with s. HA 1.03.

The Order of Cancellation in this matter was issued on May 24, 2022. In addition, the Order of Cancellation advised that an appeal of the cancellation must be filed with the Division of Hearings and Appeals within 30 calendar days from the date of the Order. The Department sent John Amato CDJR, Inc. (Amato) a copy of the Order of Cancellation on December 5, 2022. Amato emailed the Department on January 5, 2023 to request an appeal of the Order of

Cancellation. On July 29, 2024, Amato filed an appeal of the Order of Cancellation with the Division of Hearings and Appeals.

It is undisputed that Amato's appeal of this matter was not filed within 30 days of the Department's Order of Cancellation. An untimely request for an administrative hearing appealing an agency action generally prevents the Division of Hearings and Appeals from addressing the appeal. *Stern v. State of Wisconsin Department of Workforce Development*, 2006 WI App 193, (finding a thirty-day filing deadline analogous to a statute of limitations depriving the reviewing court of competency to proceed). As explained in *Stern*:

... the subject matter jurisdiction of administrative agencies-that is, their authority to hear certain subject matters in general-is conferred and specified by statute. [citation omitted] Nonetheless, the distinction between subject matter jurisdiction and competency with respect to administrative agencies is a meaningful one, and it parallels the counterpart distinction with respect to circuit courts. Statutes which establish the nature of the matters an administrative agency is authorized to hear, define subject matter jurisdiction, whereas statutory requirements that pertain to the invocation of that jurisdiction in individual cases ...may affect an agency's competency to proceed.

Stern, at ¶24

The significance of the determination whether an untimely request for a hearing deprives an administrative agency of subject matter jurisdiction or competency is that if the administrative agency lacks subject matter jurisdiction, the matter must be dismissed. If the administrative agency lacks competency to proceed, a party may waive the lack of competency. The failure of a party to file a request for hearing within a statute of limitations is an affirmative defense. "It is well settled law that the affirmative defense of statute of limitations must be raised in a pleading, or by a motion, or be deemed waived." *Milwaukee Co. v. LIRC*, 113 Wis. 2d, 199, at 206, 335 N.W.2d 412 (Ct. App. 1983).

The Division's subject matter jurisdiction to review orders cancelling vehicle titles issued by the Department is found under Chapter 342 of the Wisconsin Statutes. See, Wis. Stat. § 342.26. Moreover, the 30-day deadline for filing requests for hearings to appeal Department cancellation orders is found in Wis. Admin. Code ch. HA 1, a chapter of procedural rules controlling the conduct of certain hearings before the Division. It is appropriate to treat this deadline as a statute of limitations. Accordingly, while Amato's failure to file the appeal within 30 days of the date of the Department's Order of Cancellation may not deprive the Division of subject matter jurisdiction, it does deprive the Division of competency to proceed unless the Department waives the time limit defense. The Department timely raised the fact that Amato's appeal was untimely during the prehearing conference and advised that the Department was not willing to waive the filing deadline in this matter. Therefore, the Department sought dismissal of the untimely appeal. Because the appeal was not timely, the Division does not have competency to proceed and Amato's appeal must be dismissed.

Dismissing Amato's appeal because it was not timely filed is a harsh result. However, Wisconsin courts have frequently been presented with similar situations where the strict interpretation of a filing requirement would direct a harsh result upon one of the litigants. In these cases, the courts have consistently come down on the side of enforcement of statutory filing requirements. *e.g., Gomez v. Labor and Industry Review Commission*, 153 Wis. 2d 686, 451 N.W.2d 475 (Wis. Ct. App. 1989). While a strict enforcement of statutory filing deadlines may seem unduly harsh, strict construction is appropriate for policy reasons. Strict construction of the plain mandatory language helps "to maintain a simple orderly and uniform way of conducting legal business in our courts. Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice." *519 Corp. v. DOT*, 92 Wis. 2d 276, at 288, 284 N.W.2d 643 (1979).

CONCLUSIONS OF LAW

1. The Department of Transportation has been granted the authority over issuance of vehicle titles under Chapter 342 of the Wisconsin Statutes.
2. The appeal filed by John Amato CDJR, Inc. was untimely pursuant to Wis. Admin. Code § HA 1.04(3).
3. The Division of Hearings and Appeals has authority to issue this decision pursuant to Wis. Stat. §§ 227.47 and 342.26.

ORDER

John Amato CDJR, Inc.'s appeal of the Department's May 24, 2022 Order of Cancellation was not timely and must be DISMISSED.

Dated at Madison, Wisconsin on April 1, 2025.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____
Brian Hayes
Administrator

cc: [REDACTED]

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.