

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT FOR  
HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION

ERIC BICHACHI,  
Petitioner,

CASE NO.: 13-CA-010037

DIVISION: J

vs.

FLORIDA DEPARTMENT OF HIGHWAY  
SAFETY AND MOTOR VEHICLES,  
Respondents.

---

**FINAL ORDER GRANTING PETITION FOR WRIT OF MANDAMUS; AND  
GRANTING UNOPPOSED MOTION TO ACCEPT RESPONSE AS TIMELY FILED**

**THIS MATTER** is before the Court on a Petition for Writ of Mandamus filed July 31, 2013. On September 10, 2013, Respondent, Department of Highway Safety and Motor Vehicles (the "Department"), filed its Response and an Unopposed Motion to Accept the Response as Timely Filed. Petitioner filed his Reply on September 12, 2013. Upon review of the Petition, Response, Reply, Motion, and case file, the Court finds as follows:

Petitioner's driving privileges were suspended on July 3, 2013, after he refused to submit to a breath test following an arrest for Driving under the Influence (DUI). Petitioner alleges that he went to the Department on July 17, 2013, to request a review hearing to determine his eligibility for a hardship license in accordance with section 322.271(7), Florida Statutes (2013). Petitioner alleges that the Department denied him a hearing because it had been more than 10 days since his DUI arrest. Petitioner filed the instant Petition, requesting this Court to order the Department to hold a hearing to determine his eligibility for a hardship license.

"Mandamus is defined as . . . a remedy where public officials or agencies may be coerced to perform ministerial duties that they have a clear legal duty to perform. A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance

being required is directed by law.” *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). “A party petitioning for a writ of mandamus must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law.” *Radford v. Brock*, 914 So. 2d 1066, 1067 (Fla. 2d DCA 2005) (quoting *Smith v. State*, 696 So. 2d 814, 815 (Fla. 2d DCA 1997)). For the reasons below, the Court must grant the Petition.

At issue is whether Petitioner is entitled to a review of eligibility for a restricted driving privilege in accordance with section 322.271(7), Florida Statutes, despite Petitioner failing to request a formal or informal review of his suspension within 10 days after receiving notice of the suspension. As an initial step, the Court notes that section 322.2615, Florida Statutes, provides for the review of eligibility of a restricted privilege, stating in pertinent part that

(1)(b)3. The driver may request a formal or informal review of the suspension by the department within 10 days after the date of issuance of the notice of suspension or may request a review of eligibility for a restricted driving privilege under s. 322.271(7).

...

(10) A person whose driver license is suspended under subsection (1) or subsection (3) may apply for issuance of a license for business or employment purposes only if the person is otherwise eligible for the driving privilege pursuant to s. 322.271.

(a) If the suspension of the driver license of the person for failure to submit to a breath, urine, or blood test is sustained, the person is not eligible to receive a license for business or employment purposes only, pursuant to s. 322.271, until 90 days have elapsed after the expiration of the last temporary permit issued. If the driver is not issued a 10-day permit pursuant to this section or s. 322.64 because he or she is ineligible for the permit and the suspension for failure to submit to a breath, urine, or blood test is not invalidated by the department, the driver is not eligible to receive a business or employment license pursuant to s. 322.271 until 90 days have elapsed from the date of the suspension.

§ 322.2615(1)(b)3., (10)(a), Fla. Stat. (2013). Section 322.2615(1)(b)3 is clear that a driver has the option of either (1) requesting a formal or informal review of the suspension within 10 days or (2) requesting a review of eligibility for a restricted driving privilege. While the 10-day waiting period applies to the review of the suspension, subsection 322.2615(10) provides the

time period for requesting review for eligibility for a restricted driving privilege, which is 90 days if the driver refused to submit a breath sample. § 322.2615(10)(a), Fla. Stat. (2013).

Section 322.2615(10), however, has been modified by section 322.271, Florida Statutes, which provides as follows:

(7) Notwithstanding the provisions of s. 322.2615(10)(a) and (b), a person who has never previously had a driver license suspended under s. 322.2615, has never been disqualified under section s. 322.64, has never been convicted of a violation of s. 316.193, and whose driving privilege is now suspended under section s. 322.2615 is eligible for a restricted driving privilege pursuant to a hearing under section (2).

(a) For purposes of this subsection, a previous conviction outside of this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other alcohol-related or drug-related traffic offense similar to the offense of driving under the influence as provided in s. 316.193 will be considered a previous conviction for a violation of s. 316.193, and a conviction for violation of former s. 316.028, former s. 316.1931, or former s. 860.01 is considered a conviction for a violation of s. 316.193.

(b) The reinstatement shall be restricted to business purposes only, as defined in this section, for the duration of the suspension imposed under s. 322.2615.

(c) Acceptance of the reinstated driving privilege as provided in this subsection is deemed a waiver of the right to formal and informal review under s. 322.2615. The waiver may not be used as evidence in any other proceeding.

§ 322.271(7), Fla. Stat. Section 322.271(7) eliminates the 90-day time period set forth in section 322.2615(10)(a) for qualified drivers, making a review hearing to determine eligibility for a restricted driving privilege immediately available to them. This plain reading is in accord with Petitioner's argument, with which the Court agrees.

The Department, however, argues that subsection 322.271(7)(c) further prohibits which drivers become eligible for an immediate review hearing on restricted driving privileges. According to the Department, a driver must also have requested the formal or informal review of the suspension within 10 days, under section 322.2615(1)(b)3., to qualify for an immediate review hearing on restricted driving privileges. The Court finds this strained reading of the

statutes to be clearly erroneous. Subsection 322.271(7)(c) does not require a driver to have requested a review of the suspension within 10 days for the remainder of the section to apply; rather, a plain reading of the subsection provides that drivers who seek an expedited review hearing on restricted driving privileges are not entitled to simultaneously challenge the suspension. This is in accord with section 322.1615(1)(b)3, which provides that a driver may request a review of the suspension *or* a review of the eligibility for restricted driving privilege—it does not require the former as a precondition of the latter. As such, a driver who satisfies the requirements of section 322.271(7), Florida Statutes, is entitled to a review for eligibility for a restricted driving privilege prior to the time provided for in section 322.2615(10) regardless of whether the driver timely requested a review of the suspension.

Based on the above analysis, the Court concludes that Petitioner has a clear legal right to the review hearing he requested, and that he has no adequate remedy at law. Additionally, the Court finds that the Department has an indisputable legal duty to provide Petitioner with an opportunity to be heard. Accordingly, the Petition must be granted.

It is therefore **ORDERED** and **ADJUDGED** that Respondent's Petition for Writ of Mandamus is hereby **GRANTED**.

It is further **ORDERED** that the Department's Motion is hereby **GRANTED**.

**DONE AND ORDERED**, in Chambers in Tampa, Hillsborough County, Florida, this

\_\_\_\_\_ day of October, 2013.

---

**JAMES D. ARNOLD,**  
Circuit Court Judge

ORIGINAL SIGNED  
OCT 24 2013  
JAMES D. ARNOLD  
CIRCUIT JUDGE

Copy To:

Jose A Barreiro  
The Jose A. Barreiro Law Firm, P.A.  
2811 W. Kennedy Blvd.  
Tampa, FL 33609-3101

Kimberly A. Gibbs  
Florida Department of Highway  
Safety & Motor Vehicles  
P.O. Box 570066  
Orlando, FL 32857