

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN KINFORD,  
Appellant,  
vs.  
SOCIAL SECURITY  
ADMINISTRATION,  
Respondent.

No. 82665-COA

**FILED**

APR 08 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Steven Kinford appeals from district court orders denying his petition to approve a rehabilitation program under 20 C.F.R. § 404.468. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In 2008, appellant Steven Kinford pleaded guilty to a category A felony, and was sentenced to life in prison with the possibility of parole after 10 years. Kinford is currently incarcerated at Lovelock Correctional Center (LCC). At some point before his conviction, Kinford suffered a traumatic brain injury in an automobile accident, which qualified him for social security benefits. Kinford contends that these injuries caused memory loss, including “educational knowledge.” As a result of his conviction and subsequent incarceration, Kinford’s monthly disability benefits from the Social Security Administration were suspended under 42 U.S.C. § 402(x)(1) and 20 C.F.R. § 404.468.

Under 20 C.F.R. § 404.468(a), “[n]o monthly benefits will be paid to any individual for any month any part of which the individual is

confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony.” However, the statute provides an exception to the nonpayment provision if a prisoner is (1) participating in a rehabilitation program approved specifically for the prisoner by a court of law and (2) the Commissioner of the Social Security Administration has determined that the individual is expected to be able to engage in a substantially gainful activity upon release from the program and within a reasonable time. 20 C.F.R. § 404.468(d). “The phrase ‘a court of law’ in the statute is most naturally read as referring to a court of the imprisoning jurisdiction, presumably the court that imposed the sentence.” *Peeler v. Heckler*, 781 F.2d 649, 652 (8th Cir. 1986).

In the underlying proceeding, Kinford filed a petition seeking court approval of his proposed rehabilitation plan, which included completing college courses to obtain a college degree. Kinford alleged that completion of those courses would make him more likely to obtain gainful employment upon release. However, Kinford failed to identify what particular courses he intended to complete, and also failed to provide specific information or documentation regarding his alleged disability.

After full briefing on the matter, the district court entered an order denying the petition, finding—among other things—that Kinford failed to identify the particular college program in which he intended to enroll or participate, and further failed to demonstrate whether this proposed program would ameliorate Kinford’s alleged disability. Kinford subsequently moved for reconsideration, which the district court also denied

based on Kinford's failure to provide a new factual basis for reconsideration or a change in controlling law. Kinford now appeals.

Having considered Kinford's arguments and the record on appeal, we conclude that the district court properly denied his petition for approval of a rehabilitation program, as he failed to provide adequate factual support for his request below. Under 20 C.F.R. § 404.468(d), an inmate's proposed rehabilitation program must (1) eliminate or ameliorate the disability for which he or she receives benefits, and (2) result in the individual being able to obtain substantial gainful activity upon release. *See Borchelt v. Apfel*, 25 F. Supp 2d 1017, 1020–21 (E.D. Mo. 1998); *see also Modica v. Comm'r of Soc. Sec.*, No. 11-CV-1712 (MKB), 2012 WL 5196817, at \*4 (E.D. N.Y. Oct. 19, 2012) (finding that classes regarding gardening, drug abuse and other family issues were not programs expected to result in plaintiff being able to obtain substantial gainful employment upon release); *Loewe v. Barnhart*, No. 06-4189-SSA-C-NKL, 2006 WL 3060132, at \*2 (W.D. Mo. Oct. 25, 2006) (denying relief as plaintiff failed to indicate "what his disability was or is, or otherwise set forth any facts which would lead the court to believe that these classes would overcome his disability and make him capable of employment upon release").

As Kinford failed to provide sufficient information to the district court to allow it to determine whether his proposed rehabilitation program would ameliorate his disability and result in him being able to obtain substantial gainful activity upon release, we conclude that the district court

did not err in denying his petition.<sup>1</sup> See *Gibellini v. Klindt*, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994) (stating that “[a] district court’s findings will not be disturbed on appeal unless they are clearly erroneous and are not based on substantial evidence”).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>1</sup>Although Kinford also purports to challenge the district court’s order denying his motion for reconsideration, he did not present argument related to this motion in his informal brief. Therefore, he has waived any argument as to this decision. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (“Issues not raised in an appellant’s opening brief are deemed waived.”).

<sup>2</sup>Insofar as Kinford raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Jim C. Shirley, District Judge  
Steven Kinford  
Attorney General/Carson City  
Attorney General/Las Vegas  
Clerk of the Court/Court Administrator