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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2025-20**

CARLOS LOPEZLIZ,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted April 5, 2022 – Decided April 27, 2022

Before Judges DeAlmeida and Berdote Byrne.

On appeal from the New Jersey Department of
Corrections.

Carlos Lopezliz, appellant pro se.

Matthew J. Platkin, Acting Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant Attorney
General, of counsel; Christopher C. Josephson, Deputy
Attorney General, on the brief).

PER CURIAM

Petitioner, Carlos Lopezliz, an inmate at Mid-State Correctional Facility, appeals from a Department of Corrections (DOC) decision. In this appeal we consider whether the DOC denied Lopezliz due process during his disciplinary hearing which resulted in sanctions for the misuse of authorized medication. Because the DOC failed to accord Lopezliz with notice of the policy prior to charging him, he was denied due process and we reverse.

The facts are undisputed. On December 7, 2020, Lopezliz was in line at the Mid-State Correctional Facility to receive Suboxone. Nurse Bond was administering the Suboxone and Officer Grant was monitoring the line of inmates. His tongue was observed to be dark red and discolored by both of them. Lopezliz was ordered to leave the area and return when his tongue was no longer discolored. According to the officer, inmates are not permitted to eat or drink anything for thirty minutes prior to administering Suboxone because eating candy before taking a Suboxone strip makes it harder to see the strip and the sugar slows the dissolving process of the medication. Both are considered diversionary tactics and an attempt to remove the narcotic from the area of distribution.

Lopezliz was charged with committing prohibited acts *.803/*.205. During a hearing on December 15, 2020, he was granted the assistance of

counsel substitute and pleaded not guilty to the charges. Lopezliz gave a statement claiming he did not know his tongue was discolored, he did not know he was not supposed to eat thirty minutes before taking the medication, or have his tongue discolored, and requested leniency. Lopezliz also claims his attorney substitute was interrupted before he could say everything he wanted to say and his attorney substitute was pressured to have him agree to enter the drug diversion program.¹

Lopezliz was sanctioned to ninety days restorative housing, ninety days loss of commutation time, ten days loss of recreation privileges, and permanent loss of contact visits. With the exception of loss of contact visits, all other sanctions were suspended for sixty days based upon his voluntary acceptance of assignment into the drug diversion program. On December 19, 2020, the prison administrator upheld the sanction, finding Lopezliz attempted to divert the narcotic by having food in his mouth.

On appeal, Lopezliz contends the prison provided no notice of any policy regarding administration of Suboxone or notice of consequences if an inmate has a discolored tongue. Because there was no notice of such a rule, he asserts he was denied due process as a matter of law. We agree.

¹ It is difficult to review this claim without the benefit of a transcript.

"[A]n appellate court will not disturb the ultimate determination of an agency unless it was arbitrary, capricious, or unreasonable or it was not supported by substantial credible evidence in the record as a whole." Moore v. Dep't of Corr., 335 N.J. Super. 103, 110 (App. Div. 2000). In reviewing the matter we "insist that the agency disclose its reasons for any decision, even those based upon expertise, so that a proper, searching, and careful review . . . may be undertaken." Balagun v. Dep't of Corr., 361 N.J. Super. 199, 203 (App. Div. 2003). Our review is not perfunctory and the agency must provide its reasons with particularity lest we become merely a rubberstamp of an agency's decisions. Figueroa v. Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010).


Lopezliz states he was punished for an unspecified, unwritten prison rule. He claims he reasonably did not know he was not allowed to eat for thirty minutes prior to taking medication and was not allowed to have a discolored tongue on the Suboxone line. The Department of Corrections claims inmates receive notice of the eating/drinking restriction when they enter the program. However, all of the documents relied upon by the Department in the record either post-date his charges or do not mention the restriction at all. The undated "Suboxone Information Sheets for Inmates" lists eight "expectations" from

inmates in the Suboxone line but does not mention refraining from eating or the consequences of a discolored tongue.

Pursuant to N.J.A.C. 10A:4-3.1(a)(2), "[inmates] have the right to be informed of the rules, procedures and schedules concerning operation of the correctional facility." We cannot accept without question an agency's conclusory statements, even when they represent an exercise in the agency's expertise. Balagun, 361 N.J. Super. at 202-03. The record contains no evidence Lopezliz was made aware eating prior to entering the Suboxone line or having a discolored tongue while waiting for his Suboxone would expose him to disciplinary charges. As a result, the Department's actions in charging him and finding he violated *.803/*.205 were arbitrary, capricious, and not supported by substantial, credible evidence.

We reverse.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION