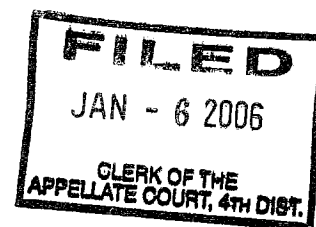


NO. 4-04-0698
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT



PRENTISS D. WILD,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
JESSE WHITE, Secretary of State, State)	No. 03MR284
of Illinois,)	
Defendant-Appellant.)	Honorable
)	Dennis L. Schwartz,
)	Judge Presiding.

ORDER

Following a hearing, defendant, Illinois Secretary of State Jesse White (Secretary), in June 2003 denied plaintiff Prentiss D. Wild's petition for reinstatement of his full driving privileges or in the alternative a restricted driving permit (RDP). In July 2003, Wild filed a complaint for administrative review. Following a June 2004 hearing, the circuit court reversed the Secretary and ordered the reinstatement of Wild's driving privileges in full. The Secretary appeals the circuit court's order. We reverse and remand the cause for issuance of a probationary RDP.

I. BACKGROUND

In June 1987, Wild was arrested for driving under the influence of alcohol (DUI) (Ill. Rev. Stat., 1986 Supp., ch. 95 1/2, par. 11-501(a)(2) (effective September 18, 1986)). The arresting officer reported observing Wild drive into a Hardee's parking lot and exit the driver's side of the vehicle. The officer described Wild as staggering and unstable on his feet.

Wild refused to take a Breathalyzer test. Wild was arrested and charged with DUI but later pleaded guilty to the lesser charge of reckless driving (Ill. Rev. Stat. 1987, ch. 95 1/2, par. 11-503(a)). Wild's license was suspended for six months due to his refusal to take the Breathalyzer test (Ill. Rev. Stat., 1986 Supp., ch. 95 1/2, par. 11-501.1).

In October 1994, Wild was stopped for speeding. The arresting officer reported smelling a strong alcohol odor on Wild's breath. Wild failed a field sobriety test and again refused to take a Breathalyzer test. Wild later pleaded guilty to DUI (625 ILCS 5/11-501(a)(2) (West 1994)).

In May 1995, the Secretary revoked Wild's driver's license pursuant to section 6-205(a)(2) of the Illinois Vehicle Code (625 ILCS 5/6-205(a)(2) (West 1994)).

Between 1998 and 2002, Wild requested driving relief from the Secretary on five occasions. Each petition was denied after a formal hearing. In 2003, Wild filed the instant petition requesting either reinstatement of his driving privileges in full or an RDP for employment purposes. In May 2003, a formal hearing was conducted on Wild's petition. The hearing officer took official notice of the prior formal hearings, including the findings of fact, the orders entered, and the alcohol evaluations and treatment documents admitted.

At the hearing, Wild testified that prior to the 1987 DUI arrest, he consumed approximately five to six beers over a four-hour period. Wild testified he could have been under the

influence but that he was not driving the vehicle. He refused to take the Breathalyzer test because he was not driving and was concerned that taking the test would constitute an admission that he was driving. He insisted his "girlfriend" was driving the vehicle but explained that they both had long hair. He fought the DUI charge for approximately one year but eventually pleaded guilty to a reduced charge of reckless driving because the State would not believe him and it was getting costly to have an attorney. When asked why he pleaded guilty instead of having his girlfriend testify for him, Wild responded he had just met her that night, did not know her name, and had not spoken to or seen her since.

Wild testified that prior to the 1994 DUI arrest he drove to Carrollton and met up with a woman and her friends. They went out to eat, and Wild consumed three or four 12-ounce beers. He testified one of the woman's friends told him the woman was also dating a married Carrollton police officer. As he was leaving Carrollton, two police cars were "waiting for [him]" and stopped him for speeding. He testified that although he did not feel intoxicated, he was probably close to being under the influence. The officers gave him a field sobriety test, which he believed he passed even though it was conducted on loose, disabling rock instead of a solid surface. He also noticed one of the officers had a bump on his head. Wild later learned in jail that an hour before his arrest the officer had been hit on the head with a bottle of liquor. Wild speculated the officer

"probably had a bad temperament for anybody with alcohol on his breath."

Wild testified he did not know if either was the officer allegedly dating the woman he was with; however, he refused to take the Breathalyzer test because he felt he was being "set up." He requested a blood test because he did not trust the officers, but his request was refused. He eventually pleaded guilty to DUI because he wanted to avoid costly attorney fees.

Wild testified that prior to his 1994 arrest, he typically consumed six beers on both Friday and Saturday night. If he did not drink on Friday he might drink more, between six and eight beers, on Saturday. He stated he rarely drank a whole 12-pack at once. He usually did not drink during the week, and he drank one to two beers approximately four or five times in the year prior to the 1994 DUI. He denied ever having a heavier drinking pattern. He testified he quit drinking after the 1994 DUI with the exception of a champagne toast at his wedding in 1997 and said he plans on remaining abstinent.

Wild maintained that he was not driving on his first DUI arrest and that he was not under the influence on the second DUI arrest. However, he did admit he drove under the influence at other times but had not been caught. He testified he has not driven since his license was revoked.

He testified he had an alcohol problem because he did not always drink responsibly and would drive while he was under

the influence. He acknowledged that although he never hurt anyone, he now realized that he could have. He learned from his counseling classes about the effects of alcohol, particularly that it impaired a person's judgment, and how to control his drinking.

He manages an orchard and would like to drive for employment purposes. He does not need to drive to work but only while on the job. Currently, his wife drives him when her health allows.

In addition to the findings and evaluations from the previous hearings, an updated alcohol and drug evaluation was admitted. This April 2003 evaluation, like all of the others before it, classified Wild as a "Significant Risk."

The record also contains two letters dated April 2002 and April 2003, from the center that conducted Wild's latest evaluations seeking to address the issues underlying the Secretary's denial of Wild's petitions in 2001 and 2002 respectively. The 2002 letter addressed (1) the circumstances surrounding Wild's DUI arrests; (2) the alleged discrepancies in Wild's abstinence date; (3) Wild's reported symptom of tolerance and his failed attempts to abstain; (4) Wild's alcohol use history; and (5) Wild's credibility, including inconsistencies and vagueness in Wild's prior testimony. The 2003 letter addressed the issues raised by the hearing officer in denying Wild's 2002 petition. This letter (1) addressed the hearing officer's finding that Wild's alcohol use history was inconsistent, (2) addressed the

hearing officer's finding that Wild appeared not to accept having developed a problem with alcohol and whether Wild's attorney needed to "prompt" Wild to admit he had a problem with alcohol, and (3) set forth the evaluator's opinion that Wild recognizes his problematic relationship with alcohol.

The hearing officer herein concluded as follows:

"1. The evidence established that the Petitioner's abuse of alcohol/drugs developed into an alcohol/drug problem, but the extent of that problem is not clear.

2. The Petitioner failed to provide evidence sufficient to carry his burden of proving that his alcohol/drug problem has been resolved. ***

3. Given the unresolved issues raised herein *** the Petitioner failed to carry his burden of proving that he would be a safe and responsible driver and that he would not endanger the public safety and welfare. ***."

One of the unresolved issues identified by the hearing officer was Wild's continued refusal to accept responsibility for his actions involving alcohol and driving. The hearing officer further questioned the accuracy of Wild's risk classification and found the extent of Wild's alcohol problem remained unclear due to discrepancies in the evidence. In particular, he found unresolved issues regarding substance-dependence symptoms and

questions as to Wild's honest reporting of information to his evaluators. The hearing officer also noted variances in the results of the Mortimer-Filkins (M-F) tests that were conducted, the discrepancies between those results and other evidence presented, and their potential distortion due to Wild's continued denial and minimization of the severity of his alcohol problem. The officer found Wild's "testimony was not credible in any way." The hearing officer recommended Wild's petition for reinstatement for full driving privileges, or in the alternative, his petition for an RDP, be denied.

In June 2003, the Secretary adopted the hearing officer's findings and recommendations. In July 2003, Wild filed a complaint for administrative review with the circuit court alleging the Secretary's decision was against the manifest weight of the evidence and constituted an abuse of discretion. At oral argument at the circuit court level, Wild abandoned his request for full reinstatement of his driving privileges and argued only for an RDP. In June 2004, the circuit court reversed the Secretary's decision. The court found Wild presented sufficient evidence to overcome the presumption that he had a current problem with alcohol and that the Secretary's finding was against the manifest weight of the evidence. The court ordered the Secretary to reinstate Wild's driving privileges in full, finding it was the appropriate relief. This appeal followed. We reverse the circuit court's reinstatement of Wild's driving privileges and remand the cause for issuance of a probationary RDP.

II. ANALYSIS

The Secretary argues that his June 2003 decision denying Wild's petition was not against the manifest weight of the evidence. We disagree.

On review of the circuit court's decision, we review the propriety of the Secretary's decision rather than the circuit court's decision. Jones v. White, 352 Ill. App. 3d 316, 324, 816 N.E.2d 1106, 1112 (2004).

Driving a motor vehicle is a privilege not a right. Grams v. Ryan, 263 Ill. App. 3d 390, 395, 635 N.E.2d 1376, 1380 (1994). The Secretary is authorized to revoke the license of those who demonstrate an inability or unwillingness to exercise this privilege with regard for the public safety and welfare. Clark v. White, 343 Ill. App. 3d 689, 693, 798 N.E.2d 412, 415 (2003).

Once revoked, restoration of driving privileges is not automatic. Jones, 352 Ill. App. 3d at 322-23, 816 N.E.2d at 1111. The Secretary shall not reinstate a person's driving privileges until he is satisfied that doing so will not endanger the public safety and welfare. 625 ILCS 5/6-208(b) (West 2002); Grams, 263 Ill. App. 3d at 395-96, 635 N.E.2d at 1380. The factors the Secretary will consider in determining the propriety of reinstating a petitioner's driving privileges include the following: (1) the petitioner's age; (2) whether the petitioner has driven while suspended or revoked; (3) the duration of petitioner's present employment; (4) the number of years licensed

to drive; (5) the number, severity, and frequency of accidents; (6) the frequency, type, and severity of traffic violations; (7) the efforts at rehabilitation or reform of past driving practices; (8) the demeanor of petitioner in the hearing; (9) the credibility of petitioner and witnesses in the hearing; (10) the credibility of and weight given to the petitioner's documentary evidence; and (11) petitioner's total driving record. 92 Ill. Adm. Code §1001.430(c) (Conway Greene CD-ROM June 2003) (effective June 13, 2002).

A. Proof Requirements for Petitions for Reinstatement or RDP After Drug- or Alcohol-Related Revocation

In addition, if the revocation was alcohol or drug related, the petitioner must prove the following by clear and convincing evidence: (1) he does not have a current drug or alcohol problem; (2) he is a low or minimal risk to repeat his past abusive behaviors and operate a motor vehicle while under the influence of drugs or alcohol; (3) he has complied with all other standards as specified by the regulations; and (4) any past drug or alcohol problems have been resolved. 92 Ill. Adm. Code §1001.440(b) (Conway Greene CD-ROM June 2003) (effective June 13, 2002).

1. The Assessment and Classification

If the revocation was alcohol or drug related, the petitioner must submit an alcohol and drug evaluation, and where required, submit evidence he completed a driver-risk education course and/or treatment or proof of adequate rehabilitative progress. 92 Ill. Adm. Code §1001.440(a) (Conway Greene CD-ROM

June 2003) (effective June 13, 2002). The DUI evaluation is intended to be an initial screening to obtain information from the petitioner about the nature and extent of his use of drugs and alcohol in order to identify the petitioner's risk to the public safety and to recommend an initial intervention. 77 Ill. Adm. Code §2060.503(a) (Conway Greene CD-ROM June 2003) (effective August 14, 2001).

A petitioner's risk classification is often governed by his or her driving record and the circumstances of their DUI arrest. 77 Ill. Adm. Code §2060.503(g) (Conway Greene CD-ROM June 2003) (effective August 14, 2001). However, a petitioner should be classified, regardless of their driving record, as a significant risk if they exhibit other symptoms of substance abuse (77 Ill. Adm. Code §2060.503(g)(3) (Conway Greene CD-ROM June 2003) (effective August 14, 2001)), or as a high-risk dependent if they exhibit symptoms of substance dependence. 77 Ill. Adm. Code §2060.503(g)(4) (Conway Greene CD-ROM June 2003) (effective August 14, 2001); 92 Ill. Adm. Code §1001.410 (Conway Greene CD-ROM June 2003) (effective March 31, 2003). While tolerance and withdrawal are symptoms of substance dependence, neither is necessary or sufficient for a diagnosis of substance dependence. American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders 178 (4th ed. 1994); see 77 Ill. Adm. Code §2060.103 (Conway Greene CD-ROM June 2003) (effective November 8, 2002).

Wild's 1987 reckless-driving conviction and 1994 DUI

conviction require that he be classified, at a minimum, as a significant risk. 77 Ill. Adm. Code §2060.503(g)(3) (Conway Greene CD-ROM June 2003) (effective August 14, 2001). Wild has been consistently classified by his evaluators as being a significant risk, and the hearing officers have consistently agreed the evidence supports, at a minimum, a significant-risk classification.

2. Standard for Evaluating the Evidence

More than one DUI disposition creates a rebuttable presumption that the petitioner suffers from a current drug or alcohol problem. 92 Ill. Adm. Code §1001.440(c) (Conway Greene CD-ROM June 2003) (effective June 13, 2002). In this case, a rebuttable presumption arose that Wild has a current problem with alcohol because he has 1987 reckless-driving conviction, which was reduced from a DUI, and a 1994 DUI conviction. 92 Ill. Adm. Code §§1001.410 (Conway Greene CD-ROM June 2003) (effective March 31, 2003), 1001.440(c) (Conway Greene CD-ROM June 2003) (effective June 13, 2002).

However, a presumption is not evidence and cannot be weighed as evidence. Franciscan Sisters Health Care Corp. v. Dean, 95 Ill. 2d 452, 461, 448 N.E.2d 872, 876 (1983). In this case, the presumption has the effect of shifting the burden of introducing evidence to meet the presumption to Wild. Franciscan Sisters Health Care Corp., 95 Ill. 2d at 462, 448 N.E.2d at 876. However, once sufficient evidence to rebut the presumption is introduced, the presumption vanishes. Franciscan Sisters Health

Care Corp., 95 Ill. 2d at 462-63, 448 N.E.2d at 877.

The evidence the Secretary shall consider in determining whether the petitioner met his burden of proof and overcame the presumption of a current alcohol problem includes the following: (1) the factors already enumerated going to the propriety of reinstating a petitioner's driving privileges; (2) the similarity of circumstances between alcohol-related arrests; (3) any property damage or personal injury caused by the petitioner while driving under the influence; (4) changes in lifestyle and alcohol-use patterns following the arrest, and the reasons for the change; (5) the chronological relationship of alcohol-related arrests; (6) length of alcohol-abuse pattern; (7) degree of self-acceptance of alcohol problem; (8) degree of involvement in or successful completion of treatment recommendations and support or recovery programs; (9) prior relapses from attempted abstinence; (10) the factors alleged to have precipitated the petitioner's abuse of alcohol and the present status of these factors, particularly whether they have been satisfactorily resolved; (11) the petitioner's explanation for his multiple alcohol-related offenses, particularly for allowing the second and later arrests or convictions to occur; (12) the petitioner's criminal history, particularly drug offenses or offenses that in any way involved alcohol/drugs; (13) the extent to which, in terms of completeness and thoroughness, a petitioner and his service providers have addressed every issue raised by the hearing officers in previous hearings; and (14) the evaluator's classification, and--because

it is particularly important that the evaluator's classification be based on complete, accurate, and consistent information--the probative value of an evaluation will be diminished to the degree the evaluation deviates from this standard and the standards established by the Office of Alcoholism and Substance Abuse. 92 Ill. Adm. Code §1001.440(d) (Conway Greene CD-ROM June 2003) (effective June 13, 2002).

B. Secretary's Findings

On appeal, the Secretary argues its denial of Wild's petition was proper in light of the hearing officer's findings that Wild was not credible and has unresolved issues to be addressed with his evaluator, particularly when considered in conjunction with Wild's past evaluations and hearings. Wild contends the Secretary's denial was contrary to a fair reading of the record and insists the Secretary has issued inconsistent findings and recommendations, distorted the record, dredged up resolved issues, and improperly disregarded the evaluations.

1. Petitioner's Challenge to the Hearing Officer's Summarization of Evidence

We briefly address petitioner's contention that the hearing officer distorted the record in several respects, so that the record accurately reflects the proceedings. An administrative agency's factual findings and conclusions are considered prima facie correct. Sanchez v. Ryan, 315 Ill. App. 3d 1079, 1082-83, 734 N.E.2d 920, 923 (2000).

Wild contends the hearing officer distorted the record in his report by stating Wild "said there 'might' have been other

times he drove under the influence." Wild actually testified "there were a few times when *** I could have gone over the limit and drove home" and that he "might have drove when [he] shouldn't have."

Wild also asserts the hearing officer incorrectly summarized his testimony on his first alcohol-related arrest. The hearing officer's findings of fact state Wild denied being intoxicated on the 1987 incident. In actuality, when asked if he was under the influence, Wild responded, "[y]es, I could have been." While this is not a definitive answer, neither is it a denial.

2. Secretary's Evaluation of the Evidence

The Secretary has broad discretion in determining whether to restore a petitioner's driving privileges, and we will not overturn that decision unless the agency exercised its authority in a manner that was arbitrary and capricious or if the decision was contrary to the manifest weight of the evidence. Clark, 343 Ill. App. 3d at 693, 798 N.E.2d at 416.

A decision is arbitrary and capricious if the Secretary relies on factors not intended to be considered by the legislature, fails to consider an issue, or the explanation for his decision runs counter to the evidence or is so implausible it could not be the result of agency expertise. Clark, 343 Ill. App. 3d at 693-94, 798 N.E.2d at 416.

A decision is against the manifest weight of the evidence when, viewing the evidence in the light most favorable

to the Secretary, no rational trier of fact could agree with the Secretary's determination. Craig v. Edgar, 165 Ill. App. 3d 270, 272, 519 N.E.2d 112, 114 (1988). A decision is not against the manifest weight of the evidence if the record contains any evidence that fairly supports the agency's decision. Jones, 352 Ill. App. 3d at 324, 816 N.E.2d at 1112.

The petitioner has the burden of showing he does not have a current problem with alcohol, that any alcohol problems have been resolved, and that he is not a danger to the public safety and welfare. Sanchez, 315 Ill. App. 3d at 1083, 734 N.E.2d at 924. Wild must show by clear and convincing evidence that he is entitled to have his driving privileges reinstated. Jones, 352 Ill. App. 3d at 324, 816 N.E.2d at 1111-12.

a. Consistency of the Evidence

The Secretary asserts Wild failed to carry his burden of providing clear and convincing evidence that his driving privileges should be reinstated. The Secretary maintains Wild failed to prove he had resolved his alcohol problem and would be a safe and responsible driver because the only testimony presented was Wild's, and the hearing officer found Wild not to be credible. The Secretary argues the hearing officer's findings are supported by Wild's farfetched and inconsistent versions of events, and his inconsistent testimony on his use and problem with alcohol. Wild contends the Secretary's findings are contrary to a fair reading of the record. We find the record does not support the Secretary's conclusion that Wild failed to carry

his burden of proof in establishing his driving privileges should be reinstated.

The Secretary argues Wild's insistence on maintaining the same farfetched version of events are evidence of his lack of credibility and inability to come to terms with his substance abuse. At the same time, the Secretary and hearing officers emphasizes every minor inconsistency in the information provided by Wild as evidence of his lack of credibility. Wild is essentially in a Catch-22. Regardless of whether Wild provides consistent or inconsistent information, the hearing officers and the Secretary have deemed Wild is not credible.

As an example, the hearing officer at the 2003 hearing stated that "the extent of the [p]etitioner's problem with, or dependence on, alcohol depends on which hearing you refer to." The officer went on to list what he appears to believe are inconsistencies in Wild's testimony regarding Wild's dependency on alcohol. In doing so, the hearing officer emphasizes issues such as (1) whether Wild believed he was an alcoholic or whether he had a "problem" with alcohol and (2) the prior hearing officer's perception of Wild's readiness to admit he had a problem. The Secretary likewise emphasizes these findings by the hearing officer as evidence of Wild's inability to come to terms with his alcohol dependence. However, this argument glosses over the fact that in four of the five hearings cited by the officer, Wild admitted to either having a "problem" with alcohol or to being an alcoholic. The hearing officer cites only the first hearing as a

time when Wild denied developing a problem with alcohol. Notably, a complete review of the record shows the hearing officer's findings were incomplete, as he apparently failed to review and report on Wild's first actual hearing. A complete review of the record shows Wild denied having a problem with alcohol at his first two hearings but has consistently acknowledge having a problem in the last four.

For the Secretary to reject Wild's repeated acknowledgment that he has a problem with alcohol as inconsistent based on Wild's inarticulate explanation of his dependency issues is contrary to a fair reading of the record. The record indicates Wild has acknowledged and come to terms with his problem with alcohol and that no rational trier of fact could agree with the Secretary's determination when the evidence is read in the light most favorable to the Secretary.


b. Renewing and Raising New Issues


In its finding and recommendations, the 2002 hearing officer found the extent of Wild's alcohol problem was unclear and that Wild failed to meet his burden of proof that his alcohol problem had been resolved and that he would be a safe and responsible driver. In making these assessments, the hearing officer specifically relied on his finding that Wild's use history was inconsistent and that Wild had not accepted his problem with alcohol because Wild needed to be "prompted" by his attorney before acknowledging his problem with alcohol. Although these were the only unresolved issues after the 2002 hearing, the 2003

hearing officer renewed or raised new issues in his report. In his report, the 2003 hearing officer noted that tolerance was reported in Wild's March 2001 evaluation. The hearing officer goes on to state his personal belief that Wild should have developed tolerance and the persistent desire or unsuccessful efforts to control his use, both symptoms of dependence. See 77 Ill. Adm. Code §2060.103 (Conway Greene CD-ROM June 2003) (effective November 8, 2002); American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders 178 (4th ed. 1994). The hearing officer indicated Wild needed to address this issue with his evaluator.

Although symptoms of substance dependence warrant the reclassification of a petitioner, there is no support for the hearing officer's determination that this is an unresolved issue. While some of the previous hearing officers raised questions as to the accuracy of Wild's classification, others found Wild's classification acceptable. Wild was reevaluated following each of his denials. In spite of the concerns voiced by the hearing officers about the accuracy of Wild's classification, Wild's evaluators have consistently classified him as a significant risk. In doing so, Wild's evaluators indicated they found Wild's version of events and information to be credible.

Specifically, the 2002 hearing officer found the evidence supported, at a minimum, a significant-risk classification and did not clearly raise this as an issue in his findings and recommendations. The actions of the 2002 hearing officer

lead Wild to reasonably believe this issue was resolved to the satisfaction of the Secretary. The 2003 hearing officer, however, raised the issue of Wild's risk classification based primarily on the same information that the 2002 hearing officer implicitly sanctioned in its finding that Wild's risk classification was acceptable. In this case, it was improper for the Secretary to deny Wild's petition based upon the unsupported renewal of an issue clearly resolved in the previous hearing where no new evidence was presented to change that finding. 

Again, the 2003 hearing officer indicated "the extent of [Wild's alcohol] problem is unclear due to material discrepancies in the evidence." This finding appears to be based on (1) the renewal of the question of Wild's risk classification previously resolved, (2) the hearing officer's perceived discrepancies in Wild's testimony regarding his dependence on alcohol, and (3) the hearing officer's finding that Wild's high M-F score from December 1998 was inconsistent with the lack of symptoms reported and that Wild's low M-F score from March 2001 was the result of Wild's inability to come to terms with this problem. Similar to Wild's risk classification, Wild's M-F score is an issue the 2003 hearing officer raised based on information that was presented to the 2002 hearing officer and implicitly approved. These issues raised by the hearing officer were resolved by the other hearing officers and reversing them at this stage is contrary to a fair reading of the record. 

c. The Evaluations

The Secretary argues that the hearing officer's negative credibility determination affects the credibility of Wild's documentary evidence, in particular his evaluations. The 2003 hearing officer disregarded Wild's evaluation, indicating it was "unreliable or incomplete" because the "evidence may not be consistent with the [s]ignificant [r]isk classification" and the "extent of [Wild's alcohol] problem [was] unclear due to material discrepancies in the evidence." Wild contends the Secretary has improperly dismissed his evaluations and the efforts he and his evaluators have made to satisfy the recommendations of the hearing officers.

We note some of the finding and recommendations issued by the hearing officers in this case were vague and provided little insight into their underlying reasoning. The petitioner, and oftentimes his evaluator, is relying on the hearing officer's explanation of why the petition was denied to address unresolved issues. A hearing officer's failure to either fully address the issues before him or to explain his conclusions inhibits the ability of the petitioner to address necessary issues and the ability of reviewing bodies to assess their rulings.

The record shows the Secretary has issued inconsistent findings and recommendations. After each denial, Wild returned to his evaluator in an attempt to comply with the Secretary's requirements and to address the hearing officer's concerns. In particular, Wild's evaluator's wrote letters in April 2002 and

April 2003 attempting to address the hearing officers' concerns and reasons for denying Wild's petition at the 2001 and 2002 hearings, respectively. At the 2003 hearing, ~~the Secretary~~ disregarded the evaluator's letter addressing the issues raised by the previous hearing officer and Wild's ongoing good-faith efforts to comply with the Secretary's changing recommendations.

While alcohol and drug evaluations "'are not dispositive of the issues and are not the sole factor to be considered'" (Jones, 352 Ill. App. 3d at 324, 816 N.E.2d at 1111-12, quoting O'Neil v. Ryan, 301 Ill. App. 3d 392, 399, 703 N.E.2d 511, 516 (1998)), the extent to which Wild and his evaluators have addressed the issues raised in previous hearings is a factor (92 Ill. Adm. Code §1001.440(d)(16) (Conway Greene CD-ROM June 2003) (effective June 13, 2002)). The Secretary has improperly disregarded this factor and has repeatedly faulted Wild for its lack of clarity and conflicting recommendations. The findings and recommendations of the 2002 hearing set forth the issues to be addressed by Wild. At the 2003 hearing, Wild presented clear and convincing evidence addressing those issues. In this case, the testimony and documents contained nothing which would justify disregarding the evaluations or renewing previously resolved issues.

A fair reading of the record indicates Wild has proved by clear and convincing evidence that he no longer has a current alcohol problem, he is a low or minimal risk to repeat his past abusive behaviors, and that his past alcohol problems have been

resolved. Wild has met his burden of proof by providing clear and convincing evidence that he would be a safe and responsible driver.

Pursuant to section 1001.420(h), "[a] petitioner otherwise eligible for reinstatement of driving privileges *** may be issued an RDP for a probationary or trial period prior to full reinstatement of driving privileges" without proving an undue hardship. 92 Ill. Adm. Code §1001.420(h) (Conway Greene CD-ROM June 2003) (effective June 13, 2002). Because Wild has met his burden of proof and shown that he would be a safe and responsible driver, we remand the cause to the Secretary with directions to issue Wild a restricted driving permit upon a showing Wild has fulfilled any remaining administrative necessities for acquiring a license. We reverse the circuit court's reinstatement of driving privileges, a remedy not requested by Wild.

III. CONCLUSION

For the reasons stated, we reverse the circuit court's reinstatement of driving privileges and remand the cause to the circuit court with directions to order the Secretary to issue Wild a probationary restricted driving permit.

Reversed; remanded with directions.

MYERSCOUGH, J., with TURNER, P.J., and KNECHT, J., concurring.