IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

| | | |
|---|---|---|
| STEPHEN MOSBAUGH,<br><br>Appellant,<br><br>v.<br><br>OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,<br><br>Appellee. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | CASE NO. 2014 CV 02819<br><br>JUDGE MICHAEL L. TUCKER<br><br>DECISION, ORDER AND ENTRY DENYING THE APPEAL OF STEPHEN MOSBAUGH |

Pursuant to the court's order of June 18, 2015, Appellant, Stephen Mosbaugh, timely filed a supplemental brief on July 17, 2015. Appellee, the Ohio Department of Job and Family Services ("ODJFS"), timely filed a supplemental brief in response on July 27, 2015, to which Mr. Mosbaugh timely replied on August 24, 2015. Given that the deadlines for supplemental briefing have passed, the court may now enter its decision on Mr. Mosbaugh's appeal.

**FACTS**

Mr. Mosbaugh filed a notice of appeal on May 13, 2014, seeking review of a decision entered on March 14, 2014 by the ODJFS Bureau of State Hearings (the "Bureau"), as well as a decision entered on April 15, 2014 by the Bureau's Administrative Appeal Section. The appeal concerns benefits under a Medicare premium assistance program ("MPAP")—in particular, the program for Specified Low-income Medicare Beneficiaries ("SLMB")—for part or all of a period beginning in 2007 or 2008 and ending on June 30, 2010. *See* Ohio Adm.Code 5160:1-3-02.1(A), (B)(2) and (7); Appellant's Supplemental Br. 3, 14, 27-29; Appellant's Supplemental Reply Br. 5-8,

23-35.[1]

In its decision of March 14, 2014, a copy of which appears in the record of proceedings (the "First Record") filed by ODJFS on May 22, 2014, the Bureau held that it could not address "issue[s] [of Mr. Mosbaugh's eligibility for benefits] from 2007 to [his] approval" for benefits on July 1, 2010 "[b]ecause [such issues] [were] outside of the timeframe for requesting a state hearing" under Ohio Adm.Code 5101:6-3-02. First R. at 9-10.[2] The Bureau's Administrative Appeal Section affirmed the decision. *Id.* at 3-4.

After the parties submitted their first round of briefs in the instant appeal, the court filed an entry, dated December 1, 2014, deferring further consideration because the First Record did not provide enough evidence on certain dispositive questions of fact. For this reason, the court ordered ODJFS to file a transcript of the testimony offered at the state hearing held on or about March 10, 2014 in Bureau Case No. 5073881707.[3] ODJFS complied with the order by filing a transcript (the "Transcript") on December 16, 2014.

The Transcript, however, did not remedy the aforementioned lack of evidence. As a result, the court again deferred consideration, this time ordering ODJFS to hold a second state hearing for the purpose of supplementing the record. ODJFS held the second hearing on April 13, 2015, and it filed an amended record (the "Second Record") on May 15, 2015. In light of the new evidence contained in the Second Record, the court allowed the parties to submit supplemental briefs.

---

[1] Mr. Mosbaugh appears to have prepared his brief by compiling several, separately paginated documents. The court disregards all pagination included within the brief, instead relying on the continuous pagination generated when using Adobe software to view the PDF copy posted on the court's online docket, with the same being true of Mr. Mosbaugh's reply brief.

[2] Citations to the First Record rely on the continuous pagination generated when using Adobe software to view the PDF copy available through the court's online docket. The pagination of individual documents included within the First Record should be disregarded.

[3] The First Record includes no mention of the date on which the Bureau held the hearing, nor did the hearing officer take note of the date in the Transcript. Mr. Mosbaugh indicates in his initial brief that the hearing was held on March 10, 2014, and ODJFS refers to the same date in its supplemental brief in response. Appellant's Br. 12; Appellee's Supplemental Br. 3. During the hearing, Mr. Mosbaugh says "March 11th" after taking the oath, but the hearing officer and ODJFS's representative did not acknowledge the remark. *See* Tr. at 2:22-4:8. As with citations to Mr. Mosbaugh's supplemental brief, citations to his initial brief rely on the continuous pagination generated when using Adobe software to view the PDF copy on the court's online docket.

**STANDARD OF REVIEW**

A party who contests "a decision or order of an agency administering a family services program shall, [upon] request, be granted a state hearing by the department of job and family services." R.C. 5101.35(B). The "state hearing shall be recorded, but neither the recording nor a transcript of the recording shall [necessarily] be part of the official record of the [hearing]." *Id.*

If the party "disagrees with [the resulting] decision," then he may appeal "to the director of job and family services." R.C. 5101.35(C). An administrative appeal of this kind "does not require a hearing, but the director or the director's designee shall review the state hearing decision and the previous administrative action [i.e. the "decision or order of an agency" with which the party initially took issue] and may affirm, modify, remand, or reverse." R.C. 5101.35(B)-(C).

According to R.C. 5101.35(E), if the party "disagrees with [the] decision of the director of job and family services," then the party "may appeal * * * to [a] court of common pleas pursuant to [R.C.] 119.12." The appeal "shall be governed by [R.C.] 119.12 * * * except that: (1) [the appellant] may appeal to the court of common pleas of the county in which [he] resides"; (2) the appellant "may apply to the court for designation as an indigent and, if the court grants this application, the appellant shall not be required to furnish the costs of the appeal"; (3) within 30 days from the date on which the decision of the director of job and family services was mailed, the appellant "shall * * * file [a] notice of appeal with the [common pleas] court," which is "the only act necessary to vest jurisdiction in the court," and mail a [copy] of "the notice of appeal to the department of job and family services"; and (4) the department of job and family services "shall be required to file a transcript of the testimony [offered at the state] hearing with the [common pleas] court only if the court orders the department to file the transcript." *Id.*; *cf.* R.C. 5101.35(B).

R.C. 119.12 "'sets forth a specific standard of review for administrative appeals'" under which "'a court of common pleas must affirm the decision of an administrative agency when [the]

decision is supported by reliable, probative, and substantial evidence and is in accordance with the law.'" *Denuit v. Ohio State Bd. of Pharmacy*, 2013-Ohio-2484, 994 N.E.2d 15, ¶ 15 (4th Dist.) (quoting *Copley v. Ohio Dep't of Health*, 4th Dist. Lawrence No. 09CA31, 2010-Ohio-5416, ¶ 10 (quoting *Ruckstuhl v. Ohio Dep't of Commerce*, 11th Dist. Geauga No. 2008-G-2873, 2009-Ohio-3146, ¶ 19)). A common pleas court should presume that an administrative "'agency's findings of fact are * * * correct,'" and the court "'must * * * defer[] to [them] unless [the] court determines that [they] are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest on improper inferences, or are otherwise unsupportable.'" *VFW Post 8586 v. Ohio Liquor Control Comm'n*, 83 Ohio St. 3d 79, 81, 1998-Ohio-181, 697 N.E.2d 655 (quoting *Ohio Historical Soc'y v. State Employment Relations Bd.*, 66 Ohio St. 3d 466, 471, 1993-Ohio-182, 613 N.E.2d 591); *see also Williams v. Ohio Dep't of Job & Family Servs.*, 2012-Ohio-4659, 978 N.E.2d 1260, ¶ 25 (3d Dist.) (citing *VFW Post 8586*, 83 Ohio St. 3d at 82) (additional citations omitted).

For purposes of R.C. 119.12, "'[r]eliable' evidence is dependable," meaning that "it can be confidently trusted." *Our Place, Inc. v. Ohio Liquor Control Comm'n*, 63 Ohio St. 3d 570, 571, 589 N.E.2d 1303 (1992) (citation omitted). In "order to be reliable, there must be a reasonable probability that the evidence is true." *Id.* To be "probative," evidence "must be relevant" and "tend[] to prove [an] issue in question." *Id.* (citation omitted) To be "substantial," evidence must have "some weight," or in other words, "it must have importance and value." *Id.* A "common pleas court must give deference to [an] agency's resolution of evidentiary conflicts, but 'the findings of the agency are by no means conclusive.'" *Ohio Historical Soc'y*, 66 Ohio St. 3d at 470 (quoting *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108, 111, 407 N.E.2d 1265 (1980)).

**LAW AND ANALYSIS**

In his supplemental brief, and in his reply to ODJFS's supplemental brief in response, Mr. Mosbaugh continues to dispute determinations of his eligibility for benefits for various periods

between 2007 and 2010. *See e.g.* Appellant's Supplemental Br. 14, 27-29; Appellant's Supplemental Reply Br. 5-7, 23-35. The only issue before the court, however, is the timeliness of Mr. Mosbaugh's appeal. Based upon the evidence included in the Second Record, the court finds that Mr. Mosbaugh did not timely appeal any of the determinations to which he objects. Therefore, the court denies Mr. Mosbaugh's appeal and affirms the decisions of the Bureau and its Administrative Appeal Section.

An applicant for SLMB benefits may request a state hearing pursuant to R.C. 5101.35(B) when his "application for benefits [is] denied, acted upon erroneously, or not acted upon with reasonable promptness." Ohio Adm.Code 5101:6-3-01(B)(1). The applicant "shall be allowed [90] calendar days to request a hearing on any [such] action or inaction," with the "ninety-day period begin[ning] on the day after the date [on which] the [corresponding] notice of action [was] mailed." Ohio Adm.Code 5101:6-3-02(B)(1)-(2). If the applicant disagrees with the resulting decision, then he "may make an administrative appeal to the director of the [Ohio Department of Job and Family Services]," and if the applicant disagrees with the director's decision, then he may appeal to "the court of common pleas of the county in which [he] resides." R.C. 5101.35(C) and (E)(1).

During Mr. Mosbaugh's first hearing, he asked the hearing officer about "his [eligibility] status from 2007 to 2010," in response to which the officer explained that "[h]ad [Mr. Mosbaugh] believed in 2007, 2008, [and] 2009" that ODJFS erred in determining his eligibility for benefits, "[he] would have had to request a hearing" at those times, because the Bureau "can't review anything that's further back than 90 days on * * * action[s] that[] [have] been taken." *See* Tr. at 14:10-14:25. This court, in its decision of January 29, 2015, found that although the hearing officer's "comments establish[ed] * * * that Mr. Mosbaugh had not previously requested a state hearing regarding his eligibility for SLMB benefits for any period," the record did not establish "'the date [on which] the [corresponding] notice[s] of action [were] mailed.'" Decision, Order and

Entry Remanding the Appeal 6, Jan. 29, 2015 (quoting Ohio Adm.Code 5101:6-3-02(B)(2)). Without evidence of the dates on which the relevant notices of action were mailed, the court could not determine whether Mr. Mosbaugh's time to request a hearing (or hearings) had ever started to run. *Id.*

The Second Record remedies this lack of evidence. Second R. at 1, 3, 37-42, 76-84, 125-140. In the Bureau's findings of fact, dated May 4, 2015, it found that notices of action were mailed to Mr. Mosbaugh on April 15, 2008; August 11, 2008; August 4, 2009; and August 21, 2009, and the Second Record includes copies of these notices. *Id.* The Bureau's findings of fact and the copies of the notices constitute "reliable, probative, and substantial" evidence sufficient to support the decision issued by the Bureau's Administrative Appeal Section on April 15, 2014, in which the Administrative Appeal Section affirmed the Bureau's finding that Mr. Mosbaugh "ha[d] not appealed in time to address" his eligibility for benefits prior to July 1, 2010. First R. at 3. Furthermore, Mr. Mosbaugh has not submitted any evidence suggesting that the notices were not mailed or that he requested a state hearing before February 24, 2014. On review of Mr. Mosbaugh's appeal, this court "'must affirm the [underlying] decision[s]'" if the "'decision[s] [are] supported by reliable, probative, and substantial evidence and [are] in accordance with the law.'" *Denuit v. Ohio State Bd. of Pharmacy*, 2013-Ohio-2484, 994 N.E.2d 15, ¶ 15 (4th Dist.) (quoting *Copley v. Ohio Dep't of Health*, 4th Dist. Lawrence No. 09CA31, 2010-Ohio-5416, ¶ 10 (quoting *Ruckstuhl v. Ohio Dep't of Commerce*, 11th Dist. Geauga No. 2008-G-2873, 2009-Ohio-3146, ¶ 19)). The court accordingly affirms the underlying decisions of the Bureau and its Administrative Appeal Section.

**CONCLUSION**

This court must affirm the underlying decisions based upon the reliable, probative, and substantial evidence set forth in the First and Second Record, particularly given the absence of any

evidence to the contrary. Therefore, the court affirms the decisions entered by the Bureau and its Administrative Appeal Section on March 14, 2014 and April 15, 2014.

**SO ORDERED**

**s/MICHAEL L. TUCKER, JUDGE**

This document has been electronically filed by using the Clerk of Courts e-filing system. The system will post a record of the filing to the e-filing account "notifications" tab of the following case participants:

AMY A. JEFFRIES
(216) 777-8027
Attorney for Appellee

Copies of this document were sent to all parties listed below by ordinary mail:

STEPHEN MOSBAUGH
136 MAPLE AVENUE, APT. H
CENTERVILLE, OH 45459
Appellant

**ANN M. SCOTT**, Bailiff
(937) 225-4448

General Divison

Montgomery County Common Pleas Court

41 N. Perry Street, Dayton, Ohio 45422

**Type:** Decision

**Case Number:** 2014 CV 02819

**Case Title:** STEPHEN MOSBAUGH vs STATE OF OHIO OFFICE OF LEGAL SERVICES

So Ordered

Michael L. Tucker