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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

BENJAMIN RUTLEDGE
Plaintiff

Case No: CV-16-865380

Judge: MAUREEN CLANCY

DIRECTOR, OHIO DEPARTMENT OF JOB & FAMILY
SERVICES
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

ORDER AND OPINION AFFIRMING THE DECISION OF THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES.

OSJ.
COURT COST ASSESSED TO THE PLAINTIFF(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

OSJ

Judge Signature

Date

FILED
2017 FEB -8 A 9:25
CLERK OF COURTS
CUYAHOGA COUNTY

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS
CASE NO. CV-16-865380

BENAJMIN RUTLEDGE,)
)
Appellant,)
)
v.)
)
OHIO DEPARTMENT OF JOB AND)
FAMILY SERVICES,)
)
Appellee.)

ORDER AND OPINION

Maureen E. Clancy, J:

This matter is before the Court as an Administrative Appeal from the decision of the Ohio Department of Job and Family Services (ODJFS) regarding the calculation of the Appellant Benjamin Rutledge's monthly Food Assistance Benefit. The Appeal was timely filed and the matter has been fully briefed. Consistent with the following order and opinion, the Court AFFIRMS the decision of the ODJFS.

I. Factual Background

Prior to April 2016, the Appellant had been receiving Food Assistance benefits in the amount of \$152 per month. The Appellee states that this amount was based upon a calculation that assumed that the Appellant pays his utility bills separate from

his rent. However, after an evaluation in April 2016, the Appellee determined that, in fact, the Appellant's utilities were included in his rent. The Appellee also determined that the Appellant's out-of-pocket medical expenses were less than \$35 per month and thus he was not eligible for a medical-expense deduction to be included in his monthly income calculation. After the Appellee recalculated his benefits, the Appellant was given a Food Assistance benefit of \$26 per month. The recalculation was affirmed by an ODJFS hearing officer following a May 18, 2016 hearing.

Appellant now appeals to this Court and avers that the calculation is incorrect because it does not take into account the cost of his monthly bus pass or the costs of various other medications that he takes.

II. Applicable Law

R.C. 5101.35(E) authorizes appeals to this Court of Decisions issued by ODJFS and provides that such appeals are to be governed by R.C. 119.12. R. C. 119.12 defines the appropriate standard of review: "[t]he court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law." See also *University of Cincinnati v. Conrad*, 63 Ohio St. 2d 108, 109-110 (1980).

III. Analysis

In addressing the Appeal, the Court may only consider the record certified to it by the ODJFS and any properly admitted newly discovered evidence; i.e. evidence that was in existence at the time of the May 18, 2016 hearing but that could not, with due diligence, be discovered and presented at the hearing. See R.C. 119.12(K) and *State Med. Bd. v. Murray*, 66 Ohio St.3d 527, 537-38 (1993).

The Appellee argues that the Plaintiff's own affidavit which he attached to his merit brief is new evidence inasmuch as it was clearly created after the May 18, 2016 hearing. However, while the document itself may be new, it appears from a review of the record that the averments and evidence put forth in the affidavit were previously presented at the hearing. Accordingly, the Court will consider the affidavit for the purpose of this Administrative Appeal.

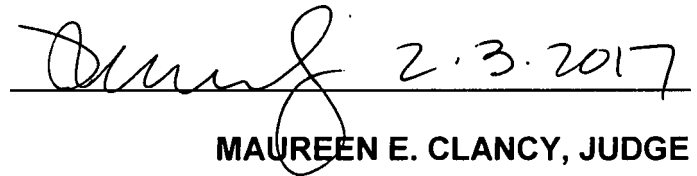
The Appellant verified his medication costs to the hearing officer at the May 18, 2016 hearing and it was determined that those costs still do not exceed the \$35 per month threshold required in order for medical expenses to be deducted from his monthly income. A review of the Plaintiff's affidavit does not offer any further evidence that the Plaintiff's costs would exceed the threshold.

Next the Appellant contends that his monthly bus pass should be considered a medical expense. The Appellant apparently did not make this argument to the hearing officer. Assuming *arguendo* that the Appellant has not waived this issue at this stage of the appeal, under Adm.Code 5101:4-4-23(C)(2)(j) reasonable costs of transportation to obtain medical services are allowed as a deduction. However, the Appellant admits that not all of his trips on the bus are for medical services and he

provided no evidence either to the hearing officer or this Court to establish how often he used the pass for medical services.

IV. Conclusion

Based upon the foregoing, the Court finds that the decision of the ODJFS from which the Appellant filed this Administrative Appeal is supported by reliable, probative, and substantial evidence and is in accordance with law. Accordingly, the Decision is AFFIRMED.

 2.3.2017
MAUREEN E. CLANCY, JUDGE