

IN THE COURT OF COMMON PLEAS
OF VAN WERT COUNTY, OHIO

CV 16-03-032

IN THE MATTER OF THE APPEAL of

BARBARA STUTZ
Appellant,

COURT OF COMMON PLEAS

2017 JAN 31 A 10:51

CINDY MOLLENKOPF-CLERK
VAN WERT CO. OHIO

JUDGMENT ENTRY
ADMINISTRATIVE DECISION
AFFIRMED

vs.

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
Appellee,

This cause is before the Court upon the notice of appeal, the record submitted and the briefs of the parties.

QUESTION BEFORE THE COURT

The Appellant has placed three assignments of error before the Court.

The first assignment claims the Administrative Appeal Officer determined there is no provision for an applicant for Medicaid to rebut the value of a life estate and offers that there is no statutory or regulatory authority that prohibits the offered rebuttal.

The second assignment offers the Administrative Appeal Officer erred in finding that Appellant did not provide a full written accounting and documentation of the transfer made the subject of this appeal as required by rule.

The third assignment offers the Administrative Appeal Officer erred in finding there is no provision for disputing the life estate value as calculated under the rule.

STANDARD OF REVIEW

In a case reviewing similar principles the Jackson County Court of Appeals determined the proper standard of Common Pleas under this statute in: Cook v. Ohio Dep't of Job & Family Servs., 2003-Ohio-3479, (Ohio Ct. App., Jackson County June 24,

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2003) "When reviewing administrative appeals brought under R.C. 119.12, a common pleas court is not permitted to try the issues de novo or to substitute its judgment for the administrative agency. Smith v. Sushka (1995), 103 Ohio App.3d 465, 470, 659 N.E.2d 875; Cook v. Maxwell (1989), 57 Ohio App.3d 131, 135, 567 N.E.2d 292; Steinbacher v. Louis (1987), 36 Ohio App.3d 68, 71, 520 N.E.2d 1381. Instead, the trial court is limited to determining whether the administrative agency's decision is supported by reliable, probative and substantial evidence and was made in accordance with law. See Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621, 1993 Ohio 122, 614 N.E.2d 748; In re Williams (1991), 60 Ohio St.3d 85, 86, 573 N.E.2d 638.

Further the Supreme Court held in University of Cincinnati v. Conrad, 63 Ohio St. 2d 108, 109, 407 N.E.2d 1265, 1266, (1980) Determining whether an agency order is supported by reliable, probative and substantial evidence essentially is a question of the absence or presence of the requisite quantum of evidence. Although this in essence is a legal question, inevitably it involves a consideration of the evidence, and to a limited extent would permit a substitution of judgment by the reviewing common pleas court. In undertaking this hybrid form of review, the court of common pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive.

The Third District has ruled **R.C. 5101.35** governs judicial review of administrative appeal decisions issued by an agency and authorizes appellants who disagree with an administrative appeal decision of the director of the agency to appeal to the court of common pleas of the county in which they reside pursuant to **R.C. 119.12**. **R.C. 5101.35(E)**. The trial court must then conduct a hearing, consider the entire record, and must affirm an agency's decision where it is supported by reliable, probative, and substantial evidence and is in accordance with law. **R.C. 119.12**. Thus, an agency's findings of fact are presumed to be correct and must be deferred to by a reviewing court unless that court determines that the agency's findings are internally inconsistent or are otherwise unsupportable. Further, all reviewing courts must give due deference to an administrative agency's interpretation of its own rules and regulations if such an interpretation is consistent with statutory law and the plain language of the rule itself. Williams v. Ohio Dep't of Job & Family Servs., 2012-Ohio-4659, (Ohio Ct. App., Logan County 2012)

DISCUSSION OF FACTS

At page 20 of the administrative record Exhibit C thereof the Appellant discusses the calculation of the life estate using the formula of **5160:1-3-05.17(F)**. The Appellant declares nobody in their right mind would think the life estate was worth the calculated amount but does not contest that this is the right calculation under the rule. Appellant asserts that the first step in valuing the value of a life estate is the formula found in

5160:1-3-05.17(F) and then postulates an additional step is then necessary. At no point does the Appellant challenge the application of the formula by the Administrative Appeal Officer. The Court finds that the determination that the life estate had a value of \$23,141.28 under the formula found in **5160:1-3-05.17(F)** as that evidence offered is unrebutted and therefore supported by reliable, probative and substantial evidence.

At pages #3 and #5 of the record the Administrative Appeal Officer reviews the age of the Appellant, the value of the real estate in question by the Auditor and the percentage to be applied. These numbers are unrebutted and the Court accepts them as the basis of the determination of the life estate value under the regulatory formula.

In reference to assignment number two the Appellant suggest that she offered a full written accounting under **5160:1-3-07.2(D)** to rebut the presumption of an improper transfer. There is no evidence of attempts to sell the life estate. In fact at page 137 of the record filed with the Court, the Appellant concedes she did not try to sell the property since in her opinion and the opinion of her appraiser it was not marketable at that value. Therefore the Court finds there is reliable, probative and substantial evidence that the Appellant did not make an effort to sell the property.

RELEVANT LAW

OAC Ann. **5160:1-3-05.17** is the current regulation calculating the value of life estates for Medicaid eligibility:

(F) Calculating the value of a life estate.

- (1) The administrative agency must first determine the value of the property as established by the county auditor. If a valuation by a county auditor is unavailable, the value shall be based upon a valuation by the appropriate governmental agency charged with the responsibility for valuation of real property.
- (2) The administrative agency must deduct from the value of the property all liens and encumbrances that have been placed against the property.
- (3) The administrative agency must deduct from the value of the property all liens and encumbrances that have been placed against the life estate.
- (4) After the deductions, the balance is the equity value of the property.
- (5) The administrative agency must multiply the equity value of the property by the product that corresponds to the life estate owner's age at the time of determination for medical assistance on the following life estate table: [Click here to view image.](#)

(G) If the individual disagrees with the county auditor's determination of the value of the property as described in paragraph (F)(1) of this rule, the individual may have a licensed real estate broker perform an appraisal of the property's value, which may be substituted as the current value of the property in paragraph (F)(1) of this rule. Such appraisal services may be provided through the use of administrative funds if the individual is unable to obtain an appraisal due to insufficient funds of his or her own.

(H) If the individual transfers or sells a life estate, the individual must receive fair market value for the life estate.

(1) The fair market value for the life estate shall be calculated in accordance with paragraph (F) of this rule.

(2) If the individual receives less than fair market value for a transferred life estate, the transfer must be examined under the rule governing the transfer of assets.

The regulation for rebutting an improper transfer is OAC Ann. **5160:1-3-07.2**:

(D) Rebutting the presumption of an improper transfer.

(1) The individual may rebut the presumption established under paragraph (C) of this rule. The individual must first provide a full written accounting and documentation of the transfer which clearly explains the following:

(a) The purpose for transferring the resource; and

(b) The attempts to dispose of the resource at fair market value; and

(c) The reasons for accepting less than fair market value for the resource; and

(d) The individual's relationship, if any, to the person to whom the resource was transferred.

(2) The evidence may include, but is not limited to: any documentary evidence such as contracts, realtor agreements, sworn statements, third party statements, medical records, financial records, court records, and relevant correspondence.

(3) Evidence which is provided shall be reviewed by the administrative agency.

(4) The occurrence of one or more of the following after a transfer of the resources, while not conclusive, may indicate resources were transferred exclusively for some purpose other than establishing medicaid eligibility: (a) Traumatic onset of disability or blindness (e.g., due to traffic accident); or

(b) Diagnosis of a previously undetected disabling condition.

(5) If the presumption of improper transfer is not overcome by the individual's rebuttal, the administrative agency shall restrict medicaid coverage if the individual is otherwise eligible for medicaid.

Cook v. Ohio Dep't of Job & Family Servs., 2003-Ohio-3479, (Ohio Ct. App., Jackson County June 24, 2003) is almost on point for the case at bar. There the applicant challenged the life estate value under the regulation and the life expectancy table adopted by the State of Ohio used to calculate all values for life estate property owned by Medicaid applicants. The court even expressed sympathy for the applicant. However the Court found the value of a life estate must be calculated by the applicable regulation.

The Court found specifically: Appellant argues that this value is "unreasonable" and "absurd" and attributes to her imaginary resources while, in reality, she has very little real resources. We acknowledge that appellant has a heavy burden to provide that the Appendix A table is unreasonable. Administrative regulations are presumed reasonable, both factually and legally, and the burden rests on the challenging party to introduce evidence to the contrary. Roosevelt Properties Co. v. Kinney (1984), 12 Ohio St.3d 7, 13, 12 Ohio B. 6, 465 N.E.2d 421, citing State, ex rel. Shafer v. Ohio Turnpike Comm. (1953), 159 Ohio St. 581, 590, 113 N.E.2d 14. Moreover, federal courts have consistently held that state regulations administering the Medicaid program should not be disturbed so long as they are reasonable. See Emerson v. Steffen (C.A.8 1992), 959 F.2d 119, 122; Mattingly v. Heckler (C.A.7 1986), 784 F.2d 258, 267; Harris v. Luckhard (C.A.4 1984), 733 F.2d 1075, 1079. Thus, appellant must do more than simply show that other tables may be more "reasonable." Rather, appellant must prove that the Appendix A table is unreasonable. In other words, appellant must show that the agency's use of the table is irrational, absurd, preposterous or senseless. Black's Law Dictionary (5th Ed. 1979) 1379.

ANALYSIS AND DECISION

First Assignment of Error. The Administrative Appeal Officer is correct there is no mechanism for rebutting a properly calculated value of a life estate calculated under **5160:1-3-05.17(F)**. The Appellant essentially acknowledges this in her own first assignment. After acknowledging the administrative rule is the proper rule for calculating a life estate she then cites the rules to define "Fair Market Value" and also cites the rule for "Rebutting an Improper Transfer." Calculating a life estate is a specific rule for a specific type of property. The law assumes the specific rule for calculating the value of a life estate controls the general rule for calculating the fair market value of assets and therefore the rule for calculating a life estate value for an individual seeking Medicaid is **5160:1-3-05.17(F)**. Since the number arrived at under the formula of the proper regulation is un rebutted and properly calculated the value of the life estate is properly calculated as determined.

5106:1-3-05.17(G) allows for the challenge of the value of the property made the subject of the life estate. There is no evidence of a challenge of this nature. **5106:1-3-05.17(H)** states unequivocally that that subsection (F) is the Fair Market Value of a life estate for person seeking financial assistance from Medicaid.

Second Assignment of Error. The second assignment deals with if the Appellant properly provided an accounting and documentation for an improper transfer. This is covered by **OAC 5160:1-3-07.2: (D)** Rebutting the presumption of an improper transfer.

OAC 5160:1-3-07.2(D)(1)(b) requires documentation of attempts to dispose of the resource at fair market value. There is no evidence of the Appellant attempting to sell this property at the value arrived at using the formula in **5160:1-3-05.17(F)**. In fact the evidence is direct that the Appellant did not try to sell at the proper price. Therefore the Appellant did not comply with **OAC 5160:1-3-07.2(D)(1)(b)**.

Third Assignment of Error. The first and third assignments are essentially the same. The first assignment closes with the assertion that there is nothing in the administrative code directly prohibiting the challenge to the value of a life estate. The Court finds that there is a specific regulation for calculating the value of a life estate held by an individual seeking the assistance of the Medicaid program. There is no mechanism for reducing that value by any other market calculation. Further the code offers a scheme for sales below market value which includes documenting efforts to sell at the appropriate value. The code is assumed reasonable and must be strictly followed absent a demonstration of unreasonableness.

The Court having rejected all three assignments of error finds the decision of the Administrative Appeal Officer is affirmed.

It is therefore ORDERED, ADJUDGED and DECREED.

Dated: January 31, 2017


Martin D. Burchfield, Judge

Copies: Appellant

Appellee

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