

ORIGINAL

In the
Supreme Court of Ohio

RURAL HEALTH COLLABORATIVE
OF SOUTHERN OHIO, INC.,

Appellee,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO

Appellant.

Case No. 14-0963

Appeal from Ohio Board of Tax Appeals

Case No. 2012-3421

NOTICE OF APPEAL

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FILED
JUN 09 2014
BOARD OF TAX APPEALS
COLUMBUS, OHIO

FILED
JUN 09 2014
CLERK OF COURT
SUPREME COURT OF OHIO

HAND DELIVERED

Dialysis Clinic, Inc. is the same entity that was denied real property tax exemption for tax year 2004 for a dialysis clinic in West Chester, Ohio through this Court's decision in *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071. In fact, Dialysis Clinic, Inc. maintained the same indigence policy during tax year 2006 that this Board held discriminatory in *Dialysis Clinic, Inc.* for tax year 2004. *Id.* at ¶¶ 34-35. The major distinguishing factor between this case and *Dialysis Clinic, Inc.* is the presence of a lease whereby the non-charitable institution Rural Health leases the subject property to Dialysis Clinic, Inc.

Despite the controlling Ohio Supreme Court precedent set forth in *Dialysis Clinic, Inc.*, the BTA in this case held that the land and dialysis clinic qualified for real property tax exemption under R.C. 5709.121(A)(2), as "used exclusively for charitable purposes." The appellant Commissioner complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The BTA erred, as a matter of fact and law, in granting real property tax exemption for the subject property under R.C. 5709.121(A)(2), as "used exclusively for charitable purposes."
2. The BTA's decision ignored the controlling holding of the Ohio Supreme Court decision in *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071. Under this controlling guidance, the BTA should have affirmed the appellant Tax Commissioner's final determination which denied Rural Health's claim to real property tax exemption in its entirety, as failing to meet the qualifications for real property tax exemption under R.C. 5709.12 when considered separately and, additionally, when considered in conjunction with R.C. 5709.121.

3. The Board's decision further erred by failing to recognize or apply the *stare decisis* standards established by the Ohio Supreme Court as set forth in *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 2003-Ohio-5849; and *Ohio Apt. Assn. v. Levin*, 127 Ohio St. 3d 76, 2012-Ohio-4414. Under the *Galatis* test, as reaffirmed in *Ohio Apt. Assn.*, for this Court to overturn its previous decision in *Dialysis Clinic, Inc.*, the following criteria must be affirmatively demonstrated: "(1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it." *Ohio Apt. Assn.* at ¶ 30 (quoting paragraph one of the syllabus in *Galatis*).
4. The Board's decision erred in failing to find that the *stare decisis* standard, as set forth in *Galatis* and reaffirmed in *Ohio Apt. Assn.*, has not been met here. *First*, the Court's holding in *Dialysis Clinic, Inc.* was not wrongly decided by either the Court or by the BTA in its decision in that case. *Second*, no changes in circumstances have occurred that would render continued adherence to the decision no longer justified. *Third*, the *Dialysis Clinic, Inc.* decision does not defy practical workability. *Fourth*, abandoning the precedent *would* create an undue hardship because real property tax exemptions are in derogation of equal rights, and place a disproportionate tax burden on all other taxpayers.
5. The BTA erred, as a matter of fact and law, in failing to consider, and by its silence ignoring, whether *Dialysis Clinic, Inc.* was a charitable institution within the meaning of R.C. 5709.121. *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-

5071, affirming *Dialysis Clinic, Inc. v. Wilkins*, BTA Case No. 2006-V-2389, 2009 WL 41000065 (Nov. 24, 2009). The BTA further erred by failing to determine that Dialysis Clinic, Inc. was not a charitable institution, and, therefore, failed to satisfy R.C. 5709.121's express requirements. *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, Subheading C ("The BTA acted reasonably and lawfully in determining that DCI is not a charitable institution"). Indeed, the BTA should have determined that Dialysis Clinic, Inc. was not a "charitable institution" within the meaning of R.C. 5709.121.

6. In failing to consider whether Dialysis Clinic, Inc. was a charitable institution within the meaning of R.C. 5709.121, the BTA erred by failing to determine that the following factors, among others, weigh on Dialysis Clinic, Inc.'s status as a non-charitable institution: (1) Dialysis Clinic, Inc.'s discriminatory indigence policy that explicitly states it is "not a charity or gift to patients [and that] DCI retains all rights to refuse to admit and treat a patient who has no ability to pay"; (2) Dialysis Clinic, Inc. annually earns millions of dollars in surplus revenue over expenses from rendering dialysis care to patients, including, most recently, \$60 million and \$57 million in excess revenue over expenses for fiscal year ends 2013 and 2012, respectively; and (3) Dialysis Clinic, Inc. "may not establish its own core activity as charitable by pointing to a benefit that it confers upon another entity whose activity is charitable," as is potentially the case with the donation of surplus revenue to kidney research. *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, ¶¶ 32-34.

7. The BTA erred, as a matter of fact and law, in determining that Rural Health is a charitable institution within the meaning of R.C. 5709.121. *Northeast Ohio Psych. Institute v. Levin*, 121 Ohio St.3d 292, 2009-Ohio-583; *OCLC Online Computer Library Center, Inc. v. Kinney*, 11 Ohio St.3d 198 (1984); *Chagrin Realty, Inc. v. Testa*, BTA Case No. 2011-2523 (Apr. 29, 2014). In determining that Rural Health is a charitable institution, the BTA erred, as a matter of fact and law, in failing to determine that the core activity of Rural Health, an institution with no employees, is the lease of the subject property to Dialysis Clinic, Inc. In determining that Rural Health is a charitable institution, the BTA further erred in relying upon Rural Health's summary documentation, which constitutes hearsay and is not the best evidence of the information presented. Still further, the BTA erred, as a matter of fact and law, by failing to determine that Rural Health is not a charitable institution, and that, therefore, Rural Health failed to satisfy R.C. 5709.121's express requirements. Indeed, the BTA should have determined that Rural Health was not a "charitable institution" within the meaning of R.C. 5709.121.
8. In holding that the subject property satisfies the requirements for exemption pursuant to R.C. 5709.121(A)(2), the BTA erred, as a matter of fact and law, through its misapplication of *Cincinnati Community Kolllel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396. Through the BTA's erroneous application of *Cincinnati Community Kolllel*, the requirement for exemption under R.C. 5709.121(A)(2) that real property be "made available under the direction or control [of a charitable institution] for use in furtherance or incidental to [a charitable institution's charitable purposes] and not with a view to profit" would be satisfied in nearly any instance. The BTA's

erroneous application of *Cincinnati Community Kollel* is particularly evident where, as here, the BTA failed to recognize the longstanding principle that tax exemption statutes are a matter of legislative grace in derogation of the rights of all other taxpayers that must be strictly construed against the taxpayer claiming exemption. *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904 (2010), ¶ 16; *Cincinnati College v. State*, 19 Ohio 110 (1850) (“All laws exempting any of the property in the state from taxation, being in derogation of equal rights, should be construed strictly.”).

9. In holding that the subject property satisfies the requirements for exemption pursuant to R.C. 5709.121(A)(2), the BTA erred, as a matter of fact and law, by failing to consider, and by its silence ignoring, whether the subject property was “made available under the direction or control of” the owner of the subject property, Rural Health, within the meaning of R.C. 5709.121(A)(2), as required to qualify for real property tax exemption under that statutory provision. *Cincinnati Nature Center Ass’n v. BTA*, 48 Ohio St.2d 122, 125 (1976). The BTA further erred by failing to determine that the subject property is not made available under the direction or control of Rural Health, and that, therefore, Rural Health failed to satisfy R.C. 5709.121(A)(2)’s express requirements. *See Christian Ministires, Inc. [sic] v. Testa*, BTA Case No. 2012-2213 (Mar. 13, 2014), at 3-4.
10. The BTA’s errors in (1) failing to consider whether the property is made available under the direction or control of Rural Health within the meaning of R.C. 5709.121(A)(2) and (2) failing to determine that the property is not made available under the direction or control of Rural Health within the meaning of R.C.

5709.121(A)(2) are particularly evident given that Rural Health transferred possession and control of the property to another entity, Dialysis Clinic, Inc., pursuant to a lease agreement. *See* R.C. 5321.02; R.C. 5709.121(A)(1).

11. In holding that the subject property satisfies the requirements for exemption pursuant to R.C. 5709.121(A)(2), the BTA erred, as a matter of fact and law, in holding that the subject property was used “in furtherance of or incidental to charitable purposes,” even though Dialysis Clinic, Inc. wrote off non-reimbursable charges for dialysis treatments constituting only 1% of its total dialysis service revenues from the clinic on the subject property during calendar year 2006. In holding that the subject property is used “in furtherance of or incidental to charitable purposes,” the BTA further erred by failing to consider the totality of the circumstances. *Bethesda Healthcare v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, ¶ 39; *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071. Still further, the BTA erred in relying upon Rural Health’s summary documentation prepared for this litigation, which constitutes hearsay and is not the best evidence of the information presented.
12. The BTA erred, as a matter of fact and law, in failing to hold that the subject property was used with a view to profit and, therefore, that the subject property failed to qualify for real property tax exemption as “used exclusively for charitable purposes.” *See Seven Hills Schools v. Kinney*, 28 Ohio St.3d 186, 187-88 (1986); *American Chemical Soc. V. Kinney*, 69 Ohio St.2d 167, 172-73 (1982) (Brown, J., dissenting).
13. The BTA erred, as a matter of fact and law, in failing to hold that the subject property is not used exclusively for charitable purposes pursuant to R.C. 5709.12(B) because the ownership and claimed exempt use of the property do not coincide in the same

entity. *First Baptist Church of Milford, Inc. v. Wilkins*, 110 Ohio St.3d 496, 2006-Ohio-4966, ¶ 12, quoting *Zangerle v. State ex rel. Gallagher*, 120 Ohio St.139 (1929) and *Lincoln Mem. Hosp., Inc. v. Warren*, 13 Ohio St.2d 109 (1968).

Wherefore, the appellant Commissioner requests that the Court reverse as unreasonable and unlawful the BTA's decision granting exemption for the subject realty, and remand the matter for issuance of an Order denying the application for real property tax exemption in its entirety to Rural Health Collaborative of Southern Ohio, Inc. for tax year 2006.

Respectfully submitted,

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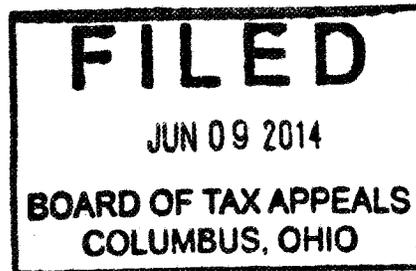
**BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO**

RURAL HEALTH COLLABORATIVE	:	
OF SOUTHERN OHIO, INC.,	:	
	:	
Appellee,	:	
	:	Case No. _____
v.	:	
	:	
	:	Appeal from Ohio Board of Tax Appeals
JOSEPH W. TESTA,	:	
TAX COMMISSIONER OF OHIO	:	
	:	Case Nos. 2012-3421
	:	
Appellant.	:	

PRAECIPE

TO THE OHIO BOARD OF TAX APPEALS

Demand is hereby made that the Ohio Board of Tax Appeals (“Board”) prepare, transmit and file with the Supreme Court of Ohio a certified transcript of the records and proceedings of the Board pertaining to its Order in the above-styled matter; including in said certified transcript, the Board’s Order, the original papers in the case or a transcript thereof, and all evidence with originals or copies of all exhibits as adduced in said proceeding considered by the Board in making its Order.



HAND DELIVERED

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio

A handwritten signature in black ink, appearing to read "David Ebersole", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal and Praecipe were filed by hand delivery with the Ohio Supreme Court, 65 South Front St., Columbus, Ohio 43215, and the Ohio Board of Tax Appeals, 30 E. Broad St., 24th Floor, Columbus, Ohio 43215, and were served upon Mark Engel, Bricker & Eckler LLP, 9277 Centre Pointe Drive, Suite 100, West Chester, by certified mail return receipt requested this 9th day of June, 2014.



DAVID D. EBERSOLE (0087896)
Assistant Attorney General

OHIO BOARD OF TAX APPEALS

Rural Health Collaborative of Southern Ohio, Inc.,)	CASE NO. 2012-3421
)	
)	(REAL PROPERTY TAX EXEMPTION)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
Joseph W. Testa, Tax Commissioner of Ohio,)	
)	
Appellee.)	

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Entered **MAY 08 2014**

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals a final determination of the Tax Commissioner denying appellant’s application for exemption from real property taxation for certain real property, i.e., parcel number 050-00-00-038.003, located in Adams County, Ohio, for tax year 2006. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the commissioner, the record of the hearing before this board (“H.R.”), and the parties’ briefs.

The appellant in this matter, Rural Health Collaborative of Southern Ohio, Inc. (“RHC”), is an organization made up of three health care providers¹ in the area, which holds title to the property and leases it to Dialysis Clinic, Inc. (“DCI”),

¹ RHC is made up of Adams County Regional Hospital, Highland District Hospital, and Health Source of Ohio. Brown County Hospital was formerly a member, but withdrew from the collaborative in 2010 when it became a for profit entity. H.R. at 14-15.



which operates a dialysis clinic there. RHC established the dialysis clinic to fill an unserved need for dialysis services in the Adams, Brown, and Highland County area; previously, the closest dialysis services were located an hour or more away, in Portsmouth, Cincinnati, and Columbus. RHC seeks exemption pursuant to R.C. 5709.12 and R.C. 5709.121. The Supreme Court recently explained these sections as follows: “[P]ursuant to R.C. 5709.12(B), any institution, charitable or noncharitable, may qualify for a tax exemption if it is making exclusive charitable use of its property. But if the property belongs to a charitable or educational institution, R.C. 5709.121 defines what constitutes exclusive use of property in order to be exempt from taxation.” *Cincinnati Community Kollel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, ¶23.

Relying heavily on the Supreme Court’s denial of exemption of a similar facility owned and operated by DCI, *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, the commissioner denied exemption of the subject property, finding that the property is not used for a charitable purpose because DCI’s indigent care policy “explicitly reserves the right to refuse to treat indigent patients.” Final Determination at 3. RHC thereafter appealed to this board. At this board’s hearing, RHC presented extensive testimony from individuals associated with RHC and DCI regarding the use of the property and DCI’s provision of charitable care.

In our review of this matter, we are mindful that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner’s determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

Although RHC makes arguments with regard to both R.C. 5709.12 and R.C. 5709.121, it primarily seeks exemption under R.C. 5709.121(A)(2), which requires that the property “(1) be under the direction or control of a charitable institution or state or political subdivision, (2) be otherwise made available ‘for use in furtherance of or incidental to’ the institution’s ‘charitable *** or public purposes,’ and (3) not be made available with a view to profit.” *Cincinnati Nature Center Assn. v. Bd. of Tax Appeals* (1976), 48 Ohio St.2d 122, 125. We first, therefore, determine whether RHC is a charitable institution. With regard thereto, *Planned Parenthood Assn. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus, provides “‘charity’ in the legal sense, is the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.”

The court in *Dialysis Clinic*, supra, explained that “[w]e have held that the determination of an owner’s status as a ‘charitable institution’ under R.C. 5709.121 requires a review of the ‘charitable activities of the taxpayer seeking the exemption.’ *Id.* at ¶27 (citing *OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 11 Ohio St.3d 198). Specific to an entity whose core activities involved the provision of a healthcare service, the court further explained that such institution would only qualify as “charitable” if it “provided service ‘on a nonprofit basis to those in need, without regard to race, creed, or ability to pay.’” *Id.* at ¶29 (citing *Church of God in N. Ohio v. Levin*, 124 Ohio St.3d 36, 2009-Ohio-5939, ¶19). However, it cautioned that “[a] threshold amount of unreimbursed care is not required.” *Id.* at ¶40.

In *Dialysis Clinic*, DCI sought exemption for a dialysis clinic it owned and operated. The court, in a four to three majority opinion, in affirming this board’s decision, found that DCI did not qualify as a “charitable institution” under R.C. 5709.121. The court noted that DCI based its argument almost solely on its status as a

federal tax exempt organization, and rejected that argument, as it has in the past. *Id.* at ¶25 (“DCI’s argument would conflate Ohio’s property-tax exemption with standards under federal law for tax-exempt charities.”), citing *NBC-USA Hous., Inc.-Five v. Levin*, 125 Ohio St.3d 394, 2010-Ohio-1553, ¶20. In looking to DCI’s activities, the court further found insufficient evidence of charitable activities. *Id.* at ¶14 (“*** DCI did not present a charity-care figure ***.”). The court further found that, consistent with its determination regarding DCI’s status as a “charitable institution,” its use of the property did not qualify as exclusive charitable use under R.C. 5709.12(B).

The parties disagree on the applicability of the court’s decision in *Dialysis Clinic* to the present matter. The appellee commissioner argues that the case “is indistinguishable from the present case,” Appellee’s Brief at 1. RHC, on the other hand, argues that the party in interest is different in this case, that RHC does not rely on its or DCI’s federal tax exempt status in establishing its charitable status, and that more evidence has been presented regarding the charitable use of the subject property. We agree with RHC – the focus in this matter is whether RHC is a charitable institution, not DCI. Notwithstanding the court’s repeated statement that proceedings related to previous tax years are not relevant to a separate tax year, see, e.g., *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, and the fact that a different entity (RHC) is seeking exemption in this matter, the record in the present case has substantially more evidence regarding RHC’s activities and purposes, and DCI’s activities at the subject property.

As explained by Kimberly Patton, CEO of Health Source of Ohio and RHC board member, at this board’s hearing, RHC was created to address the collective health needs of the area its members serve.² In addition to establishing the subject dialysis clinic, RHC has also filed applications for grants for tobacco cessation funding, pregnancy care and education, diabetes prevention and education, and

² RHC’s articles of incorporation provide that its purposes are: “(i) to enhance the quality, availability and efficiency of comprehensive health services for the people of southern Ohio by enabling and mobilizing community partnerships and resources; (ii) identifying and addressing healthcare needs which can be most effectively and efficiently responded to collectively (or ‘in a collective manner’); and (iii) supporting and furthering the missions of the member organizations.” H.R., Ex. 7 at 3.

managed care planning, and has jointly discussed addressing community health needs, such as opiate use, availability of rabies vaccines, and blood drives. In addition, RHC discussed the need for a dialysis clinic in the area, and established such a clinic at the subject property. And, indeed, our review of RHC's activities indicates that such actions are congruent with its purpose. The majority of the services facilitated by RHC's collaborative activities are made available to the community at large without charge. H.R. at 380-383. Accordingly, upon review of the record, we find that RHC is a charitable institution whose purpose is to benefit the community by providing improved health care. Cf. *Northeast Ohio Psych. Inst. v. Levin*, 121 Ohio St.3d 292, 2009-Ohio-583 (finding entity whose *sole* activity was leasing a building to another charitable entity was not a charitable institution).

Having found that RHC is a charitable institution, we next turn to a determination of whether the subject property is "made available under the direction or control of such institution *** for use in furtherance of its charitable *** purposes and not with a view to profit." As the court instructed in *Cincinnati Community Kollel*, supra, at ¶28, "the focus of the inquiry should be on the relationship between the actual use of the property and the purpose of the institution. See *Community Health Professionals, Inc. v. Levin*, 113 Ohio St.3d 432, 2007-Ohio-2336, ***." It is clear that the subject property is made available by RHC for use in furtherance of its purpose to improve the availability of health care in its three-county area, by providing dialysis services to a population that otherwise would not have such services available in the near proximity. Ms. Patton testified that RHC discussed the need for dialysis services in the area and ultimately determined that the best course of action would be for RHC to establish a facility and lease it to a dialysis operator.³

Further, the record demonstrates that the property is made available without a view to profit. RHC's financial statements indicate that the lease payments

³ Ms. Patton explained that the water requirements for a dialysis treatment center were specific and intensive, and, as such, an existing building was not available to house such activities. H.R. at 391. Andrew Mazon, DCI administrator for the subject clinic, further explained that the water filtration required for dialysis treatment requires "a huge filtration system." *Id.* at 193.

made by DCI to RHC exceeded the expenses of operating the building for most of the years 2006 through 2013.⁴ H.R., Ex. 11. With regard to DCI's activities on the property, i.e., providing dialysis treatment services, we initially note Ms. Patton's testimony that RHC interviewed three potential dialysis service providers, including DCI and two for profit entities, and the financial risk associated with operating a clinic in the Adams County area appears to have been the main reason one for profit provider would not operate there.⁵ H.R. at 390. We also note that RHC's lease with DCI was renegotiated twice because DCI was losing a "sizable amount of money operating the clinic ***;" and its financial situation had not improved several years later. Id. at 189-190. While the commissioner argues that DCI as a national organization does profit from its activities generally, it seems clear that its operation of the subject dialysis clinic is not a profitable enterprise. Its financials for the subject clinic indicate it has had an excess of expenses over revenues every year from 2006 to 2013. H.R., Ex. 15. Notably, a portion of those expenses relate to the write-off of care to patients who do not have adequate coverage through government or private insurers, and cannot independently pay their service balances. H.R., Ex. 14.

The commissioner further argues that DCI does not provide sufficient charitable care at the subject clinic, defined as "services being provided 'on a nonprofit basis to those in need, *without regard to race, creed, or ability to pay.*' (Emphasis added.) *Church of God in N. Ohio, Inc.* [, supra,] ¶19." *Dialysis Clinic*, supra, at ¶26. In *Bethesda Healthcare, Inc. v. Wilkins*, 101 Ohio St.3d 420, 2004-Ohio-1749, the Supreme Court held that "[w]hether an institution renders sufficient services to persons who are unable to afford them to be considered as making charitable use of the property must be determined on the totality of the circumstances; there is no absolute percentage." Id. at ¶39. The court, in *Dialysis Clinic*, supra, further explained that "[i]n the age of Medicare and Medicaid, the usual and ordinary indigent patient may have access to government benefits, and the modern healthcare provider is not

⁴ In 2009, the revenue from "dialysis operations" exceeded the expenses related thereto by \$9,862. H.R., Ex. 11.

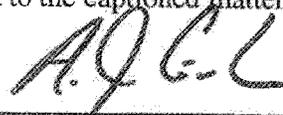
⁵ Ms. Patton further testified that Adams County is one of the top five poorest counties in Ohio, and that Brown and Highland counties are economically depressed. H.R. at 392.

required to forgo the pursuit of those benefits to qualify for charitable status.” Id. at ¶42.

The commissioner argues that the *Dialysis Clinic* court’s finding with regard to DCI’s indigence policy is definitive as to the charitable use of the subject property, which operates with the same policy. DCI’s policy states that, although DCI provides service without regard to a patient’s ability to pay, such indigence policy “is not a charity or gift to patients. DCI retains all rights to refuse to admit and treat a patient who has no ability to pay.” H.R., Ex. 6 at 2. Testimony elicited at this board’s hearing indicated that no patient has been denied services at the subject clinic because of an inability to pay. H.R. at 231-233. RHC provided a summary of patient records showing the amount of care “written off” during the years 2006 through 2013.⁶ H.R., Ex. 14. Upon review of the records presented, we find that, based on a totality of the circumstances, RHC has presented sufficient evidence of charitable care provided at the subject clinic. We further note that the evidence presented in this case differs from that presented in *Dialysis Clinic*, supra, where the court noted that “DCI did not present a charity care figure.” Id. at ¶14.

Based upon the foregoing, we find that appellant has sufficiently demonstrated its right to exemption pursuant to R.C. 5709.121(A)(2). Accordingly, the commissioner’s final determination is hereby reversed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

⁶ The information presented differentiates between “Medicare write-off” and “non-Medicare write-off.” Mr. Mazon testified that Medicare will reimburse a portion of write-offs on DCI’s annual cost report. H.R. at 246.

