

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Donald W. Stoyer,	:	
Appellant-Appellant,	:	No. 09AP-236
v.	:	(C.P.C. No. 08CVF08-11679)
Ohio Department of Job & Family Services,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on December 17, 2009

Donald W. Stoyer, pro se.

Richard Cordray, Attorney General, and Henry G. Appel, for appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Appellant, Donald W. Stoyer ("appellant"), appeals from a decision of the Franklin County Court of Common Pleas affirming a decision of the Ohio Department of Job and Family Services ("ODJFS"), which overruled appellant's food stamp appeal and found appellant had received the full amount of the benefits to which he was entitled. For the following reasons, we affirm.

{¶2} Appellant is a disabled veteran who receives supplemental security income ("SSI") benefits, a small veteran's pension, and food stamps. In January 2008, appellant received a cost-of-living increase in his SSI benefits. When combined with his veteran's

pension, appellant's unearned monthly income increased from \$910 to \$931. As a result of this increase in income, appellant's food stamp benefits decreased from \$52 per month to \$44 per month. Appellant objected to the decrease in his food stamp benefits and requested a hearing pursuant to R.C. 5101.35(B). That hearing was held on April 23, 2008 and was later the subject of a separate appeal filed by appellant before this court.¹

{¶3} In February 2008, the Franklin County Department of Job and Family Services ("FCDJFS") received verification of an increase in appellant's monthly rent. Appellant's monthly rent amount increased from \$350 to \$450. However, the increased rent amount was not included in the budget for calculating appellant's food stamp allotment of \$44 for March 2008.

{¶4} Shortly thereafter, based upon the increased rent expense, appellant's food stamp benefits were increased from \$44 per month to \$73 per month, beginning April 1, 2008. On May 20, 2008, appellant requested a state hearing regarding the calculation of his food stamp allotment for March 2008. On June 10, 2008, the state hearing was held. On that same date, FCDJFS issued a supplemental check in the amount of \$29, bringing the total food stamp benefit for March 2008 to \$73. On June 13, 2008, the hearing officer for ODJFS issued a decision overruling appellant's food stamp appeal, finding that there was no longer an underpayment, due to the issuance of the supplemental check, and that appellant had been issued the full amount of food stamps to which he was entitled.

¹ Appellant appealed the outcome of that state hearing via an administrative appeal, as well as an appeal to the court of common pleas. He then appealed to this court in case No. 08AP-1118. That appeal was dismissed as untimely. The appeal in the instant case relates specifically to claims made with respect to appellant's benefits for the month of March 2008.

{¶5} Appellant requested an administrative appeal of the state hearing decision. On July 14, 2008, the decision of the state hearing officer was affirmed. ODJFS found the food stamp budget was correctly calculated and that appellant had received all of the food stamps to which he was entitled for March 2008. Appellant next appealed to the Franklin County Court of Common Pleas, pursuant to R.C. 5101.35(E) and R.C. 119.12. The court of common pleas affirmed the decision of ODJFS, finding the statutory provisions of 7 U.S.C. 2014(d)(12) were properly interpreted. The court further found appellant's income was properly calculated and the decision was supported by reliable, probative, and substantial evidence and in accordance with law. Appellant now appeals to this court and presents four "unique questions in law," which we shall construe as assignments of error for our review:

1A. Did ODJFS and the state court *abuse its discretion* pursuant to O.R.C. § 111.15 § 119.032 in their interpretation of 7 U.S.C. § 2014 (d)(12) concerning "cost-of-living" adjustments, when in fact, these "cost-of-living" adjustments are exempt through the words of 'any increase of income attributed to cost-of-living adjustments made after July 1 through September 30' concerning any annual federal cost-of-living increase since cost-of-living adjustments that are applied for purposes of inflation pursuant to the 'Consumer Price Index' and should be exempt?

1B. Did ODJFS and the state court *abuse its discretion* pursuant to O.R.C. §111.15 §119.032 in their interpretation to its Ohio citizens through O.A.C. § 5101:4-7-03 since this code is applied through *discipline creating an abridgment through misinterpretation by ODJFS*, when in fact, *discipline or punishment* can not be applied to any United States Citizen without appropriate *due process of law* or *equal protection* standards being applied?

2A. Did ODJFS and the state court *abuse its discretion* pursuant to O.R.C. §111.15 §119.032 in their interpretation of 7 U.S.C. § 2014 concerning the 'federal poverty level,' when

in fact, the federal law definition of 'federal poverty line' is '*silent*' throughout the O.A.C. for all concerned Ohioans who are poverty stricken and who are below the federal poverty line minus expenditures and qualifying for a full food stamp entitlement?

2B. Did ODJFS and the state court *abuse its discretion* pursuant to O.R.C. § 111.15 § 119.032 in their interpretation of O.A.C. §§ 5101:4-6-19 (A)(5) due to the fact that disabled and elderly, are considered '*Categorical eligibility*' means AGs in which all members are recipients of SSI and are considered categorically eligible for the food stamp program. '*Categorical eligibility*' means the AG is not subject to the gross income test, the net income test, and is considered to meet the resource limit due to the receipt of SSI . . .

{¶6} In an administrative appeal, pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with the law. In applying this standard, the court must "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

{¶7} The Ohio Supreme Court has defined reliable, probative, and substantial evidence as follows:

(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St.3d 570, 571.

(Footnotes omitted.)

{¶8} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence.

Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn. (1992), 63 Ohio St.3d 705, 707. In reviewing the court of common pleas' determination that the board's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 680. Absent an abuse of discretion on the part of the trial court, a court of appeals cannot substitute its judgment for that of the board or the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157. However, on the question of whether the board's order was in accordance with the law, this court's review is plenary. *McGee v. Ohio State Bd. of Psychology* (1993), 82 Ohio App.3d 301, 305, citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343.

{¶19} We shall consider appellant's first and second "questions of law" together as his first assignment of error. Here, appellant challenges the amount of food stamps he received from FCDJFS for the month of March 2008. Appellant asserts he is entitled to \$205 in food stamp benefits for March 2008, rather than the \$73 allotment he actually received. He contends ODJFS improperly used the cost-of-living adjustment to his SSI in calculating his income and his food stamp allotment. Appellant argues that FCDJFS was not permitted to consider the cost-of-living increase he received in SSI benefits in January 2008 because of the income exclusions set forth in 7 U.S.C. 2014(d)(12). Appellant further submits that Ohio's mass application of these cost-of-living adjustments for

recipients of SSI, which consequently results in an automatic decrease in food stamp benefits, violates due process.

{¶10} The federal statute at issue, 7 U.S.C. 2014(d)(12), reads in relevant part as follows:

§ 2014. Eligible households

* * *

(d) Income excluded in computing household income. Household income for purposes of the food stamp program² shall include all income from whatever source excluding only * * * (12) through September 30 of any fiscal year, any increase in income attributable to a cost-of-living adjustment made on or after July 1 of such fiscal year under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq.) [42 USCS §§ 401 et seq. or 1381 et seq.], section 3(a)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)(1)), or section 3112 [5312] of title 38, United States Code, if the household was certified as eligible to participate in the food stamp program or received an allotment in the month immediately preceding the first month in which the adjustment was effect[.]

{¶11} Under this statute, an individual's food stamp allotment cannot be adjusted during the federal fiscal year as a result of a cost-of-living increase in social security benefits, if the increase occurs on or after July 1 of that fiscal year. A federal fiscal year runs from October 1 through September 30,³ so if the increase occurs after July 1, it cannot be used to re-calculate a food stamp allotment until after September 30 of that same fiscal year, which is the date when the fiscal year ends. Thus, the increased income would not count against the individual until the next fiscal year, which would begin on October 1. However, that is not the situation here.

² The food stamp program was re-named the "supplemental nutrition assistance program" on October 1, 2008.

³ See 31 U.S.C. 1102.

{¶12} In this case, the federal fiscal year at issue runs from October 1, 2007 through September 30, 2008. The cost-of-living increase in appellant's social security benefits occurred in January 2008. Under 7 U.S.C. 2014(d)(12), the increase in appellant's income is not excluded because the increase occurred *before* July 1, 2008. It would only be excluded if the increase occurred *on or after* July 1, 2008, and then, it would only be excluded through September 30, 2008.

{¶13} Appellant's argument that no cost-of-living adjustment can ever be included as income because January 2008 will always occur after July 2007 is flawed, as his interpretation of the provision at issue is incorrect. Furthermore, if the legislature had wanted to exclude cost-of-living adjustments indefinitely without a time limit, it easily could have done so. However, it specifically included a time limit to exclude those increases only if they occurred on or after July 1 and then, only through September 30. Therefore, the calculation of appellant's food stamp benefit, based upon his increased SSI benefit, is appropriate as determined by FCDJFS and ODJFS, as it does not violate 7 U.S.C. 2014(d)(12) and is in accordance with law.

{¶14} Food stamp benefits are a statutory entitlement for persons who are qualified to receive them and are thus treated as a form of property in which a recipient has an interest. *Atkins v. Parker* (1985), 472 U.S. 115, 128, 105 S.Ct. 2520, 2528. Appellant argues that Ohio Adm.Code 5101:4-7-03, the Ohio provision which also permits adjustments to food stamp benefits based upon periodic cost-of-living adjustments to SSI benefits, is actually a punishment imposed upon SSI recipients without due process of law. While appellant appears to be making a procedural due process claim, we find he fails to submit any basis for this claim.

{¶15} Ohio Adm.Code 5101:4-7-03 permits counties to make mid-year adjustments to food stamp allotments for certain changes in eligibility and benefit criteria, such as adjustments to SSI. This provision recognizes that certain changes initiated by the state or federal government may affect an entire caseload or a significant portion of a caseload. Notably, there is nothing within this provision which violates the income exclusion restrictions set forth by the federal statute under 7 U.S.C. 2014(d)(12).

{¶16} Appellant does not assert how or why his due process rights have been violated by the provisions contained in Ohio Adm.Code 5101:4-7-03, other than to contend that he is being punished for receiving an increase in his income. Appellant has not argued how he was denied due process, nor has he pointed to any additional procedural safeguards which should have been provided in order to better protect his property interest. See *Caswell v. City of Detroit Housing Comm.* (C.A., 6 2005), 418 F.3d 615, 621 (procedural due process claim rejected where, instead of pointing to a procedural flaw in his hearing, appellant claimed he was improperly denied his property interest, despite having received process). See also *Matthews v. Eldridge* (1976), 424 U.S. 319, 335, 96 S.Ct. 893, 903 (identification of due process requires consideration of three factors: (1) the private interest that will be affected; (2) the risk of an erroneous deprivation and the probable value of additional or substitute procedural safeguards, if any; and (3) the government's interest, including the fiscal and administrative burdens).

{¶17} Appellant simply seems to claim that he is in disagreement with the policy reasons for allowing states to adjust food stamp benefits during the fiscal year in order to account for increases in SSI benefits. He fails to explain how the procedure for decreasing food stamp benefits as a result of an increase in income violates due process,

particularly when the purpose behind the food stamp program is to provide nutritional assistance based upon income and to target benefits to the neediest households.

{¶18} Furthermore, we note that in challenging his food stamp benefits, appellant has received a state hearing, an administrative appeal, and an appeal to the court of common pleas, as well as the instant appeal.

{¶19} For these reasons, we overrule appellant's first assignment of error.

{¶20} We shall consider appellant's third and fourth "questions of law" as his second assignment of error. In this assignment of error, appellant challenges the interpretations of both 7 U.S.C. 2014, with respect to the "federal poverty level," and Ohio Adm.Code 5101:4-6-19(A)(5), regarding "categorical eligibility" and the application of the gross income test and net income test.

{¶21} Appellant seems to argue that ODJFS failed to properly apply the "federal poverty level" standard and/or that ODJFS incorrectly applied the "net income test" in determining his food stamp benefits. Specifically, appellant argues ODJFS and FCDJFS should use the federal poverty level standard to determine food stamp benefits because that standard is referenced in 7 U.S.C. 2014. Appellant contends he falls below the federal poverty line with respect to his unearned income.

{¶22} Furthermore, appellant argues he is "categorically eligible" for food stamps as an SSI recipient, pursuant to Ohio Adm.Code 5101:4-6-19, and therefore he is considered to meet the resource limit requirements without applying the net income test. He argues FCDJFS and ODJFS improperly used the net income test regarding his food stamp benefits, as the net income test does not apply to individuals who receive SSI benefits.

{¶23} We agree that appellant is "categorically eligible" for food stamp benefits. However, we disagree with appellant's contention that the net income test was incorrectly applied or that the federal poverty level standard should be used to determine his benefits, based upon the clear language used in the applicable provisions.

{¶24} Under Ohio Adm.Code 5101:4-6-19(A)(5), "categorical eligibility" means that an individual or assistance group is not subject to either the gross income test or the net income test. Instead, under a "categorical eligibility" classification, the individual or assistance group is considered to automatically meet the resource limits imposed for food stamps as a result of the receipt of SSI benefits. Appellant clearly fits into this classification.

{¶25} However, the classification, which dispels with the need to use the net income test, only applies to appellant's *eligibility to participate* in the food stamp program. Eligibility for the program is only the first step. After certification for the program, the monthly *food stamp benefit* must be calculated. The net income test must be applied to calculate the amount, or allotment, of food stamps for which appellant qualifies, pursuant to Ohio Adm.Code 5101:4-5-01. FCDJFS and ODJFS determined appellant's food stamp allotment pursuant to the criteria set forth in this provision as required. There is no applicable federal or state provision which dispels with the requirement to apply the net income test to determine appellant's *food stamp allotment*. Nor is there a provision which automatically qualifies appellant for the maximum allotment of food stamps without applying the net income test based upon status as an SSI recipient. Thus, appellant's income was properly calculated.

{¶26} Furthermore, the federal poverty level standard set forth in the federal provision in 7 U.S.C. 2014(c) also applies to the determination of an applicant's *eligibility to participate* in the food stamp program. Because appellant is categorically eligible to participate, the standard is not applicable to him. Moreover, because he is already eligible to participate, he cannot challenge the use or non-use of these standards for determining eligibility, as he has not been injured and lacks standing to raise those particular challenges. See *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469-70, 1999-Ohio-123 (to have standing, the litigant must show he has suffered or is threatened with a direct and concrete injury that is different from the injury suffered by the general public, that the law in question has caused the injury, and that the relief requested will redress the injury).

{¶27} For the reasons cited above, we overrule appellant's second assignment of error.

{¶28} We find no abuse of discretion on the part of the court of common pleas in finding that appellant's income was properly calculated and in determining the decision of ODJFS was supported by reliable, probative, and substantial evidence and in accordance with law. Accordingly, appellant's first and second assignments of error are overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.
