

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: August 7, 2014)

ELMER GARDINER

V.

RHODE ISLAND DEPARTMENT OF  
HUMAN SERVICES

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C.A. No. KC-2013-1301

**DECISION**

**TAFT-CARTER, J.** Before the Court is the appeal of Elmer Gardiner (Appellant) from a November 19, 2013 decision of the Rhode Island Department of Human Services (DHS) denying his application to the Medicare Premium Payment Program (MPPP). The Appellant filed a timely appeal to this Court on December 13, 2013. Jurisdiction of this appeal is pursuant to G.L. 1956 § 42-35-15.

**I**

**Facts and Travel**

In May 2013, Appellant applied for MPPP. (Admin. Hr’g Dec. at 2; Tr. at 3, Sept. 12, 2013.) The application was reviewed by a Casework Supervisor and an Eligibility Technician. (Admin. Hr’g Dec. at 2; Tr. 3-4.) It was determined that the Appellant’s gross monthly income was \$1312.90. (Admin. Hr’g Dec. at 2; Tr. at 4.) The figure was automatically rounded to \$1313 by the computer. Id. An unearned income disregard in the amount of \$20 was then deducted from the Appellant’s income leaving a monthly net income of \$1293. Id. The guidelines provide that the eligible income threshold is \$1292.63. Id. The Appellant’s ineligibility was based on a \$0.37 overage. Id.

DHS mailed a notice of ineligibility to the Appellant on June 4, 2013. (Admin. Hr'g Dec. at 2; Tr. at 3.) The ineligibility was based on excessive income as determined by § 0372.05 of the Rhode Island Department of Human Services Manual (hereinafter DHS Manual). Id. The Appellant's ineligibility was also confirmed by a separate offline calculation. (Admin. Hr'g Dec. at 2; Tr. at 12.)

On June 12, 2013, the Appellant requested an administrative hearing concerning the denial of his application. (Admin. Hr'g Dec. at 4.) A hearing was held on September 12, 2013, at which the Appellant appeared. (Tr. at 1-2.) Representatives from the George Wiley Center and the Senior Agenda Coalition also attended on behalf of the Appellant. (Tr. at 2.) Additionally, a Casework Supervisor and Eligibility Technician for DHS were present on behalf of the agency. (Tr. at 2.)

At the hearing, the Appellant testified regarding to his monthly income. He provided two bank statements as evidence of the monthly Social Security deposits totaling \$1208. (Admin. Hr'g Dec. at 2; Tr. at 6.) The Appellant argued that the monthly deposit of \$1208 is the net amount after a reduction for Medicare Part B premium in the amount of \$104.90. (Admin. Hr'g Dec. at 2; Tr. at 7.) The Appellant did concede, however, that his gross monthly Social Security benefit totals \$1312.90. (Admin. Hr'g Dec. at 2-4; Tr. at 7.) During the hearing, the Appellant also argued that Medicare rules provide for eligibility if his income totals \$1313 or less a month. Id. In support of this proposition, the Appellant submitted two internet printouts from Medicare.gov and the National Council on Aging. Accordingly, Appellant concluded that his assets are within the income guidelines; therefore, he is eligible for MPPP. (Admin. Hr'g Dec. at 2; Tr. at 7-8.)

Next, the representative from the George Wiley Center testified on behalf of the Appellant concerning the income eligibility determinations made by DHS. (Tr. at 13-16.) Specifically, the representative questioned the fact that the computer adjusted the figures up rather than down. (Tr. 13-14.) The representative conceded that, even without the adjustment, Appellant's income did not meet the eligibility standard. (Tr. at 13.) The representative also discussed the agency's practice of subtracting \$20 as an unearned income disregard from an applicant's gross monthly income. (Tr. 14-16.) Finally, the representative asked which agency was in charge of setting the income eligibility figures. (Tr. at 16.) The hearing officer informed the representative that it is the Social Security Administration that is in charge of the eligibility guidelines and computer program. (Tr. at 16.)

In addition, the representative from the Senior Agenda Coalition testified. (Tr. at 18.) The representative questioned whether DHS had discretion when making the eligibility determination. Id. Specifically, the representative asked if DHS can consider an applicant's need for the benefits or how much his or her income is above the income guidelines when making an eligibility determination. (Tr. at 18-19.) The hearing officer explained that eligibility determinations are made solely based upon the federal guidelines; therefore, DHS has no discretion to make an exception for an applicant whose income is only several cents over the limit. (Tr. at 20.)

On behalf of DHS, two representatives provided testimony. First, a DHS Eligibility Technician confirmed that the Appellant was ineligible. (Tr. at 4-5.) She explained that DHS received the Appellant's MPPP application on May 15, 2013, and income verification was conducted through the Social Security Administration. (Tr. at 3-4.) When it was complete, the income of \$1312.90 was automatically adjusted to \$1313. (Tr. at 4.) Thereafter, the Appellant's

income was reduced by \$20. Id. The reduction represented the unearned income disregard. Id. The end result was net income allocated to the Appellant in the amount of \$1293. Id. The Eligibility Technician testified that eligibility for MPPP is \$1292.63. Id. The Appellant's application was denied because his monthly income exceeded the guidelines. (Tr. at 4-5.) Finally, the Eligibility Technician explained that he performed an offline calculation of Appellant's income and verified that he was ineligible for MPPP. (Tr. at 12.)

Next, the DHS Casework Supervisor explained that her duty is to review the Eligibility Technicians' work. (Tr. at 6.) The Casework Supervisor testified that the income limits are set federally by the Social Security Administration. (Tr. at 14.) The State has no authority to change the income limits. Id. Further, she explained how and why the \$20 unearned income disregard is subtracted from an applicant's gross monthly income to determine his or her countable net income for eligibility purposes. (Tr. at 15-16.) The Casework Supervisor also stated that she performed an offline calculation of Appellant's income and confirmed that he was ineligible for MPPP because his income exceeded the guideline limit. (Tr. at 17.)

On November 19, 2013, after hearing the testimony and reviewing the evidence submitted, the hearing officer issued his decision. (Admin. Hr'g Dec. at 1.) The hearing officer affirmed the DHS decision denying the Appellant's MPPP application. (Admin. Hr'g Dec. at 4.) In reaching this conclusion, the hearing officer made a finding of fact that the Appellant's gross monthly Retirement, Survivors, and Disability Insurance (RSDI) benefit was \$1312.90. Id. The hearing officer noted that DHS Policy § 0372.05.15 provides that countable income is determined using Social Security Income-related (SSI) methodology and a QI-1 is an individual who has countable income greater than 120% of the Federal Poverty Level and less than 135% of the Federal Poverty Level. (Admin. Hr'g Dec. at 4-5.) Further, the hearing officer found that

DHS Policy § 0364.05.10 provides that the first \$20 per month of unearned income is deducted from the total countable income. (Admin. Hr’g Dec. at 4.) Accordingly, the hearing officer subtracted \$20 from Appellant’s gross monthly RSDI income of \$1312.90 to find that Appellant’s net countable income is \$1292.90. (Admin. Hr’g Dec. at 5.) The hearing officer stated that, as indicated by DHS policy, 135% of the Federal Poverty Level is \$1292.63. Id. Since Appellant’s net countable income of \$1292.90 exceeds the income limit, the decision of DHS denying MPPP benefits was affirmed. Id. This instant appeal followed.

## II

### Standard of Review

The Superior Court’s review of a DHS decision is governed by the Administrative Procedures Act (the APA), §§ 42-35-1, et seq. The applicable standard of review is codified as follows:

“[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the agency;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error or law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 42-35-15(g).

The Superior Court’s review is essentially “an extension of the administrative process.” R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994). “In essence, if ‘competent evidence exists in the record, the Superior Court is required to uphold

the agency's conclusions.” Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth., 650 A.2d at 485). Accordingly, this Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007); Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is “some or any evidence supporting the agency's findings.” Auto Body Ass'n of R.I., 996 A.2d at 95 (quoting Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)).

This Court reviews questions of law *de novo*. Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977). Questions of law decided by an administrative agency are not binding upon this Court and may be reviewed to determine what the law is and its applicability to the facts. Id. at 1. “When a statute is clear and unambiguous we are bound to ascribe the plain and ordinary meaning of the words of the statute . . . .” Town of Burrillville v. Pascoag Apartment Assocs., 950 A.2d 435, 445 (R.I. 2008) (quoting Unistrut Corp. v. State Dep't of Labor and Training, 922 A.2d 93, 98 (R.I. 2007)). However, the Court will defer to an agency's interpretation of an ambiguous statute “whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied.” Auto Body Ass'n of R.I., 996 A.2d at 97 (omission in original) (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)). The Court will not defer to an agency's statutory interpretation if it is “clearly erroneous or unauthorized.” Id. (quoting Unistrut Corp., 922 A.2d at 99).

### **III**

#### **Analysis**

##### **A**

##### **The Department of Human Services**

DHS is an agency within the executive branch of state government that is responsible for the management, supervision and control of social service programs, including medical assistance programs. Sec. 42-12-1, et seq. Pursuant to § 42-12-4, DHS is responsible for the management of federally and state funded public assistance programs; however, in order to receive federal funding, DHS's rules and regulations must comport with the provisions of Title XIX of the federal Social Security Act. 42 U.S.C. § 1396; G.L. 1956 § 40-8-13.

The MPPP's stated purpose is to "help elders 65 and older (and adults with disabilities) pay all or some of the costs of Medicare Part A and Part B premiums, deductibles and co-payments." DHS Manual § 0372.05. "A person's income and resource determine which type of Medicare premium assistance is available." Id. With respect to an applicant's countable income, DHS Policy § 0372.05.35.10 provides that the income limits for the MPPP benefits should be determined based on the Federal Poverty Level (FPL) Guidelines. Pursuant to DHS Policy § 0372.05, to be eligible for benefits as a Qualifying Individual (QI-1), the applicant's income must be "greater than one hundred twenty (120%) FPL and less than one hundred thirty five (135%) percent FPL." Id. DHS Policy § 0362.05 provides that the 135% FPL income limit for a qualified individual is \$1292.63.

## **B**

### **Review of the Decision**

#### **1**

#### **Determining Eligibility Under the MPPP**

Appellant is prosecuting the instant appeal as a self-representing litigant. It is well established that courts should read the pleadings of self-represented litigants liberally in order to extract the essence of their arguments. See Bryant v. Wall, 896 A.2d 704, 709 (R.I. 2006); Catelli v. Fleetwood, 842 A.2d 1078, 1081 (R.I. 2004). In looking to the essence of Appellant's appeal, he is arguing that the hearing officer's decision and findings were clearly erroneous as they were based on untrustworthy evidence and ignored reliable and relevant evidence. As such, the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In support of the argument, the Appellant sets forth two propositions. First, he argues that DHS should use the federal government's eligibility guidelines for MPPP rather than the state requirements. Appellant contends that if the federal guidelines are used for eligibility determinations, he would be eligible. The eligibility would be based on a monthly income ceiling of \$1313. In response, DHS contends that the federal government's eligibility requirements are followed when determining whether an individual qualifies for MPPP. Specifically, DHS argues that, pursuant to the federal authority of Title XIX, the state is required to follow the methodology of the federal SSI program when determining the income standard for potentially qualified individuals.

DHS Policy § 0372.05.35.10 provides that the income limits utilized for MPPP eligibility determinations should be calculated based on the FPL Guidelines. Pursuant to DHS Policy § 0372.05, to be eligible for benefits as a Qualifying Individual (QI-1), the applicant's income



must be “greater than one hundred twenty (120%) FPL and less than one hundred thirty five (135%) percent FPL.” DHS Manual § 0372.05. DHS Policy § 0362.05 provides that the 135% FPL income limit for an individual in 2013 was \$1292.63. Therefore, to be eligible for MPPP, Appellant’s monthly countable income had to be less than \$1292.63.

At the hearing, the Appellant submitted two internet printouts from Medicare.gov and the National Council on Aging that indicate the income eligibility level for MPPP is \$1313. The DHS Casework Supervisor testified that the documents submitted by the Appellant, indicating that individuals with total monthly income less than \$1313 were eligible for MPPP, were not produced by the State of Rhode Island. (Tr. at 11.) Furthermore, the witness confirmed that the Social Security Administration set the income limit based upon the FPL Guidelines, which the agency used in finding the Appellant ineligible. (Tr. at 14.)

The Court will not “substitute its judgment” in regard to the credibility of witnesses or the weight of the evidence concerning questions of fact. Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). An administrative decision can be vacated, however, if it is “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Newport Shipyard, Inc. v. R.I. Comm’n for Human Rights, et al., 484 A.2d 893, 897 (R.I. 1984) (citation omitted).

Upon review of the whole record, it is the Court’s conclusion that it contains reliable, substantial, and probative evidence which supports the conclusion of the hearing officer. The findings of fact and conclusions clearly indicate that the hearing officer assessed the credibility and weighed the evidence. Therefore, this Court finds that the hearing officer did not err when ruling that DHS used the federal guidelines when determining Appellant was ineligible for MPPP. The hearing officer relied upon the Casework Supervisor’s testimony that DHS is

mandated to follow the FPL Guidelines when determining whether an individual is eligible for MPPP. (Admin. Hr’g Dec. at 4; Tr. At 14.) The testimony crystallized that DHS possesses no discretion or authority to change the income limits or deviate therefrom. (Tr. at 14.); see also Warren v. North Carolina Dep’t. of Human Res., Div. of Soc. Servs., 65 F.3d 385, 391 (4th Cir. 1995) (indicating that equity should not be applied to an agency’s eligibility guidelines). Accordingly, this Court finds that the hearing officer’s decision was supported by the reliable, substantial, and probative evidence on the record and was not clearly erroneous, arbitrary or capricious, made upon unlawful procedure, in excess of statutory authority, or an abuse of discretion.

## 2

### **Computer-Based Calculations**

The Appellant argues next that DHS should not utilize computer-based calculations to determine eligibility because they are untrustworthy and not reliable evidence. Appellant challenges the agency’s practice of automatically adjusting an applicant’s income to the nearest dollar. DHS counters that their computer-based eligibility calculations follow the federal guidelines; therefore, they are permitted. In addition, DHS avers that an offline calculation of Appellant’s net countable income was performed that confirmed Appellant was ineligible for MPPP.

An administrative agency’s calculation of an applicant’s income and resources is entitled to deference. Himes v. Sullivan, 779 F. Supp. 258, 264-65 (W.D.N.Y. 1991). “A presumption of validity attaches to the actions of administrative agencies.” Alabama Nursing Home Ass’n v. Harris, 617 F.2d 388, 393 (5th Cir. 1980) (citations omitted). “While the presumption is rebuttable, \* \* \* the burden of proof rests with the party challenging the agency’s action.” Id. In

the context of eligibility determinations, an administrative agency's calculation of income and resources available to an applicant is entitled to deference unless it conflicts with unambiguous congressional intent or is clearly impermissible. Himes, 779 F. Supp. at 264-65. Here, the DHS Eligibility Technician explained that she verified the Appellant's monthly income through the Social Security Administration. (Tr. at 3-4.) The agency's computer system automatically adjusted the Appellant's income up from \$1312.90 to \$1313. (Tr. at 4.) From that figure, \$20 was subtracted as an unearned income disregard resulting in a total countable income of \$1293. (Tr. at 4.) The Eligibility Technician stated that the income limit to be eligible for MPPP as a qualifying individual is \$1292.63. (Tr. at 4.) Since the Appellant's monthly income exceeded that figure, his application was denied. (Tr. at 4-5.) In addition, the Eligibility Technician performed an offline calculation of Appellant's income and verified that he was ineligible for MPPP. (Tr. at 12.) Similarly, the Casework Supervisor performed an offline calculation of Appellant's income and confirmed that he was ineligible for MPPP because his income exceeded the guideline limit. (Tr. at 17.) The hearing officer, in his decision, made a finding of fact that the Appellant's gross monthly RSDI benefit was \$1312.90. (Admin. Hr'g Dec. at 4.) These findings of fact were based upon the reliable and probative evidence presented. The hearing officer performed the calculations to arrive at the Appellant's net income. (Admin. Hr'g Dec. at 5.) The hearing officer reviewed the requisite Federal Poverty Level as indicated by DHS policy. Id. He then found the Appellant's net income to be \$1292.90. Id. This exceeded the eligibility, and thus, the DHS decision denying MPPP benefits was affirmed. Id.

Upon review of the whole record, it is the Court's conclusion that the hearing officer's decision was based upon substantial, reliable, and probative evidence. Accordingly, this Court finds that the hearing officer's conclusions were supported by the evidence and were not clearly

erroneous, arbitrary or capricious, made upon unlawful procedure, in excess of statutory authority, or an abuse of discretion.

#### **IV**

#### **CONCLUSION**

After review of the entire record, this Court finds that the agency's decision was supported by the reliable, substantial, and probative evidence on the record and was not clearly erroneous, arbitrary or capricious, made upon unlawful procedure, in excess of statutory authority, or an abuse of discretion. Substantial rights of the Appellant have not been prejudiced. Accordingly, the November 19, 2013 decision by the DHS, which affirmed the initial DHS decision denying MPPP to him, is affirmed. Appellant's appeal is therefore dismissed.

Counsel shall submit the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**CASE NO:** KC-2013-1301

**COURT:** Kent County Superior Court

**DATE DECISION FILED:** August 7, 2014

**JUSTICE/MAGISTRATE:** Taft-Carter, J.

**ATTORNEYS:**

For Plaintiff: Elmer Gardiner, pro se

For Defendant: Gail A. Theriault, Esq.