IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dale Creely, Petitioner	:	
v.	:	
Pennsylvania Housing Finance Agency, Respondent	:	No. 2212 C.D. 2010 Submitted: March 4, 2011

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: April 6, 2011

Dale Creely (Creely) petitions for review of the August 17, 2010 decision of the Pennsylvania Housing Finance Agency (PHFA) hearing examiner affirming the May 5, 2010 decision of the Homeowners' Emergency Mortgage Assistance Program (HEMAP) denying Creely's mortgage assistance loan (loan). The issue before this Court is whether there is substantial evidence to support PHFA's denial of Creely's loan on the basis that Creely's delinquency was not beyond his control and/or that there was no reasonable prospect of Creely resuming full mortgage payments within 36 months and paying the mortgage by maturity. For the reasons that follow, we affirm the decision of the PHFA hearing examiner.

In February of 2007, Creely and his wife refinanced their mortgage with Beneficial Consumer Discount Company (Beneficial) through its servicer, HSBC Consumer Lending (HSBC), in the amount of $198,088.00 with an interest rate of 10% and a monthly payment of $1,738.95. As of March 31, 2010, Creely was seven months behind on his mortgage payments for a total of $12,172.65, plus $521.64 in late fees.

Creely and his wife were employed by the Pizza Outlet as a delivery person and a cook, respectively, from August of 1996 through September of 2009.[1] According to the HEMAP loan application, Creely's gross monthly pay was $2,167.00, plus $1,500.00 in tips. His wife's gross monthly pay was $465.00. Creely quit working for the Pizza Outlet for health reasons, and his wife quit to take care of him. According to the couple's federal tax returns, their annual income from 2006 through 2009 was as follows: 2006 - $15,500.00, 2007 - $14,320.00, 2008 - $4,200.00, and 2009 - $6,275.00. After leaving the Pizza Outlet, neither was able to collect unemployment compensation, but Creely applied for and is now receiving Social Security Disability (SSD) in the amount of $1,704.00 per month and Supplemental Security Income (SSI) in the amount of $642.00 per month, and food stamps. The couple's monthly expenses totaled approximately $2,942.95 at the time of the hearing.

On January 21, 2010, Beneficial notified Creely that the mortgage was in default because payments had not been made on the account. Creely met with a consumer credit counseling agency in February of 2010 to prepare an application for a PHFA HEMAP loan. On May 5, 2010, PHFA notified Creely that his application had been denied because Creely was not suffering financial hardship due to circumstances beyond his control, and there was no reasonable prospect that he could resume full mortgage payments within 36 months of the mortgage delinquency and pay the mortgage by the maturity date. Creely appealed the denial, and a hearing was held on June 22, 2010 before a hearing examiner. On August 17, 2010, the hearing

[1] Creely's testimony indicates that he worked until December of 2009. Supplemental Reproduced Record at 16.

examiner issued a decision affirming PHFA's denial of Creely's HEMAP loan application on the basis that Creely's financial hardship was due to overextension, which was not a circumstance beyond his control, and that there was no reasonable prospect that he could resume full payments within 36 months. Creely appealed, pro se, to this Court.[2]

Creely argues that the hearing officer's decision is not supported by substantial evidence because he was able to make his mortgage payments before his health problems caused him to quit his job. We disagree.

"Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Cullins v. Pennsylvania Hous. Fin. Agency*, 623 A.2d 951, 953 (Pa. Cmwlth. 1993). Section 404-C(a) of the Housing Finance Agency Law (Law)[3] provides in relevant part:

> No assistance may be made with respect to a mortgage or mortgagor under this article unless all of the following are established:
>
> . . . .
>
> (4) The mortgagor is a permanent resident of this Commonwealth and *is suffering financial hardship due to circumstances beyond the mortgagor's control* which render the mortgagor unable to correct the delinquency or delinquencies within a reasonable time and make full mortgage payments.
>
> (5) The agency has determined that there is a reasonable prospect that the mortgagor will be able to resume full

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[2] This Court's "review is limited to whether constitutional rights were violated, an error of law committed, or the findings of fact are not supported by substantial evidence." *Fish v. Pennsylvania Hous. Fin. Agency*, 931 A.2d 764, 767 n.3 (Pa. Cmwlth. 2007).

[3] Act of December 3, 1959, P.L. 1688, *as amended*, added by Section 2 of the Act of December 23, 1983, P.L. 385, 35 P.S. § 1680.404c(a).

> mortgage payments within twenty-four (24) months[4] after the beginning of the period for which assistance payments are provided under this article and pay the mortgage or mortgages in full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for completing mortgage payments.

35 P.S. § 1608.404c(a) (emphasis added).

First, "in order to determine whether the financial hardship is due to circumstances beyond the mortgagor's control, the agency may consider information regarding the mortgagor's employment record, credit history and current income." 35 P.S. § 1680.404c(a)(10). According to PHFA's regulations, "[e]xpenses related to . . . illness in the homeowner's household . . . which reduce the amount of household income" is an example of a circumstance beyond the mortgagor's control. 12 Pa. Code § 31.205(b)(6). However, the regulations also state that "[w]hen the homeowner's financial hardship [is] a result of money mismanagement or an over extension of credit to the homeowner," the mortgagor's circumstances are not beyond his control. 12 Pa. Code § 31.205(c)(4).

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[4] The hearing examiner's decision was based on a determination that, *inter alia*, Creely could not resume full mortgage payments within *36 months* of the mortgage delinquency, even though Section 404c(a)(5) of the Law, 35 P.S. § 1680.404c(a)(5), provides for only a 24-month period because Section 405c(f.1) of the Law provides:

> The twenty-four (24) month limit on assistance available under this act established in subsection (f) and referenced in sections 401-C(a)(5), 403-C(f) and 404-C(a)(5) and (12)[, 35 P.S. §§ 1680.401c, 1680.403c and 1680.404c,] shall increase to thirty-six (36) months if during the month the homeowner submits an application for assistance the average rate of total unemployment in the Commonwealth, as seasonally adjusted, for the period consisting of the most recent three (3) months for which such data for the Commonwealth is published before the close of such month equals or exceeds six and one-half (6.5) percent.

35 P.S. § 1680.405c(f.1), added by Section 4 of the Act of December 21, 1998, P.L. 1258.

The record reflects that Creely and his wife refinanced their mortgage in February of 2007 for $198,088.43, including $172,000.00 to pay off the original mortgage, $15,500.00 for home improvements, $500.00 to pay off a car loan, and $10,088.43 for closing costs. Supplemental Reproduced Record (S.R.R.) at 35. Creely's health problems started around September of 2009. S.R.R. at 27. According to the HEMAP loan application, Creely's monthly housing and living expenses were approximately $4,370.00, and his and his wife's monthly income totaled approximately $4,132.00. S.R.R. at 33-34. The Creely's federal joint income tax returns, however, showed income of less than $16,000.00 per year from 2006 - 2009 (i.e., 2006 - $15,500.00, 2007 - $14,320.00, 2008 - $4,200.00, and 2009 - $6,275.00). S.R.R. at 28. Currently, Creely is eligible for monthly benefits of approximately $1,704.00 for SSD, $642.00 for SSI, and $195.00 for food stamps, and has monthly expenses totaling approximately $2,942.95. S.R.R. at 17, 29. Clearly, Creely was financially overextended before he started experiencing health problems in 2009, and his financial hardship was not caused by expenses related to these problems. Therefore, it was reasonable for the PHFA to conclude that his financial hardships were not due to circumstances beyond his control.

Concerning their ability to resume full payments and pay off the mortgage and pay the mortgage at maturity, Creely's 2006 – 2009 federal tax returns indicated a household income of less than $16,000.00 per year even before both Creely and his wife quit their jobs. There is no testimony or evidence which explains the discrepancy between the wages Creely indicated on his HEMAP loan application and income reported on his federal tax returns. As stated previously, Creely is eligible for monthly disability income and public assistance. In addition, Creely testified that he and his wife were hoping to find employment after another surgery on his back, if it was successful. S.R.R. at 18-19. There is no evidence that either

Creely or his wife are actively seeking employment. This Court has held that "the [PHFA] cannot base its determination on speculative income." *Cullins*, 623 A.2d at 954. Therefore, it was reasonable for PHFA to determine that there was no reasonable prospect of Creely resuming full mortgage payments within 36 months and paying the mortgage by maturity in light of his federal tax returns, current disability income/public assistance and continued unemployment.

Because the hearing examiner's findings are supported by substantial evidence, the decision of the PHFA hearing examiner is affirmed.

JOHNNY J. BUTLER, Judge

Judge Leavitt did not participate in the decision in this case.

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Respondent	:	

O R D E R

AND NOW, this 6th day of April, 2011, the August 17, 2010 decision of the Pennsylvania Housing Finance Agency hearing examiner is affirmed.

JOHNNY J. BUTLER, Judge