

401K plan and family and friends, and they used credit cards and personal loans to maintain their mortgage payments. In December 2009, Petitioners also filed a Chapter 7 bankruptcy petition to discharge approximately \$162,291 in unsecured debt. The bankruptcy was discharged in May 2010.

In May 2010, Petitioners were notified that the Chase Home Finance mortgage was in default as of December 2009. On June 25, 2010, Petitioners filed an application with the PHFA for an emergency mortgage assistance loan, which was denied. At the time of application, Petitioners' average net monthly income was \$4,489, and their monthly expenses totaled \$6,956.

Petitioners requested an appeal hearing, which was held on September 14, 2010. Joan O'Farrow testified that, because her business is seasonal, most of the profit income is generated between the months of October and December. (N.T., 9/14/10, at 5.)¹ Joan further testified that her twenty-four-year-old son Craig, who lives with Petitioners, contributes \$500 per month toward the household expenses and would soon be contributing \$600 per month. (*Id.* at 6.) Joan also testified that her thirty-one-year-old son Derek, who lives in New York City, contributes \$800 per month toward the household expenses. (*Id.*) However, after Derek and his fiancée marry in 2012, they plan to move to Pennsylvania, live with Petitioners, and pay more than three-quarters of the mortgage. (*Id.* at 6-7, 11-12.)

The hearing examiner affirmed the denial of Petitioners' application, finding that:

¹ At the time of the hearing, Joan's actual income could not be verified because Petitioners had not yet filed their 2010 federal income tax returns.

[a] review of the verifiable household income, . . . exhibits that the applicants generated an average net monthly income of \$3,794 in 2007, \$2,291 in 2008 and \$2,170 in 2009. The monthly expenses totaled \$6,956 at application which exceeded the average net monthly income as derived from the federal income tax returns on record for the past three years. The total monthly housing expense alone (mortgage payments, real estate taxes, hazard insurance and utilities) of \$3,301 at application reflected 87% of the average net monthly income in 2007 and exceeded the average net monthly income in 2008 and 2009.

(PHFA's Decision, 9/27/10, at 5.) Therefore, the hearing examiner concluded that there was no reasonable prospect that Petitioners would resume full mortgage payments within thirty-six months of the delinquency and pay the mortgages by maturity, thus rendering them ineligible for assistance under section 404-C(a)(5) of the Housing Finance Agency Law (Law).²

² Act of December 3, 1959, P.L. 1688, added by section 2 of the Act of December 23, 1983, P.L. 385, *as amended*, 35 P.S. §1680.404c(a)(5). Section 404-C(a)(5) provides that no assistance may be given with respect to a mortgage unless:

The agency has determined that there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments within [thirty-six] months after the beginning of the period for which assistance payments are provided . . . 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. §1680.404c(a)(5); *see* section 405-C(f.1) of the Law, added by section 2 of the Act of December 23, 1983, P.L. 385, *as amended*, 35 P.S. §1680.405c(f.1) (increasing twenty-four-month limit on assistance to thirty-six months due to high level of statewide unemployment).

On appeal,³ Petitioners argue that the PHFA erred in concluding that they would be unable to resume full mortgage payments within thirty-six months of the delinquency. We disagree.

As the PHFA found, Petitioners' income has been insufficient to cover their monthly expenses since 2007. Petitioners' average net monthly income was \$3,794 in 2007, \$2,291 in 2008 and \$2,170 in 2009, whereas their monthly expenses at the time of application totaled \$6,956. Although Petitioners managed to increase their average net monthly income to \$6,074 at the time of the hearing, that amount was still less than their monthly expenses of \$6,454.

The PHFA also properly declined to consider the financial contributions of Petitioners' adult sons, which began only recently. Presently, Craig's only source of income is unemployment compensation, which is statutorily limited. Although Derek eventually plans to move in with his parents and increase his contributions, the earliest that he would do so is 2012. It is well settled that "speculative" income may not be considered in determining eligibility for assistance under the Law. *Cullins v. Pennsylvania Housing Finance Agency*, 623 A.2d 951, 954 (Pa. Cmwlth. 1993); *see also R.M. v. Pennsylvania Housing Finance Agency*, 740 A.2d 302, 308 (Pa. Cmwlth. 1999) (affirming denial of application for mortgage assistance where homeowner's future income was speculative). Furthermore, there is no evidence in the record to

³ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether the PHFA's findings are supported by substantial evidence. *Joe v. Pennsylvania Housing Finance Agency*, 539 A.2d 920, 921 (Pa. Cmwlth. 1988).

support Petitioners' assertion that Joan's business will become more profitable in the foreseeable future, where the business has been losing money for the past few years.

After examining Petitioners' present, verifiable household income, the PHFA aptly concluded:

Due to the short history of the contributions from the applicants' sons, it is uncertain at this time if the contributions will remain a consistent and reliable source of income. Based on a review of the income history as provided to the [PHFA], the applicants' income from employment and self-employment has been insufficient to maintain the mortgage payment and total monthly expenses since at least 2007. Therefore, in view of the record at this time, a mortgage assistance loan was properly denied

(PHFA's Decision, 9/27/10, at 6.) We find no error in this determination.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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

