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**IN THE
COURT OF APPEALS OF INDIANA**

JOHANN L. BACKER,)

Appellant-Plaintiff,)

vs.)

No. 71A03-0611-CV-511)

PORTAGE TOWNSHIP OF ST. JOSEPH)
COUNTY and PORTAGE TOWNSHIP)
TRUSTEE IN HIS OFFICIAL CAPACITY,)

Appellees-Defendants.)

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Michael P. Scopelitis, Judge
Cause No. 71D07-0407-PL-311

November 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Johann L. Backer appeals the trial court's order affirming the decision of the St. Joseph County Board of Commissioners ("the Board"), which affirmed the decision of Charles Voreis, Portage Township Trustee ("the Trustee"), to deny in part Backer's application for township assistance. We affirm.

Issues

Backer raises two issues, which we restate as follows:

- I. Whether the notices of poor relief action issued to Backer by the Trustee satisfied due process requirements; and
- II. Whether the trial court clearly erred in concluding that the Trustee complied with the applicable township assistance statutes and his written standards.

Facts and Procedural History

The facts most favorable to the trial court's judgment are as follows. Backer, age fifty-six at the time of trial, shares a home in Portage Township with Larry Ort. Backer suffers from various health problems, including arthritis of the spine and hepatitis B. He is unable to perform heavy lifting. Ort also has serious health issues, including cirrhosis of the liver, hepatitis B, congenital cataracts, and glaucoma. At the time of trial, Ort was on Medicare and received social security disability benefits.

Indiana has a township assistance program, formerly known as "poor relief," which is regulated by Indiana Code Sections 12-20-1-1 through 12-20-28-3. The Trustee serves as the administrator of the township assistance program. Indiana Code Section 12-20-5-2 charges the Trustee with "the oversight and care of all poor individuals in [Portage Township] as long

as the individuals remain in the trustee's charge. The township trustee shall see that the individuals are properly taken care of in the manner required by law." Further, the Trustee is required to "process all applications for township assistance according to uniform written standards[.]" See Ind. Code § 12-20-5.5-1. These standards must contain criteria for determining eligibility for township assistance. Ind. Code § 12-20-5.5-2. Also, the Trustee must "promptly notify in writing each applicant for township assistance of action taken upon a completed application[.]" Ind. Code § 12-20-6-8.

In early 2004, Backer applied to the Trustee for \$403.19 in financial assistance toward his electric bill. On March 23, 2004, the Trustee issued a notice of poor relief action partially approving Backer's request in the amount of \$100.00. The notice also ordered Backer to "work[] off" the assistance money by serving nineteen hours at the local food bank.¹ Appellant's App. at 16. Backer visited the food bank, and they told him that they had no work available for him. Backer faxed a note to the Trustee advising him of the situation, but the Trustee never acknowledged receipt of the note, and Backer's assistance was suspended for 180 days for his failure to comply with the work order.

¹ Ind. Code § 12-20-10-2 states in pertinent part:

If:

(1) a township assistance applicant is in good health and able to work; and

(2) either:

(A) the [Trustee] offers employment to the township assistance applicant, regardless of whether the compensation for the work is in the form of money, house rent, or commodities consisting of the necessities of life; or
(B) employment at a reasonable compensation is offered by any other individual, governmental agency, or employer;

the [Trustee] shall not furnish township assistance to the applicant until the township assistance applicant performs the work or shows just cause for not performing the work.

Backer successfully appealed this decision, and the Trustee issued a notice on May 20, 2004, reinstating its decision to provide Backer with \$100.00 in township assistance. This notice also stated, as one reason for not approving the entire amount of Backer's request, that Ort, Backer's housemate, "is eligible for a pension yearly thru the church, last year he received \$8,000.00 and was told that he would have to apply for that this year before [the Trustee] could aid again." Appellant's App. at 18.

Erin Dombrowski, a Trustee employee, interviewed Backer on May 20, 2004, prior to the issuance of the written notice on that same date. At that time, Backer stated that Ort had withdrawn \$10,000.00 (less \$2,000.00 for taxes withheld) from his pension fund in 2003. Backer told Dombrowski that Ort did not plan to withdraw any more money because "[he] is letting the interest build." Appellees' App. at 65. Ort testified that he had informed a Trustee employee about his pension in the spring of 2004 during his own interview for food stamps. He told the Trustee's employee that he "did not have those funds available" at that time. *Id.* at 48. A quarterly statement from the pension fund introduced at trial indicated otherwise, however. Defendants' Exh. B.

Backer again appealed, and on June 8, 2004, the Board affirmed the Trustee's May 20, 2004, notice of poor relief action. On July 1, 2004, Backer filed with the trial court a verified petition for review and complaint for declaratory, injunctive, and compensatory relief. After a trial on February 22 and 24, 2006, the trial court affirmed the Board's decision. Backer now appeals.

Discussion and Decision

I. Due Process

First, Backer argues that the May 20, 2004, notice of poor relief action issued by the Trustee is invalid because it does not satisfy due process requirements under the Fourteenth Amendment to the United States Constitution.² Because there is no material dispute as to the content of the notice itself, this issue is purely a question of law, which we must review *de novo*.³ *See St. Mary's Medical Center, Inc. v. McCarthy*, 829 N.E.2d 1068, 1072 (Ind. Ct. App. 2005) (appeal of trial court's decision regarding plaintiff's standing in declaratory judgment action is a question of law for *de novo* review where the essential facts are undisputed).

Backer cites a case in which the U.S. Supreme Court held that due process requires “timely and adequate notice detailing the reasons for a proposed termination” of welfare benefits. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970). Also, Backer directs us to a recent Wisconsin Court of Appeals case, *Driver v. Housing Authority of Racine County*, 713 N.W.2d 670 (Wis. Ct. App. 2006). In that case, the court found that a public housing notice was constitutionally defective and thus invalid. The court noted: “Both the initial notices and the ultimate decision, essentially form letters, fell woefully short of the level of specificity that due process requires. Nowhere did these documents specify who had violated

² Backer asserts that the Trustee also violated his state constitutional rights, but he fails to provide a separate analysis on this issue. Thus, his state constitutional argument is waived. *Richardson v. State*, 800 N.E.2d 639, 647 (Ind. Ct. App. 2003), *trans. denied* (2004).

what specific obligation and when the violation occurred, and neither gave even a rudimentary description of the incidences giving rise to the charges.” *Id.* at 673.

Backer contends that the trial court erred in upholding the Trustee’s notice as valid because it was “so confusing and unclear that it was impossible to determine the legal and factual basis of the Trustee’s action by reading the notice.” We disagree. The notice at issue in the instant case includes explanations as to why the relief was denied. First, the notice shows that Backer requested aid in the amount of \$69.69 for his electric bill, \$197.92 for his gas bill, and an unspecified amount for his rent. The notice indicates that the Trustee had approved aid in the amount \$52.33 toward the electric bill, plus \$47.67 toward the gas bill. The notice states that the amount of aid is \$100.00, even though Backer’s household is eligible for only \$88.00 in aid pursuant to the guidelines. As for Backer’s request for assistance with his rent payment, the notice states:

Mr. B was again told that he will need to find affordable housing; they cannot afford the rent of \$750.00 and all utilities at this address, owing the [landlord] over \$3,000.00 on the rent and previous told about that, [the Trustee] has been adding since 2001 over \$5,600.00 in aid and Mr. B is able bodied to work as he cannot producy [sic] and [sic] Dr. statements showing unable to work or any restrictions.

Appellant’s App. at 18. Finally, the notice addresses Ort’s pension fund as follows: “Also Mr. O. is eligible for a pension yearly thru the church, last year he received \$8,000.00 and was told that he would have to apply for that this year before [the Trustee] could aid again. If eligible for any benefit [the Trustee] has them apply.” *Id.*

³ Backer also challenges the validity of two prior notices. We need not address the validity of those notices, however, because Backer appeals only the trial court’s decision regarding the Board of

Admittedly, the spacing of the notice leaves little room for the Trustee to insert information regarding the reasons for partial or full denial of the applicant's request for assistance. Here, for example, the Trustee "squeezed in" the details regarding its partial denial of Backer's application by extending its explanation through other sections of the form, making it somewhat difficult to read. Further, the inserted text contains a few typographical errors and awkward sentences. Despite these issues, however, it is our view that the notice adequately communicates the reasons for the partial denial of Backer's application for township assistance. In sum, the Trustee's notice to Backer was adequate and did not violate his due process rights.⁴

II. Compliance with Trustee Guidelines

Backer also argues that the Trustee violated his federal due process rights because the Trustee failed to comply with his office's guidelines regarding township assistance. This Court has held that "administrative decision[s] must be in accord with previously stated, ascertainable standards" to satisfy the due process requirements of the Fourteenth Amendment. *Harlan Sprague Dawley v. Ind. Dep't of Revenue*, 605 N.E.2d 1222, 1231 (Ind. Tax 1992) (quoting *Podgor v. Ind. Univ.*, 178 Ind. App. 245, 258, 381 N.E.2d 1274, 1283 (1978), *trans. denied*). Indiana Code Section 12-20-5.5-1(a) states in part that the Trustee "shall process all applications for township assistance according to uniform written standards[.]" These standards must include "all applicable standards governing the provision

Commissioner's ruling on the May 20, 2004, notice. Thus, it is the only relevant notice for purposes of our review.

⁴ Backer also argues that the Trustee violated his federal due process rights because he failed to administer poor relief in accordance with the applicable statutes and his guidelines. Because of our conclusions below, we need not address this argument.

of basic necessities, including maximum amounts, special conditions, or other limitations on eligibility, if any have been established for one (1) or more basic necessities.” Ind. Code § 12-20-5.5-5.

We note that the trial court entered findings of fact and conclusions thereon in this case. Pursuant to Trial Rule 52(A), we “shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”

Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them, and the trial court’s judgment is clearly erroneous if it is unsupported by the findings and the conclusions that rely upon those findings. In determining whether the findings or judgment are clearly erroneous, we will not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence.

Ind. Patient’s Compensation Fund v. Winkle, 863 N.E.2d 1, 4 (Ind. Ct. App. 2007) (citations omitted), *trans. denied*.

With regard to the Trustee’s written standards, the trial court found as follows:

The Trustee has established Eligibility Standards and Procedures for Township Assistance that includes standards and procedures relating to office location and hours, application procedure, work requirements, eligibility decision criteria and notice of action, types of assistance and limitations, income eligibility standards and pertinent sections of Indiana Code including but not limited to 12-7-2-44.7 defining “countable income” and 12-7-2-200.5 defining “wasted resources,” as well as sections on maximum benefits permitted and general guidelines.

Appellant’s App. at 6-7. The trial court also concluded that the Trustee “acted upon ascertainable, previously written, and legally sufficient standards” in determining the

eligibility for and the disbursement of township assistance. *Id.* at 9. Our review of the evidence persuades us to agree with the trial court.

First, the Trustee's guidelines set forth specific maximum net monthly income amounts which show how much, if any, assistance will be given to an applicant. Pursuant to the guidelines, a "household" includes "a group of individuals living together at one (1) residence as a domestic unit with mutual economic dependency." Plaintiff's Exh 2; *see also* Ind. Code § 12-7-2-110.5(3). The guidelines also restate Indiana Code Section 12-7-2-44.7, which says that

"[c]ountable income" ... means a monetary amount either paid to an applicant or a member of an applicant's household not more than thirty (30) days before the date of application for township assistance, or accrued and legally available for withdrawal by an applicant or a member of an applicant's household at the time of application or not more than thirty (30) days after the date of application for township assistance.

The term "countable income" includes private or public pensions. Ind. Code § 12-7-2-44.7(9). The evidence most favorable to the judgment supports the trial court's finding that

[a]lthough at trial both Mr. Backer and Mr. Ort testified that Mr. Ort was not eligible to access the pension fund in 2004 as early as the month of May, that information was not provided to the Trustee by the plaintiff or Mr. Ort at the time the Trustee's decision was made in May 2004 nor is there any evidence that that information was provided to the Commissioners when their decision was rendered in June 2004.

Appellant's App. at 8 (finding 30). The Trustee's employees kept notes regarding the progress of each township assistance application, including their conversations with applicants, their investigation of facts, and their decisions. *See* Plaintiff's Exh. 1; Defendants' Exh. D. The entry of May 20, 2004, states in relevant part, "Mr. [Ort] received last year in [March 2003,] \$8,000.00 from a pension from the church and this would come

yearly if he elected to receive it, Mr. [Backer] said that this year [Mr. Ort] chose not to [withdraw] from it as he is letting the interest [sic] build. Once Mr. [Ort] is age 65 he would receive a monthly check.” Appellant’s App. at 18. On its notice of action dated May 20, 2004, the Trustee indicated that Mr. Ort’s pension was one of several bases for his partial denial of Backer’s request for aid.

The trial court also found that “[t]he Trustee was not fully advised of Mr. Ort’s right to access his pension funds for necessities and neither Mr. Ort or Mr. Backer were forthcoming with information about Mr. Ort’s pension income in May 2004 when the Trustee made his decision or in June 2004 when the Commissioners made their decision.” Appellant’s App. at 11 (finding 33). Ort testified at trial that he was not able to withdraw funds from the pension until twelve months after his prior withdrawal. He estimated that time to be September 2004. However, during Ort’s testimony, the court admitted into evidence a quarterly statement from his pension fund. After reviewing the statement, the court commented that “[this statement] seems to indicate that after January 1 of 2003 and before March 31, 2003 there was a [\$]10,000 withdrawal which means that if you could withdraw each year, you could have been eligible to withdraw again sometime between January 1, 2004 and March 31 of 2004. Does that ring a bell?” Tr. at 168. Ort responded, “That sounds reasonable.” *Id.* Therefore, the evidence most favorable to the judgment indicates that Ort could have withdrawn money from his pension fund during the first quarter of 2004, prior to Backer’s application for assistance in this case.

In sum, the evidence most favorable to the judgment indicates that the Trustee gathered information regarding Backer’s application, applied its guidelines to that

information, and granted partial assistance accordingly. The evidence supports the trial court's findings and the findings support its judgment to uphold the Board's decision to affirm the Trustee's notice of poor relief action.

Affirmed.

DARDEN, J., and MAY, J., concur.