

Katherine I. And Ronald McLaird

v.

Department of Revenue Administration

Docket No.: 18792-01HR

DECISION

The "Taxpayers" appeal, pursuant to RSA 198:54, the partial denial of the Taxpayer's 2001 property tax hardship relief application by the department of revenue administration ("DRA"). The Taxpayers notified the board they would be "unable to attend" the hearing scheduled and held on April 29, 2002. For the reasons stated below, the appeal is denied.

Although the "Education Property Tax Hardship Relief Statute," RSA 198:50 et seq. (Supp. 2001), contains no specific provision regarding evidentiary burdens, it is well settled that in civil actions the burden of proof is generally on plaintiffs to establish their case by a preponderance of the evidence. See Dunlop v. Daigle, 122 N.H. 295, 297 (1982); Jodoin v. Baroody, 95 N.H. 154, 157 (1958); and TAX 201.27(f).

The Taxpayers' appeal is based on the following arguments:

- (1) they moved a mobile home "onto the land in December, 1999 and moved in just after Christmas";
- (2) their claim for education property tax hardship relief is "based on our current income and

taxes, not taxes paid in 1998"; and

(3) the facts pertaining to the earlier period should not be relevant to their application for tax year 2001.

The DRA argued the denial was proper because:

(1) the hardship relief statutes require ownership and use of a homestead as a principal place of residence "in the same municipality for a period of one year as of November 3, 1999," RSA 198:51, III (b) and 198:50, II;

(2) by their own admission, the Taxpayers did not begin residing on the property for which they claim a homestead "until December, 1999";

(3) the statute requires reference to the "local assessed valuation from the 1998 property tax bill" in order to determine the "total amount of tax relief allowable," see RSA 198:51, IV (d) and (e) and REV 1203.04 (a) (5);

(4) the 1998 assessment-record card shows an ad valorem land value of \$18,630 (but no building value, an indication the land was vacant);

(5) the DRA used this value to grant partial hardship tax relief (\$66.32 instead of the full \$195.38 claimed by the Taxpayers based upon the assessed value of the land with a mobile home in 2001); and

(6) although, in hindsight, the determination that the Taxpayers were entitled to partial hardship relief was incorrect, the DRA will not contest this error in the Taxpayers' favor.

Board's Rulings

Based on the evidence, the board finds the appeal must be denied.

Entitlement to hardship relief must be based on the requirements established by the New Hampshire Legislature. These requirements include a residency period of at least “one year as of November 3, 1999.” See RSA 198:51, III and 198:50, II. In addition, the amount of relief allowable in any year is to be measured by the “local assessed valuation from the 1998 property tax bill.” RSA 198:51, IV (d) and (e).

The Taxpayers, by their own admission, did not begin to reside on the property they claim as the homestead until “December, 1999,” after they moved a mobile home onto vacant land. Only the land was assessed by the municipality in 1998.¹

On these facts, the board finds the Taxpayers were not eligible for any hardship relief. The DRA acknowledges the Taxpayers were erroneously granted partial relief based on their 2001 hardship relief application, but will not contest this error in their favor.

The board has the authority to set aside the denial of a claim for hardship relief by the DRA when there is an error of law or when the DRA’s action is arbitrary or unreasonable. RSA 198:54, II. Applying this standard, the board finds no error and no arbitrary or unreasonable action in the DRA’s refusal to grant the Taxpayers the full relief they claimed on their application. Consequently, the present appeal is denied.

¹ In a letter to the board’s deputy clerk dated March 4, 2002, one of the Taxpayers acknowledged these facts, noted their financial and physical circumstances were different in 1998 when they “did not require tax relief,” and concluded that, if the 1998 assessed values were relevant, “we would not qualify and a hearing would be a waste of yours and our time.”

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Katherine I. And Ronald McLaird, Taxpayers; and Kathleen J. Sher, Esq., counsel for the Department of Revenue Administration.

Date: May 6, 2002

Anne M. Bourque, Deputy Clerk