

IN

12:39 pm, Sep 26, 2017

ANNETTE SHAW

CLERK OF COURTS

ASHLAND COUNTY, OHIO

**IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO  
GENERAL AND DOMESTIC RELATIONS DIVISIONS**

**KATHY HENRICKS,**

**Plaintiff,**

**CASE NO. 16-CIV-177**

**vs.**

**OHIO DEPARTMENT OF JOB AND  
FAMILY SERVICES,**

**Defendant.**

**JUDGMENT ENTRY ADOPTING  
MAGISTRATE'S DECISION**

The time period for objections to the attached Magistrate's Decision has expired and there has been no objection to the Decision. The Court hereby ADOPTS the attached Magistrate's Decision pursuant to Civil Rule 53(D)(4) as an order of this Court.

Within three (3) days of entering this judgment upon the Court's journal, the Clerk of Courts is hereby directed to serve copies of this Judgment Entry on all unrepresented parties and counsel of record. Said service shall be completed pursuant to Civil Rule 5(B)/Criminal Rule 49(B). The Clerk of Courts shall also note service and the date of service of this Judgment Entry in the appearance docket in accordance with Civil Rule 58 and/or Criminal Rule 32, as applicable.

It is so ordered.



Ronald P. Forsthoefel, Judge

**JM#292**

IN  
**03:36 pm, Sep 11, 2017**  
ANNETTE SHAW  
CLERK OF COURTS  
ASHLAND COUNTY, OHIO

**IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO  
GENERAL DIVISION**

**KATHY HENRICKS,**

**Appellant,**

**CASE NO. 16-CIV-177**

**vs.**

**OHIO DEPARTMENT OF JOB  
AND FAMILY SERVICES,**

**MAGISTRATE'S DECISION**

**Appellee.**

This matter is before the Court on the Appellant's appeal of the August 19, 2016 Administrative Appeal Decision of the Ohio Department of Job and Family Services regarding: In the Matter of: Kathy Henricks (Case No. 5120905517-CRISE), the Appellant's Notice of Appeal was filed on September 15, 2016 and an Amended Notice of Appeal was filed on April 10, 2017.

The record of the proceedings before the Ohio Department of Job and Family Services was filed with the Court on October 7, 2016. The Appellant filed her Brief on May 31, 2017. The Appellee filed its Brief on June 21, 2017. The Appellant filed a Reply Brief on July 3, 2017. On July 7, 2017, the Court conducted a hearing on the matter during which the parties presented oral arguments. The Court has reviewed the record of the proceedings and the arguments of counsel and hereby finds as follows.

**JM#293**

The Appellant filed her appeal of the decision of the Ohio Department of Job and Family Services, hereafter ODJFS, pursuant to R.C. 5101.35(E). As provided by R.C. 119.12(M), the Court in ruling on the appeal:

“...may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.”

As noted by the parties: “The evidence required by R.C. 119.12 has been defined as follows:

- (1) ‘reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability the evidence is true;
- (2) ‘probative’ evidence is evidence which tends to prove the issue in question; it must be relevant in determining the issue; and
- (3) ‘substantial’ evidence is evidence with some weight; it must have importance and value.”

***Our Place, Inc. v. Ohio Liquor Control Com.***, 63 Ohio St. 3d 570, 571 (1992).

The Appellant resides in a nursing home. The Appellant’s spouse, however, resides in the community. In calculating the amount of the Appellant’s income that is to be utilized for her own care, the Ohio Administrative Code requires that ODJFS include in the calculation the needs of her husband, a community spouse. A “...deduction in the computation of patient liability for needs of the community spouse” is referred to as the monthly income allowance. OAC 5160:1-3-04.3(B)(21). In this appeal, the Appellant first challenges ODJFS’s computation of the monthly income allowance.

I. Total Housing Expenses of the Community Spouse

When calculating the monthly income allowance for the community spouse, ODJFS computes the total housing expenses of the community spouse, similar to the excess shelter allowance.

Regarding the total housing expenses of the community spouse, OAC 5160:1-3-04.3(C)(2)(d)(i) states that:

“Total housing expenses of the community spouse: rent, mortgage payment (including principal and interest), taxes and insurance, condominium or cooperative required maintenance charges, and (if applicable) the established standard utility allowance, rounding the total down to the nearest whole dollar...”

In this appeal, the Appellant contends that ODJFS incorrectly calculated the tax amounts, insurance amounts, maintenance costs, and the utility allowance. In most of these instances, the Appellant is essentially contending that ODJFS did not properly interpret the provisions of OAC 5160:1-3-04.3.

In the case of ***State v. Michael***, 2014 Ohio 4535, ¶15, the Third District Court of Appeals recognized that:

“Courts use the same rules of construction for interpreting statutes and administrative regulations. See *McFee v. Nursing Care Mgt. of Am., Inc.*, 126 Ohio St.3d 183, 2010-Ohio-2744, 931 N.E.2d 1069, ¶ 27. It is a well-settled law in Ohio that words in a statute or a regulation “should be construed in their ordinary and natural meaning, and be given the meaning ordinarily attributed to them unless a different intention appears in the statute.” *Gareau*, 18 Ohio St.2d at 64; accord *State ex rel. Baroni v. Colletti*, 130 Ohio St.3d 208, 2011-Ohio-5351, 957 N.E.2d 13, ¶ 18, quoting *Morning View Care Ctr.-Fulton v. Ohio Dept. of Human Servs.*, 148 Ohio App.3d 518, 2002-Ohio-2878, 774 N.E.2d 300, ¶ 36 (‘The interpretation of statutes and administrative rules should follow the principle that neither is to be construed in any way other than as the words demand.’).”

## A. Taxes

In regards to the calculation of the taxes owed, the Appellant contends that ODJFS failed to account for all of the property taxes owed, particularly the delinquent taxes. ODJFS argues that delinquent taxes should not be included in the calculation for various policy reasons. While the Court does not disagree with the policy concerns raised by counsel for the Appellee, the definition of the total housing expenses of the community spouse / excess shelter allowance does not distinguish between delinquent taxes owed and current taxes due. As noted in OAC 5160:1-3-04.3(B)(3), the excess shelter allowance means the community spouse's expenses for the principal place of residence. If the community spouse does not pay the delinquent taxes, the community spouse could face a foreclosure action and lose his residence. As defined in OAC 5160:1-3-04.3(B)(21), the monthly income allowance is intended to account for the needs of the community spouse. While the Court does not find that the definition of the monthly income allowance allows for any and all potential expenses to be included in the calculation, the Court finds no reason not to attribute to the term 'taxes' the meaning normally attributed thereto, which could include both current taxes due and delinquent taxes owed. The authors of this provision could have specifically excluded delinquent property taxes from the definition of the total housing expenses / excess shelter allowance, but chose not to. The Court, therefore, finds that the term "taxes" covers both current property taxes due and delinquent taxes owed on the principal place of residence.

## B. Maintenance Costs

The Appellant next contends that ODJFS should have included expenses for the maintenance of the community spouse's principal place of residence in its determination of the community spouse's total housing expenses. As noted above, the term total housing expenses includes "...condominium or cooperative required maintenance charges." OAC 5160:1-3-04.3(C)(2)(d)(i). ODJFS contends that the maintenance charges noted therein are limited to charges required by a condominium or cooperative, neither of which apply to this case. As noted by the Appellee, the Ohio Supreme Court has held that courts must accord due deference to an agency's interpretation of a provision of the Ohio Administrative Code when the General Assembly has designated that agency as the proper forum for determination of issues related thereto. ***Leon v. Ohio Bd. of Psychology***, 63 Ohio St. 3d 683, 687 (1992). The language of this provision states that "condominium or cooperative required maintenance charges" are to be included in the total housing expenses of the community spouse. ODJFS's interpretation of this provision is reasonable. While the Appellant notes that the purpose of this calculation is to ensure that the needs of the community spouse are met, the Ohio Administrative Code addresses this point by providing for relief in exceptional circumstances. As to the calculation of the total housing expenses of the community spouse in accordance with OAC 5160:1-3-04.3(C)(2)(d)(i)), the Court is finding that ODJFS has reasonably interpreted this provision and that the required maintenance charges to be included in this calculation are limited to those required by a condominium or cooperative.

### C. Standard Utility Allowance

The Appellant further challenges ODJFS's usage of the standard utility allowance in calculating the total housing expenses rather than using the actual costs of utilities. Specifically, the Appellant argues that the term "if applicable" in the definition of the total housing expenses / excess shelter allowance should limit the usage of the standard utility allowance. OAC 5160:1-3-04.3(B)(29), however, provides that:

"The 'standard utility allowance' means an amount that is used in lieu of the actual amount of utility costs. The standard utility allowance is applicable if the community spouse is responsible for payment toward the cost of gas, electric, coal, wood, oil, water, sewage, or telephone for the residence."

By its own terms, the standard utility allowance is the amount used instead of the actual costs of utilities. As to the term "if applicable," the definition notes that this amount is applicable if the community spouse is paying towards utilities such as gas, electric, and so forth. The Court, therefore, finds that ODJFS has reasonably interpreted this provision and that the standard utility allowance was properly utilized in the calculation of the community spouse's excess shelter allowance in this case.

### II. Exceptional Circumstances

The Appellant next contends that even if ODJFS calculated the monthly income allowance correctly, the Appellant is still entitled to modification of her patient liability in accordance with OAC 5101:6-7-02, which provides that if the community spouse establishes that he needs additional income above the level otherwise provided "...the hearing decision shall substitute the allowance with an amount adequate to provide

such additional income to the community spouse as is necessary...” OAC 5101:6-7-02(B)(1). In order to qualify for this modification, a community spouse must establish:

“...exceptional circumstances that have resulted in significant financial duress. Exceptional circumstances are those that are more rare than occur in everyday life, such as acts of God or accidents and illnesses that result in personal harm or property damage. Significant financial duress is the result of an exceptional circumstance only when the community spouse is faced with a financial obligation that exceeds the spouse's ability to also pay reasonable living expenses from income or resources that exceed the community spouse resource allowance.” 5101:6-7-02(B)(2).

The Appellant contends that there are exceptional circumstances in this case due to health concerns and needed repairs on his residence. As noted above, “Exceptional circumstances are those that are more rare than occur in everyday life, such as acts of God or accidents and illnesses that result in personal harm or property damage.” In regards to the repairs needed for the residence, the Court is finding that these are not exceptional circumstances as that term is defined in 5101:6-7-02(B)(2).

Regarding the community spouse’s medical issues, the record notes that the Appellant’s community spouse testified as to his medical conditions, including a heart condition and diabetes. Further, the Appellant’s community spouse submitted a letter during the administrative appeal process noting that he previously suffered a heart attack. The Hearing Officer found that medical expenses could not be included in determining “...patient liability because the institutionalized spouse is not a financially responsible relative.” While not entirely clear in the Hearing Officer’s decision, the Hearing Officer appears to have not applied the correct, or all the applicable, standards in reaching this conclusion. By definition, an illness that results in physical harm to the community spouse is an exceptional circumstance. As set forth throughout this

**JM#299**



decision, the Court interprets these provisions and terms by utilizing their ordinary and natural meaning. As found by the Hearing Officer, the community spouse incurs regular medical expenses due to a heart condition. The Court is finding that a heart condition, resulting from a heart attack, which requires regular medical treatment does constitute an exceptional circumstance.

As to whether this exceptional circumstance has resulted in significant financial duress, the Hearing Officer found that: “The community spouse gave credible testimony and evidence indicating he is experiencing financial duress.” After seemingly finding a lack of exceptional circumstances, the Hearing Officer did not render a decision as to the issue of significant financial duress.

Due to the Court’s finding that the Appellant’s community spouse’s heart condition does qualify as an exceptional circumstance, the Court is remanding this matter back to the Ohio Department of Job and Family Services for further consideration. The Court is not inclined to conduct its own reconsideration / recalculation of the matter.

In regards to the reconsideration / recalculation of the matter, the Court finds, as set forth above, that the term ‘taxes’ includes both delinquent taxes owed and current taxes due. Further, the Court finds that ODJFS has properly utilized the standard utility allowance in making its calculation and has properly limited the application of maintenance costs to those required by a condominium or cooperative in determining the total housing expenses of the community spouse.

In regards to the Appellant's claim of exceptional circumstances, the Court finds that the community spouse's heart condition does qualify as an exceptional circumstance. On remand, ODJFS will have to determine whether this has resulted in significant financial duress. The Court, however, finds that the intended repairs for the home do not qualify as exceptional circumstances.

Finally, in regards to the insurance issue, since the Court is remanding the case back to the Ohio Department of Job and Family Services the Court is ordering that ODJFS start anew in regards to the calculation of the amount of insurance that should be included in the calculation of the community spouse's total housing expenses. The Court concurs with ODJFS that the term insurance is limited to insurance on the principal place of residence so insurance on personal possessions, automobiles, or horses should be excluded. The Appellant shall bear the burden of establishing the cost of the insurance on his principal place of residence.

## DECISION

Based upon the foregoing, the Court hereby sets aside the August 19, 2016 Administrative Appeal Decision of the Ohio Department of Job and Family Services regarding: In the Matter of: Kathy Henricks (Case No. 5120905517-CRISE), and remands the matter back to the Ohio Department of Job and Family Services to conduct an additional hearing in accordance with Ohio Administrative Code Section 5101:6-6 to recalculate / reconsider the Appellant's patient liability consistent with the Court's findings in this decision.

Costs shall be taxed to the Appellee.



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Magistrate Paul T. Lange

## NOTICE

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL, THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii) or Crim.R.19(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b) and Crim.R.19(D)(3)(b).