

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 09, 2014

CHARLES M. MURPHY, JR. V. KATHY J. COLE, ET AL.

**Appeal from the Chancery Court for Marshall County
No. 16372 J. B. Cox, Chancellor**

No. M2013-02225-COA-R3-CV - Filed July 30, 2014

The Tennessee Department of Human Services appeals an order of the trial court reversing the Department's holding that an applicant was not eligible for food stamp benefits or to apply for certain medicare coverage due to excessive income. Upon consideration of the record, we reverse the judgment of the trial court, affirm the decision of the Department and dismiss the petition for review.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed;
Petition Dismissed**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and W. NEAL MCBRAYER, J. joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Joseph F. Whalen, Associate Solicitor General; and Warren Jasper, Senior Counsel, Nashville, Tennessee, for the appellant, Department of Human Services of the State of Tennessee.

Charles M. Murphy, Jr., Lewisburg, Tennessee, Pro Se.

OPINION

Mr. Charles M. Murphy, Jr. is a retired member of the United States Army Air Corps who received food stamp benefits and Qualified Medicare Beneficiary ("QMB") coverage through the Tennessee Department of Human Services ("Department"). When mail which the Department sent to Mr. Murphy was returned undelivered, the Department requested that he verify his residence and income. In response, Mr. Murphy advised the Department that he was receiving a \$1,021 monthly pension from the Department of Veteran Affairs ("VA").

The Department thereafter treated the entire \$1,021 as countable unearned income, determined that Mr. Murphy was over the income limit for a single person household, and on October 25, 2011, issued him a notice terminating his food stamps and QMB coverage and denying him Specified Low-Income Medicare Beneficiary (“SLMB”) coverage.¹ Pursuant to applicable regulations, Mr. Murphy requested a fair hearing on the termination of his benefits.

On November 21, 2011, the Department sent Mr. Murphy a letter advising that the Department could not grant him a hearing relative to his eligibility for QMB benefits at that time because of inadequate information relating to his income that Mr. Murphy had provided when he made the request. The letter reported the amount of income shown on the records available to the Department and requested that Mr. Murphy advise of any disagreement within ten days. Mr. Murphy did not provide further information and his QMB coverage was terminated.

The hearing on Mr. Murphy’s eligibility for food stamp benefits was held before a Hearing Officer on January 10, 2012, with Mr. Johnny Stewart, Department Program Coordinator, and Mr. Murphy present. On February 3 the Hearing Officer issued an Initial Order concluding that the Department improperly terminated Mr. Murphy’s food stamp benefits by failing to verify his income change prior to taking adverse action as required by Tenn. Comp. R. & Regs. 1240-01-19-.04(10).² The Department was ordered to verify certain medical expenses included in Mr. Murphy’s monthly VA pension and redetermine his food stamp eligibility. The Department did not appeal the Initial Decision; in fifteen days it became a Final Order and the food stamp benefits were reinstated.

On February 21, 2012, in accordance with applicable regulations, Mr. Murphy applied to have his eligibility for food stamps and QMB coverage recertified. In the process of verifying his sources of income, the Department received a letter from the VA that specified the amount and components of Mr. Murphy’s pension to be:

¹ Tenn. Comps. R. & Reg. 1240-03-02-.02(r) provides “Qualified Medicare Beneficiaries” (QMB) coverage to persons who are entitled to Medicare Part A and whose income does not exceed 100% of the Federal poverty guidelines effective January 1990. Pursuant to Tenn. Comps. R. & Reg. 1240-03-02-.02(u), “Specified Low-Income Medicare Beneficiaries” (SLMB) coverage is available to persons who meet the requirements for QMB coverage and whose incomes “are greater than [100%] but not greater than [120%] of the current federal poverty guidelines.”

² Tenn. Comp. R. & Regs. 1240-01-19-.04(10) requires that “if the household reports a change. . . which could ultimately result in the decrease or termination of that household’s Food Stamp benefits, the worker must first verify the change that has been reported or otherwise made known to the worker before any decrease or termination of benefits can be enforced. . .”

Gross Benefit Amount	\$962.00/mo
Aid and Attendance Benefit	\$682.00/mo
Net Amount Paid	\$1,644.00/mo
Effective Date	April 1, 2010

On March 2, Mr. Murphy received notice that his eligibility for food stamps and QMB coverage would end because his income was “over the limit.” Mr. Murphy appealed this decision and a second hearing was held on May 15, with Molly McDonald, Department Program Coordinator, and Mr. Murphy present.

On June 18, 2012, the Hearing Officer issued an Initial Order relating to Mr. Murphy’s eligibility for food stamps. The order held that the Department properly applied Tenn. Comp. R. & Reg. 1240-01-04-.14(2)(i) and 1240-01-4-.15(2)(a)(8) when it excluded the \$682 allocated to medical aid and attendance and when it counted the \$962 gross benefit as unearned income for Mr. Murphy;³ the Hearing Officer concluded that, because Mr. Murphy’s income exceeded the income standard at Tenn. Comp. R. & Reg. 1240-01-04-.27(1)(b)(1),⁴ the Department correctly terminated Mr. Murphy’s food stamps due to excessive income.⁵

³ Pursuant to Tenn. Comp. R. & Reg. 1240-01-04.14(2)(i) “[V]eterans. . . benefits. . . are counted as unearned income.” Tenn. Comp. R. & Reg. 1240-01-04-.15(2)(a)(8) provides that reimbursements, which include flat allowances for medical expenses, are excludable as income.

⁴ “If a household’s available income (after exclusions and deductions) exceeds the Net Monthly Income Standard for the number of persons in the household, a household is not eligible for Food Stamps.” Tenn. Comps. R. & Reg. 1240-01-04-.27(1)(b)(1) (2012).

⁵ The Hearing Officer made the following findings of fact regarding Mr. Murphy’s food stamp benefits:

1. [Mr. Murphy] was a recipient of Food Stamp benefits as a single person household.
2. On February 21, 2012, [Mr. Murphy] filed a recertification application for Food Stamps.
3. On February 29, 2012, the Department received documentation from the VA that verified that [Mr. Murphy] receives \$962 per month in gross benefits and \$682 for medical aid and attendance, for a total monthly pension benefit of \$1,644.
4. The Department excluded the \$682 allowance for medical aid and attendance.
5. At the time of recertification, [Mr. Murphy] received Social Security income of \$962 per month.
6. At the time of recertification, [Mr. Murphy]’s countable gross unearned income was \$1,888.
7. At the time of recertification, [Mr. Murphy] incurred a monthly mortgage of \$688.99 plus monthly utilities.
8. [Mr. Murphy] incurred a monthly Medicare premium of \$99.40.

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With respect to QMB coverage, the Hearing Officer issued an Initial Order concluding that the Department properly counted the \$962 monthly VA gross benefit as countable income pursuant to 20 C.F.R. § 416.1121(a),⁶ properly excluded the \$682 pursuant to the TennCare Medicaid Policy Manual,⁷ and that, pursuant to Tenn. Comp. R. & Reg. 1240-03-02-.02(2)(r) and 1240-03-02-.02(u), the Department properly denied Mr. Murphy QMB and SLMB coverage.⁸

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9. After applicable deductions, [Mr. Murphy]'s net adjusted income was \$1,537.
10. The net income standard for a household of one (1) was \$908 at the time of recertification.
11. On March 2, 2012, the Department issued [Mr. Murphy] notice that indicated the termination of Food Stamps benefits effective March 31, 2012, due to excessive income.

⁶ 20 C.F.R. § 416.1121(a) provides:

Some types of unearned income are--

(a) Annuities, pensions, and other periodic payments. This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits.

⁷ The TennCare Medicaid Policy Manual provides that the aid and attendance allowance paid by the Veterans Administration is excludable as income.

⁸ The Hearing Officer made the following findings of fact:

1. On February 21, 2012, [Mr. Murphy] filed an application for QMB coverage.
2. On February 29, 2012, the Department received documentation from the VA that verified that [Mr. Murphy] receives \$962 per month in gross benefits, and \$682 for medical aid and attendance, for a total monthly pension benefit of \$1,644.
3. The Department excluded the \$682 allowance for medical aid and attendance.
4. At the time of recertification, [Mr. Murphy] received Social Security income of \$962 per month.
5. At the time of recertification, [Mr. Murphy]'s countable gross unearned income was \$1,888.
6. After applicable deductions, [Mr. Murphy]'s total countable income was \$1,868.
7. The income standard for a household of one (1) for QMB eligibility was \$931 at the time of application.
8. The income standard for a household of one (1) for SLMB eligibility was \$1,117 at the time of application.
9. On March 2, 2012, the Department issued [Mr. Murphy] notices that indicated denial of QMB and SLMB coverage, due to excessive income.

Mr. Murphy filed an appeal of both Initial Orders, arguing that the money he received from the VA was not countable as income. Assistant Commissioner Michelle Waldrep issued a Final Order on July 25, 2012, affirming both Initial Orders.

On August 24, 2012, Mr. Murphy timely filed a petition for judicial review in the Marshall County Chancery Court pursuant to T.C.A. § 4-5-322.⁹ Mr. Murphy alleged that the denial of his food stamp benefits, QMB, and SLMB coverage was due to the Hearing Officer's wrongful conclusion that the \$962 in monthly gross benefits he received from the VA was countable income. Additionally, Mr. Murphy contended that the February 3, 2012 Initial Order that reinstated his food stamp benefits became final when the Department failed to file a timely appeal; thus, the Department did not have the authority to revoke his benefits a second time.

On March 20, 2013, the court issued its Memorandum Opinion holding:

As to [Mr. Murphy], the initial ruling must become law of his case unless there has been a change in [his] circumstances. The second denial decision is tainted by the investigation ordered by the hearing officer that produced the letter that was the basis for the [Department]'s denial of later benefits. No change has occurred in his circumstances. For that reason the Court finds that the decision of the hearing officer is arbitrary and capricious and hereby sets aside that decision.

The trial court reversed the Department's denial of Mr. Murphy's food stamp benefits, QMB, and SLMB coverage.

The Department appeals and states the following issue:

1. Whether the termination of petitioner's Food Stamp benefits and the denial of his application for Qualified Medicare Beneficiary (QMB) and Specified Low-Income Beneficiary (SLMB) benefits are supported by substantial and material evidence in the record.

⁹ The petition named the Department, Mr. Murphy's case manager, Kathy J. Cole, and Asst. Commissioner Michelle Waldrep as defendants. The trial court dismissed the individual defendants on November 21, 2012.

DISCUSSION

Judicial review of decisions of administrative agencies is governed by Tenn. Code Ann. § 4-5-322(h) which provides that a court may modify or reverse the agency's decision if the findings, inferences, conclusions, or decisions are:

- 1) In violation of constitutional or statutory provisions;
- 2) In excess of the statutory authority of the agency;
- 3) Made upon unlawful procedure;
- 4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- 5) (A) Unsupported by evidence which is both substantial and material in the light of the entire record.

We review the factual findings of the Department under the limited provisions of Tenn. Code Ann. § 4-5-322, and matters of law *de novo* with no presumption of correctness. *Davis v. Shelby Cnty. Sheriff's Dep't.*, 278 S.W.3d 256, 264 (Tenn. 2009) (citing Tenn. R. App. P. 13(d)); *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 373 (Tenn. 2007).

There is no dispute as to the factual findings made by the Hearing Officer in the June 18 Initial Orders; the issue before this court is one of law.

The trial court held that “the initial ruling [the February 3, 2012 Initial Order which became final on February 18] must become law of [Mr. Murphy]'s case unless there has been a change in [his] circumstances. . . . [n]o change has occurred in his circumstances.” As a result, the court reversed the Department's denial of Mr. Murphy's application for recertification of food stamps and application for QMB, and SLMB coverage. The Department contends that the fact that the February 3 order reinstated Mr. Murphy's food stamp benefits is not controlling because the order which is the subject of this appeal was entered as a result of Mr. Murphy's February 21, 2012, applications to recertify his eligibility for food stamps benefits and for QMB and SLMB coverage.

Pursuant to Tenn. Comp. R. & Reg. 1240-01-07-.01(1) a household's eligibility for food stamp benefits ends at the expiration of each certification period. Upon recertification of food stamp benefits, any information, changed or unchanged, regarding income or medical expenses must be verified. *See* Tenn. Comp. R. & Reg. 1240-01-16-.06(1)(f), 1240-01-16-.06(1)(i) (2007). Additionally, Tenn. Comp. R. & Reg. 1200-13-13-.02 provides that the Department has the responsibility of determining initial eligibility for TennCare Medicaid, as well as redetermining, at regular intervals, whether eligibility should be continued.

At the end of his certification period, Mr. Murphy was no longer entitled to food stamp benefits and was considered a new applicant.¹⁰ Per its obligation, the Department considered all evidence in Mr. Murphy's record at the time of recertification, including the letter from the VA, when making its decision regarding his eligibility for food stamps. Further, because Mr. Murphy was applying for, not recertifying, QMB and SLMB coverage, the Department had the responsibility to determine his initial eligibility for medical assistance in accordance with the technical and financial requirements as described in Chapter 1240-03-03 of the Department's Division of Medical Services. Tenn. Comp. R. & Regs. 1200-13-13-.02(6)(b) (2010). Therefore, on February 21 the verification of the benefits in Mr. Murphy's VA pension was not a continuation of the first appeal but, rather, a new process of verification and a separate proceeding.

The trial court's decision to reverse the Department's denial of Mr. Murphy's application for recertification of food stamp eligibility and application for QMB and SLMB coverage was based on its holding that the February 3, 2012 Initial Order became the law of the case; this doctrine, however, was not applicable in this proceeding.

The Tennessee Supreme Court describes the "law of the case" doctrine as follows:

An appellate court's final decision in a case establishes the "law of the case" when a case is remanded for further proceedings. This "law of the case" is binding on the trial court during the remanded proceedings and is also binding on the appellate courts should a second appeal be taken after the trial court enters a judgment in response to the remand order. *Memphis Publ'g Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998).

The "law of the case" doctrine is neither a constitutional mandate nor an inflexible limit on the adjudicatory power of the courts. Instead, it is "a longstanding discretionary rule of judicial practice," *Memphis Publ'g Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d at 306; *Orlando Residence, Ltd. v. Nashville Lodging Co.*, 213 S.W.3d 855, 861 (Tenn. Ct. App. 2006), reflecting the commonsense recognition that issues previously litigated and decided by a court of competent jurisdiction need not be revisited. *In re Estate of Boote*, 256 S.W.3d 402, 413 (Tenn. Ct. App. 2007); *Ladd ex rel. Ladd v. Honda Motor Co.*, 939 S.W.2d at 90. Adhering to the "law of the case" doctrine promotes finality and the efficiency in litigation, ensures

¹⁰ Tenn. Comp. R. & Reg. 1240-01-14-.09(3) provides that if an application for recertification is submitted after the household's certification period has expired, that application shall be considered an initial application.

consistent results in the same proceeding, and assures that lower courts follow the decision of higher courts. *State v. Jefferson*, 31 S.W.3d 558, 561 (Tenn. 2000); *Harrison v. Laursen*, 128 S.W.3d 204, 208 (Tenn. Ct. App. 2003).

Gray's Disposal Co. v. Metro. Gov't of Nashville, 318 S.W.3d 342, 348 (Tenn. 2010).

We have been cited to no authority that the doctrine applies to administrative proceedings. In any event, because the doctrine is only binding on future proceedings within the same case, the February 3 Initial Order does not govern the consideration of Mr. Murphy's recertification or the second appeal. The February 21 applications for recertification and QMB and SLMB coverage started a new process which required verification of his income and expenses; the letter from the VA detailing the components of Mr. Murphy's pension provided the Department with substantial and material evidence to support the denial of his benefits.¹¹

CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed and the decision of the Department of Human Services affirmed. The petition for review is dismissed.

RICHARD H. DINKINS, JUDGE

¹¹ The law of the case doctrine does not necessarily apply when the evidence offered at a trial or hearing following the remand is substantially different from the evidence in the earlier proceeding. *Gray's Disposal Co. v. Metro. Gov't of Nashville*, 318 S.W.3d at 348.