COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO: 93-1146-B

PAULINE CHLUDZENSKI, & another[1]

vs.

THE DEPARTMENT OF PUBLIC WELFARE OF THE COMMONWEALTH OF MASSACHUSETTS

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, Pauline Chludzenski (Mrs. Chludzenski) and Raymond Chludzenski (Mr. Chludzenski) are seeking judicial review, pursuant to G.L. c. 30A, §14, of a decision rendered by a Division of Hearings referee upholding the Department of Public Welfare's (DPW) denial of Mr. Chludzenski's application for Medicaid benefits. For the reasons stated below, the case is **REMANDED.**

**BACKGROUND**

The facts below are taken from the record, filed as the DPW's answer, as required by G.L. c.30A, §14(4).

Mr. and Mrs. Chludzenski were visiting their daughter in Beverly, Massachusetts in October 1992, when Mr. Chludzenski suffered a stroke. Since October 4, 1992, he has been receiving care in a Massachusetts nursing home while Mrs. Chludzenski has been staying with her daughter in Beverly. For the four years prior to his stroke, the Chludzenski's lived in a mobile home they

---

[1] Raymond Chludzenski

12-27-93 TCM 8ff

A TRUE COPY, ATTEST
Frances A. Wells
DEPUTY ASS'T. CLERK

owned in Florida.

The Chludzenskis applied to the DPW for Medicaid benefits to pay for Mr. Chludzenski's nursing home bills. The DPW determined that the Chludzenski's mobile home was a countable asset in determining their eligibility for benefits. Thus, the Chludzenski's mobile home was exempted for a nine month period in which the Chludzenskis were required to sell or liquidate its equity to pay for medical care.

The Chludzenskis appealed this agency decision to a DPW Division of Hearing's referee who affirmed the DPW decision. The referee noted two regulations under which the Chludzenski's mobile home might be exempt, 106 Code Mass. Regs. § 505.160(I)(3) and 106 Code Mass. Regs. § 505.170. While the referee discussed evidence showing the Chludzenskis to be residents of Florida and found the "appellant's" (Mr. Chludzenski's) primary residence to be Florida, the referee neglected to make findings as to the residence of Mrs. Chludzenski.

**DISCUSSION**

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity. Merisme v. Board of Appeals on Motor Vehicle Liab. Policies & Bds., 27 Mass. App. Ct. 470, 474 (1989); Faith Assembly of God v. State Bldg. Code Comm'n, 11 Mass. App. Ct. 333, 334 (1981), citing Almeida Bus Lines, Inc. v. Department of Pub. Utils., 348 Mass. 331, 342 (1965). In reviewing the agency decision, the court is required to give due weight to the agency's experience, technical competence,

specialized knowledge, and the discretionary authority conferred upon it by statute. Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992); Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 721 (1988); Quincy City Hosp. v. Labor Relations Comm'n, 400 Mass. 745, 748-749 (1987).

The reviewing court may not substitute its judgment for that of the agency. Southern Worcester County Regional Vocational School Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420-421 (1982), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n, 372 Mass. 152, 154 (1977).[2/] A Court may not dispute an administrative agency's choice between two conflicting views, even though the court would justifiably have made a different choice had the matter come before it de novo. Zoning Bd. of Appeals of Wellesley v. Housing Appeals Comm'n, 386 Mass. 64, 73 (1982); Shamrock Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 7 Mass. App. Ct. 333, 335 (1979).

The Court may review and either affirm, reverse, remand, compel action or modify a state's administrative decision if the court determines "that the substantial rights of any party may have been prejudiced because the agency decision is . . . (c) based upon an error of law . . . ." G.L. c.30A, §14(7).[3/]

---

[2/] Likewise, the court cannot interfere with the administration's imposition of a penalty unless there are "extraordinary circumstances." Vaspourakan Ltd. v. Alcoholic Beverages Control Comm'n, 401 Mass. 347, 355 (1987) citing Levy v. Bd. of Registration & Discipline in Medicine, 378 Mass. 519, 528-529 (1979).

[3/] From the pleadings and motions filed by the plaintiffs, their claim appears to be based on a claim that the DPW referee made an error of law in his/her decision.

The central issue in this case is whether plaintiffs' Florida home is a countable asset, the value of which the DPW may consider in making a determination of eligibility for Medicaid benefits. The referee relied upon 106 Code Mass. Regs. §505.170(A), which provides in relevant part, that noncountable assets include, "[t]he home of the filing unit . . . if located in Massachusetts and used as the principle place of residence." (emphasis added). Since the Chludzenskis' mobile home is clearly in Florida, the referee determined that the Chludzenskis could not claim exemption under this regulation as currently written.[4/]

---

[4/] While not necessary to resolve this decision, the Department should note that this regulation may be contrary to state and federal law. As plaintiffs note, neither the relevant Massachusetts statute nor the federal law upon which it is based, distinguish between primary residences located in the same state in which Medicaid is sought and those located in a different state. G.L. c. 118E, § 10; 42 U.S.C. §1396p(1)(2)(A).

General L. c. 118E, § 10, which essentially mirrors its federal counter-part, 42 U.S.C. § 1396p(a)(2)(A), provides in relevant part:

> The following income and resources shall be exempt and neither be taken into consideration nor, except as permitted under Title XIX, required to be applied toward the payment or part payment of the cost of medical assistance available under this chapter; -
>
> (2) ownership of one's residence. . . . In the case of an applicant for whom a medical determination has been made, after notice and opportunity for an appeal and hearing, that he or she cannot reasonable be expected to return to live in the residence, the residence will be considered a countable asset unless: -
>
> (B) any one of the following persons continue or would continue to reside therein: (i) the applicant or recipient's spouse. . . . (emphasis added)

The DPW regulation, 106 Code Mass. Regs. §505.170(A), goes one step beyond the statute in limiting application of this home

However, the record clearly shows that DPW also considered whether the Chludzenskis were eligible under 106 Code Mass. Regs. § 505.160 (I).[5/] Section 160(I) provides in relevant part:

> (3) Former Home of Individual in a Medical Institution
>
> If an applicant or recipient moves out of his or her home to enter a medical institution; the Department shall consider the applicant or recipient's former home as a countable asset when all of the following conditions are met.
>
> (b) None of the following relatives of the applicant or recipient are residing in the property;
>
> 1. a spouse.

The referee did not determine where Mrs. Chludzenski "resides" and, therefore, did not decide whether the mobile home is exempt under Section 160(I). If Mrs. Chludzenski is found to "reside" in Florida while only temporarily staying with her daughter in

---

exclusion to only principal places of residence located in Massachusetts, perhaps impermissibly.

In addition, Section 170(A) has an internal contradiction. While the first sentence limits use of the home exclusion to residences located in Massachusetts, the second sentence authorizes DPW to put a lien on "any real estate in which the recipient has ownership interest. Finally, it makes little sense to create a regulation that forces spouses to sell the exact same house which the home exclusion regulation was designed to protect.

[5/] In the Referee's Decision reference is made to 106 Code Mass. Regs. §505.160(I) which is also cited in the letter of denial of benefits on unnumbered page six of the record.

Massachusetts, their mobile home would be exempt pursuant to 106 Code Mass. Regs. § 505.160 (I)(3)(b)(1).[6/]

Since the referee did not determine where Mrs. Chludenzki resides which is necessary to determine the applicability of 106 Code Mass. Regs. § 505.160, this case must be remanded. While not ordered to do so, the Department is strongly encouraged to review 106 Code Mass. Regs. § 505.160 and 106 Code Mass. Regs. § 505.170 in light of comments made in this decision.

**ORDER**

For the foregoing reasons, it is **ORDERED** that this matter be **REMANDED** to the Division of Hearings of the Department of Public Welfare for further proceedings consistent with this opinion.

Charles M. Grabau
Justice of the Superior Court

Dated: December 22, 1993

---

6/ There is no reference in 106 Code Mass. Regs. § 505.160(I) that implies or requires the home must be in Massachusetts. That requirement is only mentioned in a separate and distinct regulation, 106 Code Mass. Regs. § 505.170. Section 505.170 provides specifically that the assets made noncountable under its provisions are "in addition to" the assets exempted pursuant to Section 505.160. Thus, there are two distinct regulations, with only Section 170 requiring the property to be in Massachusetts.