

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WAYNE A. SMITH,

Petitioner-Appellant,

v

TOWNSHIP OF FORESTER,

Respondent-Appellee.

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UNPUBLISHED

March 19, 2019

No. 344587

Tax Tribunal

LC No. 17-003828-TT

Before: STEPHENS, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

The Michigan Tax Tribunal (MTT) rejected Wayne Smith’s appeal from Forester Township’s denial of his request for a poverty exemption from his 2017 property taxes. Because Smith’s income and assets were above the township’s guidelines threshold, we affirm.

**I. BACKGROUND**

Smith has his principal residence in Forester Township. He applied for a poverty exemption from his property taxes in 2015, 2016, and 2017 pursuant to MCL 211.7u(1), which provides, “The principal residence of persons who, in the judgment of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges is eligible for exemption in whole or in part from taxation under this act.” MCL 211.7u(3) permits the taxing unit to set the poverty guidelines as follows:

The governing body of the local assessing unit shall determine and make available to the public the policy and guidelines the local assessing unit uses for the granting of exemptions under this section. The guidelines shall include but not be limited to the specific income and asset levels of the claimant and total household income and assets.

The township’s guidelines permit a landowner to claim a poverty exemption if (1) his or her assets are valued at \$4,500 or less and (2) his or her income is less than the federal poverty line. *Smith v Forester Twp*, 323 Mich App 146, 148; 913 NW2d 662 (2018) (*Smith I*). The township guidelines further provide “that reverse-mortgage payments would be ‘added’ to an applicant’s

income.” *Id.* Reverse-mortgage payments are made under a “reverse annuity mortgage,” “[a] mortgage in which the lender disburses money over a long period to provide regular income to the (usu[ally] elderly) borrower, and in which the loan is repaid in a lump sum when the borrower dies or when the property is sold.’ ” *Id.* at 148 n 1, quoting *Black’s Law Dictionary* (9th ed), p 1103.

The township’s board of review denied Smith’s 2015 poverty-exemption request because his income included over \$22,000 in reverse-mortgage payments and Social Security benefits and he had \$9,000 in assets. The MTT concluded that the reverse-mortgage payments were income as they were funds “available to [Smith] to pay his property taxes.” *Smith I*, 323 Mich App at 149. Smith appealed to this Court and argued, in part, that the reverse-mortgage payments should have been considered assets rather than income. *Id.* at 151. This Court ultimately affirmed the MTT’s decision in February 2018, noting “If we accept [Smith’s] arguments, [Smith’s] resulting assets would exceed the asset limit set in [the township’s] guidelines and, therefore, he would fail the asset test and still be precluded from claiming the poverty exemption.” *Id.* This Court did not resolve whether the reverse-mortgage payments should be considered assets or income but held that Smith would not qualify for the poverty exemption in either instance. *Id.* at 152.

In the meantime, Smith sought a poverty exemption for his 2016 taxes. The township’s board of review again denied the exemption because Smith exceeded the income requirements. Smith appealed, but the MTT held the appeal in abeyance pending this Court’s resolution of *Smith I*.

Smith then sought a poverty exemption for his 2017 taxes. His application showed Social Security benefits of \$9,922 and gross business income of \$4,894, but a net business loss of \$1,691. Smith also disclosed \$6,850 in reverse-mortgage payments. The township board of review added Smith’s gross business income to his Social Security benefits and determined that his income was \$14,816, which exceeded the \$12,060 federal poverty threshold for that year. The board did not consider the reverse-mortgage payments at that time. For the third time, the board of review denied the exemption because Smith’s income exceeded the poverty guidelines.

Smith appealed to the MTT for the third year in a row, this time arguing that the board of review had erroneously included his gross business income instead of his net profit/loss when calculating his income. Following this Court’s resolution of *Smith I*, the township came to a MTT hearing armed with a copy of the opinion and Smith’s completed 2017 poverty exemption application. This application included a “Part H Schedule” in which Smith disclosed his receipt of reverse-mortgage payments, but questioned their inclusion in his income. In the alternative, Smith argued in his application that the reverse-mortgage payments should be reduced by the amounts he had expended on the property.

Smith objected to the township’s submission of “new” evidence on the day of the hearing and insisted that the only issue before the MTT was whether the township improperly considered gross business income instead of net profit/loss when calculating his income. The township argued that the 2017 poverty exemption should be denied because this Court had finally ruled that the MTT had correctly denied Smith’s request for the exemption in 2015. The hearing

referee disagreed and considered Smith's 2017 exemption application, along with Part H Schedule, and *Smith I*.

The hearing referee issued a proposed opinion and judgment, agreeing with Smith about the calculation of his income based on gross business income and losses. However, the referee continued, when the reverse-mortgage payments were added in, Smith's assets were too valuable to qualify for the exemption. Smith filed exceptions to the referee's opinion, primarily arguing that the MTT was limited to considering whether the board had properly considered his gross business income, that the introduction and admission of his application and Part H Schedule were improper, and that consideration of the reverse-mortgage payments was prohibited because the board did not address his assets in denying the exemption and the township did not raise the issue of whether Smith met the asset test until the day of the hearing.

The MTT ultimately denied Smith's 2017 poverty exemption, adopting the referee's proposed final decision, findings of fact, and conclusions of law. Smith moved for reconsideration, arguing that his constitutional rights were violated by the admission and consideration of the reverse-mortgage payments when that issue was not raised until the hearing. The MTT denied the motion as "merely restating the arguments previously presented regarding the [MTT's] de novo authority to review the case."

On appeal, Smith raises eight issues, all of which boil down to two questions: 1) whether the MTT erred by determining that Smith's assets were too valuable to qualify for the poverty exemption when the issue should have been limited to the calculation of his business income; and 2) whether the MTT violated Smith's constitutional rights by deciding the case on the basis of the reverse-mortgage payments.

## II. STANDARD OF REVIEW

"In the absence of an allegation of fraud, this Court's review of a [MTT] decision is limited to determining whether the tribunal committed an error of law or adopted a wrong principle." *Mich Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). "The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Id.* at 490-491. The interpretation of statutes is a question of law, which we review de novo. *Moshier v Whitewater Twp*, 277 Mich app 403, 407; 745 NW2d 523 (2007). We also review de novo whether a party was denied due process of law based on the absence of notice. *Cassidy v Cassidy*, 318 Mich App 463, 500; 899 NW2d 65 (2017).

## III. ANALYSIS

We discern no error in the MTT's ultimate resolution of this case. *Smith I* declared that reverse-mortgage payments impact a landowner's ability to pay property taxes and are therefore properly counted against the landowner. The \$6,580 in reverse-mortgage payments received by Smith in 2017 exceeds the \$4,500 asset limit under the poverty exemption. The reverse-mortgage payments alternatively raise Smith's income over the \$12,060 federal poverty level. He received \$9,922 in Social Security benefits, \$6,580 in reverse-mortgage payments, and only suffered a business loss of \$1,691, or a total income of \$14,811.

The MTT did not deny Smith due process of law by allowing the township to raise the issue of the reverse-mortgage payments for the first time at a hearing before a referee. “Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decision maker.” *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). Smith was on notice from the outset of his 2017 application that his reverse-mortgage payments could be counted against him. The payments were used to calculate his income in 2015 and the inclusion of those payments was the subject of Smith’s appeal in *Smith I*. Smith included his 2017 reverse-mortgage payments on his 2017 poverty exemption application and included a statement of why he thought those payments should not be counted against him. It should have come as no surprise to Smith when the issue was raised in the MTT appeal of his 2017 poverty exemption denial after *Smith I* issued. And Smith’s 2017 poverty exemption application included his legal and factual arguments for the MTT’s consideration. The MTT did not agree with Smith’s position, but he was granted due process of law.

Furthermore, Smith could, and did, move for reconsideration of the MTT’s final opinion and order. This gave Smith the opportunity to make any argument he thought necessary to demonstrate that the reverse-mortgage payments were not relevant to whether he was entitled to the exemption. Accordingly, due process safeguards were satisfied. See *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 406; 576 NW2d 667 (1998) (due process safeguards satisfied by opportunity to move for reconsideration and evidence that MTT considered the issues raised in the motion for reconsideration); *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 52-53; 572 NW2d 232 (1997) (due process rights sufficiently protected by posthearing procedure conducted by MTT).

Moreover, the MTT did not err by accepting into evidence Smith’s 2017 poverty exemption application and Part H Schedule. This evidence was necessary for the MTT to consider the appeal and should have been provided by Smith in the first instance as he bore the burden of proof. The proponent of a tax exemption bears the burden of proving entitlement to the exemption by a preponderance of the evidence. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002). Although State Tax Commission bulletins are not binding, *Ferrero v Walton Twp*, 295 Mich App 476, 479; 813 NW2d 368 (2012), ever since MCL 211.7u was amended by 1994 PA 360, the STC has maintained that

[i]n order to qualify for the poverty exemption, the claimant must meet all of the tests set by the local governing body. For example, it is possible that a claimant might meet the income test for the poverty exemption but not meet the asset level test or some other test set by the local governing body. In this situation the claimant would not qualify for the exemption even though the income test was met. [STC Bulletin No. 5 of 1995, Poverty Exemptions Under MCL 211.7u, New Requirements, January 23, 1995, p 3.]

Indeed, the 2012 Bulletin *Smith* himself submitted as evidence includes almost identical language. STC Bulletin No. 5 of 2012, p 3. Accordingly, to meet his burden of proof before the MTT, Smith was required to present evidence of his assets and income. The 2017 poverty

exemption application included the list of assets and income Smith presented for the township's consideration and he could not support his challenges in the MTT without that documentation. Had the documents not been admitted into evidence, the MTT would have been required to reject Smith's appeal of the denial of his poverty exemption for failure to establish his claim.

The MTT also did not err in considering the newly released *Smith I* at the hearing. The published opinion of this Court was not "evidence." Rather, the opinion was precedent affecting the issues underlying this case. Had the township not brought it to the MTT's attention, the MTT would have uncovered *Smith I* while researching this case and discovered that Smith's reverse-mortgage payments were required to be counted as either income or assets, requiring denial of Smith's poverty exemption. Consideration of and reliance on recent, relevant, binding authority cannot constitute error.

Smith argues that if he knew before the hearing of the consideration of the reverse-mortgage payments, he would have been able to decide what evidence and argument he could submit to demonstrate that the payments were not relevant to justify denial of the poverty exemption. This argument is unavailing. This Court held in *Smith* that the reverse-mortgage payments, whether considered income or assets, resulted in Smith being ineligible for the poverty exemption. *Smith*, 323 Mich App at 151-152. In light of this holding, there was no evidence or argument Smith could have provided that would show that the reverse-mortgage payments were not relevant to whether he was entitled to a poverty exemption.

We affirm.

/s/ Cynthia Diane Stephens  
/s/ Elizabeth L. Gleicher  
/s/ Mark T. Boonstra