

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16813
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

This case arises from a timely protest of a State Tax Commission staff (staff) decision adjusting property tax reduction benefits for 2002. This matter was submitted for a decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision based on the file.

[Redacted] (petitioner) filed a property tax reduction application on or about March 1, 2002. The income amount shown in that application was \$-0-. During review of the petitioner's application and other information provided by the petitioner, the staff determined the petitioner did not qualify as a claimant for property tax reduction benefits. The application indicated she qualified to receive the benefits as a widow; however, the attached documents suggested she was a married woman. The staff sent the petitioner a letter advising her of the intent to deny her the benefits.

In response to that letter, the petitioner telephoned the benefits coordinator. In the ensuing conversation, the petitioner explained that a friend lives with her but they are not married. She said he receives veteran's benefits from the Department of Veterans Affairs for her as his dependent. She promised to send copies of documents to substantiate her status as an un-remarried widow.

When the additional paperwork arrived, the staff transferred the file to the Legal/Tax Policy Division for administrative review. The petitioner did not respond to a letter from the Tax Appeals Specialist advising her of her appeal rights.

Idaho Code § 63-701 uses definitions to describe the conditions that must exist for an applicant to qualify to receive circuit breaker benefits. The Code states in pertinent part:

63-701. Definitions. – As used in this chapter:

(1) **"Claimant" means a person who has filed a claim** under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year in which the claim was filed a **claimant must be an owner of a homestead and be:**

- (a) Not less than sixty-five (65) years old; or
- (b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or
- (c) A **widow** or widower; or
- (d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or
- (e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or
- (f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or
- (g) Blind. (Emphasis added.)

The code sets out certain eligibility requirements for persons seeking property tax reduction benefits. In her application for benefits and in her letter of protest, the petitioner claims her eligibility is because of her status as the widow of [Redacted], who died July 29, 1977.

With her application, the petitioner submitted a copy of a letter from the Department of Veterans Affairs that was addressed to the person living at the petitioner's address and a copy of that person's 2001 federal 1040 income tax form. The letter dated December 4, 2001, said [Redacted] had been added to the veteran's "award." It said, under reason for change, "Payment now being

made at the 'married' rate.'" The income tax return showed the petitioner's address and the name of the same person identified in the letter from the Veterans Affairs. The filing status was "single."

In response to the letter advising her of the intent to deny her benefits, the petitioner called the staff and said she did not agree with the determination. She said she had another letter from the Veterans Affairs that shows she is considered as the dependent of her friend that is living in her house. She sent a copy of the same letter as before from the Veterans Affairs and another letter dated July 1, 2002, wherein it is stated, "We are paying you as a veteran with one dependent. Your payment includes an additional amount for your spouse. Let us know right away if there is any change in your marital status."

The Tax Appeals Specialist contacted the Department of Veterans Affairs and asked for clarification of the Department of Veterans Affairs' position regarding petitioner's relationship with her friend living in her home. The representative said the computer information showed the petitioner as the wife of her friend. The representative agreed to send a copy of the document that was accepted as proof of the marriage.

The Tax Appeals Specialist reviewed the copy of a document entitled "Administrative Decision" received from the Department of Veterans Affairs. The issue discussed in the document is stated as, "Does a Common-Law Marriage exist between [Redacted] for VA benefit purposes?" The following nine pieces of evidence are listed:

1. VA Form 21-686c, "Declaration of Status of Dependents" dated June 25, 2001, listing [Redacted] as current spouse.
2. Statement dated June 25, 2001, from [Redacted] that he has personal knowledge of [Redacted] and the veteran having lived together since 1978.
3. VA Form 21-4138 from veteran stating that he and [Redacted] have been living together as husband and wife since "15 Nov 77" to the present.

4. VA Form 21-4170 "Statement of Marital Relationship" signed by [Redacted] which we received on Sept 13, 2001, which establishes details of marital status.
5. Three VA Forms 21-4171 which we received on Sept 13, 2001. One of these forms is from [Redacted]'s sister, and the other two are from friends of 20+ years attesting to their knowledge of the marriage between [Redacted] and the veteran.
6. Application for Insurance from the Medical Services Bureau of Idaho Inc. dated August 7, 1989, which shows [Redacted] as a dependent spouse of the veteran.
7. Insurance card from Blue Shield of Idaho dated April 30, 1990, which shows [Redacted] as a wife of the veteran.
8. Insurance Policy card from General Insurance Co. dated Mar 21, 2001, showing [Redacted] as a second insured driver on the veteran's insurance policy.
9. Home Heating Oil (fuel utility) bill from Chevron BriCo of Idaho, Inc. dated April 23, 2001, which shows the utility account in the veteran's name, but receipt signed by [Redacted].

The Decision states: "The marriage between [Redacted] is considered a valid Common-Law Marriage for VA purposes and is recognized from November 15, 1977 when they first started living together as husband and wife."

Common-law marriages were recognized by the State of Idaho until January 1, 1996 when the legislature amended the language of Idaho Code § 32-201 to reflect no common-law after that date. However, existing common-law marriages were protected by Idaho Code § 32-201(2):

The provisions of subsection (1) of this section requiring the issuance of a license and a solemnization shall not invalidate any marriage contract in effect prior to January 1, 1996, created by consenting parties through a mutual assumption of marital rights, duties or obligations.

Webster's Ninth New Collegiate Dictionary defines widow as "a woman who has lost her husband by death and has not remarried." The petitioner does not meet the common dictionary definition of a widow.

Idaho State Tax Commission Property Tax Administrative Rule 700(07) defines widow/widower as a person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled. The petitioner does not meet the Tax Commission's definition of widow as it applies to the property tax reduction benefit. The petitioner and [Redacted] meet the requirements under Idaho law of a common-law marriage.

The petitioner does not meet any of the requirements to qualify as a claimant for property tax reduction benefits. She must be denied benefits.

The Tax Commission is aware there is some potential this decision could cause a hardship to the property tax reduction applicant in certain circumstances. The proper jurisdiction to handle such hardship situations falls with the board of county commissioners under Idaho Code § 63-711.

WHEREFORE, the decision of the State Tax Commission staff is hereby APPROVED, AFFIRMED and MADE FINAL.

An explanation of petitioner's right to appeal this decision, if it is adverse to petitioner, is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:
[Redacted]

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[Redacted]
