

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25697
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

This case arises from a timely protest by [Redacted], Attorney at Law, (representative) for [Redacted] (petitioner), of a State Tax Commission staff Notice of Deficiency Determination (NODD) adjusting the property tax reduction benefit for taxable years 2010 and 2011. This matter was submitted for decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision. For the reasons given below, the Commission upholds the NODD.

[Redacted]petitioner filed property tax reduction benefit applications in 2010 and 2011, in [Redacted] County. The staff routinely audits the applications that have been submitted to the county where the petitioner lives. During the review process, the staff contacted the Social Security Administration (SSA) to verify the petitioner’s status as disabled. Because the SSA had no record of the petitioner’s disability recognition, and she did not meet any of the other status requirements of Idaho Code § 63-701(1), the staff sent the petitioner a NODD denying her the 2010 and 2011 property tax reduction benefit.

In response, the petitioner sent a letter stating that she was recognized disabled by the SSA. The petitioner’s representative also sent a letter, with a power of attorney form which designated him as the petitioner’s representative, asserting that although the petitioner is not receiving disability payments, she is still recognized disabled by SSA. The petitioner’s file was transferred to the Legal/Tax Policy Division for administrative review. The tax policy specialist

sent the petitioner a letter advising her of her appeal rights. Included in the letter was a request from the petitioner's representative for a letter from SSA stating that it recognizes the petitioner's disability even though no disability payments were received.

The petitioner's representative called and requested a telephone hearing on August 22, 2013. He faxed additional information on August 20, 2013. The hearing was held by telephone on the scheduled date. Present were the petitioner, her husband, [Redacted], and the petitioner's representative at the representative's offices in [Redacted], Idaho. Present in the Boise office was the tax policy specialist assigned to the case and [Redacted], tax policy specialist.

Petitioner's Position

During the hearing, the petitioner's representative asserted that the petitioner's disability has not improved as attested to by the statement of the petitioner's physician, [Redacted] Practice, [Redacted], ID, dated July 2013. The document states that the petitioner has a genetic syndrome from birth called [Redacted] which has not changed and "perhaps become worse". The petitioner's representative states in its memorandum, "Social Security's SSI rules require that a decision that one's disability has ended requires a finding that there has been "medical improvement in your impairment" Title 20 CFR § 416.994(b).

The representative concludes that since the disability has been recognized by the SSA in the past, it continues to recognize it exists until it has ceased to exist. At that time, SSA must make a report that the disabled person is no longer disabled. In addition, the SSA income levels should not be a measure used by an Idaho benefit program to determine if a claimant qualifies for the Idaho benefit program.

Analysis

The Commission does not argue whether the petitioner is disabled or not. It asserts that by statute, the test is recognition by the SSA, not whether a person is disabled or not. In Idaho Code § 63-701(1)(d) a qualified claimant is identified and it states, in pertinent part, “A disabled person who is recognized as disabled by the social security administration”. Since a person who is not recognized by SSA may still be disabled, the test is not disability, but recognition.

The petitioner’s representative cites Title 20 CFR § 416.994(b) to state that SSA still recognizes the petitioner. The portion cited refers to medical reasons by which the benefit payments may be discontinued. Title 20 CFR § 416.110 states that the purpose of the program is not a disability recognition program, but a program to ensure that the disabled person has sufficient income to live. It states, in pertinent part:

The basic purpose underlying the supplemental security income program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level.

Based on the statement of purpose, the SSA program may discontinue benefits based on income. A disabled person could still be disabled and not be recognized by SSA because their income levels are too high. This does not make them a person without a disability, just a disabled person with income over the Federal minimum.

The petitioner’s representative provided a letter from SSA to the petitioner dated January 14, 2008, stating that it would stop payments in February 2008, because the petitioner’s income levels are beyond what SSA allows. The physician’s letter also recognizes that the petitioner’s “disability status was changed by Social Security”. Title 42, United States Code, Section 1382 adds that the income from a spouse can be added to the disabled person’s to determine if the income requirements are exceeded. The petitioner’s representative also notes

that the petitioner's failure to receive benefits from SSA is due to the petitioner's husband's disability income.

The Commission does not argue whether the petitioner is disabled or not. The property tax reduction benefit is a program instituted with income limitations to determine which property owners may receive it, Idaho Code § 63-705. This is similar to SSA's income limitation. The Commission asserts that failure to receive a SSA disability benefit—because the disabled person no longer needs supplemental income—is a failure to be recognized as disabled by the SSA.

Unfortunately, the petitioner did not receive disability payments and she does not meet any of the other status requirements. She does not qualify as a claimant for the 2010 or 2011, property tax reduction benefit and must be denied the benefit.

BENEFIT	INTEREST	TOTAL
\$1,114.52	\$79.42	<u>\$1,193.94</u>

THEREFORE, the Notice of Deficiency Determination dated March 12, 2013, is APPROVED, AFFIRMED, and MADE FINAL.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
