

**NOTICE**

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2020 IL App (4th) 190403-U

NO. 4-19-0403

IN THE APPELLATE COURT

OF ILLINOIS

**FILED**

June 17, 2020

Carla Bender

4<sup>th</sup> District Appellate Court, IL

FOURTH DISTRICT

DANIEL MAHER, as Administrator of the Estate of	)	Appeal from the
Bernard Beiermann, Deceased,	)	Circuit Court of
Plaintiff-Appellant,	)	Sangamon County
v.	)	No. 18MR727
ILLINOIS DEPARTMENT OF HUMAN SERVICES,	)	
Defendant-Appellee.	)	Honorable
	)	Adam Giganti,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court. Justices DeArmond and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the final administrative decision of the Department of Human Services which provided that decedent who had sought Medicaid benefits was subject to a penalty because his residence was sold for less than fair market value in the five years before applying for benefits.

¶ 2 Plaintiff, Daniel Maher, as administrator of the estate of Bernard Beiermann, deceased, appealed a notice of decision issued posthumously by the Illinois Department of Human Services (Department). After an evidentiary hearing, a hearing officer approved decedent’s application for Medicaid benefits but imposed a penalty because decedent sold his home below fair market value within the five years before applying for benefits. The Secretary of the Department issued a final administrative decision adopting the findings of the hearing officer. The Sangamon County circuit court upheld the administrative decision.

¶ 3 Plaintiff appeals, arguing (1) the Department applied the incorrect section of the Illinois Administrative Code (Administrative Code) when it determined the fair market value of decedent's residence; (2) the Department incorrectly determined the fair market value of the property and therefore erroneously imposed a penalty; and (3) he is entitled to attorney fees. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In 2015, Tiara Sue Young, niece and power of attorney for decedent, sold a single-family home owned by decedent at his request. The property, located at 210 North South Street in Raymond, Illinois, was sold to Gregory and Brenda Hemann for an agreed price of \$7000.

¶ 6 In 2016, decedent moved to a long-term care facility. In October of that year, decedent applied to the Department for long-term care benefits under the Aid to the Aged, Blind, or Disabled (AABD) program (305 ILCS 5/3-1 *et seq.* (West 2014)). Decedent died in July 2017.

¶ 7 The Department posthumously approved decedent's application for long-term care benefits but imposed a five-month penalty period. The penalty period was a period of ineligibility for benefits due to the sale of decedent's residence below fair market value. The Department determined the fair market value of the residence was \$26,130. The penalty period was calculated based on the difference between the fair market value of the residence and the sale price of \$7000.

¶ 8 A. Administrative Appeal

¶ 9 In April 2018, the Sangamon County circuit court appointed plaintiff as administrator of decedent's estate. Plaintiff appealed the Department's imposition of the penalty period.

¶ 10 In June 2018, a hearing officer for the Department conducted a telephone conference. Plaintiff requested a continuance because Young was not available. According to plaintiff, Young would have difficulty participating in a hearing by telephone because she worked and would have to take time off from her employment. Plaintiff suggested Young provide an affidavit to the hearing officer. The Department objected, as an affidavit would not allow for cross-examination. The hearing officer allowed the continuance and the use of the affidavit, stating he would “give it the weight that [he] believe[d] it deserve[d] as evidence.”

¶ 11 In July 2018, the hearing officer conducted the hearing. Plaintiff presented as evidence an affidavit from Young, a letter from the Hemanns, and an Illinois Real Estate Transfer Declaration specific to the decedent’s residence.

¶ 12 According to Young’s affidavit, in 2015, Young, as power of attorney for decedent, assisted decedent in selling his single-family home located at 210 North South Street in Raymond, Illinois, at his request. The initial asking price for the property was \$10,000. Young advertised the home by placing a sign in the window of the property. After five months, the only offer received for the property was \$7000 from the Hemanns.

¶ 13 Young’s affidavit stated the property was in “terrible physical condition and needed extensive work.” Beiermann did not wish to use a realtor to sell the property, in part to avoid realtor fees. The property was not listed in any newspaper. Young stated neither she nor Beiermann were related to the Hemanns or had any prior contact with them.

¶ 14 The unsworn letter from the Hemanns stated the asking price for the property was \$8000 and the agreed purchase price was \$7000. The property was in very poor condition, and the Hemanns conducted repairs to the property including replacing the sewer lines, plumbing, screen doors, flooring, and light fixtures; remodeling the bathroom; repairing the bedroom

ceiling; removing build-up on the walls; repainting the interior of the house; and landscaping. The Hemanns further wrote they did not have the property appraised, it was purchased “as-is,” and the house was not livable when purchased.

¶ 15 The Real Estate Transfer Declaration identified the full consideration for the property as \$7000. When asked if the property had been advertised for sale (*i.e.* media, sign, newspaper, realtor), the declaration was marked “No.” The declaration did not indicate the sale was between related individuals. In the section of the declaration completed by the chief county assessment officer, the assessed value of the home for the tax year prior to the sale, 2014, was listed at \$9090, representing an assessed valuation of \$26,130.

¶ 16 During plaintiff’s case-in-chief, plaintiff argued the fair market value for the property was the \$7000 purchase price as it was an arms-length transaction and the home was in significant disrepair. The lack of a realtor involved in the transaction was due to the poor condition of the property, making it unlikely a realtor would be willing to sell the property.

¶ 17 The Department submitted as evidence the 2015 tax bill for the property. The tax bill showed the fair cash value for the parcel was \$26,130. The Department argued the tax bill was the “most reliable and reasonable evidence” of the property’s fair market value. The Department maintained (1) Young’s affidavit did not explain how the initial asking price was determined, (2) there were no attempts to advertise the house other than the sign placed in the window, and (3) the Hemanns’s letter listed repairs without estimating the value of the property. Finally, the Department argued plaintiff’s evidence lacked reliability due to the absence of live witnesses and the Department’s inability to cross-examine witnesses’ testimony.

¶ 18 In a written decision, the hearing officer found the Department correctly determined decedent’s application for long-term care benefits was subject to a penalty period

(October 1, 2016, through March 6, 2017), because the decedent transferred assets for less than fair market value in the five years preceding the application date. Upon review, the Secretary of the Department considered and adopted the findings of fact of the hearing officer. The Secretary upheld the five-month penalty, citing title 89, section 120.388 of the Administrative Code (89 Ill. Adm. Code 120.388 (2012)), which states the Department “shall use all reasonable means available and consider all relevant facts and circumstances relating to the asset and the transaction, including, but not limited to: the cost or price paid for the asset, whether the transaction was at arm’s length, comparable sales, replacement cost, and expert opinion.” The Secretary also cited section 120.385(c) of the Administrative Code (89 Ill. Adm. Code 120.385(c) (2013)) as relevant to “the issue of determining fair market value.” Section 120.385(c) pertains to the determination of home equity interest and states, in part, that “[t]he [current market value] of the property may be established by \*\*\* a county real estate assessor’s current estimate of the market value or fair cash value of the property used in determining the assessed value of a property \*\*\*.” 89 Ill. Adm. Code 120.385(c)(1)(A) (2013). The Secretary highlighted the fact that neither the Hemanns nor Young were made available to testify under oath or for cross-examination. The Secretary further noted the Department’s contention that no appraisal or assessment was offered which justified the \$10,000 initial list price for the home. Finally, the Secretary referenced section 120.385(c)(1)(A) of the Administrative Code as defining the methods of establishing the fair market value of real property and finding “[n]one of the descending order of alternatives were shown to have been used by Appellant to determine the fair market value of his property.” In conclusion, the Secretary found the “Appellant did not show, by a preponderance of the evidence, that his current market value was more accurate than the Department’s current market value.”

¶ 19

## B. Circuit Court Proceedings

¶ 20 In September 2018, plaintiff filed a complaint for administrative review of the Department's decision. In his brief in support of his complaint, plaintiff argued (1) the Department applied the incorrect regulation in determining the fair market value by relying on section 120.385 of the Administrative Code, (2) the Department incorrectly determined the property was sold for less than fair market value where the best evidence was the actual sale of the property to the Hemanns as it was an arms-length transaction, and (3) plaintiff was entitled to attorney fees on administrative review under section 10-55c of the Illinois Administrative Procedure Act, which allows an award of attorney fees to a party that has an administrative rule invalidated by a court. See 5 ILCS 100/10-55(c) (West 2016).

¶ 21 In response, the Department acknowledged section 120.388 of the Administrative Code made no reference to section 120.385. However, the Department argued the correct legal standard was applied where section 120.388 required the Department to use "all reasonable means available" to determine fair market value. See 89 Ill. Adm. Code 120.388 (2012). The Department argued nothing in the final administrative decision suggested the hearing officer did not consider plaintiff's evidence regarding fair market value of the decedent's residence but merely gave plaintiff's evidence less weight. The Department further argued it was not bound to accept the purchase price of the property as more than a factor to be considered in determining fair market value. Finally, the Department argued plaintiff would not be entitled to attorney fees where the complaint did not seek to invalidate a rule of general applicability.

¶ 22 The circuit court denied plaintiff's complaint for administrative review and affirmed the Department's decision, finding the Department's decision was "not clearly erroneous." The circuit court further denied plaintiff's request for attorney fees.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Plaintiff appeals, arguing (1) the Department erred by applying the incorrect section of the Administrative Code to determine the fair market value of decedent's property, (2) the Department incorrectly determined the fair market value of decedent's property and applied a penalty period, and (3) plaintiff is entitled to attorney fees.

¶ 26 A. Standard of Review

¶ 27 The Illinois Supreme Court has stated that “under any standard of review, a plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden.” *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33, 870 N.E.2d 273, 293 (2006). Plaintiff's burden of proof in an administrative hearing is by a preponderance of the evidence. 5 ILCS 100/10-15 (West 2016). “With administrative cases, this court reviews the administrative agency's decision, not the circuit court's.” *Kildeer-Countryside School District No. 96 v. Board of Trustees of Teachers' Retirement System*, 2012 IL App (4th) 110843, ¶ 20, 972 N.E.2d 1286.

¶ 28 “In administrative review cases, this court reviews factual question[s] under the manifest weight standard, questions of law *de novo*, and mixed questions of law and fact under the clearly erroneous standard.” *Buckner v. University Park Police Pension Fund*, 2013 IL App (3d) 120231, ¶ 13, 983 N.E.2d 125. “A finding is against the manifest weight of the evidence where the opposite conclusion is clearly apparent.” *Adams v. Board of Trustees of the Teachers' Retirement System*, 407 Ill. App. 3d 592, 595, 944 N.E.2d 789, 791 (2011). “An administrative agency's decision is clearly erroneous where the reviewing court comes to the definite and firm conclusion the agency has committed an error.” *Id.* at 595.

¶ 29 Plaintiff asserts that whether the Department applied the correct section of the administrative code is a question of law and our review should be *de novo*. Plaintiff argues the imposition of the penalty period is a mixed question of law and fact and is therefore subject to a clearly erroneous standard of review. The Department agrees our review of the application of the administrative code is subject to a *de novo* standard but contends the question of the penalty period is a question of fact and subject to a manifest weight of the evidence standard of review.

¶ 30 B. Application of the Administrative Code

¶ 31 Plaintiff argues the Department applied the incorrect section of the Code when it referenced in its final administrative order section 120.385 rather than section 120.388 as “the methods of establishing the fair market value of real property.”

¶ 32 Section 120.388 provides:

“A transfer of assets for less than fair market value made on or after January 1, 2007 by an institutionalized person or the spouse of that person within 60 months before the later of applying for medical assistance or transferring an asset shall result in a period of ineligibility for long term care services for that person.” 89 Ill. Adm. Code 120.388(a) (2012).

When determining the fair market value of a property, section 120.388 provides that the fair market value is the “prevailing price” at the time of transfer, defined as “what property would sell for on the open market between a willing buyer and a willing seller, with neither being required to act and both having reasonable knowledge of the relevant facts.” *Id.* § 120.388(f). The Department is instructed to use “all reasonable means available and consider all relevant facts and circumstances relating to the asset and the transaction, including, but not limited to: the



cost or price paid for the asset, whether the transaction was at arm's length, comparable sales, replacement cost, and expert opinion." *Id.* § 120.388(f)(1).

In its final administrative decision, the Department referenced section 120.385(c)(1)(A) as relevant to the determination of fair market value. Section 120.385(c)(1)(A) states:

“The current market value (CMV) of the property is the going price for which it can reasonably be expected to sell on the open market in the particular geographic area involved. The CMV of the property may be established by:

- i) an appraisal report, no more than six months old \*\*\*; or
- ii) a county real estate assessor's current estimate of the market value or fair cash value of the property used in determining the assessed value of a property; or
- iii) any other reliable and verifiable indicia of the price that a property would bring in a sale between a willing buyer and seller under arms-length conditions unaffected by undue pressures.” *Id.* § 120.385(c)(1)(A) (2013).

Plaintiff's issue is solely with how fair market value was determined. Plaintiff argues the Department incorrectly relied on section 120.385 to determine fair market value. As plaintiff highlights, section 120.385(c) pertains to the determination of home equity interest, not the fair market value of a transferred property, and thus was not applicable.

However, we note again section 120.388 instructs the Department to use *all reasonable means* available to determine the fair market value of an asset. Although we question the Department's reference to section 120.385 of the Code as providing a “delineated” list of methods to determine fair market value, we agree a county assessor's valuation of property may

be relevant to the determination of fair market value. Section 120.388 clearly does not prohibit the use of a county assessor's valuation as a reasonable means to determine the fair market value of a residence. The Department considered all the evidence presented and weighed the relevance of the evidence to determine the fair market value. Thus, the only true issue in this case is the Department's determination of fair market value.

¶ 33 C. Fair Market Value

¶ 34 Plaintiff argues our review of the application of the penalty period is a mixed question of law and fact and therefore subject to a clearly erroneous standard of review.

However, the application of the penalty period is clearly appropriate if the fair market value of the property was correctly determined to be more than the \$7000 selling price. Further, defendant does not challenge the ultimate determination that a penalty period should be applied if the fair market value was correctly determined to be more than the selling price. Therefore, the question at issue here is the fair market value of the property, a question of fact we review under the manifest weight of the evidence standard.

¶ 35 On appeal, plaintiff argues that the Department should have considered the evidence of the sale of the property as conclusory of the fair market value of the property. As plaintiff notes, section 120.388 states the fair market value, or "prevailing price," is "what property would sell for on the open market between a willing buyer and a willing seller, with neither being required to act and both having reasonable knowledge of the relevant facts." 89 Ill. Adm. Code 120.388(f) (2012). Plaintiff argues the arms-length nature of the sale, the poor condition of the property, and the sole offer of \$7000 from the Hemanns are uncontradicted facts which thereby demonstrate the actual sale of \$7000 was the best evidence of the fair market value of the property.

¶ 36 Plaintiff cites *Residential Real Estate v. Illinois Property Tax Appeal Board*, 188 Ill. App. 3d 232, 543 N.E.2d 1358 (1989) as instructive for the proposition that a contemporaneous sale is conclusive to the assessment of fair market value. As plaintiff notes, in that case the court stated:

“Fair cash value is synonymous with fair market value and is defined as the price a willing buyer would pay a willing seller for the subject property, there being no collusion and neither party being under any compulsion. [Citation]. A contemporaneous sale between parties dealing at arm’s length is not only relevant to the question of fair cash market value but would be practically conclusive on the issue of whether an assessment was at full value. [Citation].” *Id.* at 242.

However, if we examine the court’s assessment in *Residential Real Estate* in greater detail, we find “the sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances.” *Id.* As the evidence of sale alone is not automatically conclusive evidence of the fair market value of the property, we must look to all the evidence to determine if the administrative decision was against the manifest weight of the evidence.

¶ 37 “An administrative agency’s findings and conclusions on questions of fact are deemed to be *prima facie* true and correct,” and “a reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence.” *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205, 692 N.E.2d 295, 302 (1998). “An administrative agency’s factual determinations are contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident.” *Id.* Upon judicial review of an administrative decision, a reviewing court *must not* reweigh the evidence or assess the credibility

of witnesses. See *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88, 606 N.E.2d 1111, 1117 (1992). It is for the Department, as the trier of fact, to evaluate all evidence, judge the credibility of witnesses, resolve any conflicts in the evidence, and draw reasonable inferences and conclusions from the facts. *Smith v. Department of Professional Regulation*, 202 Ill. App. 3d 279, 284, 559 N.E.2d 884, 887 (1990).

¶ 38 Under section 120.388, the Department “shall use all reasonable means available and consider all relevant facts and circumstances relating to the asset and the transactions, including, but not limited to: the cost or price paid for the asset, whether the transaction was at arm’s length, comparable sales, replacement cost, and expert opinion.” 89 Ill. Adm. Code 120.388(f)(1) (2012). In this case, the Department presented evidence of the local assessor’s estimate of the fair cash value of the property. This evidence stated the property was valued at \$26,130. It was therefore up to the plaintiff to present evidence rebutting that valuation to a degree that the valuation of \$7000 was clearly evident. Plaintiff presented Young’s affidavit, which stated they did not use a realtor, the property was advertised by a sign placed in the window at a price of \$10,000, the property was in poor physical condition, the offer of \$7000 was the only offer received in the five month period the property was for sale, and there was no relationship with the Hemanns. Plaintiff also presented an unsworn letter from the Hemanns, stating the property was listed at \$8000, the property was purchased “as-is” for \$7000, and the property was in poor physical condition. The unsworn letter did not make a statement as to a relationship between the plaintiff and the Hemanns. Finally, plaintiff submitted the Real Estate Transfer Declaration, which stated the transaction was not between related individuals, but also did not indicate the property was advertised for sale. No evidence was presented explaining how the initial asking price was reached. In sum, it was reasonable for the Department to have

reviewed this evidence and found it was not conclusive enough of an arm-lengths transaction to rebut the Department's evidence. Therefore, because there was reasonable evidence as to the fair market value of the property being \$26,130, we find the determination by the Department was not against the manifest weight of the evidence.

¶ 39 D. Attorney Fees

¶ 40 As we uphold the Department's determination as to the fair market value of the property and the imposition of the penalty period, we need not reach the question of whether plaintiff is entitled to recover attorney fees. See *Rogers v. Balsley*, 240 Ill. App. 3d 1005, 1011, 608 N.E.2d 1288, 1292 (1993).

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the Sangamon County circuit court affirming the decision of the Department of Human Services.

¶ 43 Affirmed.