

BEFORE THE MONTANA TAX APPEAL BOARD

---

DONALD & GLENDA VAN DAELE,	)
	) Docket No. PT-2015-2
Appellant,	)
-vs-	)
	) FINDINGS OF FACT,
	) CONCLUSIONS OF LAW
DEPARTMENT OF REVENUE	) ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	) FOR JUDICIAL REVIEW
	)
Respondent.	)

---

**Statement of Case**

Donald and Glenda Van Daele (Taxpayers) appealed the final decision of the Department of Revenue (DOR) concerning the denial of their application for the Montana Disabled Veterans Property Tax Relief Program for tax years 2009 through 2013. The matter was heard before the Montana Tax Appeal Board on July 14, 2015. Taxpayers, Donald and Glenda Van Daele, appeared on their own behalf. The DOR was represented by co-counsels Elizabeth Roberts and Michele Crepeau. Karie Frydenlund, the DOR's lead Property Valuation Specialist, and Sherri Diemert, a DOR management analyst provided testimony. Judy Tice, a DOR area manager, and Kelby Fischer, a DOR law intern, observed the proceedings.

The Board having fully considered the testimony, exhibits, written submissions and all matters presented, finds and concludes the following:

### Issue

The issue before this Board is whether the Taxpayers' should be granted relief under the Montana Disabled Veterans Property Tax Relief Program although Taxpayers untimely filed their 2009 through 2013 applications.

### Summary

Donald and Glenda Van Daele are the Taxpayers in this proceeding and, therefore, have the burden of proof. Based on a preponderance of the evidence, the Board grants Taxpayers the Montana Disabled Veterans Property Tax Relief for the tax years 2009-2013.

### Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. Both parties were afforded the opportunity to present evidence, oral and written.
2. In 2007, Mr. Van Daele was diagnosed with Muscular System Atrophy (MSA), an unknown neurological disorder. Hr'g Tr. 13: 20-23.
3. Around 2008, Mr. Van Daele was also diagnosed with Amyotrophic Lateral Sclerosis (ALS). Hr'g Tr. 13: 13-16.
4. By letter dated August 9, 2007, Donald was rated 100 percent permanently and totally disabled by the U.S. Department of Veterans Affairs. Taxpayers' Ex 1.

He was forced to retire from the military. *Id.* The evaluation was considered “permanent and total in nature.” *Id.*

5. Glenda testified that Donald served in the US military for 25 years and was forced to retire for medical reasons. Hr’g Tr. 6:8-9.
6. Glenda testified that after Donald retired they met with Laurie Pereski, at the Department of Veterans Affairs, who gave them information about the benefits available to disabled veterans and instructions on how to apply for the different programs available with the Motor Vehicles Department and the Department of Revenue. Hr’g Tr. 10:8-14.
7. Glenda testified that they applied for the Montana Disabled Veterans Property Tax Relief program in 2008 and they were granted the exemption, even though they applied after the April 15 deadline. Hr’g Tr. 6:17-22.
8. Glenda testified that when they received their property tax bill in 2009, and realized that it did not reflect the disabled veteran’s exemption, Donald called the DOR to find out why they were not granted the exemption in 2009. He further testified that he was told by an unnamed DOR employee that the program did not exist. Hr’g Tr. 6:24-25; Hr’g Tr. 7:1-3.
9. Taxpayers relied on the information that the program no longer existed and timely paid their 2009 through 2013 property taxes, without any tax relief, despite the severe medical and financial hardships they experienced during this time. Hr’g Tr. 25:1-16.

10. Glenda testified that although each year's tax bill contained generic language that 'this property may qualify for property tax assistance,' they concluded, based on Donald's prior conversation with the DOR, that they themselves were no longer eligible for any of these programs and that the program did not exist. Hr'g Tr. 25:14-16.
11. Donald's medical condition had been hard to diagnosis and throughout the years at issue he has required medical treatment on a continuing basis consisting of multiple doctor's visits, treatment centers, and physicians, including trips to doctor's located out of the state. Hr'g Tr. 13:1-23
12. Throughout this same period, Donald has taken numerous medications, including morphine and fentanyl patches to manage his severe pain. Hr'g Tr.11:7-21.
13. Donald's illness is progressive and terminal, and during this time, Donald suffered from depression. Hr'g Tr. 25:1-3.
14. In early 2014, Donald learned through a casual conversation with a veteran, that the Montana Disabled Veterans Property Tax Relief program still existed. Hr'g Tr. 7:4-8. He immediately called the DOR and left a message. Hr'g Tr. 7:8-10.
15. On April 30, 2014, Karie Frydenlund of the Department of Revenue's Personal Property Valuation office returned the call. Hr'g Tr. 7:12-10.

16. Following up, Ms. Frydenlund mailed the Taxpayers an application for the tax relief program for each of the years at issue, 2009 through 2013. Hr'g Tr. 7:8-10.

---

17. Glenda testified that she received the applications from Ms. Frydenlund towards the end of May in 2014. Hr'g Tr. 7:4-25.
18. The DOR received the completed applications from the Van Daeles on July 2, 2014.<sup>1</sup> Hr'g Tr. 15:18-20; DOR Ex. A.
19. As a follow-up, Glenda made several phone calls and sent several emails to Ms. Frydenlund inquiring as to the status of the applications but received no response from Ms. Frydenlund between May of 2014 and February of 2015, except for the notification that the Taxpayers did receive benefit of the program for tax year 2014. Hr'g Tr. 8:1-6; Taxpayer's Ex. 1.
20. By letter dated March 2, 2015, DOR denied the Taxpayers' Applications for the Montana Disabled Veterans Property Tax Relief program for tax years 2009 through 2013 for the reason that the applications were untimely filed. DOR Ex. B.
21. The Department introduced a copy of the 2009 assessment notice that was mailed to the Van Daeles. DOR Ex. C. Ms. Frydenlund testified that the second page of the assessment notice included the following statement:

---

<sup>1</sup> DOR Exhibit B states, however, that the applications were received on June 2, 2014.

“Disabled veteran or the spouse of a disabled veteran. If you are a disabled veteran property owner with a 100% service related disability, or the surviving spouse of a disabled veteran, you may be eligible to claim a reduction, or a full exemption, of your Montana property taxes. We have extended the deadline to apply for this tax assistance in 2009.

To find if you qualify, contact your local Montana Department of Revenue office within 30 days after you receive this assessment notice.”

Hr’g Tr. 17:11-18; DOR Ex. C.

22. The Department introduced copies of the Van Daeles’ 2008, 2009, 2010, 2011, 2012 and 2013 tax bills. DOR Ex. D. Ms. Frydenlund testified that each bill contained the following language:

“This property may qualify for a Property Tax Assistance Program. This may include: Property Tax Assistance, Disabled or Deceased Veterans’ Residential Exemption, the Extended Property Tax Assistance Program and/or Elderly Homeowner’s Tax Credit. Contact the local Department of Revenue at 406-444-4000 for further information.” Hr’g Tr. 18:8-13; DOR Ex. D.

23. Ms. Diemert testified that every year, typically in January or February, the Department mails a copy of the yearly veteran’s exemption application to every person in the County who qualified for the veteran’s exemption in the prior year. Hr’g Tr. 22:23-25, 23:3-4, 24:2-4.

24. The Department introduced a copy of a 2009 data list used to generate disabled veteran application forms. Ms. Diemert testified that the Van Daeles are

included on the list, indicating that the Department did mail a prepopulated 2009 application to the Van Daeles. Hr'g Tr. 23:3-25.

25. The Van Daeles failed to file an application in 2009. They did not receive the 2009 exemption, and correspondingly their name would not have been on the Department's data list to receive a copy of the application in any of the subsequent years. See Hr'g Tr. 23:3-4.
26. Ms. Frydenlund testified that the Department does frequently waive the application deadline, if the taxpayer provides a letter explaining the medical reasons for the delay, but the Van Daeles did not provide a letter of explanation when requested to do so. Hr'g Tr. 20:5-9.

#### **Principles of Law**

1. The Montana Tax Appeal Board has jurisdiction over this matter. §15-2-302, MCA.
2. Section 15-6-211(1), MCA, exempts a veteran's residence and land (not to exceed 5 acres) from property tax if the veteran was discharged from active service and is rated 100% disabled subject to the income limitations set forth in subsection (2).
3. Section 15-6-211(3), MCA, states, in relevant part, "[t]he property tax exemption under this section *remains in effect as long as the property is the primary residence owned and occupied by the veteran*" (Emphasis added).

4. Finally, Section 15-6-211(3), MCA, states, “A claim for exemption on a form prescribed by the department must be filed with the department on or before April 15 of the year for which the exemption is claimed.”
5. The Department adopted ARM 42.19.501 which provides additional guidance for administering §15-6-21, MCA.
6. ARM 42.19.501 states, as follows:
  - (1) The property owner of record or the property owner’s agent must make annual application to the local department office, in order to obtain a property tax exemption.

\* \* \*
  - (4) An application must be filed, on or before April 15 of the year for which the exemption is sought, on a form available from the local department office. Applications received after April 15 will be considered for the following tax year.
  - (5) The department may waive the April 15 deadline if the applicant:
    - (a) participated in the program in the prior year;
    - (b) was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness, and can demonstrate:
      - (i) one or more of the impediments, while not necessarily continuous, existed at sufficient levels between January 1 and April 15, of the tax year in which the applicant is applying, that prevented timely filing of the application; or
      - (ii) confusion caused by the infirmity may have prevented timely filing of the application.

(6) The department may waive the April 15 deadline, on a case-by-case basis, if the applicant:

- (a) qualified in the prior year;
- (b) meets the income requirement in the current year; and
- (c) submits a written statement, plus any documentation explaining *any circumstances* not identified in (5) that prevented timely filing of the application.

7. The Montana Tax Appeal Board must give administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful. §15-2-301(4), MCA.

#### **Findings of Fact, Conclusions of Law and Board Discussion**

The Board must determine, based on a preponderance of the evidence, whether the DOR properly denied the Taxpayers' Montana Disabled Veterans Property Tax Relief Program applications for tax years 2009 through 2013.

This Board finds that Donald had impediments that existed in sufficient levels to prevent him from timely filing his application. His physical illness, his corresponding treatment, and medications affected every aspect of his daily life, including his judgment, throughout the years at issue and were impediments to his timely application. Hr'g Tr.11:8-22. It is uncontroverted that Donald is permanently disabled and that his and his wife's income remained below the threshold qualifying him for the assistance. Donald received this tax assistance in 2008. The Department does not dispute that Donald and Glenda Van Daele would have qualified for the

veteran's exemption had they made timely annual applications for the program for the years 2009-2013. The Department's denial of the assistance is based solely on the premise that the applications were not timely filed. When the Department made the decision to deny the application they did not have all the information that this Board now has. The entire record and testimony before this board does not show that the department even considered the waiver available in both subsections 5 and 6 of its own administrative rule. It is uncontroverted that from 2007 Donald has been battling a terminal disease. Doctors gave him months to live. Taxpayers' uncontroverted testimony laid out convincingly the confusion and disruption that the infirmity wrought upon their lives. The Board is convinced that but for this infirmity the taxpayers may have complied with the April 15 deadline. The taxpayer demonstrated that continuous impediments during the filing period prevented timely filing of the applications.

DOR argues that Rule 42.19.501(8) should apply. Subsection 8 of the rule allows the Department to accept and process applications and proof of income if submitted or postmarked no later than July 1 of the year for which the benefit is sought. The Van Deales did not meet the requirements of this prong of the rule. Other prongs of the rule allow the strict requirements of the deadline to be waived in certain circumstances. This case turns on Rule 42.19.501(5) and/or Rule 42.19.501(6). The Department ignores these rules. Subsections 5 and 6 were intended to allow the flexibility in favor of taxpayers who face impediments such as a disruptive infirmity or

circumstances that result in great disruptions in the taxpayer's lives. The department's rule requires a waiver under these circumstances to temper the harsh effects of the strict deadline on taxpayers who find themselves with impediments such as those faced by the Van Deales. Waiver of the strict deadline should be granted in this situation.

The Board agrees and finds there is sufficient evidence to conclude that Donald Van Daele meets the statutory requirements for the veteran's exemption because he was honorably discharged from active service with a 100 percent service-connected disability rating. His physical and mental condition warrant the application of subsections 5 and 6. At the time of Donald's discharge in 2008, the Van Daele's applied for, and received, the property tax exemption for 2008. The department waived the deadline requirement in this instance in granting the assistance, though the application was received past the April 15 deadline. Although the Van Daele's failed to reapply for the exemption in 2009, Section 15-6-211(3) MCA<sup>2</sup> states, in relevant part, "[t]he property tax exemption under this section *remains in effect* as long as the property is the primary residence owned and occupied by the veteran." (Emphasis added). The Board concludes that this statutory language clearly states that once Donald Van Daele qualified for the exemption in 2008 he remained eligible for the exemption for each succeeding year.

---

<sup>2</sup> Section 15-6-211 has been repealed by Laws 2015, ch.361,§31, eff. April 29, 2015

The amount of the exemption that DOR applies to each qualified veteran each year depends on the veteran's household income. §15-6-211 MCA. A veteran whose household income is less than \$36,000 receive a 100 percent exemption. The exemption has a cap of 50 percent for households with income in excess of \$45,000 (indexed for inflation.) *Id.* Because the exemption amount can change or fluctuate annually based on a veteran's household income, an annual exemption form must be filed with the DOR before April 15 of the year for which the exemption is claimed in order to allow the DOR to determine each veteran's exemption amount. § 15-6-211(7) MCA. However, the administrative rules allow the Department to waive the April 15 deadline if the applicant participated in the program in the prior year and impediments prevented timely filing of the application. A.R.M 42.19.501(5).<sup>3</sup> Subsection 5 does not limit the period within which the taxpayer must demonstrate his impediments such as a medical condition or infirmity. The only requirement is that the taxpayers demonstrate the impediments at the time of the filing that prevented the timely application. Administrative Rule 42.19.501(6) also gives the Department discretion to waive the April 15 deadline requirement and renew eligibility on a case-by-case basis where an applicant participated in the program in the prior year, would meet the income requirements in the current year, and the taxpayer

---

<sup>3</sup> Incidentally Administrative Rule 42.20.102 which also regulates applications for property tax exemptions has a waiver provision (b) in cases where the "applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity or mental illness" and can demonstrate "the impediment(s) existed in sufficient levels during the application period to prevent timely filing of the application.

provides a written statement, and documents explaining any circumstances not identified in 42.19.501(5) that prevented timely filing. Subsection 6 has no time limit either.

Without timely filed applications, the Department was unable to determine whether Van Daeles were eligible for the tax exemption. Now that the Department has this information they can do so.

This Board's decision turns on the credibility of the taxpayer, the intent of the exemption, and the Department's discretion to waive the April 15 deadline in specific cases of extreme medical hardship. We find that this is a case where the waiver should apply.

The purpose of this rule is to provide flexibility in situations where a taxpayer faces certain impediment such as an infirmity that creates confusion thereby imposing additional hurdles for the taxpayer to file the PTAP application in a timely manner.<sup>4</sup> This Rule was written precisely for taxpayers such as the Van Daeles. The Van Daeles did not explain the extent of Donald's severe medical condition when they submitted the "untimely" applications to the Department in 2014. The Department's employee, Ms. Frydenlund advised the taxpayers to write a letter explaining the reason they were late, but she could not prompt the Van Daele's to tell her medical reasons prevented the timely application. Unfortunately, the Van Daele's did not submit a letter setting forth the full extent of Donald's medical condition to explain why the

---

<sup>4</sup> See Montana Administrative Register Mar 2011 Issue 5 p. 338 – 339.

applications were not timely submitted. Without such an explanation, the Department had no choice but to deny the untimely applications.

The record shows that the Department applied the April 15 deadline rule and did not consider Administrative Rule 42.19.501(5) or Administrative Rule 42.19.501(6) in its determination. The Department did not consider Van Deale's impediments, viz., his infirmity, his cancer treatments, and his potent medication, as required by Administrative Rule 42.19.501 (5) nor any other circumstance on a case-by-case basis as required by Administrative Rule 42.19.501(6). Using this appeal process, the taxpayers appeared and credibly testified, to the extent of Donald's severe, debilitating, and chronic medical conditions. The Board finds that Donald had the impediments envisioned by A.R.M. 42.19.501(5). The Department should have used its discretion to waive the April 15 filing deadline. The infirmity was continuous or at least existed at sufficient levels to prevent the taxpayer from timely filing the application. Taxpayers' testimony clearly demonstrates even if the infirmity of the taxpayer may not have caused confusion, the fact that the taxpayers were inundated and overwhelmed by paperwork resulting from the cancer treatments, insurance providers, doctor's consultations, and the like, they met the criteria for applying Administrative Rule 42.19.501(6). Taxpayers were inundated with a mountain of paper work resulting from Donald's illness. Such long-standing inundation and disruption of their lives may well have prevented them from timely filing in 2009 and subsequent years.

There is no question that Donald, once qualified for the veteran's exemption in 2008, remained eligible for the exemption in 2009, 2010, 2011, 2012, and 2013. However, Donald's life was disrupted by medical crises, one after another, during these years. His medical condition and his pain medication rendered him unable to complete the normal administrative tasks expected of him. The doctors gave him months to live. These rules allow the Department flexibility to mitigate in such situations. We find that Van Daele's infirmities existed at sufficient levels to prevent the timely filing of the application. Van Daeles met the income requirement to remain eligible throughout the years in question. Here the envisioned impediments due to infirmities clearly existed, and should have triggered the weighing required by A.R.M. 42.19.501(5). This Board has now weighed the relevant evidence in favor of the Van Daeles.

If anyone is deserving of the PTAP assistance it is this Taxpayer. The department's rule allows a waiver, in certain circumstances, to temper the harsh effects of the strict deadline requirement where illness has disrupted the lives of a taxpayer such that the illness prevented the taxpayer from complying with the strict deadline requirement. The burden of the taxpayer is to demonstrate that the illness may have prevented compliance with the deadline. Here the taxpayer has demonstrated by a preponderance of the evidence that his grave and terminal illness may have caused confusion or may have prevented the taxpayer from meeting the April 15 deadline. We conclude that this Taxpayer should receive the PTAP for the

periods 2009 through 2013. This determination does not make administration of taxes more precocious because the legislature, through §16-6-302 MCA, has made it easier for veterans especially those with infirmities to meet and keep their eligibility. After December 2014, once a veteran is approved for this relief, the veteran remains eligible in subsequent years.

### CONCLUSION

Donald Van Deale is exactly the type of taxpayer the disabled veteran's property tax exemption was designed to assist with property tax relief. Infirmity prevented him from timely filing the application. His eligibility is renewed for tax years 2009 through 2013.

ORDER

IT IS HEREBY ORDERED by the Montana Tax Appeal Board of the State of Montana that the application by the Taxpayer for qualification under the Montana Disabled Veterans Property Tax Relief Program for tax years 2009 through 2013 be approved.

DATED this 14<sup>th</sup> day of October, 2015.

(SEAL)

BY ORDER OF THE  
MONTANA TAX APPEAL BOARD

  
\_\_\_\_\_  
DAVID L. McALPIN, Chairman

  
\_\_\_\_\_  
STEPHEN A. DOHERTY, Member

  
\_\_\_\_\_  
VALERIE A. BALUKAS, Member

Notice: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th of October, 2015, a copy of the foregoing order was served on the parties hereto by placing a copy in the U.S.

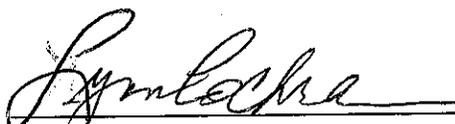
Mail and addressed as follows:

Donald & Glenda Van Daele  
3828 Wild Rye Road  
Helena, Montana 59602

U.S. Mail, Postage Prepaid  
 Hand delivered  
 E-mail

Elizabeth Roberts  
Michele Crepeau  
Tax Counsels  
Office of Legal Affairs  
Department of Revenue  
PO Box 7701  
Helena, MT 59604-6601

U.S. Mail, Postage Prepaid  
 Interoffice  
 Hand delivered  
 E-mail

  
LYNN COCHRAN