STATE OF MICHIGAN
DEPARTMENT OF ENERY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Karen's Helping Hands Inc.,
Petitioner,

v

MTT Docket No. 337638

City of Riverview,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

I. PROCEDURAL HISTORY

The main issue in this appeal is whether the subject property was owned and occupied by a nonprofit charitable institution and therefore exempt from property tax under MCL 211.7o for the 2007 and 2008 tax years. Administrative Law Judge Thomas A. Halick conducted a hearing in this case on October 1, 2008, and issued a Proposed Opinion and Judgment on March 17, 2009. The Administrative Law Judge found in his Proposed Opinion and Judgment that Petitioner owns and operates the subject property as a "non-profit charitable organization," as set forth by MCL 211.7o and, as such, is exempt from ad valorem property tax. The Proposed Opinion and Judgment granted the parties "20 days from date of entry of the Proposed Opinion and Judgment to file exceptions and written arguments with the Tribunal consistent with…MCL 24.281." The Proposed Opinion and Judgment expressly stated that exceptions and written arguments shall be limited "to the evidence presented to the administrative law judge." Consistent with the requirements of MCL 24.281, on April 6, 2009, Respondent filed exceptions to the Administrative Law Judge's Proposed Opinion and Judgment. On April 20, 2009, Petitioner filed a response to Respondent's exceptions.

II. RESPONDENT'S CONTENTIONS

Respondent took exception with the Administrative Law Judge's Proposed Opinion and Judgment claiming that the Administrative Law Judge's Opinion was based on palpable error. In particular, Respondent objects to (a) material facts found in favor of Petitioner; (b) the Tribunal's improper shift of the burden of proof; (c) the Tribunal's finding that charity for a finite amount of named individuals makes Petitioner charitable; (d) the Tribunal's findings that adult foster care is a "charitable mission" despite compulsory laws; and (e) the Tribunal's refusal to consider the analysis of *Haslett Manor AFC*.

(a) Material facts that Respondent claims were improperly found in favor of Petitioner

Respondent claims the Tribunal incorrectly found that Respondent failed to answer two unnumbered paragraphs in Petitioner's Petition. Respondent argues, "Not only is this untrue," but also that "Respondent has already raised this issue prior to this Opinion." In support of its assertion, Respondent points to its Answer to Petition, which stated that "Respondent neither admits nor denies the allegations contained in the remaining two, unnumbered paragraphs in Petitioner's Petition, as it is without sufficient information to form a belief as to the truth thereof and leaves Petitioner to its proofs." Respondent asserts that these facts tend to show a failure on the part of the Tribunal to read the pleadings. Respondent argues that the Tribunal's failure to read the pleadings resulted in a ruling against the great weight of the evidence and gross misapplication of the law.

Respondent also disagrees with the Tribunal's finding that Petitioner contracts with Gateway Network, Inc., and Petitioner's clients receive services through Gateway including instruction in preparing meals and doing laundry. Rather, Respondent argues, the evidence weighs heavily in

its favor and points to two reasons why it feels the above information is incorrect: (1) Petitioner's contract with Gateway expired in 2007 and no evidence of renewal was provided by Petitioner; and (2) Petitioner's employees provide the instruction and there was evidence these individuals are not independent contractors.

Respondent states that Petitioner did not provide any documentation supporting the Tribunal's finding that Petitioner receives funding from Gateway. In particular, the signed tax returns provided by Respondent do not indicate funding through Gateway. Furthermore, Respondent states that testimony from Karen Goreta that the Department of Community Health is "Gateway" is improperly considered by this Tribunal since that document speaks for itself. Rather, public records indicate "Gateway" is a private non-profit organization, not the Department of Mental Health as Petitioner contends. Respondent argues that had there been any evidence that Gateway provides "flow through" funds this Tribunal should have demanded Petitioner to provide same.

Respondent also argues that the Tribunal improperly determined that Karen Goreta and Petitioner are one and the same. Rather, Respondent asserts that Karen Goreta is really the Petitioner and Petitioner is the one providing charity. Karen Goreta is employed by Karen's Helping Hands. Karen Goreta pays for personal items and trips for clients and staff. Respondent states that instead of the Tribunal demanding that Karen Goreta provide evidence tending to show that she was reimbursed for her personal charity for personal items and trips for clients and staff, the Tribunal determined that Petitioner provides charity even though the tax returns show otherwise. According to Respondent, the evidence weighed in favor of Respondent since the tax returns speak for themselves.

Respondent also argues that, according to the testimony of Karen Goreta, the donations made to Ecorse Community Bible Church on behalf of Petitioner's clients are not really made on behalf of Petitioner's clients. Rather, Respondent states that a unilateral decision by Petitioner does not translate to "on behalf" if evidence supports that the clients are not aware of the donations so they can receive a deduction on his or her personal tax return.

Respondent further argues that instead of questioning how this closely held corporation is run, the Tribunal finds nothing out of the ordinary with a husband and wife making nearly $200,000.00 a year from an adult foster care facility. Karen and Karl Goreta received raises every year from 2005 forward. Further testimony from Karen showed that she and Karl received raises in 2006 and 2007 even though no new facilities were opened. Additionally, Karl works full time for U.S. Steel. As such, Respondent contends that "Karl works 40 hours a week for U.S. Steel and 40 hours a week for Karen's Helping Hands, at the same time. Despite her own conflicting testimony and the fact that it conflicts with the documentary evidence, this Tribunal concluded that no additional documentation was needed from Petitioner to clarify or support Petitioner's salary or the methods for granting a raise. Consequently, Respondent argues that "the evidence did not weigh in favor of Petitioner."

Furthermore, Respondent points out that on page 18 of the Opinion, the Tribunal references testimony of Mr. Goreta. Respondent has reiterated the fact that Mr. Goreta did not testify and was not present at the hearing.

(b) Tribunal's improper shift of the burden of proof

Respondent highlights the burden of the taxpayer "to show credible evidence which shows it is more likely true than untrue." However, according to Respondent, "the existence of a 'Fee Policy' for Karen's Helping Hands and the absence of a charity policy, further supports Respondent's position that Petitioner is a non-profit, not a "charitable non-profit." Furthermore, Respondent contends that the "submitted 990 Returns for the Petitioner . . . fail to support Petitioner's assertions of charitable status or that any charitable donations were made." According to Respondent, the importance of Petitioner's returns becomes evident "when reading the specific line items on the tax returns they all read 0.00. Line 23 of the 2007 tax return reads 0 for specific assistance to individuals and no schedule itemizing it is attached." As such, Respondent claims that "either Petitioner is misrepresenting its 'charity' to this Tribunal or it is misrepresenting it to the Internal Revenue Service."

Respondent continues by claiming that "The tax returns…are self authenticating and speak for themselves, yet this Tribunal relied on receipts [that] do not have Petitioner named as payor. Petitioner did not prevail on a preponderance of the evidence and it fails to meet the Michigan Supreme [Court's] standard for agency decisions. We deem the tribunal's factual findings conclusive if they are supported by 'competent, material, and substantive evidence on the whole record.' Const 1963, art 6, §28 and *Continental Cablevision* [*of Michigan, Inc*] *v Roseville*, 430 Mich 727, 735; 425 NW2d 53 (1988)."

(c) The Tribunal's findings that charity for named individuals makes Petitioner charitable

Respondent claims that "the Tribunal did not properly consider the evidence submitted by Respondent when the Administrative Law Judge found that Petitioner is charitable." Respondent

states that "Petitioner does not provide charity as a policy and testified it has no charity policy. Rather, Petitioner has a Fee Policy." Consequently, according to Respondent, "the Tribunal's own opinion actually broadens the definition of charity by permitting service to a finite group of persons and deeming it charity."

Respondent claims that "the Tribunal determined that the Petitioner benefits an indefinite number of persons by providing adult foster care, yet it also states it provides care only for a few named individuals who are mentally and developmentally disabled." This does not fall within the requirements of a charity under the *Wexford* [*Medical Group v City of Cadillac*, 474 Mich 19912; 713 NW2d 734 (2006),] standard." Rather, Respondent argues that the Tribunal's ruling is contrary to the definition of charity and "is not . . . consistent with the application of the Court of Appeals decision in *Wexford.*"

(d) The Tribunal's findings that adult foster care is a "charitable mission" despite compulsory laws

Respondent contends that if the Proposed Opinion and Judgment is adopted, the Tribunal will effectively make the mere operation of an adult foster care facility tax exempt if it operates in accordance with MCL 400.701. The legal ramifications of this decision are exactly what the Legislature sought to avoid when it amended MCL 211.7o. If all one has to do to show a charitable mission is obtain an adult foster care license and operate as the law already requires, all privately owned adult foster care facilities can get ad valorem property tax exemptions.

The Tribunal's decision in favor of exemption for Petitioner enlarges the Tribunal's authority to interpreting the intent of the Legislature. "The Legislature has not provided tax exemptions from ad valorem property taxation for adult foster care family homes or small group homes owned and

operated by nonprofit corporations or associations." 1987 Mich AG LEXIS 62 (Opinion 6424). "Had the legislature intended an adult foster care facility to be classified also as a charitable organization, such language would be reflected in the statute." *Id.*

Respondent contends that an unbiased review of the evidence submitted by the parties does not show that it is more likely than not that Petitioner is non-profit and charitable. Rather, Respondent argues that the Tribunal's decision in favor of Petitioner permits a privately owned foster care home to be classified as a charitable institution, and classifies legal obligations of privately owned adult foster care facilities as charitable.

(e) The Tribunal's refusal to consider the analysis of Haslett Manor AFC.

Lastly, Respondent argues that ''the Tribunal failed to consider not only applicable law but its own decisions providing necessary guidance in granting such an exemption,'' and as such, contends that it was an abuse of discretion for the Tribunal to ''ignore in its entirety, *Haslett Manor AFC.*"

III. PETITIONER'S CONTENTIONS

Petitioner states that Respondent alleges many concerns, all of which were addressed in prior briefs or at the Hearing. Regardless of Petitioner's broad assertion, Petitioner provided a detailed response to each of Respondent's exceptions. Petitioner's contentions are as follows:

(a) Material facts that Respondent claims were improperly found in favor of Petitioner

Petitioner states that "Respondent's objection to the Tribunal's factual finding that two paragraphs of the Petition were not addressed in the Answer is irrelevant in that all issues were discussed at the hearing and addressed in the briefs."

Furthermore, Petitioner states that it "clearly has a contract with Gateway as the evidence and testimony indicated. This matter was addressed at hearing and in the Affidavit, an exhibit, provided by Karen Goreta. . . . Clearly Petition[er] has a contract with Gateway as the evidence and testimony indicated. Judge Halick specifically found that 'Petitioner contracts with Gateway Network, Inc. . . ., which is a managed care organization….' on page 7 of the Proposed Judgment."

Regarding the Tribunal's finding that part of Petitioner's revenues is from "Gateway," again, Petitioner argues, this was discussed at hearing and was addressed in Petitioner's affidavit. The fact that Petitioner receives part of its funding from "Gateway" was documented.

Regarding certain charitable items such as paid trips: Karen Goreta testified that "I paid for" certain charitable items and she is not Petitioner. Karen Goreta is the President and administrator of Karen's Helping Hands Inc. Petitioner asserts that it is reasonable to assume that when Karen Goreta testified using the words "I paid for" that such words can be assumed to also mean "Karen's Helping Hands paid for." Also, Petitioner points to the Tribunal's reliance on 20 pages of Petitioner exhibits showing that Karen Goreta was reimbursed by Petitioner or Petitioner paid for the charitable gifts directly. Of Petitioner's exhibits showing charitable giving, there were no less than thirteen copies of cancelled checks written by Petitioner, not Karen Goreta. Karen Goreta testified in detail regarding the charitable acts, some of the testimony is found in the hearing transcript on pages 29 through 37.

Regarding the donations to Ecorse Community Bible Church, Petitioner states that "it was not asked directly by the clients to make donations to the Ecorse Community Bible Church. . . .

Rather, Petitioner makes these donations on the client's behalf." Petitioner states that these clients are "developmentally disabled and mentally ill. There is no requirement that one can only make a charitable gift if the person receiving the gift asks that it be made. If a homeless person would receive a meal from a charitable organization, there is no requirement that the homeless person 'ask' for the meal to qualify it as a charitable act."

Regarding Respondent's objection to the salaries paid by Petitioner, Petitioner states that "Respondent's attempts to suggest that Karen and Karl Goreta make 'nearly $200,000 a year from **an** adult foster care facility . . . Respondent would have the Tribunal think that Petitioner owns and operates only **one** foster care facility when the record is clear that Petitioner owns and operates four facilities." [Emphasis in original].

Petitioner further states that "Respondent makes a silly objection . . . by pointing out a typo in the Proposed Judgment. It is obvious that the surname 'Mr.' should read 'Mrs.'"

(b) The Tribunal's improper shift of the burden of proof

Petitioner asserts that "the Proposed Judgment is replete with case law showing the burden is on the taxpayer, Petitioner, to show that an exemption is justified. . . . Obviously the burden is on the Petitioner and the Tribunal properly found that the evidence was 'competent, material, and substantial evidence on the whole record.'"

(c) The Tribunal's findings that charity for named individuals makes Petitioner charitable

Petitioner states that it "owns and operates a six-person group home for developmentally disabled and mentally ill adults. Respondent makes an argument that because Petitioner's

charitable acts are limited to those individuals in the group home, Petitioner cannot be 'charitable.' . . . Petitioner takes all recommended clients and does not discriminate. It would be ridiculous to suggest that Petitioner must be involved with charitable acts outside the group of developmentally disabled and mentally ill adults living at the subject property to be considered 'charitable.'"

(d) The Tribunal's findings that adult foster care is a "charitable mission" despite compulsory laws

Petitioner states that Respondent attempts to argue that Adult Foster Care homes somehow are not able to be considered 'Charitable' under the law is unfounded. Rather, Petitioner argues that "the legislature specifically provides for exemption of Adult Foster Care homes if the requirements are met...The Tribunal properly found Petitioner exempt under MCL 211.7o."

(e) The Tribunal's refusal to consider the analysis of Haslett Manor AFC.

Petitioner highlights that

> Judge Halick, in the Proposed Judgment, states that, '*Haslett Manor AFC v Meridian Township*, MTT Docket No. 141053, decided March 10, 1993, is quiet [*sic*] distinguishable from our present case for reasons set forth in Petitioner's Post Hearing Brief.' The reasons as set forth in Petitioner's Post Hearing Brief are: First, Petitioner in *Haslett Manor* never contended to perform any 'charitable act.' Second, the subject in *Haslett Manor* was not owned and occupied by Petitioner. Third, Petitioner in *Haslett Manor* had no determination from the IRS it was a Section 501(C)(3) organization. Fourth, Petitioner in *Haslett Manor* admitted that it never provided care, room or board to any resident for free. And fifth, the Tribunal found in *Haslett Manor*, that the fact that the principles sold the subject property to Petitioner at an inflated price was a significant factor of the case.

IV. LAW AND ANALYSIS

Respondent claims that the ALJ erred in finding various facts to be true with respect to the above-captioned case in its Proposed Opinion and Judgment. Upon review of such contentions, the Tribunal finds that the ALJ properly considered the evidence and testimonies provided at the hearing in determining the finding of facts and conclusions of law.

(a) Material facts that Respondent claims were improperly found in favor of Petitioner

The Tribunal agrees with Petitioner with respect to the Tribunal's noting that "Respondent failed to deny the allegations regarding occupancy set forth in the two unnumbered paragraphs . . . of the original Petition filed in this matter . . . ," is irrelevant and more importantly, such finding by the Tribunal is not outcome determinative. In fact, contrary to Respondent's contention, the Proposed Opinion did not state that Respondent failed to "answer" the unnumbered paragraphs, but rather that it failed to "deny" the allegations contained in the two paragraphs.

According to MCR 2.111(c) "[a]s to each allegation on which the [Respondent] relies, a responsive pleading must (1) state an explicit admission or denial; (2) plead no contest; or (3) state that the pleader lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial. Respondent's Answer to Petition filed June 2007, expressly states: "Respondent, City of Riverview, ***neither admits nor denies*** the allegations contained in the remaining two, unnumbered, paragraphs in Petitioner's Petition, as it is without sufficient information to form a belief as to the truth thereof and leaves Petitioner to its proofs." [Emphasis added].

It is a longstanding principle in Michigan law that this response is appropriate only when the defendant actually does not know the facts. Parties are not to use it simply as a means of withholding information. *Miller v General Motors Corp*, 279 Mich 240, 244; 271 NW 746 (1937). Based on the record, the Tribunal finds it hard to believe that Respondent does not have the knowledge to specifically admit or deny the allegation. Moreover, the Proposed Opinion states in that regard that since there was no contradictory evidence provided by Respondent in its Answer or at the hearing with respect to the allegations involving occupancy, the ALJ was therefore justified in determining that Petitioner ‘‘occupied’’ the subject property as a matter of law. As such, the record demonstrates that not only did the Administrative Law Judge properly consider the pleadings, but it is evidence that the Administrative Law Judge applied MCR 2.111. As such, Respondent's argument is not persuasive.

Furthermore, Respondent asserts that the Tribunal incorrectly found that a contract between Petitioner and Gateway Network Inc. exists. In that regard, the Tribunal finds that the ALJ properly considered the testimony and evidence submitted in the rendering of his findings that Petitioner contracts with and receives funding from Gateway Network Inc.

The Tribunal finds that Respondent's assertion that the Tribunal improperly determined that Karen Goreta and Petitioner are "one [and] the same" is without merit, and thus, not persuasive. The Administrative Law Judge's Proposed Opinion and Judgment was replete with distinction between Karen Goreta, the individual, and Karen's Helping Hands, the entity. Furthermore, the testimony of Karen Goreta was properly considered, and no error was made when the ALJ found that she "uses her own funds to take the clients out to dinner . . . on clothing . . . on a trip to Ohio . . . [and] for co-payments for prescription medication and dental care." Contrary to

Respondent's assertions, evidence showing that Karen Goreta was reimbursed for her personal charity expenditures is not required per well-established statutory and case law. As such, the non-existence of evidence showing reimbursement does not indicate an error in the findings of facts as set forth in the Proposed Opinion and Judgment.

Similarly, Respondent's contention that the donations made to Ecorse Community Bible Church are not "made on behalf of Petitioner's clients" is without merit. In that regard, the Tribunal agrees with Petitioner that "[t]here is no requirement that one can only make a charitable gift if the person receiving the gift asks that it be made." Furthermore, whether an institution is a charitable institution for purposes of ad valorem property tax exemption is a fact-specific question that requires examining the claimant's overall purpose and the way in which it fulfills that purpose. *Wexford Medical Group v City of Cadillac* 713 NW2d 734, 474 Mich 192 (2006). Donations on behalf of clients to Ecorse Community Bible Church is not a fact that destroys the overall charitable purpose of Karen's Helping Hands.

In addition, the Administrative Law Judge was not required to order further evidence from Petitioner clarifying the salaries Karen and Karl Goreta received for the years in dispute. As such, it was within the ALJ's discretion to give the appropriate weight to the evidence and testimony provided in that regard, and the Tribunal does not find any error or abuse of discretion in those determinations.

Upon review of Respondent's contentions with respect to the various facts argued to be incorrect, the Tribunal finds only one with merit. However, the error was *de minimis* and has no

impact on the Final Judgment. Specifically, "Mr. Goreta" on page 18 of the Proposed Opinion and Judgment should be read as "Mrs. Goreta."

(b) Petitioner met its burden of proof

After giving due consideration to the Proposed Opinion and Judgment, Respondent's Exceptions, Petitioner's Response, and the case file, the Tribunal finds that the Administrative Law Judge did not improperly shift the burden of proof. Rather, based on controlling law and the facts of this case, the Tribunal finds that the ALJ properly determined that Petitioner is a "non-profit charitable organization," as set forth by MCL 211.7o, thereby holding that it established its burden of proof.

Again, based on the relevant statutory and case law, Petitioner must show (1) the real estate is owned and occupied by the exemption claimant; (2) the exemption claimant is a nonprofit charitable institution; and (3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated. MCL 211.7o. The real estate is owned and occupied by Karen's Helping Hands, the exemption claimant. Petitioner is a charitable institution incorporated under the laws of Michigan and Petitioner occupies the buildings and other property for the sole purpose for which it was incorporated, to be a charitable organization.

Respondent's claim that the Tribunal, contrary to law, placed the burden of proof on Respondent is without merit. There is no requirement that the exemption claimant prove, as part of its prima facie case, that any compensation provided to its officers be reasonable. Moreover, there is no guidance in statutory or case law on deciding what reasonable compensation is.

The Tribunal agrees with Respondent that excessive compensation to officers would defeat the charitable nature of Petitioner; however, without any guidance from the legislature or court of appeals as to what is or is not reasonable compensation, the Tribunal is without authority to decide based on the submitted evidence and testimony of the parties, if the compensation received by Petitioner's officers is reasonable. Moreover, it is well-established law that the Tribunal does not have the power to expand already promulgated Legislative requirements. *Danse Corp v City of Madison Heights,* 466 Mich 175, 644 NW2d 721 (2002). Therefore, the Administrative Law Judge properly refrained from deciding, based on the evidence submitted and testimony of the parties, whether the compensation received by Petitioner's officers was reasonable compensation for purposes of determining charitable status.

Furthermore, contrary to Respondent's contentions, Petitioner's charitable acts are not afforded to a restricted group of individuals. Rather, as stated on page 17 of the Proposed Opinion and Judgment, Petitioner "provide[s] residential care services to persons with qualifying disabilities, who are supported by governmental assistance." It might appear as though the service Petitioner provides is restricted to the numbers currently under its care. However, it can be assumed that Petitioner, for lodging reasons, cannot accept every candidate that applies. Again, looking at all the facts and circumstances, Petitioner receives a significant portion of its funding from the Social Security Administration. Thus, a larger group of adults qualify for services Petitioner provides if the adult receives government assistance and they suffer from a condition that Petitioner specializes in treating. As such, the service Petitioner provides is not restricted to the finite numbers currently under Petitioner's care. Therefore, the Tribunal finds that the ALJ properly determined that Petitioner is a "non-profit charitable organization," as set forth by MCL 211.7o, thereby holding that it established its burden of proof.

Respondent also contends the Tribunal failed to find that Karen Goreta and Karen's Helping Hands are one and the same. The Tribunal finds that the Administrative Law Judge's decision was replete with distinctions between Karen Goreta, the individual, and Karen's Helping Hands, the entity. Furthermore, a single fact, without considering all the surrounding circumstances, cannot destroy charitable status. Whether an institution is a charitable institution is a fact-specific question that requires examining the claimant's overall purpose and the way in which it fulfills that purpose. *Wexford Medical Group v City of Cadillac*, 713 NW 2d 734; 474 Mich 192 (2006).

Again, it is not a specific requirement in the statute that a charitable organization, as an entity, properly account for its employee's personal expenses made in connection with its duties as an employee of the organization and show that such expenses met some non-existent reasonable standard. Contrary to Respondent's beliefs, and consistent with controlling law, the Administrative Law Judge's decision did not expand what the Legislature clearly intended to cover. As such, if the Tribunal were to find that Karen, the individual, and Karen's Helping Hands are one and the same based on the facts and circumstances of this case, then the Administrative Law Judge's Proposed Opinion and Judgment would be palpable error.

(c) The Tribunal's findings that charity for named individuals makes Petitioner charitable; and adult foster care is a "charitable mission" despite compulsory laws

Respondent argues that the Tribunal's decision in favor of exemption for Petitioner enlarges the Tribunal's authority to interpreting the intent of the Legislature. Respondent finds support in its argument by relying on a 1987 Michigan Attorney General Opinion which states:

> The Legislature has not provided tax exemptions from ad valorem property taxation for adult foster care family homes or small group homes owned and

> operated by nonprofit corporations or associations. Had the legislature intended an adult foster care facility to be classified also as a charitable organization, such language would be reflected in the statute. 1987 Mich. AG LEXIS 62 (Opinion 6424).

Not only is the 1987 Attorney General Opinion not binding on the Tribunal, but also, relevant and controlling law has been issued since the date of that Opinion's promulgation. The facts of this case mirror that of not only case law, but also express legislative language. The Administrative Law Judge's Proposed Opinion and Judgment in no way expands the meaning of charity; rather, the Administrative Law Judge applied relevant and controlling case and statutory law in giving proper effect to the intent of the Legislature by examining the plain language of the involved statute. See MCL 211.7o; See also, *Wexford Medical Group.* Therefore, the Tribunal finds that the Administrative Law Judge properly determined that Petitioner is a "non-profit charitable organization."

(d) The Tribunal's refusal to consider Respondent's analysis of Haslett Manor AFC

Lastly, Respondent's contention that the ALJ refused to consider the analysis of *Haslett Manor* is simply factually incorrect. Instead, Respondent is merely reiterating points that were previously considered through Petitioner's Post Hearing Brief. As such, the Tribunal disagrees with Respondent and does not find an abuse of discretion on the Administrative Law Judge's part for choosing not to restate the reasons discussed in Petitioner's Post Hearing Brief, which formed the reasoning that the ALJ found *Haslett Manor* distinguishable with the instant case.

V. CONCLUSION AND JUDGMENT

Having reviewed Respondent's exceptions, the Tribunal finds Respondent has failed to show good cause to justify modifying the Proposed Opinion and Judgment or granting a rehearing and,

as such, the Tribunal adopts the Proposed Opinion and Judgment as the Tribunal's final decision in this case. *See* MCL 205.276. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law in the Proposed Opinion and Judgment in this Final Opinion and Judgment.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period

prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

MICHIGAN TAX TRIBUNAL

Entered: November 30, 2009 By: Kimbal R. Smith III

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

Karen's Helping Hands Inc.,
Petitioner,

V

City of Riverview,
Respondent,

MICHIGAN TAX TRIBUNAL
MTT Docket No. 337638

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED OPINION AND JUDGMENT

A hearing was held on October 1, 2008, on the appeal of the Board of Review's denial of Petitioner's claim of exemption from property taxes. A proceeding before the Tribunal is original, independent, and *de novo*. MCL 205.735(1).

Petitioner, Karen's Helping Hands, appeared at the hearing, represented by its counsel, Norman D. Shinkle. Petitioner filed a prehearing and post hearing brief and delivered a closing argument.

Respondent, City of Riverview, appeared through its counsel, April E. Knoch. Argument was heard and testimony taken. Respondent's counsel filed a prehearing and post hearing brief and delivered a closing argument.

This property tax appeal requires the Tribunal to determine whether the subject property was owned and occupied by a nonprofit charitable institution and therefore exempt from property tax under MCL 211.7o for the 2007 and 2008 tax years.

SUMMARY OF PETITIONER'S EVIDENCE

The parties stipulated to the admissibility of Petitioner's documentary evidence, identified as Exhibits P-1 through P-23:

P-1 -- Hotel bill

P-2 – Medicaid receipt for "Lee" and dinner receipt

P-3 – Dinner receipt for clients

P-4 – Hotel room bill from Ohio

P-5 – Hotel room bill from Ohio

P-6 – Hotel room bill from Ohio

P-7 – $10 receipt for client

P-8 – Receipt for client's clothing

P-9 – Receipt for client's clothing

P-10 – Petitioner's check #'s 4487, 4944, and 4945

P-11 – Petitioner's check #'s 5318, 5310, & 5277

P-12 – Petitioner's check #'s 5391, 5537, & 5482

P-13 – Petitioner's check #'s 5209, 5226, and check for $103.50

P-14 – Co-pay receipt from Ecorse Dental

P-15 – Co-pay receipt from Ecorse Dental

P-16 – Co-pay receipt from Walgreens

P-17 – Co-pay receipt from Walgreens

P-18 – Co-pay check to Advance Care

P-19 – Co-pay receipts from CVS Pharmacy

P-20 – Receipts for TB skin testing

P-21 – Petitioner's Restated Articles of Incorporation, November 3, 1994

P-22 – Petitioner's Affidavit of Karen Goreta, dated July 8, 2008

P-23 – Stipulation of Facts by Petitioner and Respondent filed with the Tax Tribunal in May 2008

Petitioner called the following witnesses:

1. Sandra McElhenie – a resident of the subject property
2. Nadja Bradley – the manager of Karen's Helping Hands, Inc.
3. Karen Goreta – President and Administrator of Karen's Helping Hands, Inc.

SUMMARY OF RESPONDENT'S EVIDENCE

Respondent offered the following documentary evidence, marked as Respondent's Exhibits R-1 through R-20, which were admitted into evidence by stipulation of the parties:

R-1 – 2007 990 tax return

R-2 – 2007 990 tax return prepared by Shefun Financial Services

R-3 – 2006 990 Tax Return

R-4 – 2005 990 Tax Return

R-5 – 2004 Annual Report

R-6 – 2005 Annual Report

R-7 – 2006 Annual Report

R-8 – 2007 Annual Report

R-9 – Petitioner's Articles of Incorporation

R-10 – Petitioner's Restated Articles of Incorporation

R-11 – Karen's Helping Hands Fee Policy Statement

R-12 – Affidavit of Karen Goreta

R-13 – Excerpt from the Michigan Adult Services Manual

R-14 – Revenue Ruling Letter

R-15 – AFC Resident Care Agreement

R-16 – Excerpts from Adult Foster Care Facility Licensing Act

R-17 – Karen's Helping Hands License

R-18 – Renewal Inspection Report

R-19 – Residential Provider Participation Agreement

R-20 – Copy of MCL 211.7o

Respondent cross examined Petitioner's witnesses but called no witnesses of its own.

FINDINGS OF FACT

The parties stipulated to the following facts as set forth in the stipulation filed May 7, 2008:

1. "The property ID # of the subject property is 51-019-01-0502-000, located at 20686 Coachwood, Riverview, MI 48193."

2. "Petitioner, Karen's Helping Hands Inc., is located and has its principal offices at 4425 High Street, Ecorse, MI 48229 and owns the subject property and is responsible for payment of the real property taxes."

3. "Petitioner is a non-profit organization."

4. "Petitioner is licensed by the State of Michigan in accordance with Act No. 218 of the public acts of 1979, as amended for Adult Foster Care, licenses # AS820250220 with the program designation of Developmentally Disabled Mentally Ill. The subject property is currently operated pursuant to this license."

5. "Petitioner is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code."

In addition to the foregoing, the Tribunal finds that the following, material facts were proven at hearing by a preponderance of the evidence.

During the tax years at issue (2007 and 2008) Petitioner, Karen's Helping Hands, Inc., owned and occupied the subject property, which is a residential dwelling that is licensed under the "Adult Foster Care Facility Licensing Act," 1979 PA 218, and operated under the name "Karen's Helping Hands II." The subject property is certified as a residential facility for the "developmentally disabled, mentally ill" with a capacity of six residents, as indicated on the license document (License Number AS820250220). The Administrator/Licensee Designee is Karen Goreta.

The Renewal Inspection Report (Respondent's Exhibit 18) describes the program as follows:

> …licensee intends to provide a home-like setting for mentally challenged adults in the least restrictive environment possible. This is intended to maximize the social and psychological growth of the consumers of the facility. The principals of normalization will be applied to recognize the uniqueness of each individual. Emphasis is placed on having residents participate in a program designed to meet their social developmental needs. The resident population will consist of six (6) ambulatory adult males. Residents will be referred from several agencies with whom the licensee has a contract…. The licensee will provide all transportation for program and medical needs. The facility will make provision for a variety of leisure and recreational equipment. In addition, the facility will utilize local

> community resources including, public schools, public library, malls, and Riverfest Park.

The affidavit of Karen Goreta, July 8, 2008, states that, "The subject property is staffed 24 hours a day seven days a week to provide services to" the residents of the subject property, as required by 1979 AC, R 400.14206. This was affirmed by the testimony of Karen Goreta at hearing. Respondent has failed to present evidence to create a factual issue related to "occupancy." Furthermore, Respondent failed to deny the allegations regarding occupancy set forth in the two unnumbered paragraphs (following paragraph 8) of the original Petition filed in this matter. The Tribunal's Order entered September 4, 2008 established that Petitioner "occupied" the subject property as a matter of law and no facts at the hearing contradict that ruling.

The subject property was conveyed by Quit Claim Deed dated May 25, 2004 from Karl R. Goreta and Karen Goreta (husband and wife) to Karen's Helping Hands, a Michigan Corporation. Karen Goreta served as the President of Karen's Helping Hands, Inc. and Karl Goreta was its Operation Manager for the years at issue. The evidence does not include the purchase price or other consideration given pursuant to the Quit Claim Deed. There is a mortgage loan outstanding on the subject property, which was issued to Karl Goreta and Karen Goreta, and for which they are still obligated. It appears that the mortgage was never formally assumed by Petitioner. However, Petitioner pays the monthly installments of principal and interest in the amount of $2,300. Transcript p 56 or "T 56". The total mortgaged debt is $115,000 and the term of the loan is 15 years. T 57. Karen Goreta testified that the loan for the subject is a "personal loan" and that the mortgage is in the name of Karl Goreta and Karen Goreta. Karen Goreta testified that "there was no bank that would give a loan to remortgage [the property] under Karen's Helping Hands because it's a residential facility." T 59. The subject property was

formerly the residence of Karl Goreta and Karen Goreta, which they purchased as a "fixer-upper." When the market "took a plunge" the agency (Gateway) asked Karen Goreta if she could open up a ranch style home to accommodate elderly residents, after which time she transferred the subject property to Petitioner for that purpose. The 2007 Summer Tax Bill for the subject stated a total payment due of $4,254.88.

Petitioner contracts with Gateway Network, Inc. ("Gateway"), which is a managed care organization that acts on behalf of the Department of Community and Mental Health of the State of Michigan to refer qualifying individuals to Petitioner for community living support and personal care. Petitioner's clients receive services through "Gateway" including instruction in preparing meals and doing laundry, as well monitoring and supervising clients with special needs. The goal is "to get them prepared for the community so they can go independent." T 66.

Petitioner receives funding from Gateway (which provides Petitioner with "pass through" funds from Medicaid) and from the Social Security Administration. The Medicaid funds are for specialized community living services. Petitioner receives funding directly from the Social Security Administration (payable to Petitioner) on behalf of the clients. Petitioner applies the funds to the monthly fees charged to the clients and the balance (generally $44 per month) is given to the client as an allowance. Karen Goreta testified regarding her affidavit (T 74) wherein she claims that Petitioner provides a "gift" to clients under the following circumstances:

1. If a client earns income past a certain threshold, social security benefits that Petitioner receives on the client's behalf are reduced, and Petitioner does not charge the client for this amount. Allegedly, in 2006 there was one client that received a "gift" in the amount of $716.50 and one client in 2007 in the amount of $398.21.
2. In 2006 one client lived at the subject property for a period of time without payment in the amount of $1,994 and two clients in 2007 in the amount of $1,693. This occurred

when Social Security funds were not available for a period of time after the resident moved into the subject property.

3. In 2006, there were four clients who moved to the subject property from another group home, who owed money to that group home, which was deducted from Social Security payments that otherwise would have been applied to fees owed to Petitioner. In 2006 this amounted to $4,353.50 and in 2007 it amounted to $1,419.75.

The client's monthly allowance does not cover all their personal expenses. Karen Goreta stated that she uses her own funds to take the clients out to dinner once per month at an annual cost of $1,800. In addition, she spends approximately $1,700 annually on clothing, takes the clients on a trip to Ohio for two days per year at the cost of approximately $1,000, and provides money for co-payments for prescription medication and dental care (totaling $288 for 2007). T 36. The evidence includes examples of receipts for these types of expenditures, but not all expenditures are documented in this record. Karen Goreta considers all these items to be gifts that are not required by any contract or agreement. It is not entirely clear whether these amounts apply to all four of Petitioner's facilities or only for the subject property. These expenditures were made by Karen Goreta from her own funds (derived from her salary earned from Petitioner) and are not paid directly by Petitioner. Karen Goreta consistently testified that "I paid for" these items. T 37. Prior to 2006, Gateway paid dental and medial co-payments, but stopped that practice for 2007 and 2008. She testified that in many cases if she didn't pay these amounts, the clients will not use their $44 per month allowance for co-pays, and would choose to forego their medications and live out on the street. However, there is no written "charity policy" allowing or requiring Petitioner or Karen Goreta to pay these amounts.

Most of the clients attend Ecorse Community Bible Church and Petitioner donates $500 to $1,000 annually to the church on the client's behalf.

The Social Security Administration provides funds for the benefit of the clients by check payable to Petitioner. For example, Petitioner may receive a check for $794 on behalf of a client, of which $750.50 pays for rent and personal care and Petitioner gives the client $44 cash for personal use.

Petitioner's "Restated Articles of Incorporation" filed in November 1991 state that Petitioner's purpose is, "to operate an adult foster care facility" as a nonprofit corporation organized on a non-stock, directorship basis. The articles include the common "boilerplate" language required for tax exempt status under IRC 501(c)(3), including that, "No part of the net earnings of the organization shall inure to the benefit of, or be distributed to its members…or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered…."

Petitioner's 2007 IRS form 990 lists the "key officers, directors, trustees, and key employees" as Rhonda Edward, Susan Kudurk, Amy Shaw, and Karen Goreta. It would appear that these individuals are identified as board members, although their specific titles or functions are not stated on the form 990 tax return (except for Karen Goreta, President). The form 990 states that none of the above persons are related to each other through family or business relationships. Karen Goreta testified that in 2006 Michelle Bray was added to the board. She also testified that Sonya Maxwell (Karen Goreta's mother) and Karl Goreta were also members of the board in 2007 and 2008, although not listed on the IRS form 990, which counsel indicated was an error on the return.

Karen Goreta, President, reported total compensation received from the corporation of $88,000 in 2007. (The 2007 form 990 reports Karen Goreta's total income related to the subject property

and three other properties that Petitioner owns, that are not subject to this appeal.) Karen Goreta testified that her salary from Petitioner is her only source of income.

As of the date of the hearing, Karen Goreta testified that Petitioner's board of directors consisted of Karl Goreta (Karen Goreta's husband), Sonya Maxwell (Karen Goreta's mother), and Michelle Bray (Karen Goreta's friend). It must be inferred that these board members were in place for the tax years at issue, notwithstanding the names set forth on the IRS form 990. Karen Goreta testified that Karl Goreta "has always been on the board" and that she didn't know why his name didn't appear on the IRS form 990 (Respondent's Exhibit 3). T 46.

The subject property is operated under the name "Karen's Helping Hands II." Karl Goreta earned $24,000 per year for services performed for the subject property in 2008. T 39. In 2008 Karl Goreta received a total salary of $96,000 from Petitioner, related to 30 hours per week of service related to all four properties owned by Petitioner. T 39. As of the date of the hearing, Karen Goreta also testified that Karl Goreta was employed full time by "U.S. Steel" in addition to part time employment with Petitioner – although it is not clear whether he was also employed by U.S. Steel in 2007, when he purportedly worked 60 hours per week for Petitioner.

The 2007 form 990, Schedule A, reports compensation for Karl Goreta of $62,500 (related to services performed for Petitioner's four properties, including services related to the subject property, for a total of 60 hours per week working with Petitioner's four properties).

When asked by counsel, "Who decides what your pay rate is for Karen's Helping Hands?" Karen Goreta answered, "I do," and further testified that, "The pay rate is a scale and we all decide on

it, yes." Karen Goreta also testified that Petitioner's 18 employees earn $9 per hour, with no benefits. T 49.

Karen Goreta testified that her salary is determined based on how many facilities are opened, and then "we take a salary from each facility that opens." In 2006 and 2007, Petitioner operated four facilities, including the subject. Karen Goreta's salary was $55,000 in 2005, $65,000 in 2006, $88,000 for 2007, and $96,000 for 2008. There was no increase in the number of facilities that Petitioner operated for 2007 or 2008.

The 2007 form 990 reports that Petitioner received "program service revenue" from the Department of Mental Health (also referred to in testimony as "Gateway") of $756,292 and from the Social Security Administration of $149,644.

Karl Goreta is listed on the 2007 form 990, Schedule A as Petitioner's "Operations Manager" who devoted 60 hours per week to the organization with compensation of $62,500 (Respondent's Exhibit 3). The 2007 form 990 sets forth "employee benefits not included on line 25a" [line 25a, "compensation of officers, directors and key employees"] in the amount of $23,770. Karen Goreta testified that the hourly employees earn $9 per hour with no benefits, so it must be inferred that the $23,770 amount is for the benefit of Karen Goreta, and / or Karl Goreta. The 2007 form 990 (part II, line 39) reports "Travel" expense of $31,373. There is no evidence or testimony regarding the nature or purpose of this travel.

In 2006, Karen Goreta received compensation of $65,000 for her services as Petitioner's "Administrator."

CONCLUSIONS OF LAW

The General Property Tax Act provides an exemption for a "nonprofit charitable institution."

MCL 211.7o in effect for the tax years at issue, provides:

> Sec. 7o. (1) Real and personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.

The general property tax act (Act), MCL 211.1 *et seq*, provides for the annual assessment and taxation of all real and personal property within the state unless expressly exempted. MCL 211.2(2) provides in relevant part:

> (2) The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

Thus the taxable status of real property is determined each year as of the tax day; each tax year stands alone. The material facts and circumstances described in the preceding section of this opinion regarding the alleged charitable purpose and activities apply to each of the relevant tax days unless a particular fact is specifically stated to apply only to one year (such as compensation levels for each year).

This appeal was filed for the 2007 assessment year (based on the taxable status as of December 31, 2006). By operation of law, the 2008 tax year is added to this appeal. MCL 205.737(5)(a). The 2009 assessment is not at issue in this appeal. However, if the material facts do not change for the 2009 tax year, the same legal conclusion would apply to 2009 based on the doctrines of res judicata and/or collateral estoppel.

In *Michigan Baptist Homes & Development Company* v *City of Ann Arbor*, 396 Mich 660 (1976), the Michigan Supreme Court interpreted this exemption narrowly, and applied the following criteria, which courts have followed when determining eligibility.

1. The real estate must be owned and occupied by the exemption claimant;
2. The exemption claimant must be a library, benevolent, charitable, educational, or scientific institution;
3. The exemption claimant must have been incorporated under the laws of this State;
4. The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

Petitioner, Karen's Helping Hands, Inc., owns and occupies the subject property. The affidavit of Karen Goreta, July 8, 2008, states that "The subject property is staffed 24 hours a day seven days a week to provide services to" the residents of the subject property, as required by 1979 AC, R 400.14206. This was affirmed by the testimony of Karen Goreta at hearing. These facts satisfy the requirements of MCL 211.7o as interpreted by *Liberty Hill Housing* v *Livonia*, 480 Mich 44; 746 NW2d 282 (2008), which held that occupancy requires that a charitable institution must maintain a regular physical presence on the property, reside in the property, or at least be habitually present on the property. Respondent's arguments pertaining to the occupancy requirements for "small group homes" are inapposite. Respondent's Reply Brief to Petitioner's Brief on the Issues, page 3. The requirement cited by Respondent merely states that the licensee need not occupy the "small group home" property as a member of the household. This does not refute Petitioner's affidavit that Karen Goreta or staff are present in the subject property 24 hours per day (with the exception of outings with the residents). Respondent failed to deny the

allegations regarding occupancy set forth in the two unnumbered paragraphs (following paragraph 8) of the original Petition filed in this matter. The Tribunal's Order entered September 4, 2008 established that Petitioner "occupied" the subject property as a matter of law and no facts at the hearing contradict that ruling.

In *Huron Residential Services for Youth, Inc. v Pittsfield Charter Township*, 152 Mich App 54; 393 NW2d 568 (1986), the Court of Appeals reversed the Tribunal's denial of an exemption under MCL 211.7o. The Tribunal found that Huron was not exempt because its principal source of funding was the State of Michigan. The Court of Appeals reversed, finding that government funding does not *ipso facto* disqualify a claimant under MCL 211.7o where the state funding covered costs only and did not generate a profit. Therefore, Petitioner is not disqualified merely because it receives its revenues from the Department of Community Health and from the Social Security Administration.

In *Huron Residential Services for Youth, Inc*., the petitioner was a Michigan nonprofit corporation that provided residential treatment programs for abused, neglected and troubled young people. *Huron*, p. 57. Huron owned two specialized care units, five community-based treatment programs, one supervised independent living program, and one school unit. Six youths and three staff members occupied the specialized care units. The facts in that case do not indicate whether staff lived on the premises, but they regularly provided educational programs within the units. Huron Residential Services for Youth, Inc. did not discriminate based on ability to pay. In nearly all cases Huron was reimbursed by the state. The Court found that the youths received a "charitable gift" notwithstanding that the state provided the payment. Furthermore, the court found it

significant that Huron did not charge more than the cost of its services, based on rates established by the state. *Huron*, p. 62. Finally, the charitable gift was bestowed upon the general public without restriction because troubled youths were rejected only if they had a history of frequent arson, running away, or if Huron determined that the youth would not benefit from the programs. The facts in *Huron Residential Services for Youth, Inc*. are closely on point with our present case.

The Tribunal must examine Petitioner's conduct to determine whether it bestows a gift upon the general public for which it does not charge a fee. To qualify as a charitable institution, the claimant's activities, taken as a whole, must constitute a "charitable gift" to the general public without restriction. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985).

There is evidence that Petitioner has allowed some residents to live at the subject property without charge in cases where Social Security benefits are not available. Although these amounts are not significant, the Supreme Court in *Wexford*, *infra*, ruled that MCL 211.7o does not contain a threshold for the services provided without charge. There is also evidence that Karen Goreta spends her own money for goods and services for the clients.

In *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Township*, 416 Mich 340; 330 NW 682 (1982), the state Supreme Court held that an apartment complex for elderly residents was not exempt.

In *Michigan Baptist Homes v Ann Arbor*, 396 Mich 660 (1976), the claimant owned and operated a home for the aged. The court held that an admission policy based on the client's ability to pay and good health defeated the claim as a charitable institution. Our present case is distinguishable because, the clients are supported by governmental programs and require special services due to their mental illness.

Meadowlanes Limited Dividend Housing Association v *City of Holland*, 437 Mich 473; 473 NW2d 636 (1991), held that the existence of a federal program does not indicate a Congressional intent to create subsidies by local units of government in addition to the economic incentives Congress provided to induce private developers to construct and operate quality low-income housing. The subject property exists by virtue of Michigan state law and policy, not federal law. Petitioner's counsel notes that prior to the creation of "group homes" Petitioner's clients would have been cared for in psychiatric hospitals or "they were on the street." T 81.

The Michigan Supreme Court has held that, "Whether an institution is a charitable institution within the meaning of MCL 211.7o is a *fact specific question* that requires examining the claimant's purpose and the way in which it fulfills its purpose." *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006). [Emphasis added]. It is relevant to consider whether Petitioner has an ". . . unrestricted and open-access policy of providing free or below-cost care to all patients who requested it." *Wexford*, p 195. Wexford "provides free and discounted health care to anyone whose income is up to twice the federal poverty level." *Wexford*, p 197. In our present case, Petitioner has no "policy for providing free or below-cost care" to all residents who request it. Nevertheless, Petitioner's articles of incorporation and state licensing documents set forth a nonprofit purpose to provide residential care services to persons

with qualifying disabilities, who are supported by governmental assistance. The testimony of Karen Goreta establishes that Petitioner accepts individuals who qualify for Social Security Benefits and that all but $44 of the monthly benefit is paid directly to Petitioner to cover the housing costs. Specific services necessary for these residents are paid for by the Department of Community Mental Health (from "pass-through" Medicaid funds).

Courts have looked to the essential or predominant purpose of the organization as stated in the articles of incorporation, as well as the actual use of the subject property for that exempt purpose. A charitable institution must provide "a gift. . . for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." Citing, *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340 (1982). It is relevant to consider whether the allegedly charitable activities are primary or merely incidental to the organization's core mission. In our present case, it is concluded that Petitioner does relieve the residents from "disease, suffering or constraint" by providing a safe living environment. Also, Petitioner facilitates the provision of special care of the clients through "Gateway." Mr. Goreta testified that, the goal is "to get them prepared for the community so they can go independent." T 66. Based on these facts, it is concluded that Petitioner assists the clients "to establish themselves for life."

It is the public policy of the state of Michigan to provide services to certain individuals with special needs through licensed, nonprofit entities such as Petitioner. The government has assumed a responsibility to care for certain individuals, such as Petitioner's clients. Therefore, it can be concluded that Petitioner's nonprofit mission described above serves the purpose of

"relieving a burden of government." *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340 (1982). Rather than provide these services through state-owned buildings operated by state employees, the state has opted to create incentives for private entities to take on this function under state licensing and regulation. If the subject property were owned by the State of Michigan, it would be exempt under MCL 211.7l.

Although Petitioner's revenues are from fees from residents, it has been held that "the fact that charges approximating cost are made for services and benefit offered by the exemption claimant does not alone defeat the exemption claim…." *Michigan Baptist Homes & Development Co* v *Ann Arbor*, 396 Mich 660, 670 (1976).

For state law purposes, a "charitable purpose" precludes Petitioner from charging high fees or paying unreasonable salaries to employees, officers, or directors.

In *Gull Lake Bible Conference Association v Township of Ross*, 351 Mich 269; 88 NW2d 262 (1958), the court determined the association was a charitable institution entitled to real property tax exemption. "[A]side from modest salaries paid to necessary employees, no individual receives any pecuniary benefit from its operation." *Id.* at 274. The court emphasized that "modest salaries" are an indication of the charitable nature of the organization, and conversely, it can be implied that "immodest salaries" might require a different conclusion. However, this case establishes no bright line rule or specific guidance as to what would constitute an unreasonable salary that would disqualify an organization.

Given the absence of state law regarding what constitutes reasonable compensation for an officer of a charitable organization, analogous federal law and the law of other states shall be consulted.

When determining appropriateness of compensation, the IRS considers whether the compensation was decided by an independent board, if the compensation is consistent with salaries paid by similar organizations for similar services, and if the basis for determining compensation was documented. The IRS has authority to penalize an individual receiving excessive compensation, or may revoke the tax-exempt status of the organization. See Treas. Reg. § 53.4958-6(c)(2)(iii).

In determining the reasonableness of compensation, all items of compensation provided by an applicable tax-exempt organization in exchange for the performance of services are taken into account.

The following cases considered whether property is used for the benefit of private individuals in the tax exempt organization context: *Founding Church of Scientology v United States*, 412 F 2d 1197; 188 Ct Cl 490 (1969), *cert denied*, 397 US 1009; 90 S Ct 1237; 25 L Ed2d 422 (1970), and *World Family Corp v Commissioner*, 81 TC 958; 1983 WL 14904 (1983).

In *Founding Church of Scientology*, the court considered whether the plaintiff was entitled to an exemption from federal income taxation pursuant to sec. 501(c)(3) of the Internal Revenue Code.

> [P]ayment of reasonable salaries by an allegedly tax-exempt organization does not result in the inurement of net earnings to the benefit of private individuals. Of course. . . excessive salaries do result in inurement of benefit. As always, whether the salaries paid are reasonable is a question of fact. *Id.* at 1198.

An organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. *Id* at 1199.

In *World Family Corp,* the United States Tax Court examined the issue of compensation to private individuals who served as officers and directors of a sec. 501(c)(3) tax exempt organization. *Id* at 959.

> It is well established that an exempt organization is entitled to pay reasonable compensation for services without endangering its exemption. Such payments are permissible even though they are made to the organization's trustees, officers, or founders; the issue is whether the payments are reasonable. *Id.* at 968.

Under federal income tax law, there is a rebuttable presumption that compensation is reasonable if the transaction is approved by the charity's governing body or committee which is composed entirely of individuals who do not have a conflict of interest with respect to the arrangement or transaction who (i) obtained and relied upon appropriate data as to comparability prior to making [their] determination, and (ii) adequately documented the basis for their determination concurrently with making that determination. See, Proposed Regulations §53.4958-6(a)(1).

The Michigan Nonprofit Corporations Act, MCL 450.2223, requires the incorporators to select a board of directors. The business and affairs of a corporation shall be managed by its board, which shall consist of one or more persons. 450.2501(1). Compensation paid to an officer or employee, such as the President and Operation Manager in this case, must be “reasonable.” MCL 450.2301(2)(a).

Petitioner is organized on a directorship basis (not a membership basis).

It cannot be concluded that compensation paid to Petitioner and her spouse are approved by an independent board of directors. Karen Goreta testified that the board consists of her husband, her mother, and her friend, for the tax years at issue. T 46. Under federal tax law, this fact would not allow for a presumption to arise in favor of Petitioner, but the ultimate issue is whether the compensation is "reasonable." This determination can only be made based on market evidence of compensation paid to similarly situated officers and employees, which is lacking in this case. The Michigan Nonprofit Corporation Act, 1982 PA 162, contains provisions regarding transactions that are void or voidable due to a conflict of interest. See, MCL 450.2545. The Nonprofit Corporation Act provides that transactions are void or voidable if one or more of the directors have an interest in the transaction. The approval of compensation for an officer would fall within this provision, in a case where two of the three directors had a familial relationship with the officer, and the other is described as a "friend" of that officer. MCL 450.2545 pertains to a "derivative" action brought to declare void or to rescind certain transactions wherein one or more directors has an interest in the transaction. However, such a transaction is not void if it is "fair and reasonable." Therefore, in this case, the question becomes whether the compensation approved by the board of directors is "fair and reasonable." Ms. Goreta's compensation is not unlawful merely because it was approved by her husband and mother.

In addition to monetary compensation, the "benefits" reported on the 2007 form 990 must be attributed to Karen Goreta. Also, travel expenses of $31,374 are a potential source of benefit to Karen Goreta. The evidence does not establish the details or circumstances of this travel, but it is a potential source of benefit inuring to her. If it could be proven that such travel was extravagant and unnecessary to the charitable purposes of Karen's Helping Hands, Inc., such facts would be relevant to the question of whether Petitioner qualifies as an exempt charitable organization for property tax purposes under MCL 211.7o.

In this case, Respondent raised the issue regarding compensation paid to the officer (President) and a key employee (Operation Manager), which was approved by an apparently non-objective board of directors. Neither party presented authority or evidence to establish that the level of compensation paid to any employee, officer, or director is unreasonable. Petitioner bears the burden to prove that it qualifies for the exemption, which requires a showing that it is truly a charitable organization. Based on all the relevant facts and circumstances discussed above, Petitioner has met its burden of proof that it is a "charitable" organization within the meeting of MCL 211.7o. Weighing all relevant factors, the questions raised about the reasonableness of compensation paid to the officer and a key employee do not overcome the overall character of the organization as essentially charitable, based on authorities cited above and in Petitioner's briefs filed in this matter. Merely raising the matter is not sufficient to create a factual issue that would require Petitioner to go forward with evidence to prove that the compensation is reasonable.

There is no market evidence on this record to support a conclusion that the salaries paid to Petitioner's President (officer) and "Operation Manager" (a key employee) are out of line with compensation paid by similarly situated organizations.

The issue is whether Petitioner qualifies for an exemption from property taxes based on its charitable character. The essence of a public charity is that the funds of the organization should be used to advance the charitable mission, and not to inure to the benefit of any individual. The goal of the board of directors of a nonprofit corporation is not to maximize profits for shareholders (or anyone else) but to insure that no individual is enriched and that funds are

applied to maximize the charitable mission of the organization. Paying appropriate compensation to attract qualified officers and employees is necessary to accomplish the charitable purposes.

It has been established in this case that Karen and Karl Goreta received a combined income of $150,500 for 2007 (not including benefits) for the operation of Petitioner's four adult foster care facilities, including the subject property. Karen Goreta estimated that Karl Goreta earned approximately ¼ of his compensation from services related to the subject property. Assuming that Karen Goreta's compensation was allocated in a similar fashion, her total compensation attributable to the subject property was $22,000 for 2007 and $24,000 for 2008. Karen Goreta worked approximately 50 hours per week, or approximately 12.5 hours per week for the subject property (650 hours per year), which indicates an hourly rate of approximately $33.85 per hour, which increased to $36.92 per hour in 2008. The 2007 form 990 also indicates "employee benefits" in the amount of $23,770. Testimony established that the hourly employees received no fringe benefits, and therefore, the "benefits" were provided to either Karen Goreta or Karl Goreta.

Based on these facts, it can be estimated that Karl Goreta earned $15,625 in 2007 for services related to the subject property. The 2007 Schedule A to IRS form 990 states that he worked 60 hours per week total, or 15 hours per week related to the subject, for a total of 780 hours in 2007. This would indicate a rate of approximately $20 per hour. Based on testimony, Karl Goreta also worked full time at "US Steel" during the years in question.

In the absence of market data pertaining to compensation paid to officers or key employees of similarly situated adult foster care facilities, it cannot be concluded as a matter of law that the compensation at issue here is unreasonable or excessive for a charitable organization.

The leading case regarding charitable exemptions is *Wexford Medical Group* v *City of Cadillac*, 474 Mich 102; 713 NW2d 734 (2006), which reaffirmed the "widely used definition" of "charity" :

> [Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. [*Id.* at 348-349, 330 NW2d 682, quoting *Jackson v. Phillips*, 96 Mass (14 Allen) 539 (1867) (emphasis deleted; alterations in original).] *Wexford, 211*.

Wexford identified six factors relevant to the determination of whether an organization meets the definition of "charity" that was first set forth in *Retirement Homes, supra*.

> In light of this definition, certain factors come into play when determining whether an institution is a "charitable institution" under MCL 211.7o and MCL 211.9(a). Among them are the following:
>
> (1) A "charitable institution" must be a nonprofit institution.
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year. *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 215; 713 NW2d 734, 746 (2006).

In *Wexford*, the court restated the inquiry as originally framed in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982), pertaining to the tax exempt status of independent living apartments for seniors: "Does Retirement Homes operate the apartments in such a way that there is a 'gift' for the benefit of 'the general public without restriction' or 'for the benefit of an indefinite number of persons'?" *Id.* at 349, 330 NW2d 682. In that case, the Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc. owned a facility that included a licensed nursing home, a licensed home for the aged, and the Chelsea Village Apartments. The nursing home and home for the aged were admitted to be exempt and were not in dispute -- only the Chelsea Village Apartments were at issue. The court held that the apartments were not exempt and that residents did not "receive any significant benefit that they do not pay for" and therefore, there is no "gift to the residents." Furthermore, the residents were generally in good heath and able to live independently, both physically and financially. The *Wexford* opinion cited from *Retirement Homes* as follows:

> [T]here is no "gift" for the benefit of an indefinite number of persons or for the benefit of the general public without restriction in the operation of the apartments. The monthly fee is designed to cover all operating costs as well as to recover the construction costs of the apartments. While it does not appear that the apartments are operated for a profit, neither does it appear that the residents receive any significant benefit that they do not pay for. There is no "gift" to the residents. The operation of the apartments does not appear to benefit the general public. Its residents are chosen on the basis of their good health, their ability to pay the monthly charge, and, generally, their ability to live independently. [*Id.* at 349-350, 330 NW2d 682.] *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

The following passage from *Wexford* is on point:

> Petitioner is also fundamentally different from the Hillside Terrace home for the aged in *Michigan Baptist, supra,* and the apartment complex in *Retirement Homes, supra.* In both of those cases, the cost of maintaining the institutions was covered by fees collected from the residents. Prospective residents whose health

> or financial status did not meet strict requirements were not accepted. And although the petitioner in *Michigan Baptist* made some small exceptions in that regard, the general rule was of an exclusionary nature, not a charitable one. *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

In holding that the nonprofit hospital, Wexford Medical Group, was entitled to an exemption under MCL 211.7o, the Court stated:

> Petitioner has a charity care program that offers free and reduced-cost medical care to the indigent with no restrictions. It operates under an open-access policy under which it accepts any patient who walks through its doors, with preferential treatment given to no one. Although petitioner sustains notable financial losses by not restricting the number of Medicare and Medicaid patients it accepts, it bears those losses rather than restricting its treatment of patients who cannot afford to pay. *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

Wexford Medical Group was held to be a charitable institution that exists for, and carries out, the purpose of giving a gift for the benefit of an indefinite number of persons *by providing free and below-cost medical care to anyone who needs it without qualification.* Furthermore, it realized no pecuniary gain. As such, Wexford Medical Group was entitled to an ad valorem tax exemption. *Id.* 222.

The six factors enumerated by the Supreme Court must be applied along with the recognized statutory definition of charity, on a case-by-case basis, with special attention paid to published cases involving similar facts. In applying the relevant factors to the subject property, the Tribunal concludes as follows:

(1) A "charitable institution" must be a nonprofit institution.

Petitioner is a “nonprofit institution” organized under the Michigan Nonprofit Corporation Act.

There is no evidence that any profit, dividend, or pecuniary benefit is paid to or otherwise inures to any private shareholder or other person. As discussed above, there is no market evidence that Petitioner's officers or employees have received "unreasonable" compensation.

(2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.

Petitioner is organized solely to "operate an adult foster care facility." There are two parts to this inquiry. First, the Tribunal must examine the stated purpose of the organization in its articles, bylaws, written policies, and other sources. Second, the Tribunal must determine whether the organization acts in conformity with its stated purpose. It is not enough that the exemption claimant performs good works, but it must prove that it provides charity, which has been defined as "a gift…for the benefit of an indefinite number of persons…either by bringing their minds or hearts under the influence of education or religion, relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life…or otherwise lessening the burdens of government." *Wexford*, 215. Part of the inquiry focuses on the type of charity provided and the circumstances of the beneficiaries of that charity.

It is concluded that Petitioner uses the subject property to relieve persons from "disease, suffering or constraint" and also to assist persons to "establish themselves for life," which are two charitable purposes set forth in case law. *Wexford,* 211. Petitioner benefits persons who cannot care for themselves due to mental illness. Petitioner thereby relieves a burden of government by carrying out this purpose. Therefore, it is concluded that the articles state a charitable purpose and that Petitioner actually performs certain activities that are charitable in nature, as discussed above.

Case law requires that Petitioner must provide a "gift" for the benefit of an indefinite number of persons or for the benefit of the general public without restriction. An organization that provides a service that is charitable in nature (such as relieving a person from suffering or helping establish them for life) must further prove that it provides a "gift" as defined by case law. There was no question in *Wexford* that the taxpayer, a nonprofit hospital, "relieved persons from suffering," but the analysis did not end there. The court further considered the restrictions (or lack of restrictions) on the care provided. In *Wexford*, it was crucial that the hospital treated anyone who needed care, without regard to the person's ability to pay. (However, the level of free or "charitable" care is not relevant because no such threshold is set forth in the statute.)

In this case, there was testimony that Karl and Karen Goreta transferred the subject property to Petitioner. The consideration for the transaction, if any, is not in evidence.

However, our present case is more on point with *Huron Residential Services for Youth, Inc*, *supra*, where the taxpayer was a Michigan nonprofit corporation that provided residential treatment programs for abused, neglected and troubled young people. *Huron*, p. 57. In that case, the exemption was granted without a specific finding that the clients received a pecuniary "gift" – and where their care was paid for from governmental sources. Our case is similar in that the client's housing and care are paid for by Social Security and Medicaid benefits. The services that the clients receive are similar to those in *Huron*.

In *Wexford*, the Supreme Court held:

> First, whether the organization claiming the exemption is a charitable one; and, second, whether the property on which the exemption is claimed is being devoted to charitable purposes. In general, it may be said that any body not organized for

> profit, *which has for its purpose the promotion of the general welfare of the public, extending its benefits without discrimination as to race, color, or creed, is a charitable or benevolent organization within the meaning of the tax exemption statutes*… the fact that a *charge is made for benefits conferred, against those who are able to pay,* in no way detracts from the charitable character of an organization. *Wexford Medical Group v City of Cadillac,* 474 Mich 192, 206-207; 713 NW2d 734, 742 (2006).

In our present case, a charge is made against those who are "able to pay." Petitioner's clients generally must qualify for governmental benefits based on their disability in order to pay the monthly charges. A client who is in the process of applying for Social Security and Medicaid benefits is allowed to remain at the subject property, and in some cases, Petitioner has not received full payment during that process. However, if a client fails to qualify for benefits, and cannot pay from other sources, they cannot continue to live at the subject. Nevertheless, a person who does not qualify for the necessary level of public benefits based on a mental illness is not within the class of persons that Petitioner seeks to benefit.

"Charity" within the meaning of MCL 211.7o is not limited to dispensing money or goods to the poor. The courts have rejected an overly narrow interpretation that would limit the exemption to charitable institutions that are "kind and generous in giving money or help to those in need." In *Edsel & Eleanor Ford House v Village of Grosse Pointe Shores*, 134 Mich App 448, 456; 350 NW2d 894, 897 (1984), although the claimant did not provide aid to the poor, it nevertheless offered its cultural and historical center and accommodations *to the general public without restriction*. The Edsel & Eleanor Ford House was open to the public. Groups could use it for various functions for fees far below maintenance costs. *Id.* 460. It becomes evident upon reading the relevant case law, that courts place greater emphasis on various factors in different cases. No single factor is necessarily conclusive, but as Wexford indicates, the court will look to the overall nature of the organization. While it could be said that this method of analysis leads courts toward policy-making, this is nevertheless a task that the legislature seems content to leave to the courts.

It has been held that providing *low-cost* day care services for children of low-income families promotes the general welfare. In *Association of Little Friends, infra,* the day care services were available at low cost to an indefinite number of persons and the property used for that purpose was exempt. *Michigan Sanitarium & Benevolent Ass'n v Battle Creek,* 138 Mich 676; 101 NW 855 (1904), held that a nonprofit hospital was entitled to a property tax exemption where the hospital treated some patients for free and some at a reduced rate, notwithstanding that most patients paid a regular schedule of fixed fees. Those unable to pay were not refused services.

It can be concluded on this record that providing adult foster care services to mentally ill individuals who have the financial means to pay only by virtue of public assistance promotes the general welfare of the people of the state of Michigan and benefits an indefinite number of persons.

(3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

In this case, Petitioner's mission is to serve a population of adults who qualify for Social Security and Medicaid benefits based on their mental illness or disability. It was testified that this population generally lacks the ability to live independently, although the goal is to achieve independence. It was also testified that without assistance, including occasional financial assistance from Karen Goreta, that some residents would choose not to use their monthly allowance for co-pays on medications, but would end up living "on the street." There is no

evidence that the process of admitting qualified persons for residence at the subject property constitutes the type of discrimination contemplated by the case law cited above.

It would appear that Petitioner's clients would be destitute and unable to care for themselves without the shelter and care provided by Petitioner. It is reasonable to conclude that those individuals who fail to qualify for Social Security or Medicaid benefits have been determined by those agencies not to be mentally ill, and therefore, are not within the target population that Petitioner seeks to serve.

Michigan Sanitarium and Benevolent Association v Battle Creek, 138 Mich 676; 101 NW 855 (1904), involved a hospital that accepted "indigent or other sick and infirm persons." *In Gundry v RB Smith Memorial Hospital Association*, 293 Mich 36; 291 NW 213 (1940), the hospital did not refuse admittance to any person due to inability to pay. That case also held that a tax exempt charitable organization must have for its purpose the "promotion of the general welfare of the public." In the case of a hospital, this requirement was met because the hospital accepted anyone for treatment without regard to their ability to pay. It offered care to *any person who needs the particular type of charity being offered*. Likewise, in *Wexford*, the hospital had an "open access policy under which it accepts any patient who walks through its doors." *Id.* 216. In the above "hospital" cases, it did not matter how many persons were served, but that the hospital was willing and able and actually served those indigent persons who needed care. The line of hospital cases culminating in *Wexford* are found to be factually distinguishable from our present case, which again, is found to be more on point with *Huron Residential Services, supra*. (However, the legal principles set forth in *Wexford* are applicable to this case.)

In *Wexford*, the Supreme Court discussed *Michigan Baptist Homes*, which involved a taxable nursing home[1] where the nursing home residents were "… hand-selected by the establishment after an application process that asked them to fully detail their financial status and their health." *Wexford*, 208.

Petitioner is distinguishable from the non-exempt licensed "home for the aged" ("Hillside Terrace") in *Michigan Baptist*. Petitioner's clients are essentially destitute and suffer from mental illness.

Restrictions that exclude a resident based on the ability to live independently have been cited as a factor that weighs against granting an exemption in a case involving "independent living" apartments. *Retirement Homes*, *supra*, 350; *Michigan Baptist*, *supra*, 669. In *Retirement Homes*, the relative good health of those residents militated against tax exempt status. In our case, due to the nature of the services provided at the subject property, most clients need 24-hour supervision and are not able to live independently.

This case is distinguishable from *Clark Retirement Community, Inc, v City of Kentwood*, MTT Docket No. 300634 (Proposed Opinion and Judgment issued August 30, 2006 – Final Opinion pending), where it was found that the taxpayer did not use the subject property for the benefit of "needy" persons generally, but rather provided high-end residential services for those able to pay. The financial restrictions in that case precluded a finding that there was a charitable gift to residents.

1 The opinion in *Michigan Baptist* referred to the subject property as a licensed "home for the aged" and also a center which has been licensed as a "nursing home."

Also, *Lutheran Social Services of Michigan* v *Bloomfield Township*, Docket No. 239460, unpublished opinion of the Court of Appeals, issued September 11, 2003, upheld Tribunal's denial of an exemption under MCL 211.7o. The property at issue in *Lutheran Social Services* ("Maple Village") included both independent living units and assisted living units. The assisted living units provided three meals daily, seven days a week; daily housekeeping; linens, bed sheets, towels provided; 24 hour registered nurse or licensed practical nurse on site and medical and medication monitoring. Maple Village was not a licensed home for the aged or chronically ill. The following passage from *Lutheran Social Services* is on point:

> While it is undisputed that many of the activities of Petitioner fall within the definition of "charity" as defined in *Retirement Homes v Sylvan Township, supra*, this record is devoid of anything that would indicate that Petitioner's ownership of Maple Village, which is an upper end retirement facility that requires annual rental payments of $35,000 to $50,000, together with deposits and application fees of $3,500 or more, constitutes a gift for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, or relieving their bodies of disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. The facts of this case are analogous to the facts found in *Michigan Baptist Homes v Ann Arbor*, 396 Mich 660; 242 NW2d 747 (1976), wherein after an analysis of the entry fees, costs to tenants, etc., the Court found that the operation of the facility in question "did not serve the elderly generally, but rather provides an attractive environment for those among the elderly who have the health to enjoy it and can afford to pay for it." *Lutheran Social Services of Michigan v Bloomfield Township, supra*.

In *Redford Opportunity House* v *Township of Redford*, Docket No. 241718, unpublished opinion of the Court of Appeals, issued January 27, 2004, the Court of Appeals upheld the Tribunal's ruling that a licensed facility for developmentally disabled adults was exempt under MCL 211.7o. The residents were required to either be eligible for Supplemental Social Security Income benefits ("SSI") or have sufficient resources to pay anticipated expenses. All persons entering the program had developmental disabilities and therefore qualified for SSI, which, along

with other governmental benefits, covered the cost of care. Therefore, it was irrelevant that fees had never been waived.

There is no merit to Respondent's argument that the ownership of the subject property could revert to Karl Goreta and Karen Goreta due to the fact that they are the mortgagors of record. Petitioner holds title to the subject property and has made payments on the loan from its revenues. Although this arrangement may be of interest to the lender, it has no relevance in this proceeding. Essentially, Karl and Karen Goreta have agreed to remain personally obligated on the loan and the lender retains its secured position with regard to the real estate. Under these circumstances, Karl and Karen Goreta have no interest in the real property as fee owners or secured parties. Furthermore, in the event of dissolution of the corporation, any proceeds from the sale of the subject property could not inure to the benefit of any officer, director, or other private individual, but would be distributed for a nonprofit purpose under the Nonprofit Corporation Act.

It is concluded that the case of *Haslett Manor AFC* v *Meridian Township*, MTT Docket No. 14103, decided March 10, 1993, is quite distinguishable from our present case for reasons set forth in Petitioner's Post Hearing Brief.

The statutory amendment to MCL 211.7o (2006 PA 681, Imm. Eff. Jan. 10, 2007) is irrelevant to this case as it only applies to nonprofit corporations that were exempt on December 31, 2004, or that were exempt on January 10, 2007. No inference should be drawn from this amendment either for or against exemption for the subject property.

The evidence taken as a whole, examined in light of relevant case law, shows that Petitioner has met its burden to prove that the subject property qualifies for exemption under MCL 211.7o.

JUDGMENT

IT IS ORDERED that the subject property is entitled to a property tax exemption under MCL 211.7o for tax years 2007 and 2008 as provided in the Conclusions of Law section of this Opinion and Judgment.

IT IS FURTHER ORDERED that Petitioner shall have 20 days from date of entry of this Proposed Opinion and Judgment to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act [MCL 24.281]. Petitioner shall limit exceptions and written arguments to the evidence presented to the administrative law judge. This Proposed Opinion and Judgment, together with any exceptions and written arguments, shall be considered by the Tribunal in arriving at a final decision in this matter pursuant to Section 26 of the Tax Tribunal Act [MCL 205.726].

MICHIGAN TAX TRIBUNAL

Entered: March 17, 2009

By: Thomas A. Halick