Circuit Court for Baltimore County
Case No. 03-C-17-010478

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 776

September Term, 2018

BALTIMORE COUNTY, MARYLAND

v.

SUSAN KARASINSKI

Meredith,
Graeff,
Battaglia, Lynn A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: September 6, 2019

Susan Karasinski, appellee, owns a residential rental property in Dundalk, Baltimore County. Baltimore County ("County"), appellant, sent Ms. Karasinski a bill for sewer service in the amount of $13,111.47. After the County Director of Public Works denied her plea for a reduction, Ms. Karasinski pursued an administrative appeal to the Board of Appeals for Baltimore County (the "Board"). After conducting a de novo hearing, the Board found that "the sewer charges are not accurate, and cannot be the basis for monetary recovery from the property owner." The County petitioned for judicial review in the Circuit Court for Baltimore County, and the circuit affirmed the Board's decision. The County then filed this appeal.

Although the County presents three questions, we conclude that a single question is dispositive, namely: Is there substantial evidence in the record to support the decision of the Board of Appeals?[1]

[1] The questions presented in the County's brief were worded as follows:

1. Whether the County presented a prima facie case that the assessed sewer service charges were based upon water consumed at Appellee's Property, and the wastewater was discharged to the sewer system and properly billed?

2. Whether Appellee failed to present probative and legally sufficient evidence to overcome the County's prima facie case that the sewer charges were properly billed?

3. Whether the [Board's] decision was contrary to the relevant statutory presumptions, and arbitrary, capricious and unsupported by substantial evidence?

For the reasons set forth herein, we conclude that there is substantial evidence in the record supporting the Board's decision, and we shall affirm the judgment of the Circuit Court for Baltimore County.

FACTS AND PROCEDURAL HISTORY

In the summer of 2016, Ms. Karasinski was shocked to receive a sewer bill from Baltimore County in the amount of $13,111.47.[2] Although she paid the bill to avoid incurring penalties, on August 23, 2016, Ms. Karasinski appealed to the Baltimore County Director of Public Works ("Director"), asserting that the charge is "not supportable by law and/or fact."

By letter dated September 2, 2016, Ms. Karasinski's counsel provided supplemental information to the Director. The letter stated:

> I've enclosed Invoices showing an inspection of the property paid for by my client showing that there were no leaks in the plumbing at the above parcel. There was only a leaky toilet which was "running" at meter reading 5403.18. About two weeks later, at meter reading 5404.24, the toilet was replaced. Please note that this toilet was not running at the previous inspection. I've also enclosed two Baltimore City Water bills which show an astounding average daily consumption of 1,366 gallons (allegedly). The bills also show that Baltimore City made an adjustment, perhaps believing that a one-family townhome could not possibly be responsible for 1,366 gallons a day of water use without flooding the entire block. I urge you to also use common sense and present my client with a refund.

[2] In the "metropolitan district" where Ms. Karasinski's property is located, the water is provided by Baltimore City, but sewer service is provided by Baltimore County. Because of this arrangement, Baltimore County bills for sewer service based on the amount of water that Baltimore City's water meters reflect as having entered a property. This leads to homeowners in the metropolitan district paying a Baltimore City water bill and a separate Baltimore County sewer bill.

Counsel for Ms. Karasinski attached invoices from a plumber who had done work on the house earlier in 2016. The invoice from an inspection on March 16, 2016, described the work as follows:

> Checked water meter and found that water usage was being registered, but no water was being used.
>
> Checked bathroom and kitchen plumbing and found not [sic] leaks.
>
> Checked toilet in the basement and found the toilet was running and needs to be replaced.
>
> **Meter Reading 5403.18**

A separate invoice for plumbing service on April 4, 2016, was also attached and stated that the plumber "[r]emoved old toilet in the basement and installed a new toilet." The plumber noted the meter reading to be "**5404.24**" on this date (an increase of 1.06 since March 16, 2016).

On September 9, 2016, Ms. Karasinski, through counsel, again followed up with the Director and provided a copy of a third invoice, dated December 30, 2015, from the same plumber. Counsel's cover letter explained: "The invoice is for an inspection that was done on behalf of Ms. Karasinski after the water bill showing 1391 gallons of daily water use was received by her. The inspection showed that the water meter was not working correctly." The plumber's invoice included a note stating that this "Call was for extremely high water bill." The invoice further indicated: "Inspected plumbing inside of the house and found no apparent problems. Checked the meter and found the gauge not turning when the faucet was running. The problem seems to be related to the meter."

By letter dated September 22, 2016, the Director advised Ms. Karasinski's attorney that the Director was not able to make any further adjustments to the sewer bill, explaining:

> A review of Baltimore City's water records indicate that the water was consumed. Actual meter readings were taken by City staff, confirmed by inspections that checked the readings and found no leaks. Additionally, the County's Department of Public Works sent an inspector to the property on July 7, 2016. I have enclosed a photo of the water meter dial reading at 5426.53. This is further evidence that the water was consumed and discharged to the County's sewer system. Unfortunately, I am unable to make any further adjustments to the sewer service charge on your client's July 1, 2016 tax bill.

Ms. Karasinski appealed the Director's decision to the Board of Appeals of Baltimore County, which held a hearing on March 30, 2017. Three witnesses testified at the hearing before the Board: Bobbie Rodriguez, who was then Chief of the metropolitan district, Jennifer Ludwig, who was "a city employee with supervisory experience in this area," and Ms. Karasinski.

Ms. Rodriguez explained that residents living within the metropolitan district receive public water from Baltimore City, and sewer service from Baltimore County. Baltimore City calculates how much water is used at a property by measuring how much water passes through a meter as it enters the property. Baltimore County does not make any separate measurement of the amount of effluent that enters the sewer system as it leaves the property, but, instead, uses the water meter's measurement and bases its sewer charges on the water consumption recorded by the water meter. The meter measures

water usage in units. One unit is the equivalent of 100 cubic feet of water, or 748 gallons. Ms. Rodriguez testified that the average family of four uses 90 units per year.[3]

Ms. Rodriguez described the water usage history for the property based upon the City's records. She testified that, when an investigator is unable to read a meter, the computer will "apply an estimated read[ing] to the account." According to Exhibits 7A, 7B, and 7C, introduced at the hearing before the Board of Appeals, Ms. Karasinski's meter history as recorded by Baltimore City is summarized in the following table:

Date of Reading	Date of Entry	Type of Reading	Reading	Consumption (units)
7/29/2014	8/1/2014	Actual	2829	5
11/8/2014	11/10/2014	Estimated	2836	7
3/12/2015	3/17/2015	Estimated	2844	8
5/14/2015	6/3/2015	Estimated	2848	4
7/29/2015	8/5/2015	Estimated	2853	5
10/17/2015	11/9/2015	Actual	5109	2256
2/10/2016	2/10/2016	Pen Adjustment		
10/17/2015	2/10/2016	Adjustment/K	2256	-2256
3/3/2016	3/7/2016	Actual	5361	252
5/5/2016	5/9/2016	Actual	5413	52
7/19/2016	7/20/2016	MCH/OLD	5428	15
7/19/2016	7/20/2016	MCHN/S		
9/22/2016	9/28/2016	MCH/OLD	14	14
10/22/2016	10/27/2016	Actual	21	21
1/20/2017	3/24/2017	Actual	51	30
3/24/2017	3/27/2017	Actual	58	7

Ms. Rodriguez noted that "[t]here were some adjustment transactions reflected in the records." Because there was such unusual activity on the account, she felt it necessary "to see if there were any work orders on the property that would be relevant to

[3] For the period at issue, the sewer rate fee was $50.85 per thousand cubic feet.

the period of time to see . . . if the City had gone out and . . . made any repairs or gotten any reads or anything and . . . to send out a County inspector to take a look." Ms. Rodriguez acknowledged that the vault which holds Ms. Karasinski's meter is a "twin vault," which means that there is another meter for a neighboring property. She did not believe that there was any indication that the fluctuation in the meter readings was caused by an inspector reading the wrong meter.

She observed that leaks in a home can cause high water bills: "Running toilets, . . . there can be leaking faucets, dripping faucets, but you can have a significant amount of water wasted from . . . running toilets." The County's ultimate position was that "the water was used because the meter dial shows it."

Ms. Rodriguez admitted, however, that the Baltimore City records reflect that the meter at Ms. Karasinski's property was, at the time of the challenged readings, an old-style meter, and that the City replaced it with a new meter on July 19, 2016.

Next, Ms. Ludwig testified. She explained that Baltimore City made the large downward adjustment on Ms. Karasinski's water bill for the October 17, 2015 reading after she brought it to the City's attention. Ms. Ludwig could not explain why the City had made the adjustment to the water bill by subtracting 2,256 units of usage on February 10, 2016.

After receiving the subpoena in this case, Ms. Ludwig had reviewed the records pertaining to Ms. Karasinski's property. The "meter shop manager" for Baltimore City showed her a report that explained that the water meter at Ms. Karasinski's property had

been removed and tested on July 20, 2016. A board member had the following exchange with Ms. Ludwig:

> BOARD MEMBER: Is it fair to say, is it fair to say that as we sit here today, we don't know what the problem with the meter was during the time period of this dispute, is that fair to say?
>
> MS. LUDWIG: All I can say about the meter is that when it was put on the test bench, there was, the water that went through the meter did not register enough consumption to pass the meter test.

Upon further examination by Ms. Karasinski's attorney, Ms. Ludwig testified as follows:

> [BY MS. KARASINSKI'S COUNSEL]: You don't really know what was happening when the meter was in the ground, do you?
>
> MS. LUDWIG: I do not.

Ms. Ludwig also acknowledged that, in the past, she had seen newspaper reports about fake meter readings in Baltimore City where "the meter reader just wrote down a number and didn't really read the meter," but she had no evidence that that had happened in this case.

Ms. Karasinski then testified that she had been shocked to receive a bill for "$11,000 overage on sewage." She had previously lived in the house, but since 2013, had leased the house to a family of four ("a father, a daughter and two grandsons"). She explained that the City had adjusted her water bill after she provided a statement from a plumber:

> MS. KARASINSKI: . . . I sent a plumber to the property. The plumber found no faults with the property. I sent the copy of that plumbing inspection and I asked for an informal conference and I sent the letter. . . .

> [W]hen I went up for the informal conference and told them why I was there and signed in, the lady said to me, ["]do you know they gave you this credit?["] I said no, I didn't and I said, well, no use in me wasting your time, this is what I came for, I'm thankful for the credit and I signed that piece of paper. . . . At, in January, there was not a leaky toilet. . . .

On September 28, 2017, the Board issued its written ruling in favor of Ms. Karasinski, and reversed the "Sewer Service Charge in the amount of $11,558.21 assessed by the Baltimore County Department of Public Works." The Board explained:

> Baltimore City is responsible for the water meters measuring the water going into any given property and bills accordingly. The County, however, is responsible for sewer charges for properties receiving City water but located in the County.
>
> Ms. Rodriguez testified that in the summer of 2016, Ms. Karasinski received her annual property tax assessment which included a sewage charge of $13,111.47 for a rental property she owned at 7242 Bridgewood Drive, Baltimore, Maryland 21224. This bill covered usage for the calendar year 2015. This bill reflected an unusual usage of 2256 units for the period of 10/17/15 to 11/09/15 and another anomalous one month usage of 252 units. The typical usage[,] both before after and between the abnormally high readings[,] was between 7 and 30 units with one outlier of 52 units. Ms. Karasinski complained to the City about this unusual spike in apparent water usage. As appears to be its usual practice, the City forgave the overage.
>
> * * *
>
> The only other witness was Jennifer Ludwig, a city employee with supervisory experience in this area. As of the time of her testimony she was Acting Division Chief for the Department of Public Works. She had just transferred back to DPW after having been a senior aide to Baltimore's mayor. Ms. Ludwig's testimony was both enlightening and confusing. She did confirm that there were reported problems with City inspectors making up the numbers that are eventually put into the computer history. She also indicated that where there is a citizen complaint about aberrant usage, DPW typically adjusts the usage amount, and the corresponding water charge, to an amount that is historically typical for that customer. This appears to be the practice without much actual investigation. In this instance, for

example, the City did adjust the water bill to harmonize it with the typical usage. Implicit in her testimony is the conclusion that the City's meters and the individuals who check them were not always reliable.

According to Ms. Ludwig, in this instance there were twin meters. In other words, the meter vault contained two meters for different locations. She seemed to suggest that there was some confusion as to which meter supplied the data for the Karasinski records. Far more significantly, Ms. Ludwig testified that the meter in question was removed in July 2016. It was taken to the DPW shop where it was tested and found not to be working. The confounding aspect arose because the meter's failure was due to its not registering consumption as opposed to measuring over the actual consumption, which is, of course, the situation in Ms. Karasinski's case. In accordance with usual practice, the meter was scrapped shortly after that test. . . .

[Ms. Karasinski] also submitted a letter from a plumber who examined the Bridgewood Drive facility after the exceptional usage was noted. According to his letter, he found nothing abnormal within the premises. Interestingly, he also noted that the meter seemed to be not registering water consumption as opposed to overstating that consumption.

DISCUSSION

Section 20-5-105 of the Baltimore County Code provides, in effect, that the meter readouts in these cases are presumptively correct.[4] This statutory presumption places the burden on the property owner of proving that the meter reading lacks integrity. This Board has routinely and comfortably upheld County sewer charges based on this presumption even where the City had, without explanation, forgiven the abnormally high reading. The County makes its own independent assessment and then acts accordingly: if it determines that the meter reading was correct, then it seeks to recover the full sewer charges even where the City has adjusted away the overage.

[4] More accurately, Section 20-5-105(2) states that "the *records* of water consumption, as provided by Baltimore City, shall be used to determine the volume of water consumption," and "[t]he *records* of Baltimore City reflecting water consumption shall be presumed to be correct . . . ." (Emphasis added.) The BCC provision does not say that the "meter readouts" are presumed to be correct.

All of these cases turn on one central question: was the meter functioning properly. The statutory presumption substantially impacts that calculus. So does the meter's work order history and testing. In this case, the one over-arching and incontrovertible fact is that the meter was not functioning at the time it was replaced. Additionally, while it is true that the final test showed little or no consumption, the simple fact remains that this meter was not accurately measuring water usage. The "hows and whys" of meter failure is not a part of this case. Perhaps a meter over reads before complete failure Perhaps its inner mechanisms rust or deteriorate over time and result in widely erratic readings. Additionally, where it is clear that the meter was faulty, matters which might be insignificant in other cases, take on more importance. That the City forgave the overage actually has some probative value. That there is reason to believe that flawed or faulty information is sometimes entered into the computer history generates some concern. While normally a hearsay letter from a plumber stating that no internal plumbing problem was present carries little weight, here it contributes to the overall assessment, particularly where that letter, tellingly, confirms the very defect in the meter that we know was found to exist by DPW.

The plumber's assessment as to the presence or absence of a problem within the home is buttressed by his reporting this unusual and clearly established fact that had not been independently established at the time. Finally, because of questioning by the Board, it was only in the midst of the hearing that it was learned that the meter was found to be malfunctioning at the time it was replaced. Had Ms. Rodriguez had had [sic] access to this information, it may have reduced her confidence in the reliability of the information from the City.

In this matter, the Board knows and so finds that the meter was malfunctioning. This clearly and convincingly rebuts the statutory presumption. Moreover, the Board finds by a preponderance of the evidence that the sewer charges are not accurate and cannot be the basis for monetary recovery from the property owner.

CONCLUSION

In light of the evidence presented, the Board finds that the Sewer Service Charge in the amount of $11,558.21 assessed by the Baltimore County Department of Public Works for 7242 Bridgewood Drive, Baltimore, Maryland 21224 is REVERSED.

The County petitioned for judicial review in the Circuit Court for Baltimore County. On May 4, 2018, the circuit court entered an order affirming the Board's decision. The County timely filed a notice of appeal.

STANDARD OF REVIEW

In *Commissioner of Labor and Industry v. Whiting-Turner Contracting Company*, 462 Md. 479, 490 (2019), the Court of Appeals explained appellate review of an agency decision as follows:

> "We review an administrative agency's decision under the same statutory standards as the [c]ircuit [c]ourt. Therefore, we reevaluate the decision of the agency, not the decision of the lower court*." Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495-96, 769 A.2d 912, 921 (2001) (footnote omitted). We, however, "may always determine whether the administrative agency made an error of law. Therefore, ordinarily, the court reviewing a final decision of an administrative agency shall determine (1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision." *Baltimore Lutheran High Sch., v. Employment Sec. Admin.*, 302 Md. 649, 662, 490 A.2d 701, 708 (1985). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]" *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119, 1123 (1978). Additionally, purely legal questions are reviewed *de novo* with considerable "weight [afforded] to an agency's experience in interpretation of a statute that it administers[.]" *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554, 870 A.2d 168, 180 (2005).

DISCUSSION

The County asserts that there was not substantial evidence to support the Board's decision. According to the County, it presented a "prima facie case that the sewer service charges were properly billed," and Ms. Karasinski "failed to present probative and legally

sufficient evidence" to overcome the presumption of correctness of Baltimore City's water records. We are not persuaded that the Board's decision should be overturned.

Section 20-5-105 of the Baltimore County Code reads as follows:

> The volume of waste discharged into the system shall, for purposes of computing both the sewer service charge and treatment surcharge, be determined in accordance with the following:
>
> * * *
>
> (2) **In all cases where a person acquires all of their water from the Baltimore City water supply system, the records of water consumption, as provided by Baltimore City, shall be used to determine the volume of water consumption. The records of Baltimore City reflecting water consumption shall be presumed to be correct**; and the person disputing those records shall have the obligation to establish, to the Engineer's satisfaction, the amount of water consumed.[5]

(Emphasis added.)

"Any person liable for the payment of the user charges imposed pursuant to this title and who disputes such charges may, within ninety (90) days after mailing of the bill for such charges, request the Director of Public Works to review the charges imposed." Baltimore County Code § 20-5-110(a). The Director shall investigate the merits of such requests and afford the person challenging the charge a hearing if requested. *Id.* After an investigation, and a hearing if requested, the Director may refund any charges

[5] "The Director of Public Works shall be responsible for carrying out the provisions of this article. The Director shall be the Chief Sanitary Engineer for the county and the Chief Engineer for the metropolitan district." Baltimore County Code § 20-1-105.

"erroneously, mistakenly, or illegally charged or collected," or uphold the initial charge. *Id.*

"Any person aggrieved by the decision of the Director of Public Works may appeal the same to the Board of Appeals . . . ." Baltimore County Code § 20-5-110(b). "**Hearings before the Board of Appeals shall be de novo**." Baltimore County Code § 20-5-128(d) (emphasis added). The "Board shall determine whether or not the determination, decision, order, or notice, which is the subject of review, is proper or correct." Baltimore County Code § 20-5-128(a). The Board "shall have the power and authority to reverse or affirm, wholly or partly, or may modify the determination, decision, order, or notice appealed from and may give or make such determination, decision, order, requirement, or notices as ought to be made." *Id.*

Here, after conducting a de novo hearing, the Board found "by a preponderance of the evidence that the sewer charges are not accurate and cannot be the basis for monetary recovery from the property owner." The Board ordered a refund to Ms. Karasinski for "any portion of that sewer charge that exceeds the amount of water usage as determined by the City of Baltimore when it adjusted the water usage bill." Under our deferential standard of review, we look to the evidence presented at the hearing, and examine whether there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Bereano v. State Ethics Com'n*, 403 Md. 716, 732 (2008) (citations omitted).

The Board found that the water meter was malfunctioning during the time frame when the alleged spike in use occurred. The Board explained that "the one over-arching and incontrovertible fact is that the meter was not functioning at the time it was replaced." "In this matter, the Board knows and so finds that the meter was malfunctioning. This clearly and convincingly rebuts the statutory presumption."[6] In addition to the evidence that the water meter at Ms. Karasinski's house was "malfunctioning," the Board heard testimony that flawed or faulty information is sometimes entered in the City's records regarding water consumption, and that a plumber had found no abnormal water usage in the house on December 30, 2015, *after* Ms. Karasinski received the abnormally high water bill from the City.

In essence, the County disagrees with the Board's fact-finding and asks us to reweigh the evidence adduced at the hearing. But this was a de novo hearing, and the Board found the evidence that the meter was malfunctioning and in need of replacement in 2016, together with the City's adjustment of its water bill, and the plumber's December 2015 invoice, to outweigh the evidence the County argues should have been found more persuasive. Our review of "fact-finding does not permit us to engage in an independent analysis of the evidence." *Bereano*, 403 Md. at 732 (citation omitted). We

[6] Indeed, the presumption is that "The records of Baltimore City reflecting water consumption shall be presumed to be correct**; . . .**" As of the date of the hearing before the Board, the "records of Baltimore City" had been adjusted to remove the abnormal meter readings. The City forgave the excessive meter reading and did not charge Ms. Karasinski for using that amount of water.

conclude, as did the circuit court, that there was substantial evidence to support the Board's findings and conclusions.[7]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] The County also argues that the presumption of correctness of Baltimore City's "records" was not rebutted. Although that may be the County's view, the Board considered the presumption, and determined that the evidence "clearly and convincingly rebut[ted] the presumption." And the presumption may even weigh against the County because the City's "records" demonstrate that the City's final "record of water consumption" was reduced by 2256 units, which would be presumed correct. We do not need to reach this conclusion, however, because, even under the County's theory that the original meter reading was the "record" presumed to be correct, there was substantial evidence for the Board to find that the presumption of correctness was rebutted.