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8 **BOARD OF EQUALIZATION**
9 **STATE OF CALIFORNIA**

11 In the Matter of the Appeal of:) **HEARING SUMMARY**
12) **HOMEOWNERS AND RENTERS**
13 **EDDIE TOBIAS**¹) **PROPERTY TAX ASSISTANCE APPEAL**
14) Case No. 440644

<u>Year</u>	<u>Claim Amount</u>
2007	\$300 ²

18 Representing the Parties:

19 For Appellant: Eddie Tobias³
20 For Franchise Tax Board: Claudia L. Cross, Legal Analyst

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23 ¹ Appellant resides in San Francisco County.

24 ² On his Renter Assistance Claim form, appellant claimed \$347.50 in assistance. However, in his Appeal Letter, appellant
25 states that the appeal amount is \$300.00. If the board finds appellant qualifies for assistance as a renter-claimant, then it
26 appears that appellant should receive \$347.50 in assistance based on his income. (See Rev. & Tax. Code § 20544.) If the
27 board finds appellant qualifies for assistance as a homeowner-claimant, then the amount appellant should receive will be
28 calculated pursuant to Revenue and Taxation Code section 20543.

³ Appellant was assigned two different Tax Appeals Assistance Program (TAAP) representatives, Francisco Nogales and
Kalina Laleva, during this appeal. However, at the time appellant filed his Appeal Letter, appellant was no longer
represented by TAAP.

- 1 QUESTIONS: (1) Whether appellant was “disabled” for Homeowners and Renters Property Tax
2 Assistance (HRA) purposes for at least twelve consecutive months, including
3 December 31, 2006.
- 4 (2) Whether appellant was a homeowner-claimant or a renter-claimant for the claim
5 year; if appellant was a homeowner-claimant, whether appellant has provided the
6 information necessary to demonstrate he qualifies for homeowner assistance.

7 HEARING SUMMARY

8 Background

9 Appellant filed a timely 2007 HRA claim as a renter-claimant. On the claim form
10 appellant stated that he was under 62 years of age and disabled. Appellant attached a “Benefits
11 Printout” as proof of his disability. Appellant also indicated that he lived at a qualified residence on
12 Bertha Lane in San Francisco for 12 months during 2006. Respondent requested that appellant provide
13 documents to verify his disability. Respondent alleges that it did not receive any documents from
14 appellant in response and could not verify with the Department of Health Services (DHS) that appellant
15 was disabled, and therefore respondent denied appellant’s claim.⁴ Appellant filed this timely appeal.

16 Appellant provided a letter from his physician, directed to his insurance company, which
17 states that appellant has been disabled as of December 15, 2003. According to the physician, appellant
18 suffered from an injury while working as a stock clerk. The physician states that, due to this injury,
19 appellant has permanent work restrictions. The physician states appellant cannot lift over 25 pounds and
20 cannot go up and down stairs repeatedly. As a result, the physician states that appellant can no longer
21 work as a stock clerk.

22 Contentions

23 Appellant contends that respondent wrongly denied his claim because he provided
24 respondent with the requested documents to prove his disability. Appellant contends that the
25 documentation he provided clearly shows he is disabled. Appellant contends that he meets the legal
26 requirements to qualify for HRA and provided additional documentation with his appeal letter.

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28 ⁴ Respondent has an agreement with DHS, through which DHS will compare a specific claimant’s name, social security
number, and date of birth with its records regarding medical status of individuals in its database.

1 Respondent contends that appellant has not met all of the requirements to qualify for
2 HRA and therefore its denial of appellant's 2007 claim was correct. Respondent specifically contends
3 that appellant has not proven he was "disabled" for HRA purposes for 12 consecutive months including
4 December 31, 2006. Respondent contends the letter from appellant's physician did not state appellant
5 was disabled in 2006 or that appellant was prevented from working or seeking gainful employment.
6 Respondent emphasizes that the letter was addressed to an insurance company, and the definition of
7 "disabled" for insurance purposes may be different from the definition of "disabled" for HRA purposes.

8 Additionally, respondent contends, even if appellant could prove he was "disabled" for
9 HRA purposes, appellant should have filed as a homeowner-claimant instead of a renter-claimant
10 because respondent was informed by appellant's landlord that appellant's Bertha Lane address is a part
11 of a large complex of cooperative homes, where each resident owns a share of the cooperative where
12 they reside. Therefore, respondent contends that appellant must provide the information necessary for
13 respondent to consider a homeowner-assistance claim.

14 Applicable Law

15 Disability

16 The HRA law adopts the definition of "disabled" used by the federal government when
17 determining eligibility for SSI benefits. (Rev. & Tax. Code, § 20505, subd. (a); Welf. & Inst. Code, §
18 12050, subd. (d).) Under this definition, a "disabled" individual is one who is:

19 . . . unable to engage in any substantial gainful activity by reason of any
20 medically determinable physical or mental impairment which can be
21 expected to result in death or which has lasted or can be expected to last
for a continuous period of not less than twelve months.

22 (42 U.S.C. § 1382c(a)(3)(A).) The physical or mental impairment must be so severe that the individual:

23 . . . is not only unable to do his previous work but cannot, considering his
24 age, education, and work experience, engage in any other kind of
substantial gainful work which exists in the national economy

25 (42 U.S.C. § 1382c(a)(3)(B).)

26 The HRA law requires a claimant to provide evidence of his or her disability. (Rev. & Tax.
27 Code, § 20561, subd. (a).) According to respondent's HRA regulations, acceptable evidence of
28 disability includes: (1) a Medicare Card, if receiving Social Security or SSI benefits as a disabled

1 person, (2) a Social Security Award Letter, (3) an SSI payment decision, or (4) documentation accepted
2 by a local, state, or federal agency to support its determination of “disability” under the above-quoted
3 definition. (Cal. Code Regs., tit. 18, § 20504.) Respondent informs claimants in its publications that it
4 also accepts other documentation in lieu of the foregoing documents. Respondent indicates it accepts a
5 statement from the individual’s physician, including his medical license number, and signed by the
6 physician under penalty of perjury, which includes all of the following items:

- 7 (1) Information as to the individual’s specific physical and mental impairments.
- 8 (2) How these impairments prevent the individual from engaging in any kind of substantial
9 gainful work considering his or her age, education and work experience.
- 10 (3) The date that the disability began, and
- 11 (4) The date that the disability ended or whether the disability is ongoing.

12 Renter-Claimant

13 Revenue and Taxation Code (R&TC) section 20541 permits certain renters of residential
14 dwellings to claim property tax assistance from the State of California; under R&TC section 20544 the
15 amount of assistance is a specified percentage of \$250, determined according to the claimant’s income.
16 The maximum amount of assistance that a claimant may receive for a 2007 claim is 139 percent of
17 \$250.00, which is \$347.50. (Rev. & Tax. Code, § 20544, subd. (a)(2).)

18 R&TC section 20509 defines “rented residence” as “premises rented and occupied by the
19 claimant as his or her principal place of residence during the calendar year for which assistance is
20 claimed.” In *Appeals of Jeremiah Xavier Spicer, et al.*, 2001-SBE-003, May 31, 2001, we interpreted
21 these provisions to require that a renter-claimant show that he or she is liable for the payment of rent
22 under the rental agreement, and show that he or she paid the minimum of \$50 a month of required rent
23 from his or her own funds.

24 Homeowner-Claimant

25 R&TC section 20541 permits certain owners of residential dwellings to claim property
26 tax assistance from the State of California; under R&TC section 20543, the amount of assistance is a
27 specified percentage of the property taxes accrued and paid on the dwelling, determined according to the
28 claimant’s income. Household income generally includes income received by all persons of a household
while members of the household. (Rev. & Tax Code, § 20504.) According to R&TC section 20511,
“when a residential dwelling is owned by two or more individuals as joint tenants or tenants in common

1 and one or more of such persons is not a member of the claimant’s household, the term “property tax”
2 shall include only that part of the taxes levied which reflects the ownership of the claimant and other
3 members of the household.”

4 R&TC section 20508 defines “residential dwelling” as “a dwelling occupied by the
5 claimant as the principal place of residence...owned by the claimant...It shall also include a residential
6 unit in a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code)
7 occupied by the owner of shares or a membership interest in such corporation as his or her principal
8 residence...”

9 Internal Revenue Code (IRC) section 216(b), defines the term “cooperative housing
10 corporation” to mean a corporation:

- 11 (A) having one and only one class of stock outstanding,
- 12 (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in
the corporation, to occupy for dwelling purposes a house, or an apartment in a building,
owned or leased by such corporation,
- 13 (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any
distribution not out of earnings and profits of the corporation except on a complete or partial
liquidation of the corporation, and
- 14 (D) meeting 1 or more of the following requirements for the taxable year in which the taxes and
interest described in subsection (a) are paid or incurred:
 - 15 i. 80 percent or more of the corporation’s gross income for such taxable year is
16 derived from tenant-stockholders.
 - 17 ii. At all times during such taxable year, 80 percent or more of the total square
footage of the corporation’s property is used or available for use by the tenant-
18 stockholders for residential purposes or purposes ancillary to such residential
use.
 - 19 iii. 90 percent or more of the expenditures of the corporation paid or incurred
20 during such taxable year are paid or incurred for the acquisition, construction,
management, maintenance, or care of the corporation’s property for the
benefit of the tenant-stockholders.

21 STAFF NOTES

22 It does not appear that the documents in the record to date are sufficient to prove that
23 appellant was “disabled” for HRA purposes; accordingly, appellant should provide prior to the oral
24 hearing proof that he was “disabled” as defined by HRA law for 12 consecutive months including

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1 December 31, 2006.⁵ To do so, appellant must provide one of the acceptable forms of evidence set forth
2 in California Code of Regulations, title 18, section 20504, above or alternatively, appellant can provide a
3 physician’s letter containing the required information. In order to qualify as evidence of disability for
4 HRA purposes, a physician’s letter must indicate that appellant meets the following definition of
5 “disabled”:

6 . . . unable to engage in any substantial gainful activity by reason of any
7 medically determinable physical or mental impairment which can be
8 expected to result in death or which has lasted or can be expected to last
9 for a continuous period of not less than twelve months.

9 (42 U.S.C. § 1382c(a)(3)(A).) The physical or mental impairment must be so severe that the individual:

10 . . . is not only unable to do his previous work but cannot, considering his
11 age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy

12 (42 U.S.C. § 1382c(a)(3)(B).) It is not determinative that appellant (according to his doctor) was no
13 longer able to work as a stock clerk as of December 15, 2003; instead the question here is whether
14 appellant, for the claim year, was able to engage in any other kind of substantial gainful work
15 considering his age, education, and work experience. To meet his burden of proof, appellant may
16 provide a physician’s letter signed under penalty of perjury that states how appellant’s impairment
17 prevented him from engaging in *any* kind of substantial gainful work considering his age, education, and
18 work experience for 12 months including December 31, 2006, that includes all of the information set
19 forth above (including the physician’s license number.)

20 If appellant can prove at the hearing that he is “disabled” for HRA purposes, then the
21 issue of whether appellant is a renter or homeowner-claimant must be addressed. Both parties should be
22 prepared to discuss whether appellant’s residence on Bertha Lane in San Francisco meets the IRC
23 definition of “cooperative housing corporation.” If appellant contends that he is in fact an owner
24 claimant and that his residence meets the definition of “cooperative housing corporation,” appellant
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27 ⁵ Exhibits should be sent at least 14 days prior to the oral hearing to: **Mira Tonis**

**Board Proceedings Division
State Board of Equalization
P. O. Box 942879 MIC:80
Sacramento, CA 94279-0080**

1 should provide, at least 14 days prior to the oral hearing, a completed 2007 Homeowner Assistance
2 Claim form and the Cooperative Membership form, which was included in respondent’s Opening Brief
3 as Exhibit “B.” Should the board determine that this residence does not meet the definition of
4 “cooperative housing corporation,” and instead determines that appellant is a renter-claimant who has
5 demonstrated his disability, then the board should reverse respondent’s denial of the claim.⁶

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28 ⁶ Whether or not appellant was “disabled” per HRA law is a threshold issue which should be determined before the analysis of whether appellant is a renter or homeowner-claimant. If appellant is not found to be “disabled” for HRA purposes, then the board should sustain respondent’s denial of the claim.