

**IN THE COURT OF APPEALS OF IOWA**

No. 9-017 / 08-0115  
Filed May 29, 2009

**DEERFIELD RETIREMENT COMMUNITY, INC.,**  
Plaintiff-Appellant,

**vs.**

**BOARD OF REVIEW OF POLK COUNTY,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,  
Judge.

Appellant appeals the district court's ruling denying its claim to be  
declared exempt from real estate taxation. **AFFIRMED.**

Richard Lozier of Belin Law Firm, Des Moines, for appellant.

William Stiles, Des Moines, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

**VOGEL, J.**

Appellant Deerfield Retirement Community, Inc. (Deerfield) appeals the district court's ruling denying its petition to be declared exempt from real estate taxation as a charitable institution. Deerfield asserts that it is a charitable organization that provides charity care to patients through subsidies and does not operate for pecuniary profit, so should therefore qualify for the tax exemption. We affirm.

**I. Background Facts and Proceedings**

Deerfield is a section 501(c)(3) not-for-profit corporation operated by Life Care Retirement Communities (LCRC) and managed by Life Care Services, Inc. (LCS). Deerfield opened in 2005 and is comprised of a mix of residential and care facilities. There are thirty-two free-standing residential units, 139 independent living units, an assisted living facility with twenty-four beds, and a health care facility with thirty beds. The latter two are the "Health Care Facilities" for which Deerfield seeks tax exemption. For the residential and independent living units, Deerfield requires both a substantial entry fee as well as a monthly service fee, but does admit between five and eight percent of residents to independent living who do not meet the financial standards for admission. Once admitted, each resident is assured continuous care for life, so long as the resident meets the health care requirement. As a resident's care needs increase, and the resident is moved from independent living to the Health Care Facility, the resident's monthly fee rates do not change. At the inception of Deerfield, most units sold were for independent living, so the Health Care Facility was filled with "direct admits," or private-pay patients who paid full market rates;

or Medicare recipients, with reimbursement falling below the cost of care. Deerfield does not accept Medicaid, Title XIX, or indigent patients who are unable to pay for their care. See 42 U.S.C. §§ 1396-1396-1. The term “Medicaid” means the program for medical assistance established under title XIX of the Social Security Act. Deerfield operates solely on the funds of its residents, Medicare, and some charitable donations from LCRC Foundation. It does not use a volunteer auxiliary, other charitable contributions, or perform significant charitable activities.

In 2006, the Deerfield property was assessed at \$40,000,000, and on February 1, 2006, Deerfield filed an application for exemption with the Polk County Assessor to exempt the Health Care Facility portion, which was assessed at \$5,148,304. The Polk County Board of Review denied the tax exemption, and Deerfield appealed that decision to the district court. The district court found that Deerfield had not sustained its burden of proof of showing that it operates as a charitable institution, and thus, denied its petition for the tax exemption. We affirm.

## **II. Standard of Review**

The district court hears appeals from board of review decisions in equity. *The Evangelical Lutheran Good Samaritan Soc’y v. Bd. of Review*, 688 N.W.2d 482, 483 (Iowa Ct. App. 2004). Our review, therefore, is de novo. Iowa R. App. P. 6.4.

## **III. Tax Exemption**

Deerfield asserts that it fit the qualifications for a charitable organization tax exemption according to Iowa Code section 427.1(8) (2007), which provides

that all buildings used for religious, literary, and charitable organizations that are not used for pecuniary profit shall not be taxed.<sup>1</sup> In order to establish the tax-exempt status of its property, an entity must prove the following three factors by a preponderance of the evidence: (1) the entity was a charitable institution at the time of the claimed exemption; (2) the entity did not operate the facility with a view to pecuniary profit; and (3) the actual use of the facility was solely for the appropriate objects of the charitable institution. *Carroll Area Child Care Ctr., Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252, 254-55 (Iowa 2000). Any doubt concerning an exemption must be resolved in favor of taxation. *Bethesda Found. v. Bd. of Review*, 453 N.W.2d 224, 226 (Iowa Ct. App. 1990). The burden is upon the party claiming the exemption to show the property should not be taxed. *Id.*

The Deerfield bylaws state: “[t]he Corporation is organized exclusively for charitable purposes and shall operate in such a manner that no part of its earnings will inure to the benefit of any director, officer or other person.” There is no dispute that Deerfield does not operate with a view towards pecuniary profit. There is also no dispute that Deerfield is a corporation qualified under 501(c)(3) of the Internal Revenue Code as a tax exempt entity. The area of dispute lies in whether the “actual use of [Deerfield] was solely for the appropriate objects of the charitable institution.” *Carroll Area Child Care Ctr.*, 613 N.W.2d. at 255. The

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<sup>1</sup> Iowa Code 427.1(8) states:

**Property of religious, literary, and charitable societies.** All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit.

mere fact that Deerfield is a nonprofit corporation does not make it a charitable institution. *Bethesda Found.*, 453 N.W.2d at 227.

Deerfield contends that under the “actual use” test, the nature and scope of the charitable purpose encompassed more than mere housing, and care was given on a “gratuitous or partly gratuitous purpose.” *Id.* at 255-256. Gratuitous or partly gratuitous care can be provided by (1) subsidizing the care of those who are unable to pay, or (2) using charitable contributions to cover the costs of establishing the facility and some portion of the ongoing operating expenses, thereby subsidizing the cost of the facility for all persons who use it, regardless of their ability to pay. *Carroll Area Child Care Ctr.*, 613 N.W.2d at 257.

For those unable to pay the full amount of the cost of care, either through private pay or Medicare reimbursement, Deerfield looks to its other sources of income for subsidy. The only information Deerfield provided at trial illustrated that these subsidies were paid by an operating surplus of the entrance fees and monthly fees of other residents. Deerfield claims that this subsidy was a form of a partly gratuitous purpose. The “charity” Deerfield claims, means simply transferring excess revenue from the fee-paying residents at Deerfield to subsidize those who are not able to pay the full amount of the cost of care. While this is a method of staying financially viable, the level of these subsidies is projected to diminish in the future. This is because Deerfield currently allows direct admits, either private pay or Medicare patients, in order to fill beds not yet needed by the independent living residents. In addition, Deerfield asserts it must subsidize the cost of care of Medicare patients. However, the record indicates the Medicare reimbursement is not less than the average cost of care, but is less

than Deerfield charges for the care of a private pay resident. Further, as the district court found, “as Deerfield independent living residents transition into assisted living and skilled nursing care, the direct admits and Medicare patients will be squeezed out of the facility.” Therefore, as the direct admits diminish and are replaced with those coming from the residential units who were financially pre-qualified, the number of residents not able to cover the cost of care will decrease, resulting in a reduced need for subsidies. The district court concluded, and we agree, that any subsidy currently provided to its residents through this cost-shifting method was not substantial.

Deerfield further argues that it received charitable contributions from LCRC, which it used to enhance the patients’ quality of life. LCRC raises money on behalf of eleven retirement communities, and distributes contributions amongst the different communities. With these funds, Deerfield purchased a golf cart, exercise equipment, and café furnishings. While there is no necessity that charitable contributions reach a certain threshold percentage of an institution’s budget to be considered charitable, it is important that contributions of money, goods, and services have played some part in the establishment and operation of a charitable institution. *Richards v. Iowa Dept. of Revenue*, 414 N.W.2d 344, 353 (Iowa 1987). We agree with the district court that these contributions do not fulfill this purpose, nor qualify as subsidizing the health care costs of indigent residents.

Deerfield had no subsidy or charitable support beyond LCRC and the operating surplus of the entrance fees and monthly fees of other residents. Deerfield has identified no facts concerning the actual use of Deerfield which

would suggest it fit the requirements of a charitable organization, exempt from tax under Iowa Code section 427.1(8).

Finally, Deerfield asserts a denial of equal protection, claiming other similar facilities in the area have been exempted from taxation. The Board states that this constitutional issue was not raised below and therefore error was not preserved. The district court did, however, make this finding: "These other health care facilities are distinguished from Deerfield in that they receive charitable contributions that subsidize the care of indigent or Medicare patients. Some of them also accept volunteers to assist in the care of needy patients." We agree, as the record indicates the other facilities cited by Deerfield receive some subsidies from outside charitable organizations to support indigent patients. Having concluded Deerfield has not established charitable or volunteer subsidies to underwrite indigent patients, it is unnecessary to further expand on this issue.

**AFFIRMED.**