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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2344**

Rinzin Rinzin,
Relator,

vs.

Olmsted County Housing and Redevelopment Authority,
Respondent.

**Filed November 25, 2008
Reversed
Minge, Judge**

Olmsted County Housing and Redevelopment Authority

Charles Brumbach, Southern Minnesota Regional Legal Services, Inc., 903 West Center Street, Suite 130, Rochester, MN 55902; and

Michael Hagedorn, 450 North Syndicate Street, Suite 285, St. Paul, MN 55104 (for relator)

Thomas M. Canan, 421 First Avenue Southwest, Suite 302, Rochester, MN 55902 (for respondent)

Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Relator seeks review of the decision of a hearing officer that he was ineligible to participate in the Section 8 rental-assistance program, arguing that the decision was unsupported by substantial evidence. Because we find that the hearing officer's decision was unsupported by substantial evidence, we reverse.

FACTS

Respondent, the Olmsted County Housing and Redevelopment Authority (OCHRA), administers federal housing-assistance programs, including the Section 8 Housing Choice Voucher Program (voucher program). Under the program, an eligible family selects and rents a qualifying unit, and the local housing authority makes rent subsidy payments on behalf of the family. 24 C.F.R. § 982.1(a)(2) (2006).

Relator Rinzin Rinzin is the husband of Dadon Dadon and the father of Sherab Wangmo. Rinzin and his wife are immigrants from Tibet and require an interpreter to communicate in English. On December 9, 2002, Wangmo applied to OCHRA for the voucher program. In 2005, Wangmo added her husband, father, mother, and niece to the application. On April 4, 2007, Wangmo's name came to the top of the Section 8 voucher waiting list. On April 18, 2007, she completed and submitted the application for the voucher program, on which she listed herself as "head of household," her father as "co-head," and her mother and niece as "other adults."

On June 7, 2007, Wangmo, Rinzin, and Dadon attended a Section 8 orientation session and were issued a housing voucher in Wangmo's name. At that time, Wangmo

requested that she be removed from the household and her father be listed as the “head of the household.” OCHRA accommodated this request and designated Rinzin as the sole “head of the household.” On July 6, 2007, Rinzin submitted a request for voucher program approval for his rental unit. Ultimately, Rinzin’s unit was approved, and the family was set to begin receiving rental assistance starting September 1, 2007.

Financial eligibility for the voucher program was an important matter. Wangmo had removed herself—and consequently her income—from her family’s Section 8 application because with her income the family would not be eligible for the voucher program. On July 4, 2007, Wangmo notified OCHRA in writing that she was no longer living in her parents’ home. Wangmo, in fact, was continuing to live with her parents at that time.

On August 27, 2007, Rinzin’s landlord informed OCHRA that Wangmo was still residing with her parents. Consequently, an OCHRA representative, Donna Anderson, contacted Wangmo on the same day and explained that, if Wangmo continued to reside with her parents, the Rinzin family would not be eligible for the voucher program because the family would exceed the maximum household-income requirement. Wangmo told Anderson that she would be moving out of her parents’ home by the end of August. Anderson informed Wangmo that she needed to provide OCHRA with a copy of her new lease or a written statement from her prospective landlord to satisfy OCHRA that she would not be residing in her parents’ household on September 1, 2007. OCHRA did not receive any further communication from Wangmo before the September 1 deadline. On August 31, 2007, OCHRA sent a letter to Rinzin stating that his household would not

be receiving Section 8 voucher rental assistance due to income ineligibility. The letter explained that, because Wangmo did not provide any proof that she had moved, OCHRA included her income in the family's total income, which thereby made the family ineligible to receive assistance, and that the case had been closed.

On September 14, 2007, the Rinzin family requested that OCHRA review its decision to deny the voucher. On October 26, 2007, OCHRA's rental coordinator conducted a hearing. OCHRA representative Anderson testified and explained the basis for OCHRA's decision.

Wangmo testified and conceded that she did not move out of her parents' unit on July 4, 2007, as she previously had reported to OCHRA. However, Wangmo testified that she *did* move out of her parents' unit on September 1, 2007 and resided elsewhere in Rochester for three days. Wangmo stated that, without the housing voucher, her family could not pay its rent unless she helped, that she could not rent a separate residence if she had to help her parents pay rent, that on September 4, 2007, she moved back to her parents' home after learning that her family had been excluded from the voucher program, and that, if OCHRA provided housing assistance for her parents, she would move out. To support her claim that she had moved out of her parents' home, Wangmo provided a copy of a handwritten letter from Phirath Chhorm stating that Wangmo would be staying with her at 403 7th Street, Rochester, MN 55901. The letter had the date of September 1, 2007 next to Chhorm's signature; however, OCHRA testified that it did not receive this letter until shortly before the October 26, 2007 hearing. Wangmo claimed that she had sent the letter to OCHRA prior to September 1, 2007.

OCHRA's rental coordinator, as a hearing officer, issued a decision on October 27, 2007, affirming the denial of the Section 8 voucher. The hearing officer explained that her decision was based on the determination that OCHRA "had not received the notification from Ms. Wangmo's new landlord" and that Wangmo "should have been able to follow through with the requirements that were set." The hearing officer did not make any credibility determination regarding Wangmo's or Rinzin's testimony. Rinzin's appeal followed.

D E C I S I O N

OCHRA is a public-housing authority. When the hearing officer for a public-housing authority takes evidence, hears testimony, and makes a determination to deny an individual Section 8 housing assistance, the officer acts in a quasi-judicial capacity. *Carter v. Olmsted County Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). "An agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Id.* Although federal Section 8 regulations do not address burdens of proof, because OCHRA's decision concerned a deprivation of benefits necessary for survival, it carried the initial burden of proof at the October 26 hearing. *See id.* at 731. The reviewing court inspects the record to determine if it supports the hearing officer's decision, but does not retry facts or challenge the credibility determinations of the officer. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). "The decision is to be upheld if the

lower tribunal furnished any legal and substantial basis for the action taken.” *Id.* (quotation omitted).

The issue is whether the determination by the OCHRA hearing officer that Rinzin’s family was not income-eligible for public housing assistance was supported by substantial evidence. Although OCHRA’s decision was reviewed by the hearing officer and the action leading to the hearing, we do not directly review that decision. Rinzin argues that the hearing officer’s determination that his family was income ineligible was unsupported by substantial evidence. The parties do not dispute how OCHRA calculates income eligibility, that Wangmo’s income and residency with Rinzin would make Rinzin ineligible, or that Rinzin’s ineligibility was triggered solely by the hearing officer’s finding that Wangmo resided at Rinzin’s home on September 1. Thus, on appeal, the single dispositive question is whether there was substantial evidence for the hearing officer to conclude that Wangmo was residing in Rinzin’s unit on September 1.

Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; and (5) evidence considered in its entirety.” *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001); *see also Carter*, 574 N.W.2d at 730. This appellate court gives considerable judicial deference to administrative fact-finding, *CUP Foods, Inc.*, 633 N.W.2d at 563, and applies an abuse-of-discretion standard of review, *Carter*, 574 N.W.2d at 730. The relator must demonstrate that the administrative agency’s findings are not supported by the record when considered in its entirety. *Id.*

In support of his claim, Rinzin argues that OCHRA failed to produce evidence that Wangmo was living in Rinzin's home on September 1. OCHRA argues that its hearing officer's decision is supported by substantial evidence. According to the record, Wangmo was living in Rinzin's home at least through August 27, and in a July 4 letter to OCHRA staff, Wangmo misrepresented that she had already moved out of the home. OCHRA also presented evidence that Wangmo did not comply with a request by OCHRA staff for a copy of her new lease or a written statement from her prospective landlord. The record does not indicate that OCHRA had a rule or regulation requiring that program participants supply documentary evidence confirming who was residing in a housing unit and, more importantly, to make the lack of such documentation determinative of ineligibility. Also, the record does not contain any evidence that Wangmo was actually living in Rinzin's unit on September 1.

Rinzin and Wangmo both testified that Wangmo *did* move out of the home on September 1, as Wangmo had promised. Wangmo stated that she moved into a residence with Phirath Chhorm on September 1. Rinzin also provided a photocopy of a letter bearing the date of September 1 from Chhorm, in which Chhorm states that Wangmo would be staying with her as of that date. Chhorm did not attend the hearing or submit any supporting affidavit. Wangmo testified that she sent the letter to the OCHRA office before the end of August, but OCHRA staff testified that it did not receive the letter.

In the hearing officer's findings, the hearing officer reiterated the testimony provided by the witnesses. The hearing officer then stated that she did not believe that Wangmo sent Chhorm's letter to OCHRA. She also found that, by August 31, OCHRA

had not received any information that Wangmo had moved out. The hearing officer also found that Wangmo heard, understood, and was capable of complying with the document requirement set by OCHRA.¹ Finding that Wangmo did not meet this requirement, the hearing officer sustained the finding that Rinzin's family was income ineligible for the voucher program.

The hearing officer's findings clearly demonstrate her reasoning in this matter. There may be sound administrative reasons for OCHRA staff to request written documentation demonstrating Wangmo's new housing arrangements. The request communicated to Wangmo the importance of formally establishing such arrangements, simplifies the administrative work of the staff, and provides a basis for good faith decision making. However, there is no regulation or rule that makes the absence of such information substantial evidence of Wangmo's residency that displaces contrary testimony. There was no evidence at the hearing that Wangmo was actually living in Rinzin's home on September 1. OCHRA and the hearing officer proceeded on the assumption that, absent the requested documentary evidence of a move, she was still there on September 1 and intended to stay.²

¹ During oral argument in this appeal, relator's attorney challenged the hearing officer's assessment of Wangmo's mastery of English verb tenses. However, nothing in the record suggests that Wangmo misunderstood Anderson's request or otherwise supports a finding that language skills were responsible for confusion. Without any record on this issue, we do not further consider it.

² It is worth highlighting that the hearing officer's decision was based only on Wangmo's failure to provide the information requested by the agency and not on a determination that the testimony provided by Wangmo and Rinzin was not credible. Thus, the issue of whether an agency's decision can be based on a factual finding that is the opposite of uncontradicted testimony of an incredible witness is not before the court. *See NLRB v.*

There may be sound reasons to question the veracity of the September 1 letter, and, based on the July 4 misrepresentation, Wangmo's credibility. However, there was testimony from Rinzin that his daughter, Wangmo, had moved out. We conclude that failure to timely supply requested documents and the criticism of Chhorn's letter do not constitute substantial evidence of occupancy adequate to overcome direct testimony of non-occupancy and to support the hearing officer's decision to revoke Rinzin's voucher.

In reaching this conclusion, we do not suggest that OCHRA must provide surveillance footage, eyewitness testimony, or an admission that Wangmo was continuing to live at Rinzin's home or treat it as her residence on September 1. Nor do we consider whether reasonable rules or regulations can be adopted making failure to supply requested documents determinative of such residence. In this case, OCHRA failed to overcome the direct testimony that Wangmo had moved out, and the hearing officer did not find that the testimony was so incredible that the opposite must be true. To establish continued occupancy, some evidence was needed to overcome the direct evidence from Rinzin that Wangmo had moved out. Most people move into new homes at the beginning of a month. That Wangmo did not send a copy of her new lease or a letter from a new landlord by August 31 is not proof that she lived in Rinzin's unit on September 1.

In sum, we conclude that the hearing officer's decision was not based on substantial evidence and that the hearing officer abused her discretion in affirming

Walton Mfg. Co., 369 U.S. 404, 408, 82 S. Ct. 853, 855 (1962) (quotation omitted) (“[T]he demeanor of a witness may satisfy the tribunal, not only that the witness'[s] testimony is not true, but that the truth is the opposite of his story . . .”).

OCHRA's decision to exclude Rinzin from the voucher program as of September 1, 2007.

Reversed.