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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0184**

Deeqa Hassan,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

**Filed March 24, 2009
Reversed
Peterson, Judge**

Dakota County Community Development Agency

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Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a decision to terminate her Section 8 housing benefits, relator argues that (a) the record does not support the finding that she failed to cooperate with respondent community development agency; and (b) in making its decision, respondent

acted arbitrarily and capriciously by failing to consider relevant circumstances. We reverse.

FACTS

Respondent Dakota County Community Development Agency (CDA) administers the Section 8 Housing Choice Voucher Program. Relator Deeqa Hassan began receiving Section 8 rental assistance through CDA in November 2005. To renew her participation in the program, relator signed a Section 8 recertification application¹ and attended an annual recertification appointment on July 3, 2007. On the application, relator stated that she has a checking account at U.S. Bank and is employed at the Sheraton Bloomington Hotel. During the recertification appointment, relator was given a handwritten note asking her to provide a copy of her U.S. Bank statement to CDA by July 20, 2007. Also at the recertification appointment, relator signed a form titled “Applicant/Tenant Certification And Statement of Tenant Responsibilities,” which states:

I know I am required to cooperate in supplying all information needed to determine my eligibility, level of benefits, or verify my true circumstances. Cooperation includes . . . providing requested information in a timely manner I understand failure or refusal to cooperate will result in termination of assistance.

Following the recertification appointment, CDA apparently attempted to verify relator’s employment by sending an employment-verification form to the Sheraton Bloomington Hotel.² When the employer did not respond and relator failed to provide a

¹ The hearing officer found that somebody helped relator complete her application.

² CDA did not attempt to obtain verification of relator’s checking account from U.S. Bank because the bank charges a ten-dollar fee for providing verification. To avoid

copy of her bank statement, CDA sent relator a letter on August 8, 2007, asking her to provide a copy of her three most-recent pay stubs or other written verification of her pay from her employer and a copy of her most-recent bank statement by August 17, 2007. On August 21, 2007, CDA sent a second letter to relator asking her to provide these documents. The second letter states that failure to provide the documents by August 31, 2007, will result in termination of relator's housing benefits. Printed at the top of each letter is a rectangle with the words, "LanguageBlock Attached," inside the rectangle. The record does not include anything identified as a language block.³

On August 27, 2007, CDA received a copy of relator's bank statement, which was stapled to the handwritten note that relator received during her recertification appointment, but CDA did not receive copies of relator's pay stubs. On September 25, 2007, CDA sent a letter to relator informing her that CDA was terminating her benefits effective October 31, 2007. Relator requested an informal hearing, and a hearing was held on November 5, 2007. Fatoun Ali, an acquaintance of relator's, attended the hearing with relator, and the hearing officer considered Ali to be an interpreter.

On November 25, 2007, the hearing officer issued a decision concluding that relator violated her Section 8 obligations by failing to cooperate with CDA in providing requested documentation and that relator's participation in the Section 8 program should be terminated as proposed by CDA. This certiorari appeal followed.

paying this fee, CDA allows applicants to verify a bank account by providing a copy of a statement for the account.

³ A footnote in CDA's brief states, "The 'language block' is a statement that is attached to correspondence stating in eleven languages: 'Attention. If you want free help in translating this information, call 651-675-4403.'"

Pursuant to Minn. R. Civ. App. P. 110.03, relator prepared a proposed statement of the proceedings in which she describes the November 5 hearing as being conducted in English. Relator states that she spoke only Somali at the hearing, Ali is not an interpreter, the hearing officer enlisted Ali as an interpreter at the hearing, CDA did not arrange for Ali to interpret, Ali does not have any certification to provide interpretation services, and Ali did not take an oath at the hearing. Relator states that Ali had significant problems interpreting and understanding English and then recounts relator's testimony at the hearing. Relator's proposed statement of the proceedings was served on the hearing officer and CDA and filed with the clerk of appellate courts as required under rule 110.03.

As its objections and proposed amendments to relator's proposed statement of the proceedings, CDA served and filed only a statement that "[i]t is [CDA's] position that the Hearing Officer's decision dated 11/25/2007 fully and accurately reflects the testimony at the informal hearing and is an accurate Statement of the Proceedings."⁴ Without addressing any of the statements in relator's proposed statement of the proceedings, the hearing officer issued an approved statement of proceedings on April 15, 2008. The approved statement includes a copy of the hearing officer's decision and a statement by the hearing officer confirming that she was assigned by CDA to conduct an informal hearing with respect to the termination of relator's Section 8 housing assistance; the

⁴ Relator served and filed her proposed statement of the proceedings on February 13, 2008. Under Minn. R. Civ. App. P. 110.03, CDA was to file and serve its objections and proposed amendments within 15 days after service of relator's statement. CDA did not file and serve its statement until April 14, 2008.

hearing was held on November 5, 2007; and she concurs with CDA that her decision provides a complete and accurate record of the proceedings before her.

D E C I S I O N

Because CDA took evidence and heard testimony, it acted in a quasi-judicial capacity. *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004). Accordingly, its determination will be upheld unless it is “unconstitutional, outside the agency’s jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Id.* (quotation omitted).

Relator argues that the hearing officer’s determination that she failed to cooperate in supplying requested information is not supported by substantial evidence. “Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Carter v. Olmsted County Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 730 (Minn. App. 1998) (quoting *Soo Line R.R. Co. v. Minn. Dep’t of Transp.*, 304 N.W.2d 301, 306 (Minn. 1981)) (other quotation omitted). It “means more than a scintilla of evidence, some evidence, or any evidence.” *Id.* (quotation omitted). The relator must demonstrate that the record in its entirety does not support the agency’s finding. *Id.* But “where deprivations of benefits necessary for survival are concerned, the initial burden of proof must fall on the government.” *Id.* at 731 (citing *Goldberg v. Kelly*, 397 U.S. 254, 264, 90 S. Ct. 1011, 1018-19 (1970)).

The hearing officer determined that relator’s benefits should be terminated because relator failed to cooperate with CDA in providing requested documentation.

Relator does not dispute that she was required to provide requested information, and there is no dispute that although relator did not promptly provide a copy of her bank statement as requested in the handwritten note that she received on July 3 at her recertification appointment, she did provide the statement before the August 31 deadline set by CDA. The only issue is whether relator's failure to provide copies of her three most-recent pay stubs demonstrates that she failed to cooperate with CDA.

Relator argues that although her attempts to provide information to CDA were incomplete, they do not demonstrate a failure to cooperate because she does not read English and she did not understand that CDA's letters asked her to provide copies of her pay stubs. The hearing officer provided the following explanation for rejecting relator's claim that she did not know that she had to submit pay stubs:

The hearing officer notes that the August 21, 2007, letter sent to [relator] by the CDA is very similar to a December 5, 2006, letter previously sent to her and that she was able to comply with the December 5, 2006, [letter], bringing into question why she wouldn't have been able to similarly comply with the August 21, 2007, letter. The hearing officer also notes that there is no valid reason [relator] shouldn't have been able to read the CDA's language block as one of the languages it is written in is Somali and [relator] testified that she can read Somali. In addition, the hearing officer notes that there has been no request from [relator] of the CDA to date to provide any sort of assistance with regard to reading and/or interpreting CDA letters or other information and [relator] has been a successful and compliant participant since November 1, 2005.

The record contains neither a copy of a December 5, 2006, letter sent to relator nor a copy of CDA's language block, and there is no evidence in the record indicating that relator ever received a copy of the language block or any other notice informing her that

she could receive help in translating the letters that she received. Without evidence that relator knew that she could request translation assistance, her failure to make a request does not indicate that she was able to understand earlier letters, and without a copy of the December 5, 2006, letter, it is not clear why its similarity to the August 21, 2007, letter indicates that relator understood the August 21 letter.

The hearing officer found:

[Relator] stated that she is used to getting a letter similar to the December 15, 2006, letter she received from the CDA but never got such a letter this year. She provided a copy of the December 15, 2006, letter⁵ to the hearing officer. She added that she didn't know what was missing or what to provide.

In her proposed statement of the proceedings, relator stated that she testified at the November 5 hearing that she did not get the usual letter and she did not understand that she had to provide pay stubs because previously CDA had contacted her employer and the employer sent the information about her income.

It appears that the December 5, 2006, letter that the hearing officer referred to in her conclusions and the December 15, 2006, letter that the hearing officer referred to in her findings of fact could be the same letter and that this letter is what relator referred to at the hearing as the "usual letter" she received. But this confusion in the record was not resolved during the process of preparing a statement of the proceedings, and the record on appeal provides no basis for us to conclude that the three separate references all refer

⁵ There is no December 15, 2006, letter in the record.

to the same letter or to determine whether a letter that relator received in 2006 is evidence that relator understood a letter that she received in 2007.

Because there is not substantial evidence in the record to support the determination that relator understood that she needed to provide CDA with copies of her three most-recent pay stubs, there is not substantial evidence that relator failed to cooperate with CDA in providing requested documentation. Because there is not substantial evidence to support the determination that relator failed to cooperate, it is not necessary for us to consider whether CDA acted arbitrarily and capriciously by failing to consider relevant circumstances.

Reversed.