STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0373

Ayan Hassan,
Relator,

vs.

Dakota County Community
Development Agency,
Respondent.

Filed February 24, 2009
Reversed and remanded
Klaphake, Judge

Dakota County Community Development Agency

Hlee Vang, Southern Minnesota Regional Legal Services, 166 East Fourth Street, Suite 200, St. Paul, MN 55104-1448; and

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Mary G. Dobbins, 7400 Metro Boulevard, Suite 100, Edina, MN 55439 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Bjorkman, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Relator Ayan Hassan challenges respondent Dakota County Community Development Agency's (CDA) termination of her Section 8 public housing benefits and its demand that she repay $4,584 in rental assistance benefits she received from July through December 2007. The CDA terminated relator's benefits, alleging that she failed to provide proper 2006 tax documents and failed to report that her husband had moved into her rent-assisted unit in June 2007. We reverse because we conclude that (1) the CDA decision is not supported by substantial evidence that she failed either to provide proper tax documents or that her husband had moved into her rent-assisted unit; and (2) the CDA decision is arbitrary and capricious because it failed to consider evidence of relator's poor English proficiency and the effect that termination of her rental assistance would have on her five young children.

D E C I S I O N

Federal regulations allow for the termination of Section 8 housing benefits when a resident "violates any family obligations under the program." 24 C.F.R. § 982.552(c)(1)(i) (2008). A nonexclusive list of statutory violations includes failure to pay rent or other monies owed to the housing program, crimes by family members, such as fraud or bribery connected with the housing assistance program, abusive or violent behavior toward program personnel, and bribery. *Id.* at § 982.552(c). In considering whether to terminate assistance for violations of family obligations, the statute suggests consideration of "the seriousness of the case." *Id.* at § 982.552(c)(2).

The CDA acts in a quasi-judicial capacity in determining an individual's qualification to receive rental assistance, and we will uphold that determination 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." *Carter v. Olmsted County Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). "[A] decision not supported by proper findings is considered prima facie arbitrary[.] *Id.* at 730 (quotation omitted). "Federal section 8 regulations do not address burdens of proof, but U.S. Supreme Court precedent indicates that, where deprivations of benefits necessary for survival are concerned, the initial burden of proof must fall on the government." *Id.* at 731. During an informal hearing, the CDA may consider evidence "without regard to admissibility under the rules of evidence applicable to judicial proceedings." 24 C.F.R. § 982.555 (e)(5)(2008).

Evidentiary Support for Decision

Relator first claims that the CDA decision is unsupported by substantial evidence, which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," and "more than a scintilla of evidence, some evidence, or any evidence." *Id.* at 730 (quotations omitted). But a decision must also consider "contradictory evidence or evidence from which conflicting inferences can be drawn." *Id.* at 730-31 (quotation omitted). This court reviews the CDA decision under the abuse of discretion standard of review. *Id.* at 730.

Regarding the CDA conclusion that relator's husband had moved into her assistance unit, the evidence received at the hearing on the matter included the testimony

of a caseworker that relator had requested to add her husband to her assistance unit, relator's recertification application on which she indicated that her husband would be a member of the household, and a document from Hennepin County Child Support Services that states in regard to the amount of child support arrears owed by relator's husband, "Per Ken 6-23-07=Arrears only to Co. 6-7-07=Father added to Hh. Self employed." The form also states, "for Ken. (1) Do you have documentation that children are not in HH?" Relator also testified that her husband did not live in her assistance unit, but that she had applied for him to do so. She admitted that she had indicated on various forms that he would be living in her household because she believed that he would be approved to do so.

On this record, the CDA has not produced evidence that relator's husband was actually living in her rent-assisted unit from July to December 2007. The only evidence that could establish his residence at the assisted unit is a notation on the Hennepin County child support form from "Ken" that indicates that "Father added to Hh." This evidence is consistent with relator's testimony that she notified the CDA in anticipation of adding her husband to her Section 8 household but does not show that he actually lived with her from July to December 2007.

Further, the CDA decision did not consider or address a letter that relator provided from her husband's landlord verifying that her husband resided in a Minneapolis apartment from June through December 2007. While this evidence was provided by relator two days after the hearing record closed, relator claims that other post-hearing evidence was accepted by the hearing officer, and under these circumstances it was an

abuse of discretion to fail to consider this evidence. For these reasons, the CDA decision that relator's husband lived in her assisted unit was not based on evidence that a reasonable mind would accept as adequate to support that conclusion. Further, as the decision merely recounts the evidence, the hearing officer failed to make necessary credibility determinations that would enable meaningful review. *See Cole v. Metro. Council HRA*, 686 N.W.2d 334, 338 (Minn. App. 2004).

Relator also challenges the other basis for termination of her rental assistance, her failure to provide full 2006 tax information. Relator attempted to submit these documents on two separate occasions. The first, a fax received by CDA on March 8, 2007, is unreadable, but a notation, apparently from CDA, says "W2 tax form." The second fax, received on June 11, 2007, is an M1W form that reveals relator's Minnesota income tax withheld in 2006, but a copy of a personal check that was apparently provided as evidence of relator's day care expenses (also requested by CDA) blocks the pertinent portions of the tax form. Relator also testified that she unsuccessfully attempted to phone and meet with CDA representatives on several occasions.

On this record, the CDA did not provide substantial evidence that relator failed to submit her 2006 tax forms. Relator made two attempts to submit what she thought was this information. The record does not show whether relator had sufficient income to necessitate filing a tax return in Minnesota.

Further, Section 8 contemplates termination of assistance only for serious conduct by program participants. The statute enumerates crimes and other intentional conduct as bases for termination of assistance. 24 C.F.R. § 982.552 (c). Here, relator has lived in

Section 8 housing since 2001 and presumably complied with annual recertification requirements for many years. Her failure to provide proper forms on this occasion does not demonstrate a serious violation of her family obligations. For these reasons, this basis for termination of rental assistance is also unsupported by substantial evidence.

Arbitrariness of Decision

Relator further claims that the CDA decision to terminate her assistance is arbitrary and capricious because it failed to consider all relevant circumstances.

> The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

24 C.F.R. § 982.552(c)(2). Here, relator, a Somali immigrant, is a non-native English speaker, and the hearing officer noted this in factual findings, but the decision includes no finding on relator's English proficiency. *See Flannery v. Kusha*, 147 Minn. 156, 158, 179 N.W. 902, 903-04 (1920) (requiring district court to consider defendant's liability to understand English when addressing defendant's failure to respond to a complaint). Second, the CDA decision fails to consider the effect of termination of assistance on relator's other family members. Relator has five young children in her household, and termination of her rental assistance would have a negative effect on their ability to have "decent, safe and sanitary housing," a goal of Section 8 rental assistance. 24 C.F.R.

§ 982.1(a) (1)(2008). The CDA decision is arbitrary and capricious because it fails to consider these mitigating circumstances.

Reversed and remanded.