STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0112

Hayyate Ali,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

Filed March 3, 2009
Reversed
Stoneburner, Judge

Dakota County Community Development Agency

Terrance Hendricks, Michael Hagedorn, Southern Minnesota Regional Legal Services, Inc., Suite 200, 166 East Fourth Street, St. Paul, MN 55101-1448 (for relator)

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

Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

STONEBURNER, Judge

Relator challenges termination of her Section 8 housing benefits, arguing that respondent misapplied the law to conclude that she did not comply with disclosure obligations, the record does not support the conclusion that relator refused or failed to make required disclosures, and the hearing officer's findings are inadequate. Because respondent's stated basis for terminating relator's benefits is legally insufficient and because the evidence does not support a finding that relator failed to cooperate with respondent, we reverse.

FACTS

Since January 1, 2007, relator Hayyate Ali (relator) has received Section 8 housing benefits under a U.S. Department of Housing and Urban Development (HUD) program administered by respondent Dakota County Community Development Agency (CDA). The program requires CDA to annually recertify the eligibility of each participating household. To be eligible for benefits, relator was required to sign CDA's Applicant/Tenant Certification and Statement of Tenant Responsibilities. That document contains an acknowledgment of the tenant's requirement to cooperate with CDA, including attending pre-scheduled appointments, and an acknowledgment of understanding that failure to cooperate will result in termination of assistance.

CDA sent a letter dated August 9, 2007, to relator scheduling a recertification appointment for the morning of August 28, 2007. Relator later testified that she did not receive this letter until the day of the appointment, a day when she had to get her four-

year-old child ready for school while also dealing with morning sickness due to her pregnancy. Relator testified that she called CDA's customer-service line that day to report that she was not able to attend the appointment. Relator testified that she was put on hold for a long time but eventually spoke to a representative who said that someone would contact relator to reschedule the appointment. CDA asserts that it sent a letter dated August 30, 2007, rescheduling the appointment for September 13, 2007. Relator testified that she never received this letter and that she only learned about the September 13 appointment when she went to CDA's office sometime between September 13 and September 17 to make a payment and to inquire about rescheduling the August 28th appointment. Relator was informed that she would not be allowed to reschedule. CDA notified relator by letter dated September 25, 2007, that her benefits would be terminated effective October 31, 2007, for failure to attend the recertification appointment. Relator requested a hearing.[1]

At the hearing, CDA's representative cited 24 C.F.R. §§ 982.551–.552 for the proposition that non-cooperation by a participant is prohibited and that CDA is authorized to terminate assistance for non-cooperation. The representative also cited CDA's Section 8 Housing Choice Voucher Administrative Plan (Administrative Plan), which states that CDA may terminate assistance for failure to attend pre-scheduled appointments, and the Applicant/Tenant Certification and Statement of Tenant

[1] The record reflects that relator requested a hearing the day before the date on the letter notifying her of termination of benefits and made another request for a hearing after she received the letter.

Responsibilities, signed by relator, acknowledging a responsibility to attend appointments and termination as the consequence of failing to cooperate.

Relator testified, as described above, about her inability to attend the first scheduled hearing, that she did not receive notice of the September 13 appointment, and that she learned about the September 13 appointment for the first time when she made her payment and inquired about rescheduling at CDA's office. She testified that without Section 8 benefits she is not able to provide housing for her four-year-old child.

The hearing officer found[2] that CDA sent the first notice on August 9, 2007, and that relator "did not contact the CDA and failed to appear for her appointment." The hearing officer, noting that relator provided no evidence that morning sickness prevented her from attending the first appointment, stated: "the hearing officer believes that [relator] should have made every effort possible to attend her appointment in spite of the morning sickness she referenced." Regarding the second appointment, the hearing officer noted relator's claim not to have received notice, but found that "all other correspondence appears to reach [relator] without any problem and the second and final appointment letter was not returned to the CDA." The hearing officer concluded that relator "violated her program obligation of cooperating with the CDA due to her failure

[2] The hearing officer's "findings of fact" are not true findings, but only recite the evidence presented by relator and CDA representative. *See generally, Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989) (stating that merely reciting parties' claims does not constitute making findings of fact and that findings must be affirmatively stated as findings of the court). The hearing officer's findings are contained in the "Conclusions" section of the written decision. *See Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 145–46, 59 N.W.2d 841, 844 (1953) (noting that findings of fact, even if labeled as conclusions of law, will be treated as findings of fact).

to attend a required annual recertification appointment . . . and her Section 8 participation should be terminated as proposed by the CDA." This appeal followed.

D E C I S I O N

CDA is a public housing authority (PHA). A PHA acts in a quasi-judicial capacity when it takes evidence, hears testimony, and makes a determination to deny Section 8 housing assistance to an individual. *Carter v. Olmsted County Hous. & Redev. 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.* A reviewing court examines the findings to determine if they support the decision, but does not retry facts or challenge the credibility determinations of the agency. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). We will uphold the decision if the agency furnished any legal and substantial basis for the action taken. *Id.*

The conclusion that relator's Section 8 benefits should be terminated for failing to cooperate rests on the hearing officer's conclusion that relator's failure to attend the September 13 hearing constituted a failure to cooperate for which termination of benefits is authorized by federal regulation. We conclude that the facts in the limited record provided on appeal do not support the hearing officer's conclusions.

At oral argument on appeal, CDA argued that the Administrative Plan provides authority to terminate relator's benefits for failure to cooperarate because an Administrative Plan is required by 24 C.F.R. § 982.54 (2008). However, the

Administrative Plan binds only CDA, not participants such as relator. *See* 24 C.F.R. § 982.54(c) (stating that the PHA must administer the Section 8 program in accordance with the PHA's administrative plan). HUD requires CDA to administer the Section 8 program in accordance with CDA's adopted Administrative Plan, but HUD Administrative Plan requirements do not reference policies on termination of participant benefits except in the case of criminal activity or alcohol abuse. 24 C.F.R. § 982.54(d)(4)(iii). Because the C.F.R. declares that the Administrative Plan binds the CDA, not relator, and because the C.F.R. requirements of the Administrative Plan do not include provisions for mandatory attendance at annual reexamination appointments, we find that the Administrative Plan does not provide CDA with authority to terminate relator's benefits for missing an appointment.[3]

CDA also asserts authority to terminate relator's benefits for noncooperation under 24 C.F.R. § 982.552(c)(1)(i) (2008), which provides that a PHA may terminate program assistance if a family "violates any family obligations under the program."[4] But CDA fails to acknowledge that the only reference to "cooperation" in the federal regulations provides:

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[3] We note that 24 C.F.R. § 982.54(b) mandates that the Administrative Plan be in accordance with HUD regulations and requirements and must be revised when necessary to comply with those requirements. It appears that CDA's Administrative Plan does not conform with HUD's permissible grounds for terminating Section 8 participants enumerated in 24 C.F.R. § 982.552 (2008).

[4] CDA introduced the Applicant/Tenant Certification and Statement of Tenant Responsibilities, its administrative policies, and the appointment notification letters, all of which provided notice to relator that failure to attend pre-scheduled appointments could or would result in termination of benefits, but CDA does not argue that these notice provisions constitute its authority to terminate benefits on this ground.

> Absence from unit. The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. *The family must cooperate with the PHA for this purpose.* The family must promptly notify the PHA of absence from the unit.

24 C.F.R. § 982.551(i) (2008) (emphasis added). CDA does not claim that relator has ever failed to provide information as required by the regulation. We decline to expand the unambiguous language of the regulation to read in, as CDA has, a provision that missing an appointment is *per se* failure to cooperate in providing the required information. We conclude that CDA has not shown that relator's failure to attend an appointment constitutes a failure to cooperate under 24 C.F.R. § 982.551 (i) or that termination of assistance to relator for failing to attend an appointment is authorized under 24 C.F.R. § 982.552(c)(1)(i). We therefore reverse the termination of relator's benefits.

Additionally, even if failure to attend a pre-scheduled appointment could qualify as a lack of cooperation justifying termination of benefits under federal regulations, the record in this case is insufficient to support the hearing officer's finding that relator failed to cooperate with CDA.

The "Termination of Assistance" notice sent to relator does not specify the date of the missed appointment which led to termination of benefits. But the record as a whole makes it plain that benefits were terminated due to relator's failure to appear at the September 13 appointment, rather than her failure to appear at the August 28 appointment, because CDA rescheduled the first missed appointment without any notice

that it considered relator's failure to attend the August 28 appointment to be a failure to cooperate. The wholly unsupported finding that relator failed to contact CDA on August 28, as well as the hearing examiner's "belie[f]" that relator should have attended that hearing even if she was suffering from debilitating morning sickness, is irrelevant to CDA's decision to terminate benefits for relator's failure to attend the September 13 appointment. The hearing officer made no credibility determination about relator's testimony that she did not receive notice of the September 13 appointment. The hearing officer's "finding" that "all other correspondence" reached relator has no support in the record.

The record further shows that relator was concerned about the appointment and inquired about rescheduling when she made her monthly payment on or before September 17. There is no evidence in the record that relator ever declined to provide requested information or that she violated the conditions of the program in any way other than having failed to attend an appointment of which she was not aware. Therefore, even if the federal regulations could be read to define a duty to cooperate by attending pre-scheduled hearings, the record does not support a finding that relator failed to cooperate.

Reversed.