



A10-2053

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Melissa Peterson,

Relator,

vs.

Washington County Housing and Redevelopment Authority,

Respondent.

RELATOR'S BRIEF, ADDENDUM, AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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I. STATEMENT OF LEGAL ISSUES

1. Does the record contain substantial evidence that Ms. Peterson failed to comply with her family obligation under federal regulatory law to supply the HRA with true and complete information about her MFIP income?
 - a) This issue arose when the HRA's appointed hearing officer cited, but declined to apply, applicable federal regulatory law, requiring only that Ms. Peterson supply true and complete information.
 - b) The hearing officer upheld the HRA's termination of Ms. Peterson's Section 8 rental assistance relying on the HRA's local administrative policy, which was not authorized by federal regulatory law.
 - c) Ms. Peterson represented herself at an informal hearing where procedures for subsequently preserving issues for appeal are not available.
 - d) Apposite law:

24 CFR § 982.551(b)

Carter v. Olmsted County HRA, 574 N.W. 2d 725 (Minn. App. 1998)
2. Was the HRA's termination of Ms. Peterson's Section 8 rental assistance, in reliance on the HRA's local administrative policy, requiring that income changes be reported in writing within 5 days, authorized by federal regulatory law?
 - a) This issue arose when the HRA's appointed hearing officer cited, but declined to apply, federal regulatory law, requiring only that Ms. Peterson supply true and complete information determined necessary in the administration of the HRA's program.
 - b) The hearing officer upheld the termination of Ms. Peterson's Section 8 rental assistance, relying on the HRA's local administrative requirement that income changes be reported in writing within 5 days.
 - c) Ms. Peterson represented herself at an informal hearing where procedures for subsequently preserving issues for appeal are not available.
 - d) Apposite law:

24 CFR § 982.551(b)

24 CFR § 982.54(b)

Ali v. Dakota County Community Development Agency, 2009 WL 511158
(Minn. App. 2009)

Cain v. Allegheny County Housing Authority, 986 A. 2d 947 (2009)

3. Was the hearing officer's rejection of Ms. Peterson's testimony and written submissions, evidencing that she reported her MFIP income, properly supported by a credibility determination setting forth inconsistencies in Ms. Peterson's testimony and submissions or detailing reasons for rejecting such testimony and submissions?

a) This issue arose when the HRA's appointed hearing officer did not specify in her decision a basis for disregarding or rejecting Ms. Peterson's testimony and written submissions.

b) The hearing officer upheld the termination of Ms. Peterson's Section 8 rental assistance without specifying a basis for rejecting her testimony or written submissions.

c) Ms. Peterson represented herself at an informal hearing where procedures for subsequently preserving issues for appeal are not available.

d) Apposite law:

Carter v. Olmsted County Housing and Redevelopment Authority, 574 N.W. 2d 725 (Minn. App. 1998)

Garthus v. Secretary of Health & Human Servs., 847 F. Supp. 675 (D. Minn. 1993)

Hiawatha Aviation v. Minnesota Dep't of Health, 375 N.W. 2d 496 (Minn. App. 1985)

4. Did the hearing officer consider and evaluate all the relevant evidence presented by Ms. Peterson?

- a) This issue arose when the HRA's appointed hearing officer declined to consider or evaluate in her decision certain relevant evidence presented by Ms. Peterson.
- b) The hearing officer upheld the termination of Ms. Peterson's Section 8 rental assistance without considering or evaluating in her decision certain evidence presented by Ms. Peterson.
- c) Ms. Peterson represented herself at an informal hearing where procedures for subsequently preserving issues for appeal are not available.
- d) Apposite law:

Carter v. Olmsted County Housing and Redevelopment Authority, 574 N.W. 2d 725 (Minn. App. 1998)

Garthus v. Secretary of Health & Human Servs., 847 F. Supp. 675 (D. Minn. 1993)

5. Did the HRA and its appointed hearing officer act arbitrarily and capriciously by failing to consider a number of relevant factors which were important aspects of the question of the sufficiency of Ms. Peterson's communication of information to the HRA.

- a) This issue arose when the HRA's appointed hearing officer declined to consider, weigh or evaluate a number of potentially relevant and mitigating factors presented by Ms. Peterson.
- b) The hearing officer upheld the termination of Ms. Peterson's Section 8 rental assistance without considering, weighing or evaluating potentially relevant and mitigating factors presented by Ms. Peterson.
- c) Ms. Peterson represented herself at this informal hearing where procedures for subsequently preserving issues for appeal are not available.
- d) Apposite law:

White v. Minn. Dep't of Natural Res., 567 N.W. 2d 724 (Minn. App. 1997), review denied (Minn. Oct. 31, 1997)

Pittman v. Dakota County Community Development Agency, 2009 WL 112948 (Minn. App. Jan 20, 2009)

Carter v. Lynn Housing Auth., 880 N.E. 2d 778 Mass. 2008)

II. STATEMENT OF THE CASE

By letter dated September 10, 2010, the Washington County Housing and Redevelopment Authority (HRA) notified Ms. Peterson that her Section 8 rental assistance would be terminated on the grounds that she failed to supply written information regarding her income to the HRA within 5 days of the change in her income. By letter dated September 13, 2010, Ms. Peterson requested an informal hearing to contest the termination of her Section 8 rental assistance. An informal hearing was scheduled and held on September 23, 2010. Ms. Peterson represented herself at the informal hearing. Presiding over the hearing was the HRA'S appointed hearing officer, Kathy Kline. A decision was issued by hearing officer Kline on October 6, 2010 upholding the decision of the HRA to terminate Ms. Peterson's Section 8 rental assistance. On November 22, 2010 Ms. Peterson filed a Petition for a Writ of Certiorari pursuant to Minn. Stat. §§ 480A.06, Subd. 3 and 606.01, and Rule 115.01 of the Minnesota Rules of Civil Appellate Procedure seeking review of the quasi-judicial decision of the HRA and its hearing officer.

III. STATEMENT OF FACTS

Melissa Peterson is a low-income single mother of four minor children who has received rental assistance under HUD's Section 8 Housing Choice Voucher program for

approximately 8 years. *App. 26*. Her Section 8 assistance has been administered by the HRA. *App. 40*.

In a letter dated September 10, 2010 Ann Hoechst, a housing specialist employed with the HRA, notified Ms. Peterson that her Section 8 rental assistance would be terminated for failure to supply written information regarding her income to the HRA within 5 days of the change in her income. *Id.* Ms. Peterson requested, and was granted, an informal hearing which was held on September 23, 2010 and presided over by the HRA's appointed hearing officer, Kathy Kline. *Add. 1; App 41*. Ms. Peterson represented herself at the informal hearing. *App. 5*. Following the hearing, the HRA's hearing officer issued a decision upholding the HRA's decision terminating Ms. Peterson's rental assistance. *Add. 1-10*. The hearing officer concluded that Ms. Peterson did not comply with the HRA's local policy of reporting a change in income in writing within 5 days of the change. *Add. 9*. This policy is not set out in the federal regulations describing a Section 8 program participant's obligation to supply information to a housing authority. *Add. 11-13*. The income not reported in writing within 5 days consisted of two MFIP assistance payments, one dated July 14, 2010 in the amount of \$375, and one dated July 30, 2010 in the amount of \$647. *Add. 8-11; App.39*.

Ms. Peterson presented written submissions, and testified consistently with those submissions, that she left two voice mail messages with housing specialist Ann Hoechst, first informing Ms. Hoechst that her unemployment benefits were ending and that she was

applying for MFIP assistance, and then informing Ms. Hoechst that she was approved to receive MFIP assistance. *Add. 5, 9; App. 15, 16, 17, 18, 19, 22, 26, 41, 42, 43.* Though Ms. Peterson in her testimony did not recall exactly when she left these voice messages with Ms. Hoechst, she was emphatic and unequivocal, stating the following in her written submissions:

I did contact Ann about my income change [sic] messages and past faxes also haven't made it to Ann in the past. But I know what I did. I would never jepordize [sic] my housing over not reporting anything [sic] I have four kids I take care of by myself with no help or child support.

App. 42. Ms. Peterson's testimony at the informal hearing was consistent with this statement. *Add. 5, 14, 15, 17, 18, 26.*

After leaving these voice mail messages, Ms. Peterson did not double check to make sure Ms. Hoechst had received her messages, as was her customary practice, because of other overwhelming events and circumstances, described in more detail hereinafter, that diverted her attention. *Add. 4, 5, 6, 9; App. 12, 14, 16, 17, 21, 22, 41, 42, 43.* However, Ms. Peterson did fax Ms. Hoechst a copy of her lease to her new rental unit in a Low Income Tax Credit rental property on August 3, 2010. *App. 32-36.* And on the following day, August 4, 2010, Ms. Hoechst received from Ms. Peterson's rental manager a tenant certification form containing information indicating that Ms. Peterson had begun to receive, and would be receiving, public assistance. *Add. 8; App. 11, 12, 23, 24, 37.* There is no evidence in the record indicating that this document was provided at the request of Ms. Hoechst and not at the direction of Ms. Peterson. *Add. 1-10; App. 19,*

22.

In response to Ms. Peterson's testimony and written submissions, Ms. Hoechst stated that she didn't recall being told by Ms. Peterson that she was going to apply for MFIP, that there is nothing in the HRA's log indicating that Ms. Peterson called the HRA and left a message, and that after messages were taken off the HRA's voice mail system, there was nothing entered in the HRA's log showing a message left by Ms. Peterson. *Add. 3, 4; App. 19, 22.* The record contains no evidence that the HRA was implementing safeguards to ensure that messages were at all times accurately transferred from voice mail to log. *App. 4-28.*

Ms. Peterson, in her written submissions, also stated that she had a habit of reporting "every little thing" to Ms. Hoechst, "even if I had a conflict." *App. 42.* Ms. Peterson's testimony at the informal hearing was consistent with this statement. *App. 26.* Ms. Peterson provided further evidence in her written submissions of her practice of providing truthful information to Ms. Hoechst by affirmatively notifying Ms. Hoechst of her rental management's efforts to obtain rental assistance payments in excess of an amount to which they were entitled, stating "I also reported how my current residence was trying to get more money out of the HRA and gave her a heads up so they didn't take advantage of your program." *App. 42.*

The HRA's hearing officer cited no evidence in the record discrediting Ms. Peterson's testimony and written submissions, evidencing that she reported her MFIP

income to the HRA. *Add. 1-10.* Nor did she make a finding that Ms. Peterson was not credible. Nor did she find any inconsistencies in Ms. Peterson's testimony. *Id.* Nor did she provide any explanation in her findings or conclusions of a reason for rejecting Ms. Peterson's testimony and written submissions. *Id.* Nor did she find that Ms. Peterson's testimony and written submissions, pointing to a pattern of dealing honestly and good faith with the HRA, should be discredited. *Id.* Nor did she cite any evidence in the record of an intent or a motive by Ms. Peterson to conceal or misrepresent information about her MFIP income. *Id.* Nor did the hearing officer cite any evidence in the record indicating that Ms. Peterson's failure to report her MFIP income in writing within 5 days caused the HRA to overpay rental assistance to Ms. Peterson or suffer any other harm. *Id.*

In her testimony and written submissions Ms. Peterson described an accumulation of events and circumstances which overwhelmed her at the time of her communications about her MFIP income to Ms. Hoechst which diverted her from "double checking" to make sure Ms. Hoechst had received her voice mail messages. *Add. 4, 5, 6, 9: App. 12, 14, 16, 17, 21, 22, 41, 42, 43.* These events and circumstances included the following: having to pack and move because of flood damage; having to complete and submit numerous insurance forms to recover from the loss of damaged property; having to travel long distances daily to care for a dying aunt; attending the aunt's funeral; providing support to her sister who attempted to take her life after the aunt died; helping an uncle admitted to an intensive care unit; registering children in different schools and programs

after moving; attending to the counseling needs of a teenage son with major behavior issues; and preparing to start a college term. *Id.*

Ms. Peterson submitted additional documentation intended to partially corroborate the above evidence she presented by way of testimony and written submissions. *Add. 5, 6, 9.* That documentation included: correspondence with her insurance provider relating to the flood damage she suffered; a visitor pass to visit her uncle in the intensive care unit; a funeral program for the aunt Ms. Peterson had been traveling to care for; documentation of her enrollment at Century College; a message from the principal of her son at Tartan High School; an information sheet from Carver School where she had enrolled a child; and welcome information sheets from the Community Action Partnership concerning the enrollment of two of Ms. Peterson's children in Head Start. *Id.*

The record contains no evidence refuting or discrediting the testimony, written submissions and corroborating documentation presented by Ms. Peterson regarding the events and circumstances that had overwhelmed her at the time she was reporting her MFIP income to the HRA. *Add 1-10; App. 4-28.* Nor did the HRA's hearing officer make any finding indicating any inconsistencies in Ms. Peterson's testimony or that any of this evidence should be discredited. *Add. 1-10.* The hearing officer rejected this evidence, stating only that the corroborating documentation provided by Ms. Peterson "support some of Ms. Peterson's testimony to a limited extent but do not fully support her

testimony or all of the elements of testimony...” *Add. 9*. In rejecting the evidence presented by Ms. Peterson, the hearing officer noted that Ms. Peterson succeeded in carrying out some of her program responsibilities despite the difficult circumstances she was facing. *Id.* After noting that Ms. Peterson carried out some of her program responsibilities despite her difficult circumstances, the hearing officer concluded, without any further explanation, that “there is no basis on which to excuse Ms. Peterson from her income reporting obligation to the HRA.” *Id.*

IV. STANDARD OF REVIEW

An agency’s quasi-judicial decision will not be upheld if 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 Housing and Redevelopment Authority*, 574 N.W. 2d 725, 729 (Minn. App. 1998); *Hiawatha Aviation v. Minnesota Dep’t of Health*, 375 N.W. 2d 496, 501 (Minn. App. 1985), *aff’d*, 389 N.W. 2d 507 (Minn. 1986). When a decision turns on the meaning of words in a statute or regulation, a legal question is presented. *St. Otto’s Home v. Minn. Dept. of Human Services*, 437 N.W. 2d 35, 39 (Minn. 1989); *Northern Natural Gas Co. v. O’Malley*, 277 F. 2d 128, 137 (8th Cir. 1960) [citing *Trust of Bingham v. Commissioner*, 325 U.S. 365, 371 (1945)]. To be legally sufficient an informal hearing officer must make an express credibility determination, must set forth the inconsistencies in the record which have led to the rejection of testimony, must demonstrate that all

relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony. *Carter*, 574 N.W 2d at 729; *Garthus v. Secretary of Health & Human Servs.*, 847 F. Supp. 675, 689 (D. Minn. 1993). An agency ruling is arbitrary and capricious if the agency fails entirely to consider an important aspect of the problem. *White v. Minn. Dep't of Natural Res.*, 567 N.W. 2d 724, 730 (Minn. App. 1997) *review denied* (Minn. Oct. 31, 1997)

V. SUMMARY OF ARGUMENT

The record lacks substantial evidence countering Ms. Peterson's direct, consistent and certain testimony that she notified the HRA of her MFIP income. Ms. Hoechst's testimony that she did not recall receiving phone messages from Ms. Peterson about her MFIP income is uncertain, inferential, and insubstantial. Ms. Hoechst's lack of recollection is all the evidence the HRA has to support its decision to terminate assistance. The absence of an evidentiary basis for, or any finding, discrediting Ms. Peterson's testimony further diminishes the weight of Ms. Hoechst's testimony. Her non-recollection testimony should not operate to deprive Ms. Peterson and her four minor children of the assistance needed to meet their essential needs.

The HRA's reliance on its local policy, requiring income changes to be reported in writing within 5 days, is not authorized by federal regulatory law and may not be the basis for terminating the assistance of Ms. Peterson's family.

The HRA's hearing officer failed to explain why she disregarded Ms. Peterson's

testimony that she reported her MFIP income. She failed to find any inconsistencies in Ms. Peterson's written submissions and testimony. She failed to make any express credibility determination discrediting Ms. Peterson's testimony. And she failed to provide any detail in her findings or conclusions of a basis for discrediting Ms. Peterson's testimony.

The HRA's hearing officer also failed to consider and evaluate the following: Ms. Peterson's past pattern of dealing honestly and in good faith with the HRA; Ms. Peterson's special efforts to protect the financial interests of the HRA; the absence of any showing of a motive to conceal information about MFIP income from the HRA; and Ms. Peterson's stated motive to not place her family in jeopardy.

The HRA and its hearing officer also arbitrarily failed to meaningfully consider a number of relevant mitigating factors which were important aspects of the questions of the sufficiency of Ms Peterson's reporting her MFIP income to the HRA. This included an accumulation of events and circumstances in her life that diverted her attention and overwhelmed her, the lack of any evidence of harm to the HRA, and the obvious harm Ms. Peterson and her four minor children would suffer upon losing their Section 8 rental assistance.

For these reasons, the decision of the HRA and its hearing officer to terminate the rental assistance of Ms. Peterson and her family should be reversed.

VI. ARGUMENT

A. The administrative record does not contain substantial evidence that Ms. Peterson failed to comply with her family obligation under federal regulatory law to supply the HRA with true and complete information about her MFIP income.

Ms. Peterson testified that she left voice mail messages with the HRA's housing specialist, Ann Hoechst, informing Ms. Hoechst first that her unemployment benefits were ending and that she was applying for MFIP assistance, and then that she was approved to receive MFIP assistance. Her testimony and written submissions confirming these communications were consistent and unequivocal. The hearing officer made no determination that Ms. Peterson's testimony was not credible. Nor did the hearing officer explain why Ms. Peterson's testimony and written submissions should be discredited. The record also shows that Ms. Peterson's rental manager provided Ms. Hoechst with a tenant certification form containing information indicating that Ms. Peterson had begun to receive, and would be receiving public assistance. There is no evidence in the record indicating that this document was provided at the request of Ms. Hoechst and not at the direction of Ms. Peterson.

Ms. Hoechst testified only that she didn't recall being told by Ms. Peterson that she was going to apply for MFIP and that after messages were taken off the HRA's voice mail system there was nothing entered in the HRA's log showing a message left by Ms. Peterson. The record contains no evidence that the HRA had implemented safeguards to ensure that messages were at all times accurately transferred from voice mail to log. The

inability to recall and the absence of a notation in a log amount to inferential evidence at best, but not substantial evidence that Ms. Peterson failed to inform the HRA about her MFIP income, particularly where no basis has been articulated for discrediting Ms. Peterson's testimony. Because the HRA failed to produce any substantial evidence that Ms. Peterson did not leave voice mail messages with the HRA's housing specialist, the hearing officer's decision should not be sustained.

An administrative agency's decision must be supported by "substantial" evidence, defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Carter v. Olmsted County Housing and Redevelopment Authority*, 54 N.W. 2d 725, 730. [Citations omitted.] Substantial evidence means more than a scintilla of evidence, "some" evidence, or "any" evidence. *Id.* [Citations omitted.] A decision cannot be upheld without taking into account contradictory evidence or evidence from which conflicting inferences can be drawn. *Id.* at 730-31. [Citations omitted.] And where deprivations of benefits necessary for survival are concerned, such as Section 8 rental assistance, the initial burden of proof must fall on the government. *Carter* at 730, citing *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)

Ms. Peterson's consistent testimony and written submissions, that she left voice mail messages about her MFIP income with Ms. Hoechst, constitute substantial evidence that she complied with her obligation under 24 CFR §981.551 (b) to supply true and complete information necessary to the administration of the HRA's Section 8 program.

Ms. Peterson's testimony, undiminished by any finding that it should be discredited or rejected, precludes Ms. Hoechst's uncertain, inferential testimony from rising to the level of substantial evidence. Ms. Hoechst's testimony, standing alone, is simply not a sufficient basis for terminating the rental assistance needed to meet the essential needs of Ms. Peterson and her family. For this reason, the decision of the HRA and its hearing officer should be reversed.

B. The termination of Ms. Peterson's Section 8 rental assistance, in reliance on the HRA's local administrative policy, requiring that income changes be reported in writing within 5 days, is not authorized by federal regulatory law.

In her decision, the HRA's hearing officer relies primarily on the HRA's locally adopted policy, requiring that a change in income be reported in writing within 5 days of the change, as a basis for upholding the termination of Ms. Peterson's Section 8 rental assistance. She states as follows.

At the informal hearing, Ms. Peterson testified that she did call about her income change to MFIP but doesn't remember when, that she has been on Section 8 for a number of years and reported everything and that she wouldn't do anything to jeopardize her housing. Ms. Hoechst, however, testified that she didn't recall being told that information by Ms. Peterson. Nonetheless, the hearing officer notes that income changes are required under HRA-adopted policies to be reported to the HRA IN WRITING within five days.

Add. 9.

The HUD federal regulatory requirement that a Section 8 participant supply information necessary in the administration of the Section 8 program is set out at 24 CFR §982.551(b). Absent from the language of this regulation is any requirement that

information be supplied in writing or within five days. More particularly, absent is any language authorizing a housing authority to require a participant to report changes in income to the housing authority in writing within five days. This HUD regulation requires only that the participant family “supply any information that the PHA or HUD determines is necessary in the administration of the program...” and supply information that is “true and complete.” *Id.*

HUD regulations governing the Section 8 program also require that a housing authority’s “administrative plan must be in accordance with HUD regulations and requirements...” and that a housing authority “must revise the administrative plan if needed to comply with HUD requirements.” 24 CFR §982.54(b). Among the housing authority’s administrative plan requirements that must be in accordance with HUD regulations and requirements are local requirements relating to “[i]nterim redeterminations of family income and composition.” 24 CFR § 982.54(d)(18).

Court’s have consistently held that a housing authority, in administering a federal housing assistance program, does not have the discretion to impose on program participants requirements not authorized by, or set out in, federal law. Recently, in *Cain v. Allegheny County Housing Authority*, 986 A. 2d 947, 951 (Comwlth 2009), the court, citing a line of previous decisions, held that, because obtaining the housing authority’s approval for a move was not enumerated as a requirement in the HUD regulations, termination of assistance on that basis was improper. In *Hill v. Richardson*, 740 F. Supp.

1393,1398 (S.D. Ind. 1990), an Indiana federal district court had earlier held that a housing authority does not have discretion “to impose additional grounds for denying or terminating Section 8 applicants or participants because of an individual’s actions or inactions.” In *Hann v. Housing Authority of the City of Easton*, 709 F. Supp. 605, 608 (E.D. Pa. 1989) the United States District Court for the Western District of Pennsylvania held that the housing authority wrongfully rejected an unmarried couple’s application for Section 8 housing on marital status grounds, stating that “[a] PHA eligibility requirement will be upheld only if it is “consistent with [HUD] regulations and is in harmony with the overall policies of the Section 8 Housing program...” [citing *Vandermark v. Housing Authority of City of York*, 663 F. 2d 436, 440 (3rd Cir. 1981) And in *Holly v. Housing Authority of New Orleans*, 684 F. Supp. 1363, 1367-1368 (E.D. La. 1988) the court held that a tenant’s failure to inform the housing authority of her marriage did not permit it to terminate her Section 8 assistance where “nothing in Section 8 of the Act or in the regulations supports the notion” that the tenant has the obligation to do so.

Recently, this Court, in a unpublished decision, *Ali v. Dakota County Community Development Agency*, 2009 WL 511158 (Minn. App. 2009), also held that a housing authority does not have discretion to adopt policies not authorized by HUD program requirements and regulations.¹ This court stated, “[w]e decline to expand the unambiguous language of the regulation to read in, as CDA has, a provision that missing

¹This opinion is unpublished and reproduced in the Appendix at *App. 44*.

an appointment is *per se* failure to cooperate in providing the required information.” *Id.*

The HRA simply had no authority to impose on Ms. Peterson the additional requirement that she report the change in her income to the HRA in writing within 5 days of the change and to terminate her Section 8 rental assistance on the ground that she failed to comply with that requirement. For this reason also the decision of the HRA and its hearing officer should be reversed.

C. The HRA’s appointed hearing officer improperly failed to make any credibility determination setting forth any inconsistencies in Ms. Peterson’s testimony and evidentiary submissions or detailing the reasons for rejecting her testimony and submissions.

The HRA’s appointed hearing officer essentially disregarded Ms. Peterson’s testimony and written submissions in concluding that she failed to report her MFIP income. But, in her findings, the hearing officer offers no credibility analysis. Neither does she find any inconsistencies in Ms. Peterson’s testimony. Neither does she provide any explanation in her findings or conclusions of a reason for rejecting Ms. Peterson’s testimony.

In *Carter v. Olmsted County Housing and Redevelopment Authority*, 574 N.W. 2d 725, 729 (Minn. App. 1998), this Court applied to housing authority informal hearings the standard articulated in *People for Environmental Enlightenment & Responsibility (PEER) Inc. v. Minnesota Environmental Quality Council*, 266 N.W. 2d 858, 871 (Minn. 1978). That is, in order to facilitate appellate review, an administrative agency must state the facts and conclusions essential to its decision with clarity and completeness. *Id.* In *Carter*, this

Court also applied the eighth circuit precedent recited in *Garthus v. Secretary of Health & Human Servs.*, 847 F. Supp. 675, 689 (D. Minn. 1993) requiring that for a decision to be legally sufficient, the hearing officer

must make an express credibility determination, must set forth the inconsistencies in the record which have led to the rejection of the ...[participant's]... testimony, must demonstrate that all relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony.

Carter at 729-30. See also *White Bear Rod & Gun Club v. City of Hugo*, 338 N.W. 2d 739 (Minn. 1986)

The HRA's appointed hearing officer failed to comply with any of the above procedural standards. First, the hearing officer failed to state the facts and conclusions essential to her decision with clarity and completeness. She failed to state clearly why she disregarded Ms. Peterson's testimony that she reported her MFIP income to the HRA. Second, she failed to make any express credibility determination discrediting Ms. Peterson's testimony that she had reported her MFIP income to the HRA. Third, she failed to set forth in either her findings or conclusions any inconsistencies in Ms. Peterson's testimony (that she reported her MFIP income to the HRA) that led to the hearing officer's rejection of that testimony. And fourth, the hearing officer failed to provide any detail in either her findings or conclusions of any reasons for discrediting Ms. Peterson's testimony (that she reported her MFIP income to the HRA). Because of these failures, the hearing officer's decision upholding the termination of Ms. Peterson's Section

8 assistance should be reversed.

D. The HRA's appointed hearing officer failed to consider and evaluate all the relevant evidence presented by Ms. Peterson.

To be legally sufficient the decision of a housing authority's informal hearing officer must also demonstrate that all relevant evidence was considered and evaluated. *Carter v. Olmsted County Housing and Redevelopment Authority*, 574 N.W. 2d 725, 729-30 (Minn. App. 1998) [Citing *Garthus v. Secretary of Health & Human Servs.*, 847 F. Supp. 675, 689 (D. Minn. 1993)] The HRA's hearing officer in her decision failed to demonstrate that all relevant evidence presented by Ms. Peterson was considered and evaluated.

In her written submissions for the informal hearing Ms. Peterson stated that during all the years that she received Section 8 rental assistance she always reported everything to the HRA, even if it conflicted with her own self interest. The HRA presented no evidence to dispute this statement. Evidence of Ms. Peterson's past pattern of dealing honestly and in good faith with the HRA is relevant in determining whether she credibly testified that she reported her MFIP income to the HRA. The HRA's hearing officer failed entirely to consider and evaluate this past pattern of dealing honestly and in good faith.

Ms. Peterson also stated in her written submissions for the informal hearing that she made a special effort to provide the HRA with truthful information concerning an erroneous rental practice that needed to be corrected to protect the HRA from suffering unnecessary expenditures. This expression of concern for the HRA's financial interests

demonstrated that Ms. Peterson acted credibly and responsibly with the intent to provide the HRA with truthful information. The HRA presented no evidence to dispute Ms. Peterson's testimony and written submissions in this regard. The HRA's hearing officer failed entirely to consider and evaluate this highly responsible action by Ms. Peterson demonstrating her desire to deal honestly with the HRA.

Absent from the informal hearing record is any evidence indicating that Ms. Peterson had a motive to conceal information about her MFIP income. The record contains no evidence that Ms. Peterson would have benefitted significantly by concealing her MFIP income. The record does contain an explanation by Ms. Peterson, in her written submissions for the informal hearing, that she would never have placed her housing assistance in jeopardy by concealing such information when she had four children to support. The evidence submitted by Ms. Peterson, indicating that she was motivated to avoid placing her family in jeopardy rather than concealing her MFIP income, was not disputed by any evidence presented by the HRA. Evidence of Ms. Peterson's motives was highly relevant. The HRA's hearing officer failed in this instance to consider and evaluate both the evidence of Ms. Peterson's motive to avoid placing her family in jeopardy and the lack of evidence in the record of any motive to conceal her MFIP income from the HRA.

Because the HRA's appointed hearing officer failed to consider and evaluate all the relevant evidence presented by Ms. Peterson, her decision upholding the termination of Ms. Peterson's Section 8 assistance should be reversed.

E. The HRA and its appointed hearing officer acted arbitrarily and capriciously by failing to consider a number of relevant mitigating factors which were important aspects of the question of the sufficiency of Ms. Peterson's reporting her MFIP income to the HRA.

As noted previously, the informal hearing record contains substantial evidence that Ms. Peterson reported her MFIP income to the HRA in compliance with her family obligation under HUD's regulations. However, an accumulation of unfortunate circumstances, which overwhelmed her at the time she reported her MFIP income to Ms. Hoechst factored into her not "double checking" with Ms. Hoechst to make sure Ms. Hoechst had receive her voice mail messages. These circumstances were relevant and important factors which the HRA and its hearing officer were required, but failed, to consider and thoughtfully evaluate in determining whether Section 8 rental assistance to Ms. Peterson and her four children should be terminated.

Failure to consider an important aspect of the case, such as relevant mitigating circumstances, is arbitrary and capricious and an abuse of discretion. *White v. Minn. Dep't of Natural Res.*, 567 N.W. 2d 724, 730 (Minn. App. 1997) *review denied* (Minn. Oct. 31, 1997)

This Court has recognized the importance of considering mitigating factors where housing authorities seeking to terminate Section 8 rental assistance have refused or failed to do so in good faith. *Alich v. Dakota County Community Development Authority*, 2003 WL 230726 (Minn. App. 2003) (citing *White* and holding that it was an abuse of discretion for a housing authority to fail to consider mitigating circumstances in a section 8

termination case)²; *Hicks v. Dakota County Community Development Agency*, 2007 WL 2416872 (Minn. App. 2007) (citing *White* and reversing hearing officer's decision to terminate voucher for failure to report additional household member because, among other things, decision failed to consider mitigating factors, such as participant's disability and family's need for additional assistance)³; *Hassan v. Dakota County Community Development Agency*, 2009 WL 437775 (Minn. App. 2009) (reversing voucher termination for failure to provide tax documents and failure to report alleged change in household composition because, among other things, hearing officer's decision failed to consider mitigating factors)⁴; *Pittman v Dakota County Community Development Agency*, 2009 WL 112948 (Minn. App. 2009) (remanding the case for the housing authority to properly consider relevant circumstances)⁵. Requiring consideration of mitigating factors where housing authorities have failed to do so has not been a principle followed by Minnesota courts alone. *See, e.g., Carter v. Lynn Housing Auth.*, 450 Mass. 626, 638, 880 N.E. 2d. 778, 788 (Mass. 2008) (holding that it was an abuse of discretions for the housing authority and its hearing officer to fail to indicate whether, as required by HUD regulations, they had considered all relevant circumstances, such as seriousness of the

²This opinion is unpublished and reproduced in the Appendix at *App. 48*.

³This opinion is unpublished and reproduced in the Appendix at *App. 50*.

⁴This opinion is unpublished and reproduced in the Appendix at *App. 54*.

⁵This opinion is unpublished and reproduced in the Appendix at *App.57*.

case, extent of participation or culpability of individual family members, mitigating circumstances related to disability, and effects of termination on other uninvolved family members.)

The events and circumstances presented by Ms. Peterson in her testimony and written submissions for her informal hearing were relevant and important factors to be considered in evaluating the sufficiency of her communications about her MFIP income to the HRA. These events and circumstances included the following: having to pack and move from one residence to another because of flood damage; having to complete and submit numerous insurance forms to recover from the loss of damaged property; having to travel long distances daily to care for a dying aunt; attending the aunt's funeral; providing support to her sister who attempted to take her life after the aunt died; helping an uncle admitted to an intensive care unit; registering children in different schools and programs after moving; attending to the counseling needs of a teenage son with major behavior issues; and preparing to start a college term.

In addition to testifying about, and providing written submissions describing, the above circumstances, Ms. Peterson provided the HRA and its hearing officer with documentary evidence corroborating her testimony and written descriptions. The HRA presented no evidence refuting or discrediting Ms. Peterson's testimony and descriptions of these circumstances. Yet the HRA's appointed hearing officer rejected Ms. Peterson's testimony about mitigating factors because the documentation she provided "support some

of Ms. Peterson's testimony to a limited extent but do not fully support her testimony or all of the elements of testimony..." The hearing rejected Ms. Peterson's testimony without offering any basis for discrediting her testimony, without finding any inconsistencies in her testimony, and without making any credibility finding. She found only that Ms. Peterson did not provide documentation supporting every aspect of her testimony.

After noting that Ms. Peterson succeeded in carrying out some of her program responsibilities despite her difficult circumstances, apparently concluding that this was proof that she was capable of carrying out all of her responsibilities, the HRA's hearing officer, without any further analysis, concluded that "there is no basis on which to excuse Ms. Peterson from her income reporting obligation to the HRA."

The hearing officer utterly failed to meaningfully consider and evaluate the above factors presented by Ms. Peterson or their cumulative effect on her. This failure was exacerbated by the hearing officer's failure to consider evidence of Ms. Peterson's pattern of dealing honestly, cooperatively and in good faith with the HRA, the lack of evidence of any motive by Ms. Peterson to conceal information about her MFIP income, the lack of evidence of any harm to the HRA, and the obvious harm to Ms. Peterson and her four innocent minor children caused by the loss of assistance required to meet the family's essential needs. These are all important aspects of the question of the sufficiency of Ms. Peterson's communications about her MFIP income to the HRA. Each should have been given meaningful consideration by the HRA and its hearing officer but was not. For this

reason also, the decision of the HRA and its hearing officer terminating Ms. Peterson's Section 8 assistance should be reversed.

VII. CONCLUSION

Ms. Peterson respectfully requests the Court to determine that 1) the determination of the HRA and its hearing officer that Ms. Peterson did not comply with her family obligation is not supported by substantial evidence, 2) the HRA's local administrative policy, requiring that income changes be reported in writing with 5 days, is not authorized by federal regulatory law, 3) the HRA's appointed hearing officer improperly failed to make credibility determinations or detail the reasons for rejecting evidence submitted by Ms. Peterson, 4) the HRA's appointed hearing officer failed to consider and evaluate all the relevant evidence presented by Ms. Peterson, and 5) the HRA and its hearing officer acted arbitrarily and capriciously by failing to consider important aspects of the question of the sufficiency of Ms. Peterson's reporting of her MFIP income to the HRA. Based on these determinations, Ms. Peterson requests this Court to reverse the decision of the HRA and its hearing officer terminating her Section 8 assistance. Finally, Ms. Peterson requests this Court to direct the CDA to reinstate her Section 8 Housing Choice Voucher effective on the date her rental assistance was improperly terminated.

Respectfully submitted,

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