

NO. A10-2053

State of Minnesota
In Court of Appeals

Melissa Peterson,

Relator,

vs.

Washington County Housing and Redevelopment Authority,

Respondent.

RESPONDENT'S BRIEF

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LEGAL ISSUES

I. Did the informal hearing officer abuse her discretion in determining that Ms. Peterson violated the rules and regulations of the Section 8 Program and in upholding the termination of benefits?

(1) This issue arose as part of the petition for a writ of certiorari.

(2) The informal hearing officer upheld the Washington County Housing and Redevelopment Authority's terminating Section 8 assistance because Ms. Peterson did not provide information about the family's income, which is one of the family obligations of the Program.

(3) This issue was raised on appeal as part of the petition for a writ of certiorari.

(4) Apposite authorities:

42 U.S.C. § 1437f(o)

24 C.F.R. §§ 982.516, .551, .552

Hinneberg v. Big Stone County HRA, 706 N.W.2d 220 (Minn. 2005)

Dietz v. Dodge County, 487 N.W.2d 237 (Minn. 1992)

A. Was the decision made under an erroneous theory of law?

(1) This issue arose as part of the petition for a writ of certiorari.

(2) The informal hearing officer held that Ms. Peterson failed to timely report income, in violation of Section 8 regulations and the HRA's Administrative Plan, which required participants to report a change of income in writing within five days.

(3) This issue was raised on appeal as part of the petition for a writ of certiorari.

(4) Apposite authorities:

42 U.S.C. § 1437f(o)(5)(B)

24 C.F.R. §§ 982.516, .551, .552

Hinneberg v. Big Stone County HRA, 706 N.W.2d 220 (Minn. 2005)

Dietz v. Dodge County, 487 N.W.2d 237 (Minn. 1992)

Department of Housing and Urban Dev. v. Rucker, 535 U.S. 125 (2002)

B. Was the decision without any evidence to support it?

(1) This issue arose because Ms. Peterson argued at the informal hearing that she left a voice message reporting her change in income that the HRA never received.

(2) The informal hearing officer detailed the testimony and evidence submitted, determined that the preponderance of the evidence showed no written report of a change in income, and declined to adopt testimony as to an oral report.

(3) This issue was preserved for appeal as part of the petition for a writ of certiorari.

(4) Apposite authorities:

24 C.F.R. §982.555(e)(6)

Hinneberg v. Big Stone County HRA, 706 N.W.2d 220 (Minn. 2005)

Quinn Distrib. Co. v. Quast Transfer, Inc, 288 Minn. 442, 181 N.W.2d 696 (1970)

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C. Was the decision arbitrary or capricious?

- (1) This issue arose as part of the petition for a writ of certiorari.
- (2) The informal hearing officer considered and gave appropriate weight to the evidence before her, including the testimony of Ms. Peterson, the documents she presented, and the mitigating circumstances she raised.
- (3) This issue was raised on appeal as part of the petition for a writ of certiorari.

- (4) Apposite authorities:

24 C.F.R. §§ 982.552(c), .555(e)(6)

Hinneberg v. Big Stone County HRA, 706 N.W.2d 220 (Minn. 2005)

Dietz v. Dodge County, 487 N.W.2d 237 (Minn. 1992)

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Housing Authority of the City of York v. Dickerson, 715 A.2d 525 (P. Cmwlth. 1998).

STATEMENT OF THE CASE

The Respondent Washington County Housing and Redevelopment Authority (the "HRA") terminated Ms. Peterson's Section 8 rental housing assistance because she violated the terms and conditions of the Section 8 Program in that she failed to report income.

After receiving her notice of termination of Section 8 assistance, Ms. Peterson requested an informal hearing to contest the termination. An informal hearing was held on September 23, 2010. The independent informal hearing officer, Kathleen Kline, was not employed by the HRA, but held over thirty years of experience with another housing and redevelopment authority.

The hearing officer upheld the termination in a decision dated October 6, 2010. The HRA denied Ms. Peterson's request for reconsideration on October 28, 2010. On November 22, 2010, Ms. Peterson filed and served a petition for a writ of certiorari with this Court, seeking review of the informal hearing officer's decision.

STATEMENT OF FACTS

Respondent Washington County Housing and Redevelopment Authority (the "HRA") is public corporate body organized pursuant to Minn. Stat. § 469.004 and Minnesota Laws 1974, Chapter 475. The HRA administers a Section 8 housing program ("Section 8") funded by the federal department of Housing and Urban Development ("HUD"). 42 U.S.C. § 1437 et seq. (2010). Section 8 provides rental housing assistance to qualified low-income families to offset

monthly rental payments. 42 U.S.C. § 1437f(o) (2010). The purpose of the Section 8 Program is to aid low-income families “in obtaining a decent place to live” and to promote “economically mixed housing”. 42 U.S.C. § 1437f(a).

The HRA is an authorized public housing agency to administer federal Section 8 housing assistance. The HRA reviews applications to participate in the Section 8 Program. Approved applicants receive a voucher. The participants then must locate a private landlord who wishes to participate in the Section 8 Program. A Section 8 participant pays a portion of the rent, according to Program regulations, and the HRA pays the balance under an agreement with the landlord. 42 U.S.C. § 1437f(o) (2010).

The federal Program requires that Section 8 participants complete, at least annually, a recertification process to determine, among other things, “[r]eviews of family incomes” and continuing eligibility under the Program. 42 U.S.C. § 1437f(o)(5)(A). Income data must be verified to be sure it is “complete and accurate.” 42 U.S.C. § 1437f(k) (2010).

Federal regulations require a public housing authority such as the HRA to adopt an Administrative Plan that governs the operation and administration of the Section 8 Program. 24 C.F.R. § 982.54(a). The HRA adopted its Administrative Plan on July 1, 1998. Administrative Record, Tab 2, (“AR.2”) at 2.

The HRA’s Administrative Plan requires a Section 8 participant to report to the HRA in writing any change of income within five days. AR.2 at 3 (“**Families will be required to report all increases in income/assets within five days of**

the increase.”), 4 (“The PHA requires that families report interim changes to the PHA within **five days** of when the change occurs.”), 15 (“‘Promptly’ when used with the Family Obligations always means ‘**within five days.**’”). Participants are also required to “supply any information requested” by the HRA and to cooperate and provide full and complete information to the HRA. AR.2 at 7, 8, 13-14. The income component is critical to the Section 8 Program in determining the appropriate rental subsidy provided under the federal regulations. 42 U.S.C. § 1437f(o) (2010).

In the present case, Ms. Peterson completed a recertification process to confirm her eligibility to participate in the Section 8 Program and in conjunction with her request to move in late June 2010. AR.1 at 3. This process also determined the applicable analysis for HRA, landlord, and tenant contributions. AR.25 at 6-7.

As part of this process, Ms. Peterson completed the Recertification Form, which included sections inquiring as to household members, employment, employment income, and other income – with a series of separate questions as to “economic assistance such as MFIP, GA, MSA, and/or SSI”, social security benefits, pension, interest from checking or savings account, child support, spousal maintenance, and cash contributions. AR.3 at 1-2. The “Other Income” section included a chart to list “all sources of household income,” including “MFIP.” *Id.* at 2. Ms. Peterson answered “no” to the series of questions and in the chart listed only unemployment benefits as household income. *Id.* The

Recertification Form included a certification that “the information given” to the HRA on “income, net family assets” is “accurate and complete to the best of my/our knowledge. I/we understand that false statements or information are punishable under Federal and State law. I/We also understand that false statements are grounds for termination of housing assistance and termination of tenancy.” AR.3 at 6.

As a participant in the Section 8 Program, Ms. Peterson signed the HRA’s Family Obligations on June 17, 2010, as part of the annual recertification process. AR.7, at 1. The Family Obligations stated, and Ms. Peterson certified and acknowledged by signing, that “I understand that I **must** report all changes in my income to the PHA in **writing** within **five (5) days of the change.** ” AR.7, at 1 (emphasis in original). As part of the recertification process, each participant must sign the Grounds for Denial or Termination of Assistance document, which states, in pertinent part:

The PHA may at any time Deny Program Assistance for an Applicant or Terminate program Assistance for a Participant, for any of the following reasons:

1. If the family violates any family obligations under the Section 8 program. . .

AR.8. Ms. Peterson signed each of these documents. AR.7, AR.8. She also watched a video that walked through each of the family obligations. AR.25 at 7.

As a follow-up to the Recertification Form, the HRA asked Ms. Peterson to

provide further information as to her unemployment benefits ending and whether she reported zero income. AR.4. Ms. Peterson completed the form verifying that she had no sources of income: the Certification of Minimal or Zero Household Income. AR.6. In that document, the participant must “certify that I do not receive income from any source.” AR.6. The form listed a series of examples of income, including “public assistance payments,” educational grants, bartering, and unemployment or disability payments. *Id.* The form asked the participant to detail monthly expenses – including utilities, phone, television/cable, car payments, gas, car tabs, car insurance, health insurance, credit cards – and to explain how these expenses were paid. *Id.* Ms. Peterson did not include any reference to income sources, other than “paid dad” as to utilities. *Id.*

Above the signature lines, the document stated that “I understand that I must report any income I receive to the HRA within 5 days. The HRA will then recalculate my rent portion and my rent portion will increase.” AR.6. The document also noted that further investigation would be required should this status extend beyond 90 days: “I understand that if I continue to not receive any income from any source, the HRA will require me to attend a re-examination appointment every 90 days.” *Id.* Finally, the participant acknowledged that “I understand that failure to report income may result in termination of my rental assistance and/or repayment to the Washington County HRA of any rent overpaid on my behalf.” *Id.* Ms. Peterson signed this document and submitted it to the HRA. *Id.*

HUD requires public housing authorities such as the HRA to verify all sources of income for Section 8 participants. 42 U.S.C. §1437f(o)(5)(B) (each PHA “shall establish procedures . . . to ensure that income data provided. . . is complete and accurate”); 42 U.S.C. § 1437f(k) (2010)(verifying income).

In the present case, it is undisputed that Ms. Peterson received income in the form of Minnesota Family Investment Program (“MFIP”) cash grants on July 14, 2010 and July 30, 2010. AR.11; AR.25 at 9. It was further undisputed that Ms. Peterson failed to report this income in writing to the HRA. AR.25 at 19.

The HRA became aware of this income only by happenstance. The landlord of the apartment where Ms. Peterson moved had changed owners as well as the type of federal assistance to a tax credit property (with gross rent maximum caps), complicating the rental and Section 8 calculations. AR.25 at 8, 18, 20-21; AR.1 at 1; AR.10 at 1. The landlord indicated to the HRA that it typically investigated the sources of income for all tenants. AR.10 at 1; AR.25 at 21. As part of the process of determining the rent, Ms. Peterson called and left multiple messages with questions about the rent, including the utility allowance reimbursement calculation. AR.1 at 1; AR.25 at 8, 16. The HRA file contained no message as to MFIP income. *Id.*

As part of its request for tenancy approval, the landlord supplied a packet of information to the HRA, including the Tenant Income Certification with Ms. Peterson’s lease. AR.25 at 8-9; AR.10. In that form, there was listed as “income” some \$7,764 in public assistance. *Id.* The total household income of

\$7,764 varied from the zero income reported to the HRA on July 8, 2010. Compare AR.6 (zero income) with AR.10 (listing public assistance).

The HRA Housing Specialist, Ann Hoechst, after reviewing this information, called Ms. Peterson and specifically informed her that she had received the documents from the landlord. AR.25 at 9. Ms. Peterson did not mention the public assistance income, and Ms. Hoechst noted this fact for the file. *Id.*; AR.10 at 7. Apart from verifying the income according to federal regulations and HRA procedures, the HRA took no further action on this matter until mid-September, giving Ms. Peterson ample opportunity to contact the HRA and report this income. AR.11 (income verification); AR.25 at 9 (confirming continuation of the grant monies); AR.12 (termination letter). In a letter dated September 10, 2010, the HRA notified Ms. Peterson that HRA would terminate her housing benefits for failure to report income. AR.12. That letter also informed Ms. Peterson of her right to request an informal hearing to review this decision. *Id.*

At no time during the over eight-week period – between receiving MFIP cash and the HRA letter terminating benefits – did Ms. Peterson provide the HRA with written notice of this income.

In a letter dated September 13, 2010, Ms. Peterson requested an informal hearing. AR.13. She also reported, for the first time, receiving income from unemployment benefits that she received in August. AR.13 at 3-4 (including partial printout of benefits); AR.24 (complete printout of benefits).

The informal hearing was held on September 23, 2010. Pursuant to federal regulations, the informal hearing officer, an independent person with 30 years of experience working with another HRA administering Section 8 benefits and significant experience as an informal hearing officer, qualified as "any person or persons designated by the PHA [public housing agency], other than a person who made or approved the decision under review or a subordinate of this person." 24 C.F.R. § 982.555(e)(4); AR.25 at 4.

At the hearing, the hearing officer allowed both sides to present their evidence. Ms. Hoescht presented for the HRA (AR.25 at 6-11); then Ms. Peterson presented on her own behalf. *Id.* at 11-19; 21-23. The HRA presented evidence that Ms. Peterson received the MFIP income on July 14 and July 30 – within days of her reporting “zero income” to the HRA. AR.11 at 2 (income verification showing payments of July 14 and July 30); AR.6 (certification of zero income received July 12, 2010); AR.25 at 9 (verifying continuation of MFIP grant).

It was undisputed that Ms. Peterson provided no written report of this income. In terms of the claimed lost voice message, the HRA had no record of any oral report of the MFIP income.¹ The HRA presented evidence that specific telephone conversations with Ms. Peterson did not discuss income. AR.1 at 1, AR.25 at 7 (call concerning father’s payment of utilities “didn’t mention MFIP.”);

¹ Ms. Peterson noted that past faxes did not go through to Ms. Hoechst, but did not provide any specific examples of a voice message not being received. AR.25 at 15.

AR.10 at 7 (notation to file that in call concerning receipt of documents from landlord, income not discussed); AR.25 at 8 (noting multiple phone messages concerning rent and utility reimbursement calculations, not income). The HRA phone log of telephone messages did not include reference to MFIP income. AR.25 at 19 (“[T]here’s nothing in my log that showed a message from Melissa.”); *id.* at 19 (“I didn’t have a message.”). And Ms. Hoechst had no independent recollection of a telephone message or conversation with Ms. Peterson discussing MFIP income. AR.25 at 16, 19.

At the informal hearing, Ms. Peterson produced her own testimony that she believed that she left a voice mail message concerning the MFIP grants. She did not recall when she called. AR.25 at 12 (“I did call. I don’t remember when I did call about my income change for MFIP.”); *id.* at 19 (“I could have swor[n] I left a message on your voicemail.”). She acknowledged that she did not provide written notice of the income to the HRA. *Id.* at 19. She did not dispute the evidence of a series of telephone calls and messages concerning other topics – the rent and utility reimbursement calculations. AR.25 at 8. Ms. Peterson also testified that she believed that she orally mentioned at the recertification meeting with Ms. Hoechst that “I’d probably have to go apply for MFIP” but that would have been before any necessary approval and actual receipt of funds. AR.25 at 16-17; *see also id.* at 19-20 (“I just told you when we were at the meeting.”).

Ms. Peterson also presented arguments of mitigating factors, including that in the past two-to-three months she was caring for relatives, moving, responding to flood damage at her previous residence, participating in school, registering her children for school, taking care of her children, and the impact on her family. T.25 at 12-13.

The hearing officer, as required by federal regulations, issued her decision within fourteen days of the hearing, on October 6, 2010. AR.26 at 10. The ten-page, single-spaced decision summarized the written documents received from both parties at the informal hearing, as well as the testimony of both Ms. Hoechst and of Ms. Peterson. AR.26 at 1-10. The decision concluded that the HRA properly terminated Ms. Peterson's Section 8 assistance. *Id.* at 9-10.

The hearing officer based her decision on the statements and documents from the HRA showing that Ms. Peterson violated the family obligations, and statements and information presented by Ms. Peterson at the hearing. AR.26 at 1-7. The hearing officer held: "Thus, the hearing officer has determined that Melissa Peterson failed to properly report her MFIP income to the HRA in writing within the required five day period and, in fact, never reported her MFIP income to the HRA which is a violation of the federal Program regulations and HRA-adopted policies." AR.26 at 9.

The decision found that Ms. Peterson had actual notice of the family obligations to provide "true and complete" information – including income – and of her obligation to report changes in income in writing within five days. AR.26 at

6, 7-8 (“Melissa Peterson was adequately informed by the Washington County HRA of her obligations as a participant in the Section 8 Housing Choice Voucher Program, in particular her obligation to provide accurate and complete information to the Washington County HRA and to report all changes in her household income to the HRA in writing within five days of the change as well as the consequences that could result from her failure to comply.”).

The decision further found that Ms. Peterson provided no written report of MFIP income. AR.26 at 9 (“[T]he hearing officer notes that income changes are required under HRA-adopted policies to be reported to the HRA IN WRITING within five days.”). As to the claimed oral reporting, the Hearing officer did not accept Ms. Peterson’s version of events. AR.26 at 8 (leased faxed to HRA but “made no mention of having been approved for or receiving MFIP cash benefits.”); *id.* (in follow-up call from Ms. Hoechst, “Ms. Peterson again did not mention that she ha[d] been approved for or was receiving MFIP cash benefits.”). Indeed, the decision expressly noted Ms. Peterson’s testimony and evidence, but noted they were “evaluated by the hearing officer in light of the evidence, information, and testimony presented and provided by the HRA.” *Id.* at 7.

As to Ms. Peterson’s application and receipt of MFIP benefits on the same day, July 14, the Hearing officer found that “this is information that was never report[ed] verbally or, more importantly, in writing to the HRA by Ms. Peterson” AR.26 at 9. The decision noted the vague nature of the testimony, and found that “Ms. Peterson testified that she did call about her

income change to MFIP but doesn't remember when" AR.26 at 9; *see also* AR.26 at 5 ("She added that she knows she left a message and could have swor[n] she did.").

The Hearing officer also raised concerns with other inconsistencies in Ms. Peterson's testimony. AR.26 at 9 (noting testimony of Ms. Peterson that "she didn't know her money was in there and doesn't remember when she found out" about MFIP assistance contrary to Washington County Social Services records that "Ms. Peterson's application was immediately approved on the day of the application and the first payment issued that same day.").

The decision specifically considered the testimony and evidence of mitigating circumstances presented by Ms. Peterson. AR.26 at 5-6, 7, 9 ("Ms. Peterson testified at the informal hearing that she had a lot going on and more specifically stated that she was moving and packing, that she had flood damage and had to deal with the insurance company, that she was in school, that her aunt was pretty bad off and she was traveling back and forth to Cambridge to help take care of her, that her uncle was in the intensive care unit, that her oldest son has major behavioral issues and she has to stay in touch with his probation officer, that she enrolled her twins in Head Start, and that her sister tried taking her life too."). However, the decision also noted "that the documents 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 her testimony." *Id.*

Ultimately, the decision reasoned that Ms. Peterson "appeared to have no

problem in readily handling other business matters, including housing related business” during this timeframe. AR.26 at 9. Specifically, Ms. Peterson attended her recertification appointment with the HRA on June 17, 2010, responded “quickly and completely to a request for information from the HRA dated July 6, 2010,” left “multiple phone messages for Ms. Hoechst in the June/July period regarding the changeover in the property she was moving to and how much utility allowance reimbursement she would receive”, faxed the lease to the HRA on July 23, 2010, and “promptly sent” the HRA a request for an informal hearing. AR.26 at 9.

The hearing officer concluded that “after a thorough and thoughtful review of all of the evidence, information, and testimony presented at the informal hearing” and based upon a preponderance of the evidence, Ms. Peterson violated the Section 8 Program regulations and HRA policies “as a result of her failure to report her MFIP income to the HRA as required, and that this violation constitutes sufficient grounds for termination of her Section 8 Program participation.” AR.16 at 10.

Ms. Peterson also requested reconsideration of the decision by the HRA. AR.27. The HRA denied this request. It specifically considered the mitigating circumstances raised by Ms. Peterson. AR.29 at 3. It also noted that Ms. Peterson received several weeks of unemployment benefits before reporting them to the HRA (after receiving the notice of termination concerning the MFIP

income). *Id.* at 2. On November 22, 2010, Ms. Peterson filed a petition for a writ of certiorari with this Court.

SUMMARY OF THE ARGUMENT

Ms. Peterson acknowledged that she failed to provide written notice of her change of income within five days, as required by the HRA's Administrative Plan. Indeed, Ms. Peterson never provided the HRA written notice of her change in income. The hearing officer was presented with an acknowledged violation of the Administrative Plan. Contrary to Ms. Peterson's arguments, federal regulations specifically required the HRA to determine the method of reporting a change of income. The HRA determined that such a report must be written and completed within five days.

The general thrust of Ms. Peterson's arguments on appeal was that the hearing officer was not persuaded by her self-interested testimony of leaving a voice mail message, or by the mitigating circumstances of her situation, and that this skepticism rendered the hearing officer's decision arbitrary and capricious. But this argument ignored Ms. Peterson's admitted failure to provide any written notice of the change of income, and it ignored the hearing officer's findings, which carefully delineated everything that was presented on the record at the hearing – by both sides.

The hearing officer, in the best position to evaluate not only the documentary evidence, but also the veracity and credibility of all witnesses testifying at the hearing, was entitled to draw inferences and resolve any

conflicting evidence. In doing so, the hearing officer properly concluded that Ms. Peterson violated the requirement of providing written notice of a change in income. The hearing officer was not obligated to accept Ms. Peterson's testimony, and the decision to reject it was not arbitrary or capricious.

Moreover, it was not unreasonable for the hearing officer to conclude that it was unlikely that Ms. Peterson left a voice mail message that was never received by the HRA. The HRA regularly downloaded voice messages, but the file did not include any voice mail from Ms. Peterson as to income, although it did include a series of calls related to utility payments. AR.26 at 4; AR.25 at 8, 19. The file included a notation of a telephone conference with Ms. Peterson concerning information from the landlord, but it specifically noted that Ms. Peterson did not discuss her change in income. AR.10 at 7. And Ms. Hoechst had no independent recollection of discussing the MFIP income with Ms. Peterson. AR.25 at 7, 16. If income were disclosed, Ms. Hoechst would be required to verify it and revise the HRA's Section 8 benefits calculations. It was not unreasonable for the informal hearing officer to conclude that the voice mail messages concerned other topics, such as calculating rent, moving, and utility reimbursement, rather than MFIP income reporting. AR.26 at 2 (noting multiple messages concerning other topics); *id.* at 3 (noting no independent recollection); *id.* at 4 (no mention of MFIP); *id.* (nothing in call log).

Moreover, the hearing officer specifically considered the mitigating circumstances raised by Ms. Peterson. The federal regulations stated that

considering evidence of mitigating factors is permissive, not mandatory. When viewed in light of other evidence, the hearing officer was not persuaded by the mitigating factors.

The totality of the evidence, including the credibility determinations of the hearing officer, supported the final decision as the non-arbitrary product of reasoned decision making.

STANDARD OF REVIEW

A person aggrieved by the termination of Section 8 housing benefits may seek judicial review by petitioning for certiorari under Minn. Stat. § 606.01 to review the “quasi-judicial agency decision not subject to the Administrative Procedure Act” [citations omitted]. *Hinneberg v. Big Stone County HRA*, 706 N.W.2d 220, 224 n.1, 225 (Minn. 2005). The Minnesota Supreme Court has held that under a certiorari review of a decision to terminate Section 8 benefits, the court reviews “the record to determine ‘whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.’” *Id.* at 225 (quoting *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992)).

On certiorari review, this Court grants deference to the hearing officer's quasi-judicial decision. *Dietz*, 487 N.W.2d at 237 (noting certiorari appeal “mandates nonintrusive and expedient judicial review” consistent with separation of powers). The standard of review “on certiorari is more appropriate to a review of the exercise of the board’s discretion” *Id.* at 239; see also *Ellis v. Ritchie*,

803 F.Supp. 1097, 1101 (E.D. Va. 1992) ("The court 'is not empowered to substitute its judgment for that of the agency,' but must simply determine if a rational basis exists for the agency's decision.") (quoting *Virginia Agr. Growers Ass'n Inc. v. Donovan*, 774 F.2d 89, 93 (4th Cir. 1985)); *Reynolds Metal Co. v. United States EPA*, 760 F.2d 549, 558 (4th Cir. 1985).

For a quasi-judicial decision, like the decision in the present case, the "arbitrary and capricious" test applies. *Hinneberg*, 706 N.W.2d at 225; cf. *Manufactured Hous. Inst. v. Petterson*, 347 N.W.2d 238, 244 (Minn. 1984) ("arbitrary and capricious" test, rather than the more rigorous "substantial evidence test" applies in rule-making proceedings).

ARGUMENT

I. THE HEARING OFFICER CORRECTLY APPLIED THE LAW.

Under the Section 8 Program, participant family incomes must be reviewed "not less than annually." 42 U.S.C. § 1437f(o)(5). Each public housing authority, such as the HRA, "shall establish procedures that are appropriate and necessary to ensure that income data provided to the agency and owners by families applying for or receiving assistance from the agency is complete and accurate." 42 U.S.C. § 1437f(o)(5)(B). Each public housing authority "shall, not less frequently than annually, conduct a review of the family income of each family receiving assistance." *Id.*

The HRA may terminate assistance if the participant violates any family obligations under the Section 8 Program, including failing to supply any

information requested or information as to a reexamination of family income. 24 C.F.R. §§ 982.551(b)(2),(4), .552(c)(1). The family obligations required the participant to “supply any information requested by the PHA or HUD determines is necessary in the administration of the program.” 24 C.F.R. § 982.551(b)(1). The family obligations also required participants to provide true and complete information. 24 C.F.R. §982.551(b)(4). The HRA had discretion to determine when termination of assistance was the appropriate remedy. *Department of Housing and Urban Dev. v. Rucker*, 535 U.S. 125, 130-1 (2002); *Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700, 703 (Minn. 1999); AR.2 at 6, 7, 8, 14, 18.

A. Federal Regulations Authorized the HRA’s Change-Of-Income Reporting Requirements.

Under federal regulations administering the Section 8 Program, each public housing authority must adopt an Administrative Plan to to administer the Program. 24 C.F.R. § 982.54(a) (“The administrative plan states PHA policy on matters for which the PHA has discretion to establish local policies.”). The HRA must administer the Section 8 Program in accordance with its administrative plan. 24 C.F.R. § 982.54(c). The HRA was also required to file its Administrative Plan with HUD, and HUD had the authority to require changes if the policies adopted by the HRA were inconsistent with program regulation requirements. HUD Housing Choice Voucher Program Guidebook, § 3.2. (<http://www.hud.gov/offices/adm/hudclips/guidebooks/7420.10G/index.cfm>); 24

C.F.R. § 982.54(b).

The Administrative Plan “must cover” a series of subjects, including “interim redeterminations of family income and composition.” 24 C.F.R.

§ 982.54(d)(18). In addition, a public housing authority was not only authorized but required to determine when and how a participant must report a change in income: “[t]he PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.” 24 C.F.R. § 982.516. In other words, the regulations delegated to the PHA to determine the timing and manner of reporting a change in income. The HRA’s Administrative Plan satisfied these timing (five days) and condition (written) requirements. These HRA policies did not expand the federal regulations. Rather, they implemented the directive from the regulations requiring “when and under what conditions” a family must report a change in income. *Id.*

The HRA adopted its Administrative Plan on July 1, 1998. AR.2 at 2. The HRA’s Administrative Plan required a participant to “report interim changes to the PHA within **five days** of when the change occurs.” AR.2 at 4 (emphasis in original); *id.* at 3, 15. The HRA’s Family Obligations document, as part of the annual recertification process, emphasized this requirement in bold, underline, and enlarged font. AR.7 at 1. Each participant must also initial this requirement. *Id.* The HRA’s Administrative Plan squarely satisfied the federal requirements of specifying the time and conditions to report additional income.

The cases cited by Ms. Peterson from other jurisdictions are

distinguishable. In each of the three cases, the court ruled that the local housing authority's policy contradicted or altered the relevant federal regulation. This aspect was not true in the present case, as the HRA's Administrative Plan implemented the regulation as to how and when to report a change of income. 24 C.F.R. § 982.516.

In *Cain v. Allegheny County Hous. Auth.*, 986 A.2d 947 (Penn. Cmwlth 2009), the court determined that a PHA could not require a participant to obtain approval for a move where the federal regulations merely required notice of the move to be submitted. *Id.* at 951. In *Holly v. Housing Auth. of New Orleans*, 684 F. Supp. 1363 (E.D. La., 1988), the court held that the PHA could not terminate benefits for failing to report a short-lived marriage. The *Holly* court reasoned that the participant had not violated any federal regulations. *Id.* at 1367. This holding has no bearing on the present case, when federal regulations required income reporting and verification. Finally, in *Hann v. Housing Auth. of the City of Easton*, 709 F.Supp. 605 (E.D. Penn. 1989), the court held that the PHA could not define a "family" in a manner different than the HUD regulations to exclude individuals from Section 8 eligibility who were not excluded by the plain language of HUD regulations. *Id.* at 606-607.²

² Similarly, the unpublished decision cited by Ms. Peterson reversed a PHA for terminating Section 8 assistance for failure to attend one appointment as failure to cooperate. *Ali v. Dakota County Community Dev. Agency*, 2009 WL 511158 *3 (Minn. App. 2009) (Peterson Br. at 17-18, App. 44.) . This unpublished case is distinguishable from the present case, as federal regulations specifically authorized the HRA to adopt policies concerning the timing and manner of reporting a change in income.

Unlike the cases cited by Ms. Peterson, the HRA Administrative Plan regarding income reporting did not contravene or contradict federal policy and regulations. As explained above, federal regulations required the HRA to address determinations of family income – and the how and when of reporting a change of income. 24 C.F.R. § 982.516; 24 C.F.R. § 982.54(a), (d)(18). The HRA's policy regarding reporting of changes in income implemented the federal regulations.

B. Ms. Peterson Failed to Satisfy the Reporting Requirements.

In the present case, the HRA's Administrative Plan plainly required a written report of a change of income within five days. The hearing officer noted that Ms. Peterson had actual notice of the five day and written requirements to report a change of income. AR.26 at 6-7. Ms. Peterson not only viewed a video that discussed the requirements, she signed the recertification form, signed and initialed this requirement on the family obligations form, signed the Grounds for Denial or Termination of Assistance form, and signed this language on the Certification of Zero Income form. AR.26 at 6-7; AR.4; AR.3 at 6; AR.5 at 2; AR.7 at 1; AR.8.

Ms. Peterson acknowledged that she did not provide a written report of the MFIP income. AR.25 at 19. She testified that she left a voice mail message, but was uncertain of the date or time. *Id.* at 12, 19. Even accepting her vague testimony as true, Ms. Peterson did not provide written notice of her change of

income, as required by the HRA's Administrative Plan. Not only did Ms. Peterson fail to satisfy the five-day requirement, she failed to act within the over eight-week period between the date she received the income and the date of the HRA's letter terminating benefits. In short, she failed to satisfy the HRA's required timing and method of reporting a change in income.

These requirements are not hypertechnical details. Under the Section 8 Program, the HRA must evaluate and verify all changes to income. 42 U.S.C. § 1437f(o)(5)(B). The HRA must then re-calculate the monthly rent and determine the amount to be paid by the participant as well as the HRA. 42 U.S.C. § 1437f(o); 24 C.F.R. §§ 982.1(a)(4), .505. How would the HRA determine Ms. Peterson's Section 8 benefits for July and August when the HRA did not learn of the additional July income until August by a third party?³ And Ms. Peterson's claim of leaving a voice mail message that the HRA never received demonstrates why the HRA required a written notification of income. Not only does this requirement avoid any miscommunication or claimed missed calls, it provides documentation that can be clearly presented and verified.

The HRA simply followed the directives of the federal regulations in monitoring and verifying all sources of income. Given necessary living expenses, it is unusual to have no sources of income, and HUD training materials provided

³ Contary to Ms. Petreson's arguments that she reported "every little thing" to the HRA, the record reflected that Ms. Peterson received unemployment benefits in August, but she failed to report them to the HRA until after the HRA terminated her benefits AR.13 at 3-4; AR.24.

that public housing authorities “have an obligation to pursue verification of income that reflects the family’s lifestyle.” HUD Public Housing Occupancy Guidebook, at 157

(<http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>, last accessed February 2, 2011); *Id.*, Appdx. VIII, page 352-56 (sample zero income form itemizes expenses, including grocery bill receipts, paper products, cleaning products, gas and car expenses, cable television, magazines, movies, telephone, clothing, cigarettes, telephone, cell phone, internet access, utilities, and medical expenses.); *Id.* at 88 (“When a resident (or applicant) reports zero income, well-managed PHAs make an appointment and visit the resident in their unit to determine the likelihood of the tenant’s report. If the resident has a car, a telephone, cable television, Internet service, smokes, or has other evidence of some form of income, the resident should be asked about the source of income supporting cash expenditures when zero income is reported.”). Under the Section 8 Program, the HRA was expected to closely monitor changes in income for participants who reported zero income.

Moreover, although Ms. Peterson highlighted her testimony that she “reported” rent that was higher than the payment standard, there was a self-serving component to this report. Peterson Br. at 20. Under the Program calculation of benefits, higher gross rent would result in a lower utility reimbursement to a participant reporting zero income. 24 C.F.R. §§ 982.514(b) (utility reimbursement allowed if excess from amount paid to owner), 982.515

(family portion calculated by subtracting housing assistance payment from gross rent). It was therefore in Ms. Peterson's interest to follow up on the rent amount requested by the landlord.

Similarly, this Court should not accept Ms. Peterson's implicit argument that the amount of unreported income was so small as to require reversal. The Section 8 Program is structured to require regular and continuous oversight and verification of income to assess eligibility. 42 U.S.C. § 1437f(o)(5)(B); 42 U.S.C. § 1437f(k). The Section 8 regulations did not excuse the HRA in this respect for a "modest" income error. Indeed, the HRA diligently performed its obligations to assess income. That it caught an error early in the process, rather than learning belatedly of many months or years of income, should not require reversal.

The hearing officer's decision to uphold the HRA's termination of assistance followed applicable federal regulations and the HRA's Administrative Plan.

II. THE INFORMAL HEARING OFFICER INCLUDED SUFFICIENT AND SUBSTANTIAL FINDINGS FROM THE RECORD TO SUPPORT HER DECISION.

A decision from a hearing officer, in terminating Section 8 assistance, must make "factual determinations based on a preponderance of the evidence presented at the hearing." 24 C.F.R. §982.555(e)(6). The evidence presented at Ms. Peterson's informal hearing amply supported the hearing officer's decision.

The hearing officer was not required to accept Ms. Peterson's version of events. See *Quinn Distrib. Co. v. Quast Transfer Inc.*, 288 Minn. 442, 448, 181

N.W.2d 696, 700 (1970) ("The functions of fact finding, resolving conflicts in the testimony, and determining the weight to be given it and the inferences to be drawn therefrom rest with the administrative board.") (quoting *Gibson v. Civil Serv. Bd.*, 285 Minn. 123, 126, 171 N.W.2d 712, 715 (1969)).

Under the deferential standard of review, this Court cannot substitute its views for the hearing officer's. *Vicker v. Starkey*, 265 Minn. 464, 470, 122 N.W.2d 169, 173 (1963) ("Although a reviewing court might reach a contrary conclusion to that arrived at by an administrative body, the court cannot substitute its judgment for that of the administrative body when the finding is properly supported by the evidence."); *Ellis v. Minneapolis Comm'n on Civil Rights*, 295 N.W.2d 523, 525 (Minn. 1980) (court accepts inferences agency draws from evidence "even though it may appear that contrary inferences would be better supported or that the reviewing court would be inclined to reach a different result were it the trier of fact.") *see also In re Space Center Transp.*, 444 N.W.2d 575, 579 (Minn. App. 1989) ("courts must show deference to the agency's expertise and special knowledge . . . "); *Ritter v. Cecil Cty. Office of House. & Cmt. Dev.*, 33 F.3d 323, 329 (4th Cir. 1992) (reasoning "[u]nder the deference to be accorded a reasonable interpretation, we cannot substitute a different view, even if we thought it more reasonable.").

As a Section 8 participant, Ms. Peterson had a duty to report all household income in a timely manner and in writing. She had a duty to report true and complete information. Ms. Peterson acknowledged that she did not provide a

written report of income. She testified that she left a voice mail message, but was uncertain of the date or time. Even accepting her testimony, Ms. Peterson did not provide written notice of her change of income.

A. The Record Supported the Decision.

Ample evidence was presented by the HRA to show that Ms. Peterson did not comply with the family obligations of the Section 8 Program. It was undisputed that Ms. Peterson failed to provide written notice of her MFIP income. Not only did she fail to provide written notice of this income within five days, but she failed to provide written notice over eight weeks after receiving the income, when the HRA sent a notice of termination of benefits.

Ms. Peterson claimed that she left a voice message that the HRA never received. But it was reasonable for the hearing officer not to accept this testimony. First, the HRA requirements called for written notice. AR.2 at 3, 4, 15; AR.6. Second, Ms. Peterson's testimony was unclear and vague. AR.25 at 12, 19; AR.26 at 4, 5, 9. She also testified inconsistently that (1) she left a message and (2) that she perhaps mentioned the possibility of MFIP income in her recertification meeting weeks before receiving the income. AR.25 at 16-17, 19-20. Third, the HRA file contained no evidence of a voice message; but it did include notations to the file that MFIP income was not discussed. AR.10 at 7; AR.25 at 8, 19. Fourth, Ms. Hoechst testified that she had no independent recollection of a voice mail or discussing MFIP income with Ms. Peterson. AR. 25 at 16, 19. Therefore, it was reasonable for the hearing officer to reject Ms.

Peterson's testimony as to a lost voice message and to instead rely upon the requirements of written notice of income.

Ms. Peterson, as the Section 8 participant, had a duty to report all household income as part of her family obligations. 24 C.F.R. §982.551. Her obligation was to provide "true and complete information" to the HRA. 24 C.F.R. §982.551(b)(4). The duty to provide "true and complete" information was added to the regulation in 1995 presumably to address the participant's argument in *Ellis v. Ritchie*, 803 F.Supp. 1097; see 60 FR 34660, 34684 (1995). In *Ellis*, the participant successfully convinced the appellate court to overturn the HRA's termination of assistance by arguing that she was not required to provide all information under the Program's family obligations. *Ellis* at 1102-1103. The *Ellis* Court explained, "significantly, the regulation makes no mention of any requirement that information or documentation submitted to the agency be 'true' or 'complete'." *Ellis* at 1102. Such is not the case now – participants are required to submit true and complete information as part of their family obligations. 24 C.F.R. §982.551(b)(4).

B. The Decision Permits Meaningful Review.

The hearing officer's determinations must be sufficient to permit meaningful review. *Carter v. Olmstead County Housing and Redev. Authority*, 574.N.W.2d 725, 729 (Minn. App. 1998). A hearing officer's decision should include evidence sufficient to show an examination of both sides of the case and evidence from which conflicting inferences can be drawn. *Id.* at 730-731 (citing

Liffring v. Independent Sch. Dist. No. 442, 292 N.W.2d 726, 729 (Minn. 1980)).

Contrary to the arguments set forth in Relator's brief, the facts of this case are remarkably different from those in *Carter*. In *Carter*, the hearing officer made absolutely no mention of any of the participant's evidence or arguments presented at the hearing. *Id.* at 729-30. In addition, the hearing officer provided the statement of the record and included no acknowledgment of the participant's evidence. *Id.* at 739. The statement of the record included a derogatory remark about the participant, calling the hearing officer's objectivity into question. *Id.* at 730-733. In the present case, by contrast, Ms. Peterson's testimony and documentary evidence are explicitly set forth in the decision. AR.26 at 4-5, 9. There are sufficient findings to allow inferences different from those drawn by the hearing officer, but also to support the inferences drawn by the hearing officer in her decision. *Id.* Moreover, the *Carter* decision pre-dated the Minnesota Supreme Court's decision in *Hinneberg*, which applied the deferential standard of review for certiorari appeals from *Dietz* to termination of Section 8 benefits. *Hinneberg*, 706 N.W.2d at 224 n.1, 225; 487 N.W.2d at 239.

The United States Supreme Court has recognized that informal administrative decisions need not amount to a district court opinion. *Goldberg v. Kelly*, 397 U.S. 254, 271, 90 S.Ct. 1011, 1022 (1970) (reasoning that decision terminating AFDC assistance should state the reasons "though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law").

And the Minnesota Supreme Court has held that in reviewing a quasi-judicial decision upon a writ of certiorari, courts must grant deference to agencies such as the HRA. *Hinneberg*, 706 N.W.2d at 225; *Dietz*, 487 N.W.2d at 239; *id.* at 237 (noting certiorari appeal “mandates nonintrusive and expedient judicial review”). Given this deferential standard of review, the Court should not presume error nor mandate different findings based upon conflicting evidence. *Cf. Loth v. Loth*, 227 Minn. 387, 393, 35 N.W.2d 542, 546 (1949) (“Findings of fact based on conflicting evidence will not be disturbed on appeal unless manifestly and palpably contrary to the evidence as a whole.’ . . . [T]his court will not reverse a finding having evidentiary support, even though we might find the fact to be different if we had the fact-finding function.”) (quoting *Baker v. Baker*, 224 Minn. 117, 122, 28 N.W.2d 164, 167 (1947)).

Here, it was not unreasonable for the informal hearing officer to conclude that Ms. Peterson’s voice mail messages concerned other topics, such as calculating rent, moving, and utility reimbursement, rather than MFIP income reporting.

Ms. Peterson criticized the hearing officer’s decision as failing to adopt her testimony. The hearing officer clearly reviewed the evidence submitted by Ms. Peterson and rejected it. AR.26 at 7-8. The decision contained sufficient findings to show that the hearing officer heard and considered Ms. Peterson’s evidence - but rejected it in favor of the HRA’s indisputable evidence of non-compliance with the Program requirements. *Id.* at 7 (noting Ms. Peterson’s

testimony and evidence were "evaluated by the hearing officer in light of the evidence, information, and testimony presented and provided" by the HRA).

In the end, Ms. Peterson's argument collapses into a complaint that the hearing officer did not make a formal finding that she disbelieved or discredited Ms. Peterson's testimony that she left a voice mail that the HRA never received. But the federal regulations did not require such a finding. A decision terminating Section 8 assistance must be in writing and must briefly state the reasons for the decision. "The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision." 24 C.F.R. § 982.555(e)(6). The hearing officer's ten-page decision does precisely that, briefly stating the reasons for the decision after setting forth the evidence that she reviewed in the process. AR.26 at 9-10; *See Ellis v. Ritchie* at 1106 n.3 (some statement of factual and legal basis must be stated).

The family obligations required reporting of accurate income information. The evidence reviewed by the hearing officer was undisputed that Ms. Peterson failed to report income in writing to the HRA within five days.

III. THE HEARING OFFICER'S DECISION REFLECTED RATIONAL DECISION MAKING, NOT ARBITRARY OR CAPRICIOUS ACTION, AND PROPERLY CONSIDERED MITIGATING FACTORS.

The informal hearing officer considered and gave appropriate weight to the evidence before her, including the testimony of Ms. Peterson, the documents that she presented, and the mitigating circumstances that she raised. The written decision reflects reasoned decision making, not the whim of the hearing officer.

The hearing officer's decision is a rational decision, not an arbitrary or capricious action. See *Cable Communications Bd. v. Nor-west Cable Communications Pship.*, 356 N.W.2d 658, 669 (Minn. 1984) ("If an administrative agency engages in reasoned decision making, the court will affirm, even though it may have reached a different conclusion had it been the factfinder."). A decision is arbitrary and capricious when "based on whim or is devoid of articulated reasons." *In re Proposal by Lakedale Telephone Co.*, 561 N.W.2d 550, 553 (Minn. App. 1997).

The hearing officer's decision demonstrated rational and non-arbitrary decision making, including factual determinations based on a preponderance of the evidence. Although not required to, the HRA nonetheless did consider Ms. Peterson's evidence of mitigating factors.

The HRA was not required to consider mitigating factors when terminating assistance. Rather it "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)(i) (emphasis added).

The regulation (24 C.F.R. §982.552) was modified in 1995 to remove the mandatory consideration of mitigating factors by the HRA and to cede "much broader policy making authority to the HA." *Housing Authority of the City of York*

v. Dickerson, 715 A.2d 525, 527 (Pa. Cmwlth. 1998). As the comment to 24 C.F.R. 982.552 (c)(1) stated, "comments [from the public] suggest that HUD should not merely allow the HA to consider 'all' circumstances of each case, but should require that the HA consider all circumstances. This comment is not adopted." 60 Fed. Reg 34660, 34689 (1995) (emphasis added).

It was within the HRA's discretion to terminate assistance without giving weight to mitigating circumstances. Nonetheless, the hearing officer and the HRA specifically considered the mitigating circumstances. The hearing officer's decision included a thorough accounting of all evidence presented at the hearing. The hearing officer considered the mitigating factors presented by Ms. Peterson including:

1. flood damage in her former unit and moving;
2. being a student;
3. traveling and caring for her aunt;
4. visiting her uncle in the hospital;
5. caring for son with behavioral issues;
6. registering her children for school; and
7. her sister's attempt to take her life.

AR.26 at 4-6, 9; AR.25 at 12-14, 18; AR.29 at 3.

Ms. Peterson's mitigating circumstances essentially reflected a number of family care and other commitments. Although understandably distressing or distracting, these other commitments did not prevent her from reporting the additional income to the HRA in July. Instead, Ms. Peterson nonetheless complied with a number of other items relating to Section 8 benefits, including attending recertification meeting, responding to a request for information from the

HRA dated July 6, 2010, leaving “multiple phone messages for Ms. Hoechst in the June/July period regarding the changeover in the property she was moving to and how much utility allowance reimbursement she would receive”, faxing the lease to the HRA on July 23, 2010, and promptly requesting an informal hearing. AR.26 at 9.

In analyzing the mitigating circumstances that Ms. Peterson presented, the hearing officer observed: “the documents 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 her testimony.” AR.26 at 9. Indeed, a number of the factors presented by Ms. Peterson appeared to occur at a time other than the mid-to-end July time period in which she should have reported income. AR.16 (insurance letter dated August 25, 2010); AR.17 (hospital visitor pass dated August 26, 2010); AR.23 (Head Start materials dated August 27, 2010).

The hearing officer also reasoned that Ms. Peterson handled a number of other business matters during the period of her personal difficulties. AR.26 at 9 (Ms. Peterson attended recertification meeting on June 17, 2010, responded “quickly and completely to a request for information from the HRA dated July 6, 2010,” left “multiple phone messages for Ms. Hoechst in the June/July period regarding the changeover in the property she was moving to and how much utility allowance reimbursement she would receive”, faxed the lease to the HRA on July 23, 2010, and “promptly sent” the HRA a request for an informal hearing). The hearing officer ultimately concluded that “there is no basis on which to excuse

Ms. Peterson from her income reporting obligation to the HRA.” AR.26 at 9.⁴ The hearing officer thus made a credibility determination in considering – but rejecting – Ms. Peterson’s testimony regarding mitigating circumstances.

Ms. Peterson argued, without providing any legal authorities, that her motives were highly relevant to the decision. But the federal regulations did not require a finding of bad faith or improper motive.⁵ Instead, the HRA had the discretion to terminate benefits for failure to comply with the family obligations, including failure to report income. 24 C.F.R. §§ 982.551, .552, .516; see also *Rucker*, 535 U.S. at 130-31 (rejecting argument that participant must have knowledge of drug use in unit to terminate Section 8 benefits).

Ms. Peterson also argued that the hearing officer did not consider the mitigating circumstances or her evidence submitted at trial, asserting that an agency decision may be found to be arbitrary and capricious where the agency “entirely failed to consider an important aspect of the problem[.]” *White v. Minnesota Dep’t of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997). Ms. Peterson cited to a series of non-binding unpublished cases in an effort to

⁴ The HRA’s Administrative Plan specifically stated that “acceptable reasons for missing appointments or failing to provide information by deadlines are: medical emergency, family emergency.” AR.2 at 19. Ms. Peterson did not claim that either a medical or family emergency caused her failure to report income.

⁵ Ms. Peterson also noted the hardship for herself and her children, which the HRA considered. AR.26 at 5; AR.29 at 3. Unfortunately, all participants in the Section 8 Program and those on its waiting list could likely make a hardship argument. There simply is not enough funding to help everyone who wants assistance, and that is why compliance with the Program requirements is crucial for those fortunate enough to receive vouchers.

transform the *White* test into a mandate that mitigating circumstances trump all other considerations in Section 8 termination hearings. (Peterson Br. at 22-23, App. 48-60.). But this argument failed to consider the explicit federal regulation that it is permissive to consider mitigating circumstances. 24 C.F.R. § 982.552. And it failed to consider the Minnesota Supreme Court's deferential standard of review. *Hinneberg*, 706 N.W.2d at 224 n.1, 225; *Dietz*, 487 N.W.2d at 239. Of course, unpublished cases are not binding authority. Minn. Stat. § 480A.08, subd. 3 (2010).

In any event, the unpublished cases were distinguishable from the present case because the court found that the hearing officer in those cases failed to demonstrate any consideration whatsoever of the relevant mitigating circumstances. Peterson Br. at 22-23, App. 48-60 (citing *Alich v. Dakota County Comm. Dev. Auth.*, 2003 WL 230726 at *2 (Minn. App. 2003); *Hicks v. Dakota County Comm. Dev. Agency*, 2007 WL 2416872 at *4 (Minn. App. 2007); *Hassan v. Dakota County Comm. Dev. Agency*, 2009 WL 437775 at *3 (Minn. App. 2009); *Pittman v. Dakota County Comm. Dev. Agency*, 2009 WL 112948 at * 4 (Minn. App. 2009)). By contrast, in the present case, the hearing officer carefully considered evidence of mitigating circumstances. AR.26 at 4-5, 9-10.

These unpublished decisions did not change the overarching principle that the housing authority remains vested with the discretion to determine the appropriate remedy for a participant's breach, unless its decision can be shown

to be arbitrary and capricious. *Rucker*, 535 U.S. at 130-31; *Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700, 703 (Minn. 1999); AR.2 at 6, 7, 8, 14, 18. The federal regulations did not require the hearing officer to detail each and every reason for her decision. Rather, she was required to review the evidence and make a reasoned decision. There was ample support in the evidence for the hearing officer to reach the conclusion she did.

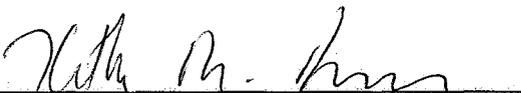
The hearing officer properly considered all of the evidence presented, resolving any conflicts in favor of the HRA. The decision was the product of reasoned decision making, not arbitrary or capricious action.

CONCLUSION

The Court should therefore affirm the informal hearing officer's decision upholding the HRA's decision to terminate Ms. Peterson's Section 8 rental assistance.

Dated: March 7, 2011.

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STATE OF MINNESOTA
IN COURT OF APPEALS

Melissa Peterson,
Relator,

Court Appeals No. A10-2053

vs.

CERTIFICATION OF BRIEF LENGTH

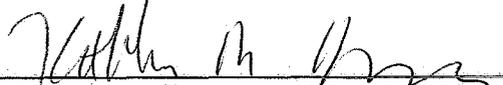
Washington County Housing
and Redevelopment Authority,

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 9,429 words. This brief was prepared using Microsoft Word for Windows XP Professional.

Dated: March 7, 2011.

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