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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1603**

Antoinette Jones,  
Relator,

vs.

Dakota County Community Development Agency,  
Respondent.

**Filed July 21, 2009  
Affirmed  
Halbrooks, Judge**

Dakota County Community Development Agency

Laura Jelinek, Terrance Hendricks, Southern Minnesota Regional Legal Services, Inc.,  
166 East 4th Street, Suite 200, St. Paul, MN 55101 (for relator)

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

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and  
Muehlberg, Judge.\*

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

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Relator Antoinette Jones challenges the decision of respondent Dakota County Community Development Agency (CDA) to terminate her Section 8 housing benefits on the grounds that the decision is unsupported by substantial evidence and is arbitrary and capricious, and that the agency erred by not granting her a reasonable accommodation under the federal Fair Housing Act and the Minnesota Human Rights Act. We affirm.

### FACTS

Jones participated in a Section 8 rental-assistance program that is federally funded by the Department of Housing and Urban Development and administered by the CDA. Participants in the CDA's Section 8 housing program are required to sign a document entitled "Applicant/Tenant Certification and Statement of Tenant Responsibilities" when they apply for housing benefits and then annually for recertification. The document, which was signed by Jones on July 20, 2007, included the following terms:

- I certify that the members of my household, that I have listed on my application, are the only people that live/stay in my housing unit.
- I understand that I must obtain prior approval from the CDA and my landlord before adding an additional member to my household. . . .
- I understand that I can have visitors stay with me on a "temporary" basis, and I understand that "temporary" is considered to be no more than a total of ten days during any 30 day period. I must obtain prior approval from the CDA if I plan to have someone stay with me for more than ten days.

- I understand that failure to report any additional household member or visitors to the CDA or obtain prior approval to add a member as required above, will result in termination of my housing assistance.
- I certify that I will notify the CDA of all changes in my household income and composition within 10 days of the change. All changes must be reported in writing. . . .
- I understand if I fail to report changes in my household composition [who lives in my unit] and all increases in my household income, my housing assistance may be terminated. I also understand that I will be required to pay back benefits that were overpaid on my behalf due to untimely reporting or non-cooperation with information requests.
- I understand that false statements or information are punishable under Federal law. I understand that false statements or information are grounds for termination of housing assistance . . . .

When she signed the document in July 2007, Jones reported that her household consisted of herself and her three children.

On August 1, 2007, in the course of conducting a routine housing-quality inspection, the CDA inspector noted that it appeared that more than one adult was living in Jones's unit. On February 11, 2008, the CDA made a fraud referral to the Dakota County Sheriff's Office to investigate the number of adults living there. On March 31, 2008, Jones called the CDA to advise the agency that she had given birth to a daughter on March 12, 2008. Jones did not mention any additional adults living in the unit at that time.

At approximately 1:50 p.m. on April 17, 2008, two detectives from the Dakota County Sheriff's Office conducted a knock-and-talk investigation at Jones's residence. A

male, who was later identified as Bradley Swager, answered the door. Jones, who was home at the time, invited the detectives into the residence and volunteered to talk to them. After being asked how often Swager was at the residence, Jones stated, “Oh God, well since I had the baby he’s been here almost every day since I’ve had the baby.” Jones also said, “[W]hen we moved here, he stayed here a month and went back to his grandmother and then we’ve been off and on so it’s been like just a whole straight living but off and on.” The detectives also talked to Swager, who told the detectives that he stayed with Jones for “maybe a week or two at the most since I found out she was pregnant.” The detectives observed that Swager’s clothes were in the bedroom closet and his toiletries were in the bathroom.

Later that day, Jones called the CDA and stated that Swager would be staying at her residence for more than ten days. Jones was advised that prior approval was required for any stay exceeding ten days and was reminded of the proper procedure to follow. On April 18, 2008, the day after the detectives’ visit, Jones delivered a letter to the CDA, confirming her phone call and requesting that Swager be added to her household. Jones stated that Swager “has been staying with me sometimes for more than 10 days a month . . . to help me through my pregnancy after I gave birth on March 12th.” In addition, Jones wrote:

I would like to have him added because I will be returning to work shortly and need a babysitter for the new born. It is important that he is here so I can return to work, otherwise I will not be able to afford daycare or hold a job. I have 2 interviews next week and am hoping to be started in a position shortly.

On April 30, 2008, Jones again wrote to the CDA. She stated:

Because of my medical condition I have been back to the physiologist [sic]. I have attached a letter stating that I need someone here with me to help me. I will be seeing her on a regular basis and having my medication revised. It's important that I have someone here for my children's well being.

Jones attached an April 25, 2008 letter from Michelle A. Brouillette, LP, Ph.D., who indicated that she had seen Jones professionally on April 23, 2008, for complaints of depression.<sup>1</sup> Dr. Brouillette wrote:

Due to [Jones's] current symptoms as well as the possibility of postpartum depression, it is recommended that she have her significant other or family friend live with her on a daily/nightly basis in order to provide consistent care for her 3 older children and 1-month-old infant daughter. Due to her current level of functioning, if this is not provided, there is concern regarding her children's care.

Jones's letter also stated that she had misunderstood the CDA policy on visitors because the CDA policy differed from the Metropolitan Council Housing and Redevelopment Authority (Metro HRA) rules that governed her former residence.

On June 3, 2008, the CDA notified Jones that her Section 8 housing benefits would be terminated on July 31, 2008, as a result of her violation of program rules. Specifically, the CDA advised Jones that she had misrepresented her household

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<sup>1</sup> To her brief, Jones appended records from four medical appointments: January 4, 2005; April 23, 2008; May 9, 2008; and May 14, 2008. These records were not submitted to the CDA or to the hearing officer, and thus are not part of the record on appeal. We therefore do not consider them. *See Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) ("It is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered.").

composition and failed to obtain pre-approval from the CDA to add an adult to her household. The letter also stated that Jones was required to repay \$3,692 for benefits that she had been overpaid. Jones requested a hearing in order to challenge the decision.

An informal hearing was held before a hearing officer on June 25, 2008. Following the hearing, the hearing officer issued a decision terminating Jones's Section 8 housing benefits. The hearing officer concluded that

the testimony, information and evidence supports the conclusion that Brad Swager did live/stay with [Jones] since at least March 12, 2008, if not before, and her first attempt to obtain approval from the CDA to add Swager to her household was not until April 18, 2008, which is clearly beyond the 10-days stated in the . . . CDA's policy.

This appeal follows.

## D E C I S I O N

An agency acts in a quasi-judicial manner “when the commission hears the view of opposing sides presented in the form of written and oral testimony, examines the record and makes findings of fact.” *In re Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980). “An agency’s quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency’s jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Carter v. Olmsted County Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). “We defer to an agency’s conclusions regarding conflicts in testimony . . . and the inferences to be drawn from testimony.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

## I.

Jones argues that substantial evidence does not support the decision to terminate her Section 8 benefits. “When [an agency] engages in a quasi-judicial function, a reviewing court applies the substantial evidence test.” *In re Petition of N. States Power Co. for Auth. to Change Its Schedule of Rates for Elec. Serv. in Minn.*, 416 N.W.2d 719, 723 (Minn. 1987) (quotation omitted). A decision is supported by substantial evidence when it is supported by “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). The substantial-evidence test “is met when we find such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *In re Request of Interstate Power Co.*, 574 N.W.2d 408, 415 (Minn. 1998) (quotation omitted).

Substantial evidence, including the statements of Jones and Swager, supports the hearing officer’s decision to terminate Jones’s housing assistance based on her failure to obtain prior approval for Swager’s presence in the unit for more than ten days in a 30-day period. Detective David Sjogren’s report stated that when Jones was asked on April 17, 2008, if Swager had been living at the residence, she stated, “[W]hen we moved here, he stayed here a month and went back to his grandmother.” Later, Jones told the detectives that Swager would live with her for a couple weeks and then they would fight and he would return to Wisconsin.

Detective Sjogren contacted Swager's grandmother to inquire about her grandson's living arrangements. She stated that Swager mainly stayed with Jones on weekends and with her during the week but added that Swager had been staying with Jones since the baby was born. In addition, the detectives' observations of Swager's clothes in the closet and personal items in the bathroom is consistent with the inspector's e-mail message in August 2007 that there appeared to be more than one adult living in Jones's unit. In her letter to the CDA dated April 18, 2008, Jones admitted that Swager had stayed with her more than 10 days in a month. And Swager testified at the hearing that "We moved here from Metro HRA" and that "he was at [Jones]'s assisted unit a large amount of the time."

Jones contends that the findings by the hearing officer are insufficient. We disagree. "In order to facilitate appellate review, an administrative agency must state the facts and conclusions essential to its decision with clarity and completeness." *Carter*, 574 N.W.2d at 729. "The agency must explain on what evidence it is relying and how that evidence connects rationally with its choice of action." *Id.*

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 Plaintiff's testimony, must demonstrate that all relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony. . . . These requirements are not suggestive guidelines, but are mandates which impose affirmative duties upon the deliberative process.

*Id.* at 729–30 (ellipsis in original) (quotation omitted).

In this instance, we agree with Jones that the hearing officer's "Findings of Fact" section is more of a summary of the witnesses' testimony than a true reflection of her independent factual findings based on the evidence presented at the hearing. But the hearing officer's "Conclusion" section does provide her analysis of the evidence, her comments on the inconsistencies in Jones's testimony, and her credibility determinations.

The hearing officer concluded, in part:

After a thorough and thoughtful review of all the evidence, information and testimony presented at the informal hearing and based on a preponderance of evidence, the hearing officer has concluded that, although . . . Jones did submit a late request to the CDA on April 18, 2008, to add Brad Swager to her household, she had already allowed Mr. Swager to live/stay with her well beyond the ten days cited in the CDA's visitor policy and continued to allow him to live/stay with her without CDA approval and thus violated her program obligations as a result of her failure to obtain prior approval from the CDA to allow him to live/stay in her assisted unit. In reaching this conclusion, the hearing officer is relying primarily on the following information and observations (in no particular order):

- Mr. Swager testified at the informal hearing that there was confusion when WE moved here from Metro HRA. He further testified that WE pretty much signed anything as there was so much going on. The hearing officer notes that this implies that even as far back as August of 2007 Ms. Jones and Mr. Swager were living/staying together.
- Mr. Swager testified at the informal hearing that if they owe money because he was staying there they are okay with that. The hearing officer notes that this is an admission on Mr. Swager's part that he was in fact living/staying in Ms. Jones' assisted unit. The hearing officer further notes the following additional testimony provided by Mr. Swager as further admission that he

was in fact living/staying in Ms. Jones' assisted unit in violation of CDA policies:

- Mr. Swager testified that in March he was at Ms. Jones' assisted unit a large amount of the time.
  - Mr. Swager testified that he talked to Ms. Jones' mom and decided it would be best if he stayed with Ms. Jones.
  - Mr. Swager testified that the landlord is okay with him living there.
  - Mr. Swager testified that he was just trying to get Ms. Jones help and if need be he would leave.
  - Mr. Swager testified that if they decide he is leaving she will need the help.
- Both Ms. Jones and Mr. Swager testified that they thought Mr. Swager could live/stay with Ms. Jones for 30 days before he had to be reported to the CDA. The hearing officer notes that not only was the CDA's 10-day visitor policy provided to Ms. Jones both verbally and in writing in July of 2007 and Ms. Jones signed a document stating that she understood the CDA's policies, but in Ms. Jones' April 17, 2008, phone call to the CDA she stated that Mr. Swager would be there longer than ten days and she wanted to add him; thus, Ms. Jones was clearly aware of the CDA's 10-day visitor policy and Ms. Jones' and Mr. Swager's testimony appear to be in conflict with other evidence. This is further reinforced by Ms. Jones' statement to [Detective Sjogren] when she stated that maybe she did know.

While Jones urges us to conclude that the hearing officer's decision is unsupported by the record, a fair reading of the hearing officer's decision is that she did not find Jones and Swager's explanations to be credible. The hearing officer's decision, which reflects

her consideration of the witnesses' testimony, her credibility determinations, and the bases for her decision, is supported by substantial evidence.

## II.

Jones argues that the hearing officer's decision was arbitrary and capricious because the hearing officer failed to consider all relevant and mitigating circumstances, including Jones's disability, the extent of her culpability in allegedly violating her program obligations, and the effects of termination on her children.

An agency ruling is arbitrary and capricious if the agency: (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

*White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Oct. 31, 1997). An "agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated." *Blue Cross & Blue Shield*, 624 N.W.2d at 277 (quotation omitted).

Contrary to Jones's argument, the hearing officer addressed Jones's disability:

Ms. Jones testified that the reason Mr. Swager was living/staying with her was because of her doctor's recommendation. The hearing officer notes that Ms. Jones did not see the doctor until April 23, 2008, which is well after the evidence supports Mr. Swager living with her. The hearing officer further notes that the doctor's April 25, 2008 [letter], provided to the CDA references also previous appointments confirming a history of depression, yet nothing

was told to investigators when they conducted the knock and talk investigation on April 17, 2008.

The hearing officer noted in her decision that Jones's April 23, 2008 medical appointment occurred well after the evidence suggests that Jones had violated the program rules and subsequent to the detectives' investigation of the allegation, months earlier, that more than one adult was living in her unit. In addition, the medically based explanation for the need for Swager's presence in the housing unit is in stark contrast to Jones's April 18, 2008 letter to the CDA, wherein she stated that she wished to add Swager because she intended to return to work soon and could not afford daycare for her infant daughter. She made no mention of a disability to the CDA.

Jones next contends that the hearing officer failed to consider her lack of culpability due to her good-faith effort to add Swager to her household in April 2008. But as noted, there is considerable evidence that Swager had been living with Jones since she moved into the residence in August 2007 and that she was aware of the program rules that limited visitors to ten days in a 30-day period. Again, the hearing officer's decision to reject this argument is supported by the record.

Finally, Jones asserts that the hearing officer's decision was arbitrary and capricious because she failed to consider the impact of the termination on Jones's children.

In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA *may consider* all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating

circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

24 C.F.R. § 982.552(c)(2) (2008) (emphasis added).

It is not clear from our record what argument, if any, Jones made at the hearing regarding the impact on her children. While the hearing officer did not specifically address the impact of the decision on Jones's children, she was not required to do so under the regulations. We therefore conclude that the absence of this discussion does not make the decision arbitrary and capricious.

### III.

On appeal, Jones characterizes her argument in terms of the CDA's failure to accommodate her disability under the federal Fair Housing Act, 42 U.S.C. § 3604(f)(1) (2006), and the Minnesota Human Rights Act, Minn. Stat. § 363A.10 (2008). In order to be granted a reasonable accommodation, Jones must have a disability, request an accommodation, and show "that her requested accommodation is (1) linked to her disability-related needs, (2) necessary to afford her an equal opportunity to enjoy Section 8 benefits and (3) possible to implement." *See Hinneberg v. Big Stone County Hous. & Redev. Auth.*, 706 N.W.2d 220, 226 (Minn. 2005) (quotation omitted). Jones has the burden of proving these elements by a preponderance of the evidence. *See Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252–53, 101 S. Ct. 1089, 1093 (1981).

The federal Fair Housing Act, 42 U.S.C. § 3602(h) (2006), defines a person with a disability to include an individual (1) with a physical or mental impairment that

substantially limits one or more major life activities, (2) who is regarded as having such an impairment, or (3) who has a record of such an impairment. On this record, Jones has not established that she has a physical or mental impairment that substantially limits one or more major life activity. In support of her argument that her depression necessitates Swager's presence in her home, Jones submitted one letter. While Jones appended to her brief a later letter from Dr. Brouillette dated June 20, 2008, it does not appear to have been provided to the hearing officer. Thus, it is not in our record. *See Plowman*, 261 N.W.2d at 583.

But the record does include Jones's June 5, 2008 letter to the CDA, challenging the termination decision. There, Jones stated:

I had no way to get pre approval for Brad Swager as my post partum depression came on all of a sudden. I have provided you with a Dr.'s note that states I need someone here with me to help. After this conclusion was drawn with my Dr. I asked Brad to move in to help me and sent the request to add him to you. I had no choice to have someone here as my medical condition required it.

That chronology is contradicted by Jones's own request to the CDA to add Swager on April 18, 2008, based on her stated need for Swager to provide daycare when she returned to work. After reviewing the documentary evidence and listening to the testimony, the hearing officer concluded that Jones knowingly violated the program rules before she constructed a justification for doing so. Because the decision to terminate Jones's housing benefits is supported by substantial evidence and is not arbitrary and capricious or unlawful, we affirm.

**Affirmed.**