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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0528**

Joclyne Thompson,
Relator,

vs.

The Housing and Redevelopment Authority of Duluth,
Respondent.

**Filed October 15, 2013
Affirmed
Kirk, Judge**

Housing and Redevelopment Authority of Duluth, Minnesota

Gwen Updegraff, Legal Aid Service of Northeastern Minnesota, Duluth, Minnesota (for relator)

Joseph J. Mihalek, Eric S. Johnson, Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

KIRK, Judge

In this certiorari appeal from the decision of a hearing officer for the Duluth Housing and Redevelopment Authority (HRA), relator-tenant Joclyne Thompson challenges the termination of her section 8 housing assistance for failure to attend

monthly income-recertification meetings, arguing that (1) the hearing officer acted arbitrarily, (2) the rule requiring her to appear in person every month is unreasonable, and (3) HRA lacked authority to terminate her housing subsidy for failure to attend scheduled appointments. We affirm.

FACTS

HRA is the public housing agency that administers section 8 funds within the city of Duluth. In August 2012, Thompson applied to HRA to transfer her section 8 voucher from another city to Duluth, certifying in the process that she had no income. HRA approved Thompson's application and issued a voucher, subject to HRA's rule that benefit recipients claiming zero income must appear in person each month to recertify their zero-income status. Over the next few months, Thompson repeatedly failed to appear at monthly recertification meetings, requested numerous schedule changes, failed to appear at rescheduled meetings, and attempted to recertify by mail.

On November 16, 2012, Thompson appeared in person after HRA notified her that it planned to terminate her benefits and that a hearing had been scheduled for that date. HRA permitted Thompson to resolve the pending termination by signing zero-income certification forms for the outstanding months and reminded her that she would have to appear in person each month thereafter. After Thompson missed subsequent appointments, including one scheduled on a date Thompson chose, HRA notified her that her benefits would be terminated. HRA scheduled a hearing for January 24, 2013, and Thompson appeared in person for that hearing. After testimony from Thompson and an

HRA representative, the hearing officer affirmed HRA's decision to terminate Thompson's benefits. Thompson appealed by writ of certiorari.

DECISION

A housing authority acts in a quasi-judicial capacity when it takes evidence and hears testimony. *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004). "An agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Id.* (quotation omitted).

I. The hearing officer's decision was not arbitrary.

Thompson first argues that the hearing officer's decision was arbitrary because she did not consider whether Thompson was culpable for failing to attend appointments. "[A]n agency ruling is arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem." *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. Of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006).

Culpability may fairly be considered an important aspect of the problem in this case because HRA's administrative plan requires HRA to consider culpability before terminating benefits. But Thompson's argument fails because the record shows that the hearing officer did consider culpability. Thompson testified about her difficulties at the January 24 hearing, and the hearing officer noted her testimony before upholding the termination decision. The hearing officer did not explicitly find Thompson culpable but her report shows that she inferred Thompson's culpability. We defer to the hearing

officer as to that inference. *See In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (appellate courts “defer to an agency’s conclusions regarding conflicts in testimony . . . and the inferences to be drawn from testimony”). The hearing officer’s decision may also have been based on her assessment of Thompson’s credibility; that assessment is not reviewable. *See Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (on certiorari review “[t]he reviewing court is not to retry the facts or make credibility determinations”).

Thompson’s second argument is that HRA imposed an “impossible burden” by requiring her to appear in person every month to recertify her zero-income status. We have held that “[i]mposing an impossible burden is an arbitrary decision.” *Carter v. Olmstead Cnty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 733 (Minn. App. 1998). But the fact that Thompson appeared in person on two occasions demonstrates that doing so was not “impossible” in a legal sense. *Black’s Law Dictionary* defines “impossibility” as “a fact or circumstance that cannot occur, exist, or be done.” *Black’s Law Dictionary* 824 (9th ed. 2009). The burden the rule imposed on Thompson may have been heavy, but it was not the kind of “impossible burden” that would render the termination decision arbitrary.

II. The rule requiring monthly in-person recertification is not unreasonable.

Thompson argues that the in-person recertification rule is unreasonable as applied to her under the facts of this case because she lives at a distance from HRA offices, lacks reliable transportation, and struggles with financial challenges.

“[An agency rule] is unreasonable (and therefore invalid) when it fails to comport with substantive due process because it is not rationally related to the objective sought to be achieved.” *Mammenga v. State Dep’t of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989). The fact that the application of a rule may yield a harsh result in a particular case does not invalidate the rule. *Id.* (citing *Wickard v. Filburn*, 317 U.S. 111, 129–30, 63 S. Ct. 82, 91 (1942); *Tepel v. Sima*, 213 Minn. 526, 536, 7 N.W.2d 532, 537 (1941)). Whether a rule is unreasonable does not depend on the burden it imposes on a particular person under particular facts, but on whether, under those facts, it lacks a rational relationship to a legitimate legislative objective. *Id.* at 789–90. Because the enabling statute for section 8 housing benefits is the United States Housing Act (USHA), the proper inquiry is whether the challenged rule is rationally related to a legitimate objective of the USHA.

Accurate reporting of financial data is a legitimate objective of the USHA. *See, e.g.*, 42 U.S.C. § 1437f(o)(5)(B) (requiring public housing agencies to “establish procedures that are appropriate and necessary to ensure that income data provided . . . by families . . . is complete and accurate”). HRA argues that in-person reporting may enhance accuracy because a recipient is less likely to be untruthful when face-to-face with an HRA representative, and because the representative can ask follow-up questions to test the recipient’s veracity and credibility. Because we find that the rule is rationally related to a legitimate goal of the USHA, we cannot conclude that the rule is unreasonable.

III. HRA acted on legitimate authority.

Thompson argues that HRA did not have authority to terminate her benefits. Specifically, Thompson begins by proposing a narrow characterization of the hearing officer's decision that emphasizes failure to appear over failure to provide information, and she then asserts that HRA lacked authority to terminate her benefits based solely on her failure to appear. This argument fails because the obvious purpose of the monthly meetings was for Thompson to provide information about her income, and the Code of Federal Regulation gives public housing agencies (PHAs) authority to terminate assistance for failure to supply financial information. 24 C.F.R. § 982.552(c)(1)(i) (2013) (giving PHAs authority to terminate assistance if the family violates any of the "family obligations" detailed in 24 C.F.R. § 982.551); 24 C.F.R. § 982.551(b)(1)–(2) (2013) (listing among the "family obligations" the duty to "supply any information that the PHA and HUD determines is necessary in the administration of the program," and the duty to "supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination . . . of family income and composition in accordance with HUD requirements"). These provisions plainly give HRA the authority to terminate Thompson's assistance for failure to comply with HRA's reasonable requirement that Thompson appear in person each month to provide information about her income.

HRA, acting on valid authority, enforced an agency rule rationally related to a legitimate goal, and the hearing officer did not decide the matter arbitrarily.

Affirmed.