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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0292**

Dahabo S. Jamal,
Relator,

vs.

Rice County Housing & Redevelopment Authority,
Respondent.

**Filed September 24, 2012
Affirmed
Collins, Judge***

Rice County Housing and Redevelopment Authority

Brian N. Lipford, Michael Hagedorn, Southern Minnesota Regional Legal Services, Inc.,
Rochester, Minnesota (for relator)

G. Paul Beaumaster, Rice County Attorney, Terence Swihart, Assistant County Attorney,
Faribault, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Connolly, Judge; and
Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Relator challenges respondent's ruling terminating her eligibility to receive Section 8 housing assistance, arguing that the hearing officer failed to make sufficiently specific findings and did not properly consider all relevant evidence. Relator also disputes the sufficiency of the evidence to support respondent's ruling. We affirm.

FACTS

Relator Dahabo Jamal applied for Section 8 housing assistance on January 9, 2009. On her application Jamal identified her nephew's daughter, S.A., as a minor household member. Based on that, as of March 1, 2009, Jamal was granted a two-bedroom housing rental subsidy.

In April 2011, respondent Rice County Housing and Redevelopment Authority (RCHRA) requested the county sheriff to investigate whether there were additional adult family members living at Jamal's residence in Faribault. At some point, the focus of the investigation changed to whether six-year-old S.A. actually resided there. On May 23, Sergeant Mark Hlady went to Jamal's residence with Joy Watson, RCHRA's housing coordinator. There, Hlady met Jamal's nephew Mohammed Warsame, S.A.'s father. Warsame asserted that S.A. lives with Jamal and attends school in Owatonna, and that Warsame provides the transportation. When asked if Owatonna school officials were aware of this arrangement, Warsame responded that they were not and likely assume that S.A. lives with him in Owatonna. Warsame permitted Hlady to look around Jamal's residence. Hlady observed the bedroom that Warsame said was used by Jamal and S.A.

In the second bedroom, Hlady saw a television and video-game system. Warsame denied that he lived there, but explained that on school days he comes to drive S.A. to school in Owatonna and drives her back to Faribault.

On June 21, 2011, RCHRA sent Jamal a release form to be signed by S.A.'s guardian. RCHRA also directed that if Jamal was S.A.'s guardian she must provide guardianship papers. On July 8, RCHRA sent Jamal notice of a first violation for not providing the required information within ten days. On July 10, Jamal and Warsame executed a delegation of parental authority, transferring parental powers over S.A. to Jamal.

In an effort to verify S.A.'s residence, RCHRA sought additional information from various sources. On August 22, 2011, Owatonna public schools identified S.A. in their system since January 26, 2005, and that she would be enrolled at Wilson elementary beginning September 6, 2011. On September 13, Owatonna public schools reported S.A.'s address as 616 Bridge St. West #206, Owatonna, the address of her parents in the Woodbridge Apartments. Owatonna school district records show two Owatonna addresses for S.A. since July 2008. On September 27, Woodbridge Apartments informed RCHRA that S.A. was listed on Warsame's lease from June 19, 2008 through "present."

On September 28, 2011, RCHRA sent Jamal a letter informing her that her Section 8 housing assistance would be terminated effective October 31. The letter stated that "RCHRA has learned [S.A.] does not reside in your home." The letter also noted that RCHRA learned that S.A. is enrolled in the Owatonna school system and has been listed on Warsame's Owatonna apartment lease since June 2008. RCHRA policy states that

family obligation violations can result in termination of assistance. The letter asserted that Jamal violated obligation 2.3 A.4, stating that any information supplied by the applicant must be true and complete.

On October 27, 2011, RCHRA and Jamal held an informal discussion. In a letter dated November 3, RCHRA upheld the termination. An informal hearing occurred on December 14. Jamal was represented by Mary Vrieze, a Southern Minnesota Regional Legal Services (SMRLS) paralegal.¹

On behalf of RCHRA, Watson testified that interpreters were present when Jamal completed the Section 8 application and that Watson was given no indication that Jamal did not understand the program. Watson testified that she accompanied Hlady to Jamal's residence to investigate who was residing there. From where she stood, she was able to see into each bedroom, the family room, foyer, hall closet and kitchen. She did not see any clothes, shoes, toys, or any other items that would indicate S.A. lived there. Watson testified that she obtained the information from the Owatonna school district that showed S.A.'s Woodbridge address in Owatonna. But she further testified to receiving a letter from the Owatonna school district on October 18, 2011, stating that S.A.'s primary household is with Jamal at her Faribault address.

¹ The hearing was not recorded. Therefore, there is no transcript available. Pursuant to Minn. R. Civ. App. P. 110.03, Jamal submitted a proposed statement of the proceedings. RCHRA submitted an "Approved Statement of the Proceedings." Jamal argues that RCHRA's submission was not proper because only the hearing officer is authorized to submit an approved statement of the proceedings. The hearing officer, however, submitted an affidavit in which he states that he has reviewed RCHRA's statement of the proceedings and that the document "provides an accurate account of what occurred in this matter." We therefore rely on the "Approved Statement of the Proceedings" as the record of the hearing.

Joe Arendt, of Midwest Welfare Fraud Investigations, testified that during April and May, 2011, he made eight visits to Jamal's residence. On April 14, a man came to the door but would not let Arendt inside. Arendt did not notice a child present. From Owatonna public schools records, Arendt obtained a print-out that stated S.A. lived with her parents in Owatonna.

In the course of a separate investigation for Rice County, Arendt made numerous visits to Jamal's residence in August, 2011, but each time no one came to the door. Arendt testified that as he was leaving on August 15, he was stopped by a female resident of another apartment of the house who told him she was positive that there was not a small child living with Jamal. Arendt also testified that he went to the Woodbridge Apartment complex in Owatonna, and the manager Sam Samudio confirmed that Warsame and his wife still lived there with their four children, including S.A.

Finally, Nedra VanDam of Rice County Social Services testified that Jamal's Section 8 housing assistance was terminated because Jamal did not have a minor child living with her.

Testifying on behalf of Jamal, Warsame explained as follows: S.A. lives with Jamal because the child has a connection with Jamal and Jamal gets lonely. S.A. attends school in Owatonna and Warsame provides the transportation. Thus, on school days, Warsame has to drive from Owatonna to Faribault to pick up S.A., drive her to school in Owatonna, return to the school to pick up S.A., drive her home to Faribault, and drive back to Owatonna. Also, because Jamal does not speak English, Warsame has to help

S.A. with her homework. Warsame further testified that he works 12-hour days starting at 6 a.m.

Warsame testified that he and his wife executed a “Letter of Authorization of Caring for Minor Child” in 2008, designating Jamal as the caretaker for S.A. He also testified that S.A. has lived with Jamal for the last four years, that he informed the Owatonna school to reflect those changes, and has tried on numerous occasions to try and correct the address with the school district. The hearing officer questioned why the school district’s residence history for S.A. shows two successive Owatonna addresses if she actually lived with Jamal in Faribault. Warsame responded that the school district must be wrong.

Asha Ahmed, S.A.’s mother, also testified that S.A. lived with Jamal because Jamal would be lonely without her. Nasra Mohamud, S.A.’s aunt, testified similarly.

Jamal testified that S.A. lived with her and attended school in Owatonna. She did not know why S.A. was listed on Warsame’s Woodbridge Apartments lease or why the Owatonna school district records showed Warsame’s address for S.A. Jamal testified that S.A. did not have a lot of toys, but that she has clothes at home in Faribault.

On behalf of Jamal, Vrieze requested to have Lul Ali testify by telephone. RCHRA objected. The hearing officer inquired whether Ali would provide information additional to what was already provided by the other witnesses. Vrieze summarized Ali’s expected testimony and the hearing officer disallowed it, stating that it was repetitive, redundant, and would not add any new information. Vrieze also submitted letters from Tim Winsor and Samudio. In his letter, dated October 5, 2011, Winsor identified himself

as Jamal's landlord, and stated that he often goes to Jamal's residence and every time he is there S.A. is present. The Samudio letter, dated October 6, 2011, explains that a misunderstanding occurred regarding Warsame's lease information. The letter states:

It is my understanding that there was a miscommunication by previous Woodbridge management, who advised [Warsame] to include all of his children on his [l]ease if they were going to be in his home at any time. Since [S.A.] does come to his home on occasion, he continued to place her name on his [l]ease, even though she was spending the majority of time with [Jamal] in Faribault.

At the close of the hearing, RCHRA argued that substantial evidence contradicts Jamal's contention that she, a 62-year-old woman with medical issues, who does not speak English and does not have a driver's license, is caring for a 6-year-old child at home in Faribault: a neighbor stated that no child was living with Jamal; school records show that S.A. lives in Owatonna; and S.A. has been listed on her parents' Woodbridge Apartments lease since 2008. Jamal persisted in asserting that S.A. lived with her.

On December 20, 2011, the hearing officer issued his decision supporting RCHRA's termination of Jamal's Section 8 housing assistance. The decision states that, "[a]lthough the testimony from all parties was reviewed and considered for relevancy in reaching a decision, the testimony of [Warsame] and [Arendt] were particularly important to this case." The hearing officer found that Arendt provided "an objective view of the issue." The hearing officer found it persuasive that two separate fraud investigations had concluded that S.A. lived with her parents in Owatonna, not with Jamal in Faribault. The hearing officer found that Warsame's testimony was contradicted by RCHRA's evidence, and found RCHRA's evidence to be more credible. The hearing officer stated:

In review of the document received by [RCHRA] from the school district the school did show reported address changes on 7/16/2008, again on 4/29/2010 and finally on 9/7/2010. In regard to the reported changes in 2008 and in April 2010, the change of address shows both the current and past addresses in Owatonna for [Warsame] as being the home address for [S.A.]. It is not until the address change is reported on 9/7/2010 that her place of residence according to school records is [Jamal's] address in Faribault and this appears to have occurred after RCHRA initiated an investigation and ensuing action against [Jamal] for falsely reporting household composition.

Lastly, the hearing officer stated S.A. being listed on the Warsame Woodbridge Apartments lease in Owatonna is “in and of itself sufficient evidence to indicate that a violation of Section 8 Program rules and regulations by the household has occurred.” This appeal followed.

D E C I S I O N

I.

Jamal appeals RCHRA's decision to terminate her Section 8 housing assistance. This court upholds a housing authority's quasi-judicial decision to terminate a participant's housing assistance unless we conclude that the authority's decision is “unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Carter v. Olmsted Cnty. Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). Jamal first argues that the hearing officer's findings were inadequate for failure to demonstrate that he considered all relevant evidence presented at the hearing. The agency's decision “must be based on objective criteria applied to the facts and

circumstances of the record at hand.” *Id.* (quotation omitted). Agency discretion is not unlimited and must be explained.” *Id.* (quotation omitted). The agency’s decision must clearly and completely state the facts and conclusions essential to its decision. *Id.* “The agency must explain on what evidence it is relying and how that evidence connects rationally with its choice of action.” *Id.*

Jamal contends that, “[t]he hearing officer fails to reference any of the relevant testimony that was presented confirming that [S.A.] resided with [Jamal].” She cites *Carter* in support of her argument that the hearing officer’s findings lack sufficient specificity. In *Carter*, this court reversed the housing authority’s termination of housing assistance because the hearing officer’s findings were not sufficiently specific. *Id.* at 730. There, the hearing officer’s decision “fail[ed] to mention Carter’s and [another person’s] testimony or any of the documentary evidence that does not support [the hearing officer’s] conclusion and gives no explanation as to why [the hearing officer] chose to disregard it.” *Id.* Here, however, the hearing officer’s decision begins by stating that “testimony from all parties was reviewed and considered for relevancy” and that the testimony of two witnesses was “particularly important” to his decision, namely, Warsame and Arendt.

Specifically, the hearing officer stated that Arendt was credible because he provided an “objective view” of this case. The hearing officer explained that Arendt conducted two separate investigations into reports that Jamal’s household composition had not been properly reported to RCHRA. The conclusion of both investigations was that S.A. resided with her father in Owatonna and not with Jamal in Faribault. Because

the hearing officer considered Arendt an objective, disinterested source, the hearing officer found Arendt's testimony integral to his decision.

Moreover, the hearing officer found that Warsame's statements "are contradicted by evidence provided in support" of RCHRA's decision. The hearing officer could not reconcile the inconsistencies regarding S.A.'s home address stemming from the records of the Owatonna school district. Warsame testified that he reported S.A.'s Faribault address to the school district beginning in 2008. But the hearing officer reviewed the evidence and found that although school district records reflect two address changes, one in July 2008 and the second in April 2010, each shows both the current and previous addresses as Owatonna residences for S.A. The hearing officer found that while Jamal's recertification document submitted to RCHRA in January 2010 lists S.A.'s residence as Jamal's Faribault address, the change to the school records in April 2010 shows the change of S.A.'s address to the current Owatonna address for the Warsame household.

Because of this contradiction the hearing officer concluded:

In consideration of Warsame's statement that he began reporting changes in 2008, and the documents showing that the school records changes that were made beginning in 2008, it is my assumption that the records were amended in accordance with Warsame's contact. These records in my opinion contradict Warsame's statement that the school recorded the addresses in error and that the school in fact made those changes based on [Warsame's] report.

The hearing officer continued by noting that S.A. was simultaneously listed on Jamal's Faribault lease and Warsame's Owatonna lease, and stated that "[m]y opinion of the matter, and based upon evidence and testimony presented by both [Jamal] and

[RCHRA], is that . . . the household composition . . . is inaccurate and indicates an act that could be considered fraudulent.”

While multiple witnesses testified that S.A. resided with Jamal, the testimony did not differ greatly from Warsame’s testimony, which the hearing officer discredited. Further, although the hearing officer did not explicitly reference every bit of evidence presented, he did twice state that all evidence from all parties was reviewed and considered.

Therefore, this hearing officer’s decision is distinguishable from *Carter* in that it confirms that he considered all testimony presented, including that offered in support of Jamal’s contentions, and fully explained why he chose to disregard Jamal’s witnesses’ testimony.

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.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted). Because the hearing officer took testimony from a variety of witnesses, examined the school district records, identified and weighed inconsistencies in the evidence, made credibility findings, and based his decision upon all the evidence and testimony presented, to our satisfaction the resulting decision has a rational connection between facts found and the hearing officer’s choice to uphold the termination of Jamal’s Section 8 housing assistance, and was not arbitrary and capricious.

II.

Jamal argues that the hearing officer “fail[ed] to provide any reason for disregarding or discrediting the material testimony of other witnesses as well as material documentary evidence presented.” The hearing officer “must demonstrate that all relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony.” *Carter*, 574 N.W.2d at 729 (quotation omitted). Jamal contends that the hearing officer disregarded pertinent testimony and did not give reasons for discrediting certain testimony.

Specifically Jamal contends that the hearing officer did not explain why testimony from Ahmed, Mohamud, and Jamal was disregarded or discredited. All three testified to the effect that S.A. lived with Jamal. In essence, Ahmed, Mohamud, and Jamal’s testimony did not differ from that of Warsame: all testified that S.A. resided with Jamal for some number of years. The hearing officer’s reason for discrediting Warsame’s testimony is well-documented in the decision, and the hearing officer did not find the testimony from Ahmed, Mohamud, and relator any more persuasive than that of Warsame. While the hearing officer did not reference every bit of evidence presented, he repeatedly stated that all evidence was considered and set out his reasons for discrediting Warsame’s testimony on the point of S.A.’s place of residence. It is well-settled that it is within the hearing officer’s authority to make express credibility determinations as he did in regard to Warsame’s testimony. *See id.* at 729-30 (outlining the duties of an ALJ and concluding that there is no distinction between a legally trained ALJ and a lay hearing officer).

Jamal also argues that the hearing officer should have allowed Lul Ali, Tim Winsor, and Samudio to testify by telephone. The hearing officer inquired as to whether Ali's testimony would be substantively different than the previous four witnesses that testified that S.A. lived with Jamal. After hearing Vrieze's summary of the intended testimony, the hearing officer sustained RCHRA's objection, ruling that additional testimony would be redundant and not provide any new information. Therefore, Ali's testimony was precluded not because she would have had to appear by telephone, but because it was cumulative and redundant. See Minn. R. Evid. 403 (stating that "needless presentation of cumulative evidence" may be excluded). As to Winsor and Samudio, although neither testified, a letter from each was received in evidence and it is clear that the hearing officer took the contents into account. Specifically the Samudio letter stated that "[Warsame] continued to place [S.A.'s] name on his Lease, even though she was spending the majority of time with [Jamal]." The hearing officer noted that S.A. was listed on her parents' Woodbridge Apartments lease as well as Jamal's lease and that in his opinion this implied fraud.

III.

The hearing officer's decision must be supported by substantial evidence, defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," and "more than a scintilla of evidence, some evidence, or any evidence." *Id.* at 730 (quotations omitted). "Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings." 24 C.F.R. § 982.555 (e)(5). However, an administrative agency cannot rest its findings solely upon

hearsay evidence which is inadmissible in a judicial proceeding. *State ex rel. Indep. Sch. Dist. No. 276 v. Dep't of Educ.*, 256 N.W.2d 619, 627 (Minn. 1977). “Only where it appears that the Department clearly abused its discretion in relying upon inherently unreliable evidence, under the hearsay rule or otherwise, should the courts intervene.” *Id.*

Jamal argues that the hearing officer based his decision substantially upon unreliable hearsay evidence. However, the hearing officer explicitly assured that “testimony from all parties was reviewed and considered for relevancy in reaching a decision,” and “based on all evidence and testimony presented . . . [RCHRA] is acting within its policies . . . terminating the Section 8 HCV assistance of [Jamal’s] household.” The hearing officer noted that the testimony of Warsame and Arendt were “particularly important.”

Jamal contends that Warsame’s testimony was discredited with “questionable” hearsay evidence. There is nothing calling into question the reliability of the records originating from the school district that the hearing officer relied on. The document reflecting the address changes provided for S.A. was a screen print-out from the school. Another school record is dated and signed by an identified school administrator.

Jamal also contends that the testimony of Arendt is unreliable because he testified about a statement attributed to Jamal’s neighbor who was not identified and not present for the hearing. But it is a function of the hearing officer to make credibility determinations, and he determined that Arendt was objective and therefore reliable. Had the hearing officer based his decision solely on Arendt’s testimony, Jamal’s argument would have merit. However, the hearing officer based his decision on all the evidence

and testimony. In addition to Arendt's testimony and the evidence obtained from the school district, the hearing officer considered evidence including: a letter from Samudio confirming that S.A. was simultaneously listed on her parents' Owatonna lease as well as Jamal's Faribault lease; evidence that Warsame participated in multiple Section 8 recertification processes for Jamal while residing at Woodbridge and did not remove S.A. from his lease; testimony from Watson and Hlady that at Jamal's residence they saw no indication of a child residing there; and testimony that called into question Jamal's ability to care for a child of S.A.'s age, and the likelihood of a parent's willingness to allow it. The record contains substantial evidence for the hearing officer to rely on outside of hearsay evidence.

Affirmed.