STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0271

In the Matter of Nina Gorokhova & Vladimir Barkhudarov

Filed January 13, 2009
Affirmed in part and reversed and remanded in part
Peterson, Judge

Dakota Community Development Agency

Vladimir A. Barkhudarov, 1020 West Burnsville Parkway, Apt. 362, Burnsville, MN 55337 (pro se appellant)

Mary G. Dobbins, Landrum Dobbins L.L.C., 7400 Metro Boulevard, Suite 100, Edina, MN 55439 (for respondent Dakota County Community Development Agency)

Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Relator challenges respondent agency's calculation of family income for public-housing-subsidy purposes, arguing that the agency (1) should have given relator a standard $20 exclusion and (2) should not have included a state-funded dietary allowance in income. We affirm with respect to the $20 exclusion and reverse and remand with respect to the dietary allowance.

FACTS

Respondent Dakota County Community Development Agency (the CDA) administers federal housing-assistance programs, including Section 8 voucher programs.[1] Relator Vladimir Barkhudarov and his wife Nina Gorokhova receive housing-assistance benefits through that program. Because the amount of assistance Barkhudarov receives from the CDA is based on his family income, Barkhudarov must submit to annual review of his income by the CDA. *See* 42 U.S.C. § 1437f(o)(2)(A) (2000) (calculating assistance payment as percentage of family income), (5)(B) (requiring administering authority to review family income upon "the initial provision of housing assistance for the family and thereafter not less than annually"). The CDA calculated Barkhudarov's monthly family income as $934. Barkhudarov disputed this amount and requested a hearing. After an informal hearing, the hearing officer upheld the CDA's calculation. This certiorari appeal followed.

D E C I S I O N

Barkhudarov challenges the CDA's calculation of family income. By taking evidence and hearing testimony at the informal hearing, the CDA acted in a quasi-judicial capacity. *Cole v. Metropolitan Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004). We will uphold an agency's quasi-judicial determinations unless "they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an

[1] Section 8 housing assistance is a federally funded program designed to help low-income families obtain a "decent place to live." 42 U.S.C. § 1437f(a) (2000). It includes a voucher program to subsidize monthly rent payments. *Id.*, § 1437f(o).

erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Id.*

Barkhudarov first argues that the CDA should have reduced his income by $20 because he is entitled to a "disregard" of that amount. To support this argument, he cites 20 C.F.R. § 416.1124(12) (2008) and Minn. Stat. § 256D.435, subd. 5 (2006), which exclude the first $20 of unearned income when determining the amount of state and federal supplemental security benefits. These exclusions, however, do not apply in the Section 8 context.

Barkhudarov next argues that the CDA erred in failing to exclude a special dietary allowance from his income. Barkhudarov and Gorkhova apparently require a special diet in order to alleviate certain medical conditions, and this allowance is a cash grant used to subsidize their dietary expenditures. The record is unclear as to the precise nature of the grant but suggests that it might be a Minnesota Supplemental Aid (MSA) medical-diet allowance under Minn. Stat. § 256D.44, subd. 5(a) (2008) (providing monthly allowance for "medically prescribed diets if the cost of those additional dietary needs cannot be met through some other maintenance benefit"). This would be consistent with the hearing officer's finding that the allowance is a "cash grant," as well as Barkudarov's bank statements showing that these funds were electronically deposited into his account. *See* Minn. Stat. § 256D.47 (2008) (authorizing payment of MSA benefits by "direct deposit into the recipient's account in a financial institution").

The CDA argues that "[t]here is no exclusion contained in the regulations that applies to the income at issue in this case." We disagree. The HUD regulations

explicitly exclude from income "[a]mounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member." 24 C.F.R. § 5.609(c)(4) (2008). Although the regulatory definition of "medical expenses" does not specifically include medical-diet allowances, it does not exclude them either.[2] Under Minnesota law, however, a person may receive an MSA special-diet allowance only if the "special diet or dietary items [are] prescribed by a licensed physician." Minn. Stat. § 256D.44, subd. 5(a). An MSA special-diet allowance is, therefore, "received by the family. . . specifically for. . . the cost of medical expenses" under 24 C.F.R. § 5.609(c)(4) because the funds are specifically granted for the purpose of obtaining food items deemed medically necessary by the recipient's physician. Minn. Stat. § 256D.44, subd. 5(a). Thus, if Barkudarov's dietary allowance is, in fact, an MSA special-diet allowance, the CDA was required to exclude it when calculating his family income.

The hearing officer also erred in concluding that Barkhudarov would need to comply with the CDA's procedural requirements before the grant could be counted as a "medical expense." Specifically, the hearing officer found that Barkhudarov would have to (1) request a reasonable accommodation from the CDA, (2) provide medical documentation listing the special items to be consumed, and (3) provide receipts for the purchased items and that Barkhudarov failed to do this even when the CDA offered the medical-expense exclusion as an option. But the HUD regulations exclude from income the amount received for medical expenses, rather than the amount that is used for medical

[2] Under 24 C.F.R. § 5.603(b) (2008), medical expenses are defined rather circularly as "[m]edical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance."

expenses. 24 C.F.R. § 5.609(c)(4). An MSA special-diet allowance is received for the specific purpose of a medically prescribed diet. Minn. Stat. § 256D.44, subd. 5(a).

We, therefore, reverse the CDA's determination of Barkhudarov's family income to the extent that it includes amounts received for the special dietary allowance. But because the record is unclear as to the precise nature of these funds, we remand for findings on whether they are, in fact, an MSA special-diet allowance under Minn. Stat. § 256D.44, subd. 5(a). If so, CDA must exclude the allowance from income.

Affirmed in part, reversed in part, and remanded.