STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0362

Amy Vann,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

Filed April 14, 2009
Affirmed
Toussaint, Chief Judge

Dakota County Community Development Agency

Laura K. Jelinek, Southern Minnesota Regional Legal Services, Inc., 166 East Fourth Street, 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; Worke, Judge; and Randall, Judge.*

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

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

TOUSSAINT, Chief Judge

Relator Amy Vann, a housing assistance recipient, challenges the decision of respondent Dakota County Community Development Agency to terminate her assistance, arguing that she was deprived of due process and that the decision was not supported by substantial evidence. Because relator was not deprived of due process and substantial evidence supports respondent's decision, we affirm.

D E C I S I O N

"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 HRA*, 574 N.W.2d 725, 729 (Minn. App. 1998).

1. Due Process.

Before terminating assistance, respondent is required to "give a participant family an opportunity for an informal hearing" to consider whether a termination of its assistance is "in accord with the law, HUD regulations and PHA policies." 24 C.F.R. § 982.555(a) (2008). Relator argues that she was denied due process because she did not attend such a hearing.

She received a letter from respondent telling her that her assistance would terminate on November 30, 2007, and that she could request a hearing. Respondent replied to her request for a hearing in another letter, dated November 19, 2007, that told relator her hearing was scheduled for November 28, 2007. Relator did not appear for the

hearing and, on January 9, 2008, respondent informed her of its decision to terminate her assistance.

On February 4, 2008, respondent received a letter from relator's attorney explaining that relator had not received the letter informing her of the hearing until November 29, 2007, when a neighbor who had received the letter by mistake gave it to relator. Relator's attorney did not provide any explanation as to why relator had waited from November 29, 2007, when she learned that the hearing had been held the previous day, until February 4, 2008, to inform respondent of the problem.

In other contexts, failure to take prompt action is a factor considered in awarding relief from a judgment. *See, e.g.*, *Sand v. School Service Employees Union*, 402 N.W.2d 183,186 (Minn. App. 1987) (party seeking relief from judgment under Minn. R. Civ. P. 60.02 must show "that it has acted with due diligence after notice of entry of judgment"), *review denied* (Minn. April 29, 2987); *Howard v. Frondell*, 387 N.W.2d 205, 208 (Minn. App. 1986) (upholding default judgment partly because defaulting party, which had not received notice of hearing on default motion, had "no sensible excuse for [its] failure to answer"), *review denied* (Minn. July 31, 1986). Relator has presented no sensible excuse for her failure to wait from November 29, 2007, until February 4, 2008, to take any action in regard to the missed hearing.

For the first time on appeal, relator alleges that she contacted respondent on November 29, 2008, to say she had just received notice of the hearing and to ask that it be rescheduled. No evidence supports this allegation, and relator's attorney's letter of February 4, 2008, did not mention any previous attempt of relator to contact respondent.

Thus, the allegation is completely without support in the record. In any event, this court does not generally address matters not presented to the prior decision-maker. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Respondent gave relator an opportunity to attend the hearing by scheduling it and notifying her, by letter, of its date. Relator was not deprived of due process.

2. Substantial Evidence.

Respondent told relator that her assistance would be terminated because she failed to supply information requested and failed to take responsibility for paying the utilities for her apartment; the hearing officer, presented with no conflicting information, adopted these findings. Relator argues that the findings are not supported by substantial evidence.

A. Failure to Supply Information.

Recipients of housing assistance are required to supply any information requested for use in reexamination of their income. 24 C.F.R. § 982.551(b)(2). Relator signed a statement saying that she knew she was required to cooperate with respondent and that cooperation included "providing requested information in a timely manner." Respondent sent relator two letters requesting financial information, namely relator's tax returns. The first letter said her 2005 and 2006 returns were needed by a specific date; the second, written about two weeks after that date, said that the 2005 return had not been submitted and that, if it was not submitted by a given date, relator's benefits could be terminated.

Relator does not address her failure to supply her 2005 tax return. She claims that the failure "to supply information requested by the CDA" refers only to information about utilities because "[a]ll the documents in the record refer to the utility issue." But

the record contains copies of both of respondent's letters that concern tax returns and do not mention utilities. Therefore, the record disproves relator's claim.

B . Failure to Maintain Utilities.

Recipients of housing assistance "may not commit any serious or repeated violation of the lease." 24 C.F.R. §982.551(e). Relator's lease provides: "Tenant shall pay for the following utilities: heat, electricity and telephone." Relator does not dispute that she failed to pay for utilities and the utility company transferred responsibility for payment to her landlord. The record shows that relator was repeatedly asked to pay for the utilities and have responsibility for payment transferred back to herself. Thus, she committed "repeated violation of the lease."

Relator relies on 24 C.F.R. § 404(b) (2008), stating that assistance recipients are responsible for any breach of mandated housing quality standards resulting from a failure to pay utilities, to argue that, because her nonpayment did not result in a breach of any housing quality standards, she did not violate her obligation. But 24 C.F.R. § 404(b) is a supplement to, not a limitation of, the obligation to refrain from violating a lease imposed by 24 C.F.R. § 982.551(e): it provides that participants are also obliged to repair any additional damage from violation of their lease obligation to pay utilities. Relator's reliance on 24 C.F.R. § 404(b) is misplaced.

Finally, relator fails to show that she made the overdue payment before she attempted to have responsibility for the utilities payment returned to her own name. Relator also argues that the hearing officer erred in failing to consider the "relevant circumstance" of relator's inability to have the utilities account returned to her own name

but again does not address her own refusal to make the overdue utilities payment.

Substantial evidence supported the decision to terminate relator's assistance.

Affirmed.