STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0371

Steven Larsen,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

Filed April 14, 2009
Affirmed
Collins, Judge[*]

Dakota County Community Development Agency

Lisa Hollingsworth, Southern Minnesota Regional Legal Services, 166 East Fourth Street, Suite 200, St. Paul, MN 55101 (for relator)

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

Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and Collins, Judge.

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

COLLINS, Judge

Relator challenges the termination of his Section 8 housing benefits, arguing that (1) respondent's decision was arbitrary and capricious and unsupported by substantial

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

evidence, and (2) the hearing officer's findings are legally insufficient. Because the hearing officer made sufficient findings and the decision is supported by substantial evidence, we affirm.

D E C I S I O N

When a public housing authority takes evidence, hears testimony, and makes a determination to deny an individual Section 8 housing benefits, it acts in a quasi-judicial capacity. *Carter v. Olmsted County Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). "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.* Appellate courts examine the findings to determine whether they support the decision but do not retry facts or challenge the credibility determinations of the agency. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). "The decision is to be upheld if the lower tribunal furnished any legal and substantial basis for the action taken." *Id.* (quotation omitted).

I.

Since December 2001, Steven Larsen has received Section 8 housing benefits under a United States Department of Housing and Urban Development (HUD) program administered by respondent Dakota County Community Development Agency (CDA). Effective November 30, 2007, due to Larsen's failure to report earned income of $583, the CDA terminated Larsen's Section 8 housing benefits. While not stating so explicitly, Larsen appears to assert that the decision was arbitrary and capricious because the

hearing officer failed to consider Larsen's "difficulty reading and completing paperwork," his poor health due to lung disease and psychological issues, and his "very low income and . . . real threat of homelessness." Larsen also argues that because his failure to report the earnings resulted in no overpayment of benefits, the hearing officer failed to consider "the seriousness of the case." Finally, relator argues that the CDA "failed to prove that [he] violated the applicable federal regulations."

Arbitrary and Capricious

A decision is arbitrary and capricious if the decision-making body (1) relied on factors not intended by the relevant legal authority; (2) *entirely* failed to consider an important aspect of the issue; (3) offered an explanation that conflicts with the evidence; or (4) made a decision that is so implausible that the decision could not be explained as a difference in view or the result of the decision-making body's expertise. *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 484 (Minn. App. 2002). "An agency's decision is arbitrary and capricious if it represents its will and not its judgment," *Hiawatha Aviation of Rochester Inc. v. Minn. Dep't of Health*, 375 N.W.2d 496, 501 (Minn. App. 1985) (citation omitted), *aff'd*, 389 N.W.2d 507 (Minn. 1986), but 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).

Contrary to Larsen's assertion, the hearing officer considered all mitigating factors presented before affirming the CDA's termination decision. First, in response to Larsen's claim that he did not "understand a lot of paperwork," the hearing officer reasoned that

"participants in the Housing Choice Voucher Program are responsible for complying with specified family obligations in exchange for the receipt of federal rental assistance and that in this case [Larsen] failed to comply with those family obligations." Second, in response to Larsen's claim that he was sick at his last recertification appointment and suffered from lung disease, the hearing officer found that "the fact remains that at no time during his nearly 10-month tenure . . . did he report [his] employment to the CDA." Third, regarding Larsen's claim that if he were to lose his Section 8 housing benefits he would "be broke, wouldn't have any money, would have to move somewhere really cheap, and would be at risk of being homeless," the hearing officer stated:

> [T]he Section 8 Housing Choice Voucher Program is specifically designed to assist low to moderate income individuals and households in affording a decent, safe and sanitary place to live and that there is no evidence to suggest that the loss of such assistance would be any more or less devastating to [Larsen] than to any other program participant or the lack of availability of such assistance to any potential applicant.

Finally, although less comprehensively, the hearing officer did consider "the seriousness of the case." After acknowledging that Larsen's failure to report the earnings did not result in any overpayment of benefits, the hearing officer stated that Larsen and his counsel "acknowledged that [Larsen] had not reported his employment . . . to the Dakota County CDA in accordance with federal regulations and CDA adopted polices and that federal regulations do not require but definitely support a termination in this case." Although the hearing officer's analysis of this mitigating factor was terse and conclusory, it establishes that the hearing officer did not *entirely* fail to consider an

important aspect of the issue. Thus, the hearing officer's decision was not arbitrary and capricious.

Substantial Evidence

We will not disturb an agency's decision so long as the agency's determination is supported by substantial evidence. *Carter*, 574 N.W.2d at 730. Substantial evidence is "(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; and (5) evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (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) (citation omitted). Therefore, on appeal, the relator must demonstrate that the agency's findings, when considered in its entirety, are not supported by the record. *Carter*, 574 N.W.2d at 729. We apply an abuse-of-discretion standard. *Id*.

Larsen argues that because he never worked for ten consecutive days, he did not violate the regulation requiring participants to "notify the CDA of <u>all</u> changes in [their] household income and composition <u>within 10 days</u> of the change."

Regulations promulgated by HUD apply to all participants in the Section 8 program. *Manor v. Gales*, 649 N.W.2d 892, 894 (Minn. App. 2002). HUD regulations are interpreted according to their plain language. *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 130, 122 S. Ct. 1230, 1233 (2002).

Federal regulations provide that "[t]he family must supply any information requested by the [CDA] or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements . . . , [and that a]ny information supplied by the family must be true and complete." 24 C.F.R. § 982.551(b)(2), (4) (2008). The CDA also requires that tenants annually certify that they "will notify the CDA [in writing] of all changes in . . . household income and composition within 10 days of the change." In signing both the Section 8 housing benefits application and recertification application, participants also acknowledge that a failure to report all household income increases may result in the termination of their benefits.

Neither the applicable federal regulations nor the CDA regulations provide for participants to be employed for ten consecutive days before being required to report earnings. Rather, the regulations plainly require that any income increase is to be reported within ten days and that failure to do so could result in the termination of benefits. Here, it is undisputed that Larsen was employed and earned income for work performed on a number of days in the third and fourth quarters of 2006 and the first quarter of 2007 and that he failed to report this income to the CDA. Thus, there is substantial evidence supporting the hearing officer's finding that Larsen violated applicable federal and CDA regulations, duly resulting in the termination of Larsen's Section 8 housing benefits.

Larsen contends that because he earned only $288 during the third quarter of 2006, $310 during the fourth quarter of 2006, and $45 during the first quarter of 2007, it is

unlikely that he was working at the time he signed the zero income form. On this premise, Larsen asserts that "[t]he CDA did not prove [the misrepresentation] allegation by a fair preponderance of the evidence." This argument is unavailing. The applicable regulations do not exempt from the reporting requirement income earned for periods of employment before or after the income form is signed. Were that the case, occasionally employed program participants could avoid the requirement of reporting earned income by scheduling their annual recertification appointments on days or weeks when they are not employed.

Larsen also argues that because misrepresentation is not specifically referenced in the applicable regulations, the CDA is really alleging fraud, which requires both the intent to deceive and the overpayment of benefits—neither of which is established here. However, the issue presented does not require proof of specific intent to deceive; rather, as the CDA replies, Larsen agreed to provide "true and complete" information to the CDA and did not do so, thus failing to meet his essential obligations under the regulations. As discussed above, there is substantial evidence in the record to support the hearing officer's conclusion that Larsen did not provide "true and complete" information to the CDA which, in turn, warrants the termination of his Section 8 housing benefits.

II.

Finally, Larsen calls into question whether the hearing officer's written decision is sufficiently specific, arguing that the hearing officer failed to properly weigh the facts, cite to the operative law, and apply the law to the facts. We disagree.

"Agency action must be based on objective criteria applied to the facts and circumstances of the record at hand. Agency discretion is not unlimited and must be explained." *Carter*, 574 N.W.2d at 729. The agency must explain the evidentiary basis for its decision and how that evidence is rationally related to its action. *Hiawatha*, 375 N.W.2d at 501.

Larsen relies on *Carter* in support of his argument that the hearing officer's findings lack sufficient specificity. In *Carter*, the public housing authority terminated Carter's rental assistance after deeming that another person was living in Carter's unit without the consent of the housing authority and was receiving unreported income. 574 N.W.2d at 728. Carter appealed, challenging the sufficiency of the hearing officer's findings and the evidence to support those findings. *Id.* at 729.

We reversed the agency's decision, concluding that the hearing officer's findings were not sufficiently specific.[1] *Id.* at 730. The hearing officer's decision "fail[ed] to mention Carter's and [the individual's] testimony or any of the documentary evidence that does not support [the examiner's] conclusion and [gave] no explanation as to why [the examiner] chose to disregard it." *Id.* There, we took guidance from *Garthus v. Sec'y of Health & Human Servs.*, 847 F. Supp. 675, 689 (D. Minn. 1993), stating:

> To be legally sufficient, the [agency decision-maker] must make an express credibility determination, must set forth the inconsistencies in the record which have led to the rejection of the [complainant's] testimony, must demonstrate that all relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony. . . .

[1] In *Carter*, we also held that the hearing officer's decision was not supported by substantial evidence. 574 N.W.2d at 733.

> These requirements are not suggestive guidelines, but are mandates which impose affirmative duties upon the deliberative process.[2]

Id. at 729-30.

Unlike *Carter*, the facts here are undisputed. The real issue before the hearing officer was whether Larsen's asserted excuses were legally sufficient to require a reversal of the CDA's termination-of-housing-benefits decision. Moreover, the hearing officer did more than merely recite the facts acted on by the CDA. Instead, the hearing officer rendered a detailed decision that incorporated the facts put forth by both the CDA and Larsen and tested those facts against the applicable federal regulations. The hearing officer explicitly identified 24 C.F.R. §§ 982.551-.552 and the CDA policy regarding tenant responsibilities as the applicable law. The decision details Larsen's certification and recertification history, illustrating Larsen's failures to report his earned income. Specifically, the hearing officer relied on Larsen's testimony in which he admitted that he did not report to the CDA earnings that he received during the third and fourth quarters of 2006 and the first quarter of 2007. Finally, as discussed in section I, the hearing officer provided detailed explanations for why Larsen's proffered excuses were factually unpersuasive or legally unfounded.

Affirmed.

[2] We also reasoned that there was no basis for distinguishing between "decisions by a lay hearing officer and by a legally trained administrative law judge . . . ." 574 N.W.2d at 730.