STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1637

Stacie Willis,
Relator,

vs.

Rice County Housing & Redevelopment Authority,
Respondent.

Filed July 28, 2009
Reversed
Connolly, Judge

Rice County Housing and Redevelopment Authority

Laura Jelinek, Michael Hagedorn, Southern Minnesota Regional Legal Services, Inc., 166 East Fourth Street, Suite 200, St. Paul, MN 55101-1448 (for relator)

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Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Relator's Section 8 housing assistance was terminated following an administrative hearing before a hearing officer. Because the hearing officer's determinations that relator

had an unreported household member living at her residence and was also involved in illegal-drug use are unsupported by substantial evidence, we reverse.

FACTS

Relator Stacie Willis received Section 8 voucher assistance to subsidize her rent. On May 17, 2008, relator was involved in a domestic disturbance with her boyfriend, W.W. On May 30, relator received a notice of lease termination from her management company. Apparently, her lease termination was precipitated by incidents at her apartment involving the police. These incidents stemmed from the end of her relationship with the boyfriend.

Respondent Rice County Housing & Redevelopment Authority (HRA) sent relator a letter on June 6 informing her that it would be terminating her Section 8 assistance. Relator requested a hearing, and one was held on July 10 before a hearing officer.[1] On July 18, the officer issued his decision. He terminated relator's Section 8 voucher assistance on the grounds that (1) she had an unreported household member living at her residence, and (2) she was involved in illegal-drug activity. This appeal follows.

D E C I S I O N

Because the HRA took evidence and heard testimony, it acted in a quasi-judicial capacity. *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004). Accordingly, its determination will be upheld unless it is "unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory,

[1] Relator requested that the hearing be recorded and brought her own audio-recording device to the hearing. The hearing officer denied relator's request.

unsupported by substantial evidence, or arbitrary and capricious." *Id.* (quotation omitted). While "[f]ederal section 8 regulations do not address burdens of proof . . . U.S. Supreme Court precedent indicates that, where deprivations of benefits necessary for survival are concerned, the initial burden of proof must fall on the government." *Carter v. Olmsted County Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 731 (Minn. App. 1998).

In this case, relator argues that HRA's decision is not supported by substantial evidence. "Substantial evidence" means "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Id.* at 730 (quoting *Soo Line R.R. Co. v. Minn. Dep't of Transp.*, 304 N.W.2d 301, 306 (Minn. 1981)) (other quotation omitted). It "means more than a scintilla of evidence, some evidence, or any evidence." *Id.* (quotation omitted). This court reviews an agency's findings to determine if they support the decision, but it does 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 burden is on relator to demonstrate that the record in its entirety does not support the agency's finding. *Carter*, 574 N.W.2d. at 730.

During an informal hearing, the HRA may consider evidence "without regard to admissibility under the rules of evidence applicable to judicial proceedings." 24 C.F.R. § 982.555(e)(5) (2008); *see also Basco v. Machin*, 514 F.3d 1177, 1182 (11th Cir. 2008) ("[H]earsay may constitute substantial evidence in administrative proceedings as long as factors that assure the underlying reliability and probative value of the evidence are present." (quotation omitted)).

I. The hearing officer's decision to terminate relator's Section 8 rental assistance on the basis that she had an unreported household member living at her residence is unsupported by substantial evidence.

A Section 8 participant may not have a person not listed on the assisted lease in the household. 24 C.F.R. § 982.551(h)(2) (2008). HRA has interpreted this to mean that no adult person other than those listed on the lease shall live or stay in the unit other than on a temporary basis, not exceeding 14 days.

When explaining why relator violated this provision of Section 8, the hearing officer explained:

> [Relator] stated that she entered into a relationship with [W.W.] on April 3, 2008 and as her guest he stayed overnight 2-3 times a week and left clothing behind. Section 8 Voucher policy states "NO adult person other than those listed on the lease and application shall live/stay in the unit . . . not exceeding 14 days, not necessarily consecutively. This is to insure the Gross Family Contribution is accurately based on the Total Monthly Income for that household unit."
>
> A guest staying in the assisted housing unit 2-3 times a week will clearly exceed the threshold of 14 days in a short time.[2] This is a lease violation.

(Ellipses in original.)

Relator challenges this finding. Because the hearing officer declined relator's request to have the hearing recorded, and because the hearing officer declined to rule on relator's proposed statement of the proceeding or on any of HRA's objections and proposed revisions, we must rely on both relator and respondent's proposed statement of the proceeding to ascertain what relator said at the hearing. *See Willis v. Rice County &*

[2] The hearing officer never made an explicit finding that W.W. stayed 14 days or more at relator's unit.

Hous. Dev. Auth., No. A08-1637, (Minn. App. Dec. 31, 2008) (order) (stating that, because the hearing officer is "unable to rule on the objections or to approve a final statement of the proceedings," the record "shall include both relator's proposed statement of proceedings and respondent's objections and proposed revisions").

On this point, relator's proposed statement of the proceeding provides:

> [Relator] provided the hearing officer with a May 2008 calendar showing when [W.W.] was at her unit. *She testified that [W.W.] first visited her apartment on May 8, 2008.* He was seldom at her apartment because he was a manager at KFC in Minneapolis and worked 60 to 80 hours per week. *From May 8th until the May 17th incident, [relator] testified that he visited her apartment approximately 2 to 3 days.* The only personal item he had in her apartment were those of a typical boyfriend/girlfriend relationship: a pair of shoes, a couple of boxers, and a couple pairs of jeans. *She further testified that [W.W.] was never in her unit for 10 hours or more per day for 14 days during a calendar year.*

(Emphasis added.)

HRA's proposed statement of the proceeding states:

> Relator provided the hearing officer with a May 2008 calendar showing when [W.W.] was at her unit. *She testified that [W.W.] first visited her apartment on May 8, 2008.* He was seldom at her apartment because he was a manager at KFC in Minneapolis and worked 60 to 80 hours per week. The paystub submitted by Relator shows that [W.W.] only worked 36 hours per week, not 60-80 as claimed by [relator], and it does not indicate an address for [W.W.].
>
> *From May 8th until the occurrence of the incident on May 17th, Relator testified that [W.W.] visited her apartment approximately 2 to 3 days.* Relator admitted that [W.W.] kept personal items at her apartment such as a pair of shoes, a couple of boxers, and a couple pairs of jeans. *She further testified that [W.W.] was never in her unit for 10 hours or more per day for 14 days during a calendar year.*

(Emphasis added.)

Both relator and HRA's proposed statement of the proceeding are in agreement that relator testified that: (1) W.W. first visited her apartment on May 8, (2) he visited her apartment approximately two to three days, and (3) he was never in her unit for 10 hours or more per day for 14 days during a calendar year. Yet, the hearing officer found that relator testified that W.W. was in her apartment two to three times per week as opposed to just two to three days. He then concluded that someone staying in a unit two to three days per week will clearly exceed the threshold of 14 days in a short time. This finding is without substantial support in the record. It is contradicted by both relator and HRA's statement of the proceedings which are in agreement that relator testified that W.W. stayed overnight in her apartment a total of two to three nights.

The only evidence in the record that could be construed as supporting the hearing officer's finding that W.W. spent more than 14 days in relator's apartment is found in a memo produced by the management company for relator's apartment. It contains the statement "[Relator] also told the officers that [W.W.] lived there." However, this memo does not provide the date that W.W. began living with relator or the number of days that he has lived with her. Beyond the management company's memo, there is nothing in the record indicating that W.W. spent more than 14 days in relator's apartment. HRA in its brief points to the fact that W.W. had a few personal items at relator's apartment, but this does not indicate that he had stayed there for 14 days or more.

II. The hearing officer's decision to terminate relator's Section 8 rental assistance on the basis of illegal-drug activity is unsupported by substantial evidence.

The hearing officer also decided to terminate relator's Section 8 voucher because of "illegal-drug activity" by relator. The federal regulation pertaining to this issue states that

> [t]he [Public Housing Authority][3] must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:
>
> (A) Any household member is currently engaged in any illegal use of a drug; or
>
> (B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

24 C.F.R. § 982.553(b)(1)(i) (2008).

It is not clear what type of illegal-drug activity the hearing officer found relator to be involved in. He did not specify whether she possessed, sold, and/or used drugs. When addressing this issue, the hearing officer explained:

> Illegal drugs were found in the car which according to written statements was sold to [W.W.]. The Minnesota license plate is registered to [relator] at 1600 Jefferson Parkway, Northfield according to record. [Relator] admits driving to the cities in the car in which the drugs were found, with a broken window and her child in the car. She also claims that the car is now gone.

From this, it appears that the hearing officer found that, at a minimum, relator possessed drugs because a car that was registered to her name contained illegal drugs. HRA alleges that two documents provide substantial support for this finding: a memo containing

[3] The PHA in this case is HRA.

multiple levels of hearsay, and an e-mail that was not provided to relator prior to the hearing.

A. The memo.

The undated memo in question was provided by the management company of relator's apartment building. It was prepared by one of its employees and contains statements from Police Officer Heider. Officer Heider's statements, in turn, are based upon statements that relator allegedly made to him. No police report from the incident was introduced into the record at the hearing. The memo states:

> [Relator] said [to Officer Heider] that [W.W] had a gun. [Relator] also said that the gun might be out in the car. The officers searched the car, which is a Chevy Caprice that [relator] recently bought from another resident that lives at Parkway. [Relator] admitted to breaking out the window of the Caprice with [W.W.] inside because he was going to take the car and it is hers.

The memo is clearly hearsay, and there are no factors present that assure its underlying reliability and probative value. Neither the apartment manager nor the police officer testified at the hearing. The memo has no independent corroboration. The memo is directly contradicted by relator's testimony, in which she states that the car did not belong to her. The hearing officer fails to explain why he discredited this testimony. *See Carter*, 574 N.W.2d at 729 (stating that a hearing officer must set forth inconsistencies that led to the rejection of testimony and must detail the reason for discrediting pertinent testimony.) The memo does not state the drugs belonged to relator, or that she was charged with a drug-related offense. Furthermore, it runs contrary to logic that an individual would repeatedly tell police, as relator did, to search her car if it had drugs

belonging to her in it. Finally, the management company that prepared the memo is not a disinterested third-party. It had an interest in painting relator in a negative light because it was the party who initiated the termination of relator's lease. Given these considerations, we conclude that the memo does not provide substantial support for the hearing officer's finding that relator was involved in illegal-drug activity.

B. The e-mail.

Immediately prior to the hearing, HRA produced an e-mail from Police Officer Brandon Gliem stating, in pertinent part, "The MN plate registers to [relator] of 1600 Jefferson Parkway Northfield on a 89 Chevy Caprice." The hearing officer clearly relied on this statement as it is the only evidence in the record indicating that the car was registered to relator. This is problematic because federal regulations prevent the HRA from relying on evidence that was not provided to parties in advance of the hearing:

> The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

24 C.F.R. § 982.555(e)(2)(i). Based upon this regulation, the hearing officer improperly considered the e-mail when determining that the car was registered to relator because relator was not given the opportunity to examine it prior to the hearing.[4]

[4] HRA and relator agreed that all exhibits would be exchanged by July 9, 2008. The e-mail was not included in this exchange.

Because the hearing officer's findings are not substantially supported by the evidence, we cannot uphold the decision to terminate relator's Section 8 housing assistance

Reversed.