STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1801

Roderick Blanchard,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

Filed July 21, 2009
Affirmed
Bjorkman, Judge

Dakota County Community Development Agency

Lisa Hollingsworth, Southern Minnesota Regional Legal Services, Inc., 166 East 4th Street, Suite 200, 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 Bjorkman, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

BJORKMAN, Judge

In this certiorari appeal, relator argues that respondent community development agency's denial of his request for a live-in-aide accommodation under the Section 8

Housing Choice Voucher Program is contrary to law. Because the agency's decision accords with Section 8 regulations and related guidance, we affirm.

FACTS

Relator Roderick Blanchard receives rental assistance under the Section 8 Housing Choice Voucher Program administered by respondent Dakota County Community Development Agency (CDA). Since 1994, relator has received a larger rental subsidy than typically provided to a single-person household, based on a live-in aide accommodation that allows him to afford a two-bedroom unit.[1]

In November 2006, relator met with a CDA representative for an annual review and recertification of his live-in aide accommodation. During the meeting, relator indicated that he had multiple PCAs, rather than a single live-in aide, but he requested that the CDA recertify his accommodation based on the live-in status of his primary PCA, Anthony Ruddock. After further investigation, the CDA confirmed that relator utilized three PCAs: Ruddock for 29 hours per week, his sister Terese Blanchard for 20 hours per week, and Carrie Hartung for 42 hours per week. The CDA also learned that although Ruddock frequently stayed overnight at relator's home, he maintained his own residence. Based on this information, the CDA denied relator's request for a live-in aide accommodation, stating that "[i]n order to meet the criteria for a live-in aide for which a separate bedroom is allocated the live-in aide must not maintain a separate residence." Relator requested an informal hearing to challenge this decision.

[1] Relator was born with cerebral palsy and is confined to a wheelchair. He requires the assistance of personal care attendants (PCAs) to meet his daily needs.

A CDA hearing officer conducted an informal hearing on April 24, 2007. At the hearing, the CDA representative explained that it denied relator's request because, although relator needs intensive PCA services, his needs were being met by a rotating group of three PCAs. In response, relator stated that he had dismissed Ruddock and hired Raphael Dodd to be his exclusive caregiver. The hearing officer treated this as a new request for an accommodation that required reevaluation by the CDA. The CDA approved Dodd as relator's live-in aide on a conditional basis while relator completed the necessary documentation.

Following its investigation, the CDA denied relator's new request based on the fact "that [relator's] care needs could be met and have historically been met by multiple caregivers." The CDA notified relator that his rental subsidy would be decreased to the amount provided for a one-bedroom unit. In response, relator again requested a live-in aide accommodation, this time indicating that James Hawronsky was his live-in aide, with Ruddock and his sister providing intermittent assistance. In January 2008, after reviewing the new documentation, the CDA again denied relator's request for a live-in aide accommodation. The CDA noted that "it appears the only reason [relator] changed his care arrangement was in response to a reduction in housing subsidy and has documented no relationship to a change in his needs."

Relator then sent the CDA an e-mail requesting that his "live in status [be] dropped," but that the CDA nonetheless grant a "two bedroom voucher to accommodate PCAs who may stay here and often do to insure [his] safety and well being." The CDA denied this request. Relator later retained counsel, who sent a letter to the CDA in April

2008, again requesting approval of Ruddock as relator's live-in aide and another informal hearing. The CDA elected to provide a hearing despite the conflicting requests of relator and his attorney.

The informal hearing took place on August 8, 2008. A CDA representative testified along with relator and several of relator's caregivers. On September 10, 2008, the hearing officer issued a 23-page decision, concluding that

> [a]lthough the documentation supports the need for extensive care for [relator] and the testimony supports the fact that one of his PCA's does in fact spend the night frequently and perhaps even more often recently because [relator] is minus one caregiver at this time, the documentation and testimony support a conclusion that [relator's] current care arrangements consisting of multiple caregivers and not including a live-in aide that meets the federal definition work very well for him and there is no evidence to support a need for change in his current care arrangements or an actual change in his current care arrangement to include a live-in aide that meets the federal definition.

This decision confirmed that the CDA would subsidize relator's rent at the level associated with a one-bedroom unit. This appeal follows.

D E C I S I O N

An agency acts in a quasi-judicial manner when it "hears the view[s] of opposing sides presented in the form of written and oral testimony, examines the record and makes findings of fact." *Signal Delivery Serv., Inc. v. Brynwood Transfer Co. (In re Signal Delivery Serv., Inc.)*, 288 N.W.2d 707, 710 (Minn. 1980). An agency's quasi-judicial decision is to be "upheld unless [it 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 County Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). 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).

Relator argues that the CDA did not have discretion to deny his request for a live-in aide because the applicable Section 8 definition is met. *See* 24 C.F.R. § 982.316 (2008) ("The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability."). For purposes of the Section 8 voucher program, "live-in aide" is defined as:

> a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:
> (1) Is determined to be essential to the care and well-being of the persons;
> (2) Is not obligated for the support of the persons; and
> (3) Would not be living in the unit except to provide the necessary supportive services.

24 C.F.R. § 5.403 (2008). The U.S. Department of Housing and Urban Development (HUD), the federal agency responsible for the Section 8 voucher program, recently issued a guidance bulletin to local agencies clarifying this definition:

> Occasional, intermittent, multiple or rotating care givers do not meet the definition of a live-in aide since 24 CFR Section 982.402(7) implies live-in-aides must reside with a family permanently for the family unit size to be adjusted in accordance with the subsidy standards established by the

> PHA. Therefore, regardless of whether these caregivers spend the night, an additional bedroom should not be approved.

U.S. Dep't of Hous. and Urban Dev., PIH 2008-20 (HA), Over Subsidization in the Housing Choice Voucher Program (Apr. 16, 2008), *available at* http://www.hud.gov/offices/pih/publications/notices/08/pih2008-20.pdf.

Relator contends that Ruddock meets the definition of live-in aide, and that the additional HUD guidance does not change the CDA's obligation to approve relator's accommodation request. But as the hearing officer found, although relator has a significant need for assistance, this need has historically been met by using multiple or rotating PCAs. Letters submitted by relator's doctor confirm relator's extensive care needs, but do not establish his need for a live-in aide. For example, a July 2008 letter, which relator argues is "the clearest expression of the need for a live-in aide as opposed to some other scheme of care," states only that "[w]ithout extensive PCA care, it's my opinion that [relator] would no longer be able to live independently and would have to move into a nursing facility of some sort." The hearing officer correctly concluded that this letter "does not explain whether [relator's] care needs or the current care arrangement in which no caregiver qualifies as a live-in aide had changed." Additionally, relator acknowledged having multiple or rotating caregivers to both the CDA and the hearing officer on several occasions throughout the proceedings. These admissions undermine his argument that a single live-in aide is essential to his well being.

On this record, we conclude that the hearing officer's detailed factual findings are substantially supported by the evidence. The hearing officer's legal analysis and

carefully considered decision have a sound legal basis and are consistent with the applicable regulations and HUD guidance.

Affirmed.