

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2287**

Aziz Ansari,
Relator,

vs.

Metropolitan Housing and Redevelopment Authority,
Respondent.

**Filed December 15, 2009
Affirmed
Ross, Judge**

Metropolitan Housing and Redevelopment Authority
File No. XX14210

Paul Onkka, Southern Minnesota Regional Legal Services, 712 Canterbury Road,
Shakopee, MN 55379 (for relator)

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

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Respondent Metropolitan Housing and Redevelopment Authority terminated Aziz
Ansari's Section 8 housing benefits after Ansari failed to report subsidy payments that he
received as the manager of another Section 8 property. Ansari challenges the termination

decision, arguing that he was not required to report the subsidy payments because he received and spent them merely in his capacity as property manager on behalf of the property's landlord. Ansari also contends that the hearing officer relied on grounds that were not included in Ansari's termination notice and failed to consider mitigating factors. Because there is substantial evidence to support the hearing officer's credibility determination rejecting Ansari's claim that he was merely managing the property on someone else's behalf, and because Ansari's due process and other contentions are not persuasive, we affirm.

FACTS

Metropolitan Housing and Redevelopment Authority (Metro HRA) administers the U.S. Department of Housing and Urban Development's low-income tenant housing-assistance program. The program, commonly known as "Section 8," helps low-income families afford housing by making rent subsidy payments to landlords on behalf of qualifying tenant families. Metro HRA requires Section 8 participants to provide it with household-income information before enrollment and then yearly to become and remain qualified. Participants must also report any income changes that occur between the yearly recertifications.

Aziz Ansari began receiving Section 8 benefits in April 1999. In August 2008, Metro HRA terminated Ansari's benefits after it learned that he was receiving unreported payments from the Chippewa County Housing and Redevelopment Authority (Chippewa HRA) as the manager of a Section 8 property in Watson, within Chippewa County. Ansari's involvement with this property began in April 2005, when he received a power

of attorney from its owner, Shamshad Haroon. The power of attorney authorized Ansari to make real-property transactions for Haroon regarding the Watson house. In October 2005, Ansari executed, on Haroon's behalf, a purchase agreement between Haroon and Samuel Schultz for Schultz's purchase of the Watson house. According to Ansari, Schultz was a longtime friend of Ansari's who had agreed to purchase and repair the Watson house. Neither Haroon nor Ansari ever deeded the Watson house to Schultz.

In the fall of 2007, Ansari's ex-wife began receiving Section 8 benefits as a tenant at the Watson house. That August, as part of the process of registering the Watson house as a rent-assisted property, Ansari had submitted a W-9 form to the Chippewa HRA that named Haroon as the landlord. Ansari signed the form, adding "Manager" after his signature. In September, Ansari, acting as Haroon's attorney-in-fact, quitclaimed the Watson house to himself. From October to December 2007, the Chippewa HRA sent monthly subsidy checks in Haroon's name, first to a P.O. box in New Germany and later to one in Montevideo, both of which Ansari had access to. Ansari asserts that he forwarded these checks to Haroon, who endorsed them and sent them back to Ansari. Ansari endorsed the checks and deposited them into his personal checking account.

In December, Ansari submitted a second W-9 form to the Chippewa HRA indicating that Schultz (whose name is spelled variously in the record as "Schultz" and "Shultz") owned the Watson house. Ansari again signed the form as "Manager." From January to May 2008, Chippewa HRA sent monthly subsidy checks to Schultz at the P.O. box in Montevideo. The first of these five checks was honored without being endorsed, and there is no indication on the check of what account it was deposited into. The last

four checks were endorsed by Ansari and deposited into a checking account that Ansari and Schultz owned jointly.

Ansari maintains that he did not use any of the Chippewa HRA funds for his own benefit, but that he applied the funds to make improvements to the Watson house. As evidence of this, he provided the hearing officer with bank statements from January to September 2008 for the joint account that he owned with Schultz. The Wells Fargo statements show the last five subsidy deposits and bear handwritten monthly accountings of amounts owing between Schultz and Ansari. A separate handwritten receipt that Ansari produced purports to record the final transaction between Ansari and Schultz involving the Watson house.

In April 2008, Ansari quitclaimed the Watson house to Nadeem Ansar. Ansari asserts that he did so because he was advised that ownership of the house could endanger his eligibility for government medical benefits. In July, the Metro HRA learned that Ansari had been receiving subsidy checks from the Chippewa HRA as the manager of the Watson house. Metro HRA notified Ansari that his rental assistance was being terminated due to “unreported income from the Chippewa County HRA.” Ansari contested the termination decision, and an informal hearing was held before a Metro HRA hearing officer. The hearing officer upheld the termination of Ansari’s benefits. This certiorari appeal follows.

DECISION

This appeal requires us to review Metro HRA’s decision to terminate Ansari’s Section 8 benefits. Metro HRA acted in a quasi-judicial capacity when it terminated

Ansari's Section 8 benefits. *See Carter v. Olmsted County Hous. & Redev. 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.*

I

Ansari first argues that there is insufficient evidence in the record to prove that he failed to report income, insisting that he received no personal financial gain from the Chippewa HRA payments. We uphold an agency's quasi-judicial factual determinations if they are supported by substantial evidence. *Id.* at 730. "Substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (quotation omitted). It means "more than a scintilla of evidence, some evidence, or any evidence." *Id.* (quotation omitted). This court does not retry facts or make credibility determinations. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). The burden is on Ansari to demonstrate that the record in its entirety does not support the agency's finding. *See Carter*, 574 N.W.2d. at 730.

Ansari contends that the subsidy checks were not income to him because they did not belong to him and he derived no personal financial benefit from them. Federal law defines "income" rather circularly as "income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary." 42 U.S.C. § 1437a(b)(4) (2006). Federal regulations further elaborate that "annual income" is "all amounts, monetary or not, which . . . [g]o to . . . the family head . . . [unless]

specifically excluded in paragraph (c) of this section.” 24 C.F.R. § 5.609(a) (2008) (emphasis added). Ansari does not dispute that if he received the payments as the owner of the Watson house and deposited them into his bank account, then the payments would constitute “income” under 42 U.S.C. § 1437a and 24 C.F.R. § 5.609.

We reject Ansari’s argument that the payments he received in his alleged capacity as manager of the Watson house were not income. The argument has no factual basis because the hearing officer did not credit Ansari’s claim that he was acting as manager of the Watson house, receiving no benefit from the payments. This credibility determination is well supported. Ansari’s evidence that he was managing the Watson house consisted essentially of his own testimony. Neither Haroon nor Schultz testified—either in person or in writing—that Ansari received and spent the subsidy payments on their behalf. The hearing officer explained why she disbelieved Ansari. She found “holes in [Ansari’s] story,” “too many unanswered questions,” and no clarity regarding “the various relationships that were involved and interconnected involving the property in Watson.”

Ansari failed to introduce any convincing evidence that he received no personal benefit from the payments. His evidence that the payments were spent solely on the Watson house consisted of handwritten notes—presumably his own—on bank statements; he produced no receipts from any building supply or home-improvement store or any other documentary evidence to indicate how the payments were spent. The bank statements that Ansari provided do not show what happened to the payments that he deposited into his personal checking account from October through December 2007.

Because Ansari owned the Watson house while he was receiving subsidy checks, the hearing officer could reasonably conclude that Ansari benefited from the Section 8 payments even if all of them went to home improvements; as the property's owner, Ansari would have benefitted by spending the funds to maintain or enhance the value of his real property.

Ansari argues that he was not informed of any obligation to report the subsidy payments as income because the term "income" is not defined in the recertification form or in Metro HRA's "Statement of Responsibilities." This omission is irrelevant. "Income" is defined by statute and regulation. Few legal maxims have enjoyed more popularity than "ignorance of a law is no excuse for failure to observe it." *See Alderman's Inc. v. Shanks*, 515 N.W.2d 97, 102 (Minn. App. 1994), *rev'd in part on other grounds*, 536 N.W.2d 4 (Minn. Aug. 18, 1995).

Ansari raises two arguments in his briefs that do not appear to have been made to the hearing officer. First, he argues that even if the payments were income to him, his failure to mention them was not fraudulent because he was no longer receiving them when he signed the recertification form in June. This argument is untimely, and it is also unimpressive because Ansari had an ongoing obligation to notify the agency if any member of his household began receiving any income even *between* yearly recertifications. This obligation is set forth in Metro HRA's Statement of Responsibilities for the Section 8 program. Ansari signed the Statement of Responsibilities and submitted it in June 2008, after he allegedly stopped receiving the payments, but he had been participating in Section 8's yearly recertification process since

April 1999. Ansari was under a continuing obligation to report any changes to his income, an obligation that attached when he began receiving Section 8 benefits in 1999.

Second, Ansari alludes in his reply brief to the regulation's exclusion of "[t]emporary, nonrecurring or sporadic income" from its definition of annual income, hinting that the challenged payments might fit the exclusion. *See* 24 C.F.R. § 5.609(c)(9) (2008). We do not address this argument on the merits because of its tardiness, but we observe that Ansari does not expressly argue that the exclusion applies here and we do not believe the argument would be persuasive. The payments did in fact recur for several months and thus were neither temporary nor nonrecurring.

II

Ansari argues that the hearing officer's decision was based on grounds not listed in the termination notice provided to him, thus depriving him of the right to defend against them. "Due process requires that welfare recipients must have 'timely and adequate notice detailing the reasons for a proposed termination' of welfare benefits." *Franco v. Ramsey County Cmty. Human Servs.*, 413 N.W.2d 869, 871 (Minn. App. 1987) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 267–68, 90 S. Ct. 1011, 1020 (1970)). Adequate notice does not require a "detailed explanation of all the reasons for the termination" but "only a brief explanation for the termination [that] effectively communicate[s] the interest at stake." *Wilhite v. Scott County Hous. & Redev. Auth.*, 759 N.W.2d 252, 258 (Minn. App. 2009). We review de novo the procedural due process afforded to a party. *Plocher v. Comm'r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004).

The notice of termination informed Ansari that his benefits were being terminated “because of unreported income from the Chippewa County HRA.” The hearing officer reviewed the evidence and concluded, “I believe the HRA had grounds to terminate the Section 8 Rent Assistance of Aziz Ansari for unreported income.” She then observed that Ansari never reported (1) that he owned the Watson house, (2) that he managed the Watson house, or (3) that he had a joint checking account with Schultz. Ansari argues that the hearing officer relied on these facts as additional grounds for termination, and, in doing so, violated his due process rights to adequate notice and an opportunity to respond.

The argument fails. Based on the hearing officer’s weighing of the evidence, Ansari’s unreported receipt of subsidy payments was essentially part of a greater scheme that included other failures to report his involvement with the Watson house to Metro HRA. Ansari’s failure to report his ownership interest, his alleged role as manager, and his joint checking account enabled him to “fly under the radar” and avoid raising questions about what effect his arrangement might have on his eligibility for Section 8 assistance or on the amount of assistance he was entitled to receive. We conclude that the hearing officer did not state these factors as separate grounds for her decision, and the notice Ansari received “effectively communicated” to him “the interest at stake.” *Wilhite*, 759 N.W.2d at 258.

III

Ansari argues that the hearing officer’s decision was arbitrary and capricious because she failed to consider the seriousness of the case and the extent of Ansari’s

culpability. A hearing officer's ruling is arbitrary and capricious if she "(a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) [made a decision] so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006). Section 8 regulations provide that, in terminating assistance,

[t]he [public housing agency] may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

24 C.F.R. § 982.552(c)(2) (2008).

We recognize that the agency's decision does not address whether Ansari committed any serious violations of Section 8 regulations, hid income or assets that would have made him ineligible for benefits, or knew what he was doing was wrong. While section 982.552(c)(2) does not require that mitigating circumstances be considered, it may be that a public housing agency's failure to consider them constitutes arbitrary and capricious decision-making by "entirely fail[ing] to consider an important aspect" of the case. *See Citizens Advocating*, 713 N.W.2d at 832. But we conclude that Metro HRA adequately considered all relevant circumstances. The hearing officer's decision exhaustively set forth the evidence before her, including Ansari's testimony that he did not know that his conduct was wrongful. The hearing officer demonstrated that

she weighed any mitigating effect of Ansari's situation, concluding, "I did not believe there were extenuating circumstances to be considered." The hearing officer did not arbitrarily and capriciously overlook important extenuating circumstances.

Affirmed.