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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-366**

Bella Kouznetsov,  
Relator,

vs.

Carver County Housing and Redevelopment Authority,  
Respondent,

Metropolitan Council Housing and Redevelopment Authority,  
Respondent.

**Filed December 27, 2011**

**Affirmed  
Collins, Judge\***

Metropolitan Council Housing and Redevelopment Authority

Andrew N. Karlsen, Karlsen Law Services, P.A., Elk River, Minnesota (for relator)

James R. Andreen, Minneapolis, Minnesota (for respondent Carver County Housing and Redevelopment Authority)

Mary G. Dobbins, Landrum Dobbins LLC, Minneapolis, Minnesota (for respondent Metropolitan Council on Housing and Redevelopment Authority)

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and  
Collins, Judge.

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

## **UNPUBLISHED OPINION**

**COLLINS, Judge**

Relator Bella Kouznetsov challenges the termination of her Section 8 rent assistance, arguing that (1) respondent Metropolitan Council Housing and Redevelopment Authority (HRA) did not consider relevant evidence, thus the HRA abused its discretion in finding that she failed to report income in her Section 8 assistance applications, and (2) the HRA did not consider and weigh mitigating factors, thus the HRA acted arbitrarily and capriciously in terminating her Section 8 rent assistance. Because the HRA's decision is supported by substantial evidence, and the HRA articulated a rational connection between the facts found and the choice made, we affirm.

### **FACTS**

Bella Kouznetsov first applied for Section 8 rent assistance from the HRA in June 1997, when she was age 63. At that time she had been receiving Minnesota Supplemental Assistance (MSA) payments since February 1997. Kouznetsov did not disclose her MSA income where required on her initial Section 8 assistance application. She also failed to disclose her MSA income on her annual Section 8 assistance recertification applications for the years 1998 through 2009. Each Section 8 assistance recertification application included Kouznetsov's signature and a printed warning stating: "I understand that providing false information will result in the termination of my Section 8 rent assistance."

Kouznetsov recertified her Section 8 assistance application again in August 2010, this time indicating that she was unsure whether she received MSA. The HRA

investigated, and discovered that Kouznetsov had continuously received MSA since February 1997. The HRA informed Kouznetsov in November 2010 that her Section 8 rent assistance would be terminated effective December 31, 2010, for failure to disclose income, and she owed the agency \$1,176 as reimbursement for excess benefits paid during the period of December 2006 to November 2010.<sup>1</sup>

The HRA held an informal hearing with Kouznetsov on December 16, 2010, to review the termination. Kouznetsov does not speak English, but she was accompanied by her adult son who served as her translator and holds the power of attorney for her. Kouznetsov's son explained that the failure to disclose the MSA income was not intentional, and he offered to repay the benefits. Kouznetsov's son, who is also her landlord, explained that his mother enjoys her apartment and its location. The HRA reviewed letters from Kouznetsov's doctors explaining that she suffers from various ailments, including chronic major depressive disorder, insomnia, pain disorder, depression, chronic headache, dizziness, vertigo, loss of balance and poor orientation, fatigue, poor memory, and several other mental illnesses.

The HRA's report was filed on December 28, 2010.<sup>2</sup> The HRA determined to uphold the termination of Kouznetsov's Section 8 rent assistance. The hearing officer found: (1) Kouznetsov recertified her MSA application every year from 1997 to 2010, and therefore she would have repeatedly been reminded that she was enrolled in MSA;

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<sup>1</sup> Copies of Kouznetsov's recertification applications for the years 1998 through 2005 are unavailable.

<sup>2</sup> The hearing officer's report is dated December 29, 2010, but it bears a file stamp of "December 28, 2010."

(2) Kouznetsov's language barrier is not an extenuating circumstance because she had a family member translate and help her complete required Section 8 paperwork every year, and other non-English speakers are routinely able to provide complete and accurate information to the HRA; and (3) Kouznetsov's memory and mental health issues are not a valid extenuating circumstance because, although Kouznetsov was age 76 at the time of the hearing, her failure to provide complete information dates back to age 63. The hearing officer also considered countervailing factors that would support the continuation of Kouznetsov's Section 8 rent assistance, finding: (1) Kouznetsov's son's testimony was credible; (2) the amount of the Section 8 rent assistance was relatively small, approximately \$81 per month; and (3) Kouznetsov was elderly at the time of the termination. The HRA hearing officer summarized the findings:

I appreciate the support that [Kouznetsov] has in assisting her with her language barrier, her current health issues, and her housing situation and I know it is never easy to think of benefits being lost or costs increasing for a household. But in this situation, because of reasons stated above, and to be consistent with previous decisions I have made regarding unreported income, I am upholding Metro HRA's decision in the termination of [Kouznetsov's] Section 8 Rent Assistance.

This certiorari appeal followed.

## **DECISION**

By taking evidence and hearing testimony at the informal hearing, and examining the record and making findings of fact, the HRA acted in a quasi-judicial capacity. *In re Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980). We will uphold a housing authority's quasi-judicial decision to terminate a participant's housing benefits

unless we conclude that the authority's decision 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 Cnty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). "We defer to an agency's conclusions regarding conflicts in testimony . . . and the inferences to be drawn from testimony." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

## I.

Kouznetsov first argues that the HRA abused its discretion by failing to consider evidence she provided at the December 16, 2010, informal hearing.

We will not disturb an agency's determination so long as it 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; or (5) the evidence considered in its entirety." *Wilhite v. Scott Cnty. Hous. & Redev. Auth.*, 759 N.W.2d 252, 255 (Minn. App. 2009) (quoting *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002)); see also *Carter*, 574 N.W.2d at 730 (defining substantial evidence). 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) (quotation omitted). Therefore, on appeal, Kouznetsov must demonstrate that the HRA's findings, when considered in their entirety, are not supported

by the record. *Carter*, 574 N.W.2d at 730. On review, we apply an abuse-of-discretion standard. *Id.*

Federal Housing and Urban Development (HUD) regulations apply to all participants in Minnesota HUD-subsidized housing programs, including Section 8 rent assistance. *Wilhite*, 759 N.W.2d at 255; *Manor v. Gales*, 649 N.W.2d 892, 894 (Minn. App. 2002). The HRA is a Public Housing Authority (PHA) as defined in HUD regulations. 24 C.F.R. § 5.100 (2010). A PHA may terminate housing benefits for a participant if that participant violates any obligations under the program, including the obligation that “[a]ny information supplied by the family must be true and complete.” 24 C.F.R. §§ 982.552(c)(1)(i), 982.551(b)(4) (2010).

Here, the HRA reviewed Kouznetsov’s Section 8 assistance applications from the years 1997, 2006, 2007, 2008, and 2009 at the informal hearing. Kouznetsov’s son, translator, and attorney-in-fact admitted that Kouznetsov’s assistance applications were inaccurate, although he claimed that the mistakes were not intentional. Even now, Kouznetsov does not contest that her assistance applications were not true and complete. The documentation and testimony alone provide “substantial evidence” under the *Wilhite* standards. 759 N.W.2d at 255.

Kouznetsov argues that the HRA abused its discretion by failing to consider her son’s testimony, the letters from her doctors, other evidence of her mental health conditions, and her lack of English skills, and also because Kouznetsov did not personally testify at the hearing. We disagree. The HRA’s December 28 report discusses Kouznetsov’s son’s testimony in its facts section and in its conclusion, and quotes

statements made by her son at the hearing. The report discusses the doctors' letters and Kouznetsov's medical problems in both the facts and conclusions sections, and quotes directly from the letters. The report also discusses Kouznetsov's lack of English skills in both the facts and conclusions sections. Kouznetsov did not testify at the hearing, but her son spoke on her behalf as her translator and attorney-in-fact. Kouznetsov does not assert that she was prohibited or discouraged from testifying at the hearing.

In sum, there is substantial evidence in the record supporting the finding that Kouznetsov failed to disclose income as required by HUD regulations. *Wilhite*, 759 N.W.2d at 255; *Carter*, 574 N.W.2d at 730. The HRA duly considered all evidence provided by Kouznetsov, her son, and her doctors. The HRA did not abuse its discretion by applying HUD regulations to the facts and terminating Kouznetsov's Section 8 rent assistance. *See Carter*, 574 N.W.2d at 730.

## II.

Kouznetsov next argues that the HRA's decision to terminate her Section 8 rent assistance is arbitrary and capricious because the HRA upheld the termination without considering or weighing potentially relevant and mitigating factors. We disagree.

A decision is arbitrary and capricious only if the decision maker: (1) relied on factors not intended by the relevant legal authority; (2) entirely failed to consider an important aspect of the issue; (3) justified its decision in a way that conflicts with the evidence; or (4) made a decision that is so implausible that it could not be explained as a difference in view or the result of the county's expertise. *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 484 (Minn. App. 2002). When an agency entirely fails to consider an

important aspect of a problem, this is a signal that the decision is arbitrary and capricious. *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). An agency's conclusions are not arbitrary and capricious so long as the agency articulates "a rational connection between the facts found and the choice made." *In re Review of 2005 Annual Automatic Adjustment of Charges for All Electric & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation omitted).

HUD regulations permit the HRA to consider "all relevant circumstances" of the case in determining whether to deny or terminate Section 8 housing assistance due to action or failure to act by a participant, including "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)(i).

The HRA considered all evidence of mitigating circumstances provided by Kouznetsov in its decision to uphold the termination of her Section 8 rent assistance. In particular, the HRA considered Kouznetsov's health, her lack of English skills, the relatively small dollar amount of Section 8 rent assistance paid, the importance of the assistance to Kouznetsov, and the impact on her household budget of the termination of the assistance. The HRA analyzed all evidence of mitigating circumstances, but it also reviewed the uncontroverted evidence that Kouznetsov violated her obligation to provide complete and true information to the HRA. The HRA articulated "a rational connection between the facts found and the choice made," and did not act in a way that is arbitrary or



capricious. *In re 2005 Annual Automatic Adjustment*, 768 N.W.2d at 120 (quotation omitted).

**Affirmed.**