

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Vanessa G*****,)
Plaintiff,)
)
v.) Case No. 12 CH 42592
)
Housing Authority of Cook County,)
Defendant.)
)

**AMENDED MEMORANDUM OF LAW IN SUPPORT OF
VERIFIED PETITION FOR CERTIORARI**

Petitioner Vanessa G*****, by her attorneys, in support of her petition for judicial review on certiorari of an administrative decision by the Housing Authority of Cook County, states:

I. STATEMENT OF FACTS

1. Petitioner Vanessa G***** became a participant in the Section 8 Housing Choice Voucher Program (Voucher Program) in June 2011. Record of Proceedings (R.) at 4.
2. Respondent Housing Authority of Cook County (HACC) is the public housing agency responsible for the administration of the Voucher Program in portions of suburban Cook County. Answer at ¶ 3.
3. While a participant in the Voucher Program, Ms. G***** resided at 12623 S. Lincoln, Riverdale, IL 60827. R. at 4.
4. In February 15, 2012, Ms. G***** completed her first “Recertification Application for Section 8 Housing Assistance Payments Program” (Recertification). R. at 11-14. On her February 15, 2012 Recertification, Ms. G***** indicated that she and her nephew, Shawn W., (born in 1995) resided at that address. R. at 12.
5. On her February 15, 2012 Recertification, Ms. G***** responded “yes” to the question

“Do you or any member of your household...now receive or expect to receive Social Security benefits?”. R. at 13. Ms. G***** further responded that she received SSI in the amount of \$154 per month and SSA in the amount of \$540 per month. *Id.*

6. On or about April 30, 2012, HACC prepared an Enterprise Income Verification (“EIV”) report for Ms. G*****. R. at 4-10. The report states that in 2011, Cora McK*****, 12328 S. Yale, Chicago, received a Social Security payment of \$564 per month for Vanessa G*****; in 2012, Cora McK*****, 12447 S. Harvard, received a SSI payment of \$154 per month; and in 2011, Cora McK*****, 12328 S. Yale, received a Social Security payment of \$407 per month for Shawn W. R. at 6-7.

7. Ms. McK***** is Ms. G*****’s mother. R. at 11-12. Ms. McK***** did not reside with Ms. G***** at the assisted premises; she resides at 12328 S. Yale, Chicago. R. at 6-7.

8. On or about May 31, 2012, Shawn moved from Ms. G*****’s home and she submitted an “Out of Household” Affidavit advising HACC of his move. R. at 15.

9. On June 7, 2012, HACC sent Ms. G***** a notice that it was terminating her from the Voucher Program for violation of Family Obligations, specifically that “the family must report in writing within 30 days when there is an increase in household income or new income for any family member. R. at 3. The notice stated the allegation of fact that “before removing Shawn [W.] from your voucher, you failed to report that he has been receiving Social Security benefits since April 2005.” *Id.*

10. Ms. G***** disputed the intended termination and filed a timely appeal. On October 18, 2012, HACC held a hearing on the intended termination. R. at 1.

11. HACC introduced the following evidence at its hearing:

1. Termination letter, dated June 7, 2012 (R. at 3)
 2. EIV Report (R. at 4-10)
 3. 2012 renewal application, dated February 15, 2012 (R. at 11-14)
 4. Out of Household Affidavit, dated May 31, 2013 (R. at 15)
 5. Additional Renewal Information Request letters, dated May 15, 2012 and April 30, 2012 (R. at 16-17)
 6. Tenant Obligation form, dated February 15, 2012 (R. at 18)
 7. Notes from YARDI system (R. 18-20).
12. The record does not indicate that HACC presented any verbal testimony beyond the introduction of these documents.
13. Ms. G***** did not introduce any documents. The record indicates that Ms. G***** testified that she did not know when Shawn's Social Security benefits started.
14. HACC did not introduce any rebuttal testimony or documents disproving Ms. G*****'s lack of knowledge of when Shawn's benefits started.
15. On October 18, 2012, HACC issued its decision terminating Ms. G***** from the Voucher Program. R. at 1. The HACC hearing panel made one finding of fact: that "before removing Shawn [W.] from your voucher, you failed to report that he had been receiving Social Security benefits since April 2005." R. at 2.
16. Ms. G***** filed a timely appeal to this court.

II. STANDARD OF REVIEW

The decision of an administrative agency concerning a question of fact may be reversed if the decision is against the manifest weight of the evidence. *Gaston v. CHAC*, 375 Ill. App. 3d 16, 22-23 (1st Dist. 2007). While the "manifest weight of the evidence" standard of review is deferential, it does not lack meaning. As the court in *Bowlin v. Murphysboro Firefighters Pension Board*, 368 Ill. App. 3d 205, 211-12 (5th Dist. 2006), stated:

[W]e are mindful of the rule that we are limited in our review. However our review

cannot amount to a rubber stamp of the proceedings below merely because the Board heard witnesses, reviewed records, and made the requisite findings. Even when the decision is supported by some evidence, which if undisputed would sustain the administrative finding, it is not sufficient if upon a consideration of all the evidence the finding is against the manifest weight. A reviewing court will not hesitate to grant relief where the record does not show evidentiary support for the agency's determination.

Indeed, in both published opinions wherein an Illinois appellate court has reviewed a Voucher Program certiorari petition, the courts have sided with the tenants while applying a manifest weight of the evidence standard. *Gaston v. CHAC, Inc.*, 375 Ill. App. 3d 16, 24 (1st Dist. 2007)(affirming a trial court conclusion that the decision of the CHAC hearing officer was against the manifest weight of the evidence); *Kurdi v. DuPage County Housing Authority*, 161 Ill. App. 3d 988, 994 (2nd Dist. 1987)(finding that the record did not disclose evidentiary support for the hearing officer's decision and reversing the decision as against the manifest weight of the evidence). Both decisions are analyzed more fully below.

III. ANALYSIS

A. HACC Did Not Meet its Burden of Proving Ms. G*** Violated Program Rules.**

1. The Housing Authority Bears the Burden of Proof.

To prevail at a termination hearing of a Voucher Program participant, the Housing Authority bears the responsibility to put on reliable evidence in support of its termination decision. *Kurdi v. DuPage County Housing Authority*, 161 Ill. App. 3d 988, 994 (2nd Dist. 1987). In *Kurdi*, the DuPage Housing Authority (DHA) sought to terminate Ms. Kurdi because it had received communication that her husband lived with her even though he was not listed on her voucher and she had not reported his income. Ms. Kurdi testified at her hearing that she did not live with and did not receive support from her husband. In support of its intent to terminate her participation, DHA introduced testimony of a DHA employee that other residents had seen

the husband at the premises. The DHA hearing officer upheld the decision to terminate, which the trial court affirmed. The appellate court, however, considered the reliability of the hearsay evidence¹ that DHA introduced and determined that the evidence was not reliable and, thus, not admissible hearsay. Because, absent the hearsay evidence, DHA had introduced no evidence, the *Kurdi* court held that the decision to terminate was against the manifest weight of the evidence. *Kurdi*, thus, establishes that the Housing Authority must put forward persuasive evidence in support of the violation or it will not prevail.

Federal courts applying these same regulations have stated this principle explicitly. In *Basco v. Machin*, 514 F.3d 1177, 1182 (11th Cir. 2008), the court stated, “contrary to [the housing authority’s] declaration that the ‘burden of proof that the individual is a visitor rests on the family,’ and as the PHA conceded at oral argument, the PHA has the burden of persuasion and must initially present sufficient evidence to establish a prima facie case” of a violation.

HACC has not met its burden of proving that Vanessa G***** received Social Security income for Shawn during the relevant period.² HACC’s only evidence is that Cora McK*****, on Yale Avenue in Chicago, received Social Security benefits for Shawn in 2011. HACC presented no evidence Vanessa G***** or Cora McK***** received any income for Shawn in 2012. If Ms. G***** did not receive any income for Shawn, then she had no duty to report it. Because HACC has failed in presenting any credible evidence of a violation, this Court should

1. Hearsay is not an issue in the present petition.

2. Although the October 18, 2012 decision refers to Shawn’s receipt of Social Security since 2005, HACC’s only evidence that Shawn resided in the assisted household is Ms. G*****’s February 15, 2012 Recertification. R. at 12.

reverse the HACC hearing panel's termination of Ms. G***** from the Voucher Program as against the manifest weight of the evidence.

2. HACC Has Failed to Establish that Ms. McK***'s Receipt of Shawn's Social Security Benefits Should Be Imputed to Ms. G*****.**

The rent paid by families in the Voucher Program is set by formula established by Congress. National Housing Act of 1937, as amended. 42 U.S.C. § 1437f(o). The formula uses the family income in determining what portion of the rent the family pays and what portion of the rent the Housing Authority pays. 42 U.S.C. § 1437f(o)(2). Subsection 1437a(b)(4) defines income as “income from all sources of each member of the household ..., except that any amounts **not actually received by the family ... may not be considered as income** under this paragraph.” 42 U.S.C. 1437a(b)(4).

HUD has further implemented Congress's definition of income in its regulations. Income is defined as “all amounts, monetary or not, which go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member ...” 24 C.F.R. 5.609(a)(1).

No Illinois court has published an opinion considering the definition of income in the National Housing Act³. The court in *Booker v. Johnson*, 2010 WL 2572044 (S.D. Ohio June 22, 2010), considered this definition in a context similar to the present case and entered a preliminary injunction prohibiting the Dayton Metropolitan Housing Authority from counting as income the

3. Illinois courts routinely look to federal caselaw or cases from other states in interpreting federal housing regulations. See *Kurdi v. DuPage County Housing Authority*, 161 Ill. App. 3d 988, 993 (2d Dist. 1987)(relies on federal authority for analyzing the admissibility of hearsay evidence); *Midland Management v. Helgason*, 241 Ill. App. 3d 899, 912, *rev'd on other grounds*, 158 Ill. 2d 98 (1994)(relies on *Sandefur Management Co. v. Wilson*, 21 Ohio App.3d 160, 486 N.E.2d 1267 (1985), for analysis of whether a notice of termination of subsidized tenancy was sufficiently specific to comport with due process); and *Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568, 575 (1st Dist. 2010)(relies on both federal court opinions and a Missouri case in deciding whether a housing agency could terminate a tenant's lease based on a guest's criminal record).

Social Security benefits received by the tenant's ex-husband for their children who were members of her Voucher Program-assisted household. The court ruled that the Housing Authority could not impute the income from the Social Security checks to the tenant when they were received by the tenant's ex-husband, who was not a member of her household.⁴ The court specifically held that, to the extent the regulation attempts to imply a broader definition of "income" than contained in the statute, which restricts income to income that is actually received, the wording of the statute must control over the regulation.

Similarly, in *Johnson v. U.S. Department of Agriculture*, 734 F.2d 774, 787 (11th Cir. 1984), the Eleventh Circuit overruled a district court refusal to enter a preliminary injunction where the administrators of the rural housing loan program under the Housing Act counted as "income" child support as awarded by the family law court without proof that the custodial parent actually collected the child support. The court noted that a calculation "that overstates income has the immediate effect of increasing the monthly payments due out of proportion to the borrower's actual income" and held that "these income calculations have significant economic impact. In fact, this error alone may be the 'substantial prejudice' needed to obtain relief from a denial of due process in an administrative proceeding."

HACC and this Court must follow the definition of "income" in federal law even – in fact, especially -- if it differs from the federal regulations. The definition of "income" in the National Housing Act requires that the assisted-household actually receive the income. The

4. The *Booker* court noted that the father was listed as the residential parent of the children in the domestic relations parenting order. While this fact differentiates *Booker* from the present case, the distinction does not benefit HACC's position. HACC did not present evidence to the panel that Ms. G***** had a legal relationship to her nephew that would prove his income should be imputed to her. In fact, the record indicates that HACC had no

“*Johnson*” opinions further make clear that the Housing Authority may not presume or impute income. HACC failed to meet its burden of proving that Ms. G***** actually received the Social Security benefits sent to Ms. McK*****. Moreover, HACC failed to present evidence that it had a right to impute Ms. McK*****’s receipt of Shawn’s Social Security benefits to Ms. G*****. Without any evidence, the Court must conclude that the panel decision is against the manifest weight of the evidence.

3. HACC Cannot Introduce Other Evidence of Violation at this Stage.

In *Gaston v. CHAC, Inc.*, 375 Ill. App. 3d 16, 24 (1st Dist. 2007), the appellate court considered housing authority hearing officer decisions to affirm the termination of two unrelated tenants for failure to report income. At Ms. Gaston’s hearing, the housing authority presenter introduced a non-income affidavit for 2003, the first page of a recertification application for 2003, and a Social Security print-out showing the tenant’s receipt of benefits for some years, but not in 2003. Upon Ms. Gaston’s appeal to the Circuit Court, the judge overturned the hearing officer decision as against the manifest weight of the evidence because the housing authority had only presented evidence of not reporting income in 2003 – the year for which the Social Security statement indicated no income. The court refused to allow the housing authority to argue or present further evidence that Ms. Gaston failed to report income in the years for which the print-out indicated receipt of income, stating: “the documents were not part of the record before the hearing officer and were not received in evidence. When a court reviews the decision of an administrative agency to determine if its decision is against the manifest weight of the evidence,

information whether Ms. G***** was his legal guardian. R.at 16. In fact, Cora McK***** is Shawn’s legal guardian. *In re Estate of Shawn W.*, 2005-P-002724.

the court must review only ‘the record of the administrative proceedings.’” *Id.* at 25.

HACC’s present circumstance is remarkably similar to CHAC in *Ghaston*. Read literally (“before removing Shawn [W.] from your voucher, you failed to report that he had been receiving Social Security benefits since April 2005”), the HACC decision implies that a Voucher Program participant is required to present evidence of income at the point of removing a household member from the household. No such family obligation exists. Surely HACC meant that in her 2012 Recertification, Ms. G***** failed to disclose Shawn’s income – a construction supported by the family obligation language quoted in the Notice of Intent to Terminate, dated June 7, 2012. R. at 3. Yet, HACC has no evidence that anyone received income for Shawn in 2012. The EIV indicates that Cora McK***** received Social Security benefits for Shawn in **2011**. Following the holding in *Ghaston*, HACC may not now introduce evidence, if any exists, that Shawn resided at the premises in 2011, that Ms. G***** failed to report his income in 2011, or that Shawn, Ms. McK*****, or Ms. G*****, either directly or indirectly, received income from Social Security for Shawn in 2012. This Court’s determination of whether the HACC hearing panel’s decision is against the manifest weight of the evidence must rest only on the evidence presented at the hearing – that Cora McK*****, who is not a household member received, received Social Security income for Shawn in 2011 and that Vanessa G***** identified Shawn as a household member, for whom she did not receive income, from February to May 2012. This evidence does not support any conclusion that Ms. G***** violated her family obligations.

B. HACC’s Decision Should Be Reversed Because the Panel Failed To Consider Mitigating Circumstances That Warrant The Imposition Of A Penalty Less Severe Than Termination.

The regulations governing the procedure for terminating assistance under the Voucher Program are set forth at 24 C.F.R. § 982.552. Subsection (b) lists the violations that require termination and subsection (c) lists the violations that may justify, but do not require, termination. The second, discretionary category includes terminations for failure to report income. In deciding whether to terminate assistance, the Housing Authority 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)(i).

In *Gaston v. CHAC, Inc.*, 375 Ill. App. 3d 16 (1st Dist. 2007), the appellate court considered the termination of a second Voucher Program participant – Ms. Brantley, a person living with disabilities, who failed to report two month’s earned income from hair-dressing, which she undertook to purchase furniture. The court reversed the Housing Authority decision to terminate assistance because the decision did not indicate that the hearing officer considered mitigating circumstances. The court held that “the agency **must consider** some circumstances particular to the individual case, otherwise section 982.552’s distinction between mandatory and discretionary terminations becomes meaningless.” *Id.* at 24. The court particularly relied on the fact that the tenant was living with disabilities.

Further, the administrative agency is obligated to take an active role in developing

evidence for the record to protect the claimant's right to a full and fair hearing. *Meneweather v. Board of Review*, 249 Ill. App. 3d 980 (1st Dist. 1992). In this unemployment case, the court noted the special responsibility when the participant was *pro se*.

In determining whether an administrative finding is against the manifest weight of the evidence, the court should consider the severity of the sanction imposed. *Abrahmason v. Illinois Department. of Professional Regulation*, 153 Ill. 2d 76 (1992); see also *Letourneau v. Dept. of Registration and Education*, 212 Ill. App. 3d 717, 731 (1st Dist. 1991) (“When determining whether an administrative decision is contrary to the manifest weight of the evidence, a court should consider the severity of the sanction imposed.”). This is particularly true in terminating a housing subsidy. “The starting point” for terminating a subsidized tenancy “is recognition of ‘the difficulty that people of lower income means in this country have in obtaining adequate housing.’” *In Re Sweeney*, 215 B.R. 97, 103 (Bankr. E.D. Pa. 1997)(citations omitted). “The loss of a [housing subsidy] is a matter upon which the Tenant’s entire economic status is dependent.” *Id.* (citations omitted). See also *American Property Management v. Green-Talaefard*, 195 Ill. App. 3d 171, 177, 552 N.E.2d 14, 17 (2d Dist. 1990)(tenant’s “loss of housing-assistance benefits may result in her and her children’s loss of their shelter”).

As a federally-supported Housing Authority and administrator of a federal housing program, HACC must consider the federal policy shift towards preventing homelessness that is clear in recent congressional enactments. In May 2009, the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act (Public Law 111-22) became law. The HEARTH Act reauthorizes and amends the McKinney-Vento Homeless Assistance Act. Significantly, the HEARTH Act evidences a shift in resources and priorities towards homeless prevention and

rapid re-housing. *See* National Alliance to End Homelessness, Summary of HEARTH Act (June 2009), <http://www.endhomelessness.org/content/general/detail/2098>.

This shift in emphasis towards homeless prevention not only recognizes the moral and psychological imperative of preventing homelessness, it recognizes that “preventing homelessness is cost effective: according to a recent nine-city study, homelessness costs more than housing and supportive services.” National Law Center on Homelessness & Poverty, An Ounce of Prevention: Programs to Prevent Homelessness in 25 States (February 2009) at 2 http://www.nlchp.org/content/pubs/Ounce_of_Prevention1.pdf.

In the present case, HACC failed to consider or develop the record considering any mitigating circumstances. Like Ms. Brantley in *Ghaston*, Ms. G***** is a person living with disabilities.⁵ Her total monthly income is \$694. R. at 13. Her rent as a participant in the Voucher Program was \$124 per month. With income of \$694 per month, at best, Ms. G***** could find substandard housing, the rent for which would consume most of her income. Taken in its most favorable light, all of HACC’s evidence against Ms. G***** is that she failed to report income of \$407 per month from February to May 2012. Particularly considering, however, that HACC has no evidence that Ms. G***** actually received this income, the penalty of certain homelessness is simply too harsh.

WHEREFORE, Petitioner prays that this Honorable Court reverse HACC’s decision

5. The record (R. at 13) indicates that Ms. G*****, born in 1956, receives SSI, the federal program for low income seniors or people with disabilities. 42 USC § 1381.

terminating her from the Voucher Program.

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