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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2063**

Jessica Pittman,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

**Filed January 20, 2009
Reversed and remanded
Shumaker, Judge**

Dakota County Community Development Agency

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Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

On appeal from respondent's ruling terminating her eligibility to receive public housing assistance, relator argues that the record does not support the determination that she allowed an unauthorized adult to live in her housing unit, that the respondent failed to

consider all the relevant evidence, and that the ruling did not contain sufficiently specific findings. Because respondent failed to make findings of fact to support its decision to terminate relator's public housing benefits and because the legal basis for termination is unclear, we reverse and remand.

FACTS

Respondent Dakota County Community Development Agency administers federal housing assistance programs, including the Section 8 Housing Choice Voucher Program. Under the voucher program, the Department of Housing and Urban Development (HUD) "pays rental subsidies so eligible families can afford decent, safe and sanitary housing." 24 C.F.R. § 982.1(a)(1) (2008).

Relator Jessica Pittman has received housing assistance since 1997. Beginning in September 2006, relator received housing assistance through a voucher program administered by respondent. Respondent terminated relator's housing assistance effective August 31, 2007, after relator allegedly failed to report that another adult was living with her. At that time, relator had five children, including one with profound disabilities, and was pregnant with her sixth child.

In September 2006, relator completed an application to receive housing assistance benefits through respondent and moved into a unit in Apple Valley, Minnesota. As part of her application, relator was required to provide complete and accurate information on the composition of her household. She also signed an acknowledgment of tenant responsibilities, which ostensibly prohibited anyone other than the disclosed family members of her household from residing in the unit, but did allow visitors to stay

temporarily. The statement of tenant responsibilities apparently provided some parameters or a definition of the term “temporary,” but the statement is not part of the record on appeal.

In the spring of 2007, respondent became concerned that another adult, Rahsaa’n Dajuan Kemp, was residing in relator’s unit. Respondent referred the matter to the Dakota County Sherriff’s Department for further investigation. Based on information obtained during that investigation, respondent informed relator that her Section 8 assistance would be terminated because she had failed to report that Kemp was living with her. Relator challenged that decision, and an informal hearing was held on August 10, 2007.

Relator attended the hearing with counsel and with Erin Lundberg, a licensed social worker from the Salvation Army who had been working with relator. The hearing officer took testimony from relator and Lundberg and received numerous exhibits. Relator explained her relationship with Kemp to the hearing officer. She told the hearing officer that Kemp had been physically violent on several occasions and that she had to report Kemp to the police for taking her car without her permission. She admitted that Kemp would stay at her residence in Apple Valley for “a night or two and then take off,” but insisted that he never lived there.

In addition to her own testimony, relator introduced, inter alia, mail from April and May 2007, which was addressed to Kemp at a Minneapolis address, and a child-support order, which again identified Kemp’s address as the Minneapolis address.

Lastly, Lundberg testified on relator's behalf, explaining that she had worked with relator for the past three years. During this time, Lundberg visited relator's home on numerous occasions, but never met Kemp or saw signs of his presence.

On August 25, 2007, the hearing officer issued a decision, upholding the termination of relator's housing assistance. This certiorari appeal follows.

D E C I S I O N

Respondent is a public housing authority (PHA). When a PHA takes evidence, hears testimony, and makes a determination to deny an individual Section 8 housing assistance, it acts in a quasi-judicial capacity. *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.* The reviewing court examines the findings to determine if they support the decision, but 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 decision is to be upheld if the lower tribunal furnished any legal and substantial basis for the action taken." *Id.* (quotation omitted).

We first address the legal basis for respondent's decision to terminate relator's housing assistance.

Regulations promulgated by HUD apply to all participants in the Section 8 program. *Manor v. Gales*, 649 N.W.2d 892, 894 (Minn. App. 2002). We interpret HUD

regulations according to their plain language. *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 131, 122 S. Ct. 1230, 1233 (2002).

HUD regulations direct the administration of the voucher program and set forth “the obligations of a participant family under the [voucher] program.” 24 C.F.R. § 982.551(a) (2008). In accordance with these obligations, the family must provide complete and accurate information regarding household composition. 24 C.F.R. § 982.551(b)(2)(4) (2008). A PHA may deny assistance to any applicant family who violates an obligation under the voucher program. 24 C.F.R. § 982.552(c)(1)(i) (2008).

Here, respondent terminated relator’s housing assistance after concluding that she failed to provide complete and accurate information about the composition of her household when she did not identify Kemp as another adult member of her household. Relator apparently told the hearing officer that Kemp stayed at her residence occasionally. The parties concede that federal law, including the HUD regulations, do not specifically state how long a visitor may stay in a unit.

In this case, relator appears to have agreed that visitors would only temporarily stay at her home. The hearing officer relied on that agreement in concluding that relator had allowed an unauthorized adult to reside in her unit. Although this agreement apparently provides the basis for terminating relator’s housing assistance, the agreement was not made a part of the record, and the hearing officer’s decision quoting only a part of the agreement does not provide for meaningful appellate review. Because the record is silent on a material issue and does not allow for appellate review of the legal basis for determination, we reverse and remand for further proceedings. On remand, the legal

basis for any decision terminating relator's housing assistance must be fully established in the record and in the written decision.

Relator also argues that the hearing officer's decision was not sufficiently specific and failed to consider all the mitigating factors. Agencies do not possess unlimited discretion. *Carter*, 574 N.W.2d at 729. "Agency action must be based on objective criteria applied to the facts and circumstances of the record at hand." *Id.* (quotation omitted). The agency must explain the evidentiary basis for its decision and how that evidence is rationally related to its action. *Id.*

Relator cites *Carter* in support of her argument that the hearing officer's decision is inadequate or lacks sufficient specificity. In *Carter*, we reversed the PHA's termination of Carter's housing assistance because the hearing officer's findings were not sufficiently specific. *Id.* at 730. There, the hearing officer's decision "fail[ed] to mention Carter's and [another individual's] testimony or any of the documentary evidence that does not support [the officer's] conclusion and gives no explanation as to why [the officer] chose to disregard it." *Id.* We relied on the following statement in a United States district court decision:

To be legally sufficient, the [agency decision-maker] must make an express credibility determination, must set forth the inconsistencies in the record which have led to the rejection of the [complainant's] testimony, must demonstrate that all relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony. . . . These requirements are not suggestive guidelines, but are mandates which impose affirmative duties upon the deliberative process.

Id. at 729-30 (quoting *Garthus v. Sec’y of Health & Human Servs.*, 847 F. Supp. 675, 689 (D. Minn. 1993)).

Generally, in order to facilitate appellate review, the agency must state the facts and conclusions essential to its decision with clarity and completeness. *Id.* at 729 (citing *People for Env’tl. Enlightenment & Responsibility (PEER), Inc. v. Minnesota Env’tl. Quality Council*, 266 N.W.2d 858, 871 (Minn. 1978)). An agency’s decision is arbitrary and capricious if it is not supported by more than just conclusory written findings and reasons because “it represents the agency’s will rather than its judgment.” *Reserve Mining Co. v. Minn. Pollution Control Agency*, 364 N.W.2d 411, 414 (Minn. App. 1985).

Here, much of the hearing officer’s written decision simply lists the evidence presented at the hearing. A mere recitation of presented evidence is not equivalent to independent findings of fact. *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989).

The written decision also contains a separate “conclusion” section in which the hearing officer cites some of the evidence to explain why termination of relator’s rental assistance was warranted. But this analysis does not explain why certain evidence relator offered in support of her claim was disregarded. For instance, the hearing officer’s conclusion does not address the mail and court order placing Kemp at another address, or Lundberg’s testimony indicating she did not observe any indication that Kemp lived at relator’s unit.

Furthermore, the written decision does not show a consideration of the mitigating circumstances. *See* 24 C.F.R. § 982.552(c)(2)(i) (2008) (permitting a PHA to consider relevant mitigating circumstances when deciding whether to terminate assistance). Here,

relator presented evidence indicating that she had numerous children and that she and her children would be homeless if she lost her housing assistance. The record further indicates that relator was pregnant at the time of the hearing and that one of her children suffers from profound disabilities and cannot walk. Relator also testified that she was a victim of domestic violence perpetrated by Kemp. But the hearing officer's decision does not reflect a consideration of these circumstances. On remand, an express assessment of the impact of these circumstances, if any, on the decision to terminate relator's housing assistance would facilitate meaningful appellate review.

Reversed and remanded.