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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1558**

Surer Muse,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

**Filed May 21, 2018
Affirmed
Reilly, Judge**

Dakota County Community Development Agency

Heather Meyers, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota
(for relator)

Mary G. Dobbins, Landrum Dobbins LLC, Edina, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Smith,
John, Judge.*

UNPUBLISHED OPINION

REILLY, Judge

Relator Surer Muse challenges the denial of her public housing assistance (Section 8 voucher), arguing that the informal hearing officer's decision to uphold the Dakota

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

County Community Development Agency's (CDA) decision was based on an error of law and contrary to 24 C.F.R. § 982.552(c)(1) (2016). We affirm.

FACTS

Relator Surer Muse was culturally married to Ayaanle Ahmed Alim. They have eight children together. On November 1, 2014, relator and Alim moved to a house in Eagan (the Eagan House). Relator and Alim qualified for Section 8 housing assistance, and, starting in November 2014, the CDA began making Section 8 housing payments to the landlord of the Eagan House. Relator is Somali and has limited proficiency in reading, writing, speaking, and understanding English, which limits her ability to successfully interact with the CDA. She relied on Alim to communicate with the landlord and CDA.

In 2016, Alim failed to submit recertification paperwork to the CDA and failed to respond to requests for documentation. On September 30, 2016, the CDA sent notice to relator and Alim that their Section 8 housing assistance would terminate on October 31, 2016. The CDA presented Alim with the option of a hearing to appeal the termination, but Alim never requested a hearing. Relator testified that she did not learn until February 2017 that she no longer had Section 8 housing assistance.

According to relator, she is a victim of domestic violence perpetrated by Alim. Alim's abuse included frequently limiting relator's access to money, monitoring her whereabouts, verbal abuse, and physical assault. Alim also frequently threatened relator with homelessness and termination of Section 8 benefits. In March 2017, relator obtained counsel through Southern Minnesota Regional Legal Services and obtained a certification of domestic violence under the Violence Against Women Act (VAWA). Relator then

requested the CDA to reinstate housing assistance consistent with VAWA and to remove Alim from the voucher. The CDA and relator resolved the issues and reached a settlement agreement. Under the agreement, Alim was not to be present at the assisted unit at any time. Relator also agreed to attend every scheduled meeting with the CDA, and provide accurate and complete information to the CDA.

The CDA reinstated relator's voucher in April 2017, and relator continued to reside at the Eagan House with her children. Relator applied to have the Eagan House re-approved for tenancy to receive Section 8 payments. The CDA ultimately determined that the Eagan House was ineligible for housing assistance payments and informed relator that the rent would need to be reduced by \$62 to be eligible for housing assistance payments.¹

Relator asked Alim to speak with the landlord because he was a stronger English speaker. Alim spoke with the landlord. The landlord then contacted the CDA and asked why Alim and relator's rent was no longer eligible for housing assistance, because it had been eligible the year prior with no apparent changes. Through this communication, the CDA discovered that Alim was never removed from the lease for the Eagan House and that Alim was speaking with the landlord to help apply relator's housing voucher to the Eagan House.

¹ The rent exceeded the Department of Housing and Urban Development's 40% of monthly income eligibility standard. Relator brought a letter explaining the standard to her landlord, but was not sure if the landlord was able to understand her request due to their language barrier.

In June 2017 the CDA informed relator that it was “terminating” her assistance voucher. In its termination letter, the CDA determined relator had not provided accurate information to the CDA, failed to attend a meeting with the CDA, and permitted Alim to remain as a member of the household. Though relator was not entitled to an informal hearing, the CDA granted one due to the unique nature of this case.

At the hearing, relator argued that the CDA lacked the authority to terminate her housing assistance pursuant to either the regulations or the settlement agreement because the Eagan House had not been subject to assistance since October 31, 2016. Relator testified that Alim was not currently living at the Eagan House and offered evidence that he was living elsewhere, citing two separate addresses. And relator argued that Alim only contacted the landlord to assist her.

In response, the CDA offered evidence that Alim received mail at the Eagan House, and that Alim’s cell phone was registered to the Eagan House’s address. The CDA also referenced a March 17, 2017 domestic abuse incident where relator told police Alim assaulted her, but she later recanted those allegations in an affidavit dated April 10, 2017. The April affidavit claims relator and Alim had never been separated prior to March 17, 2017, and that Alim never abused her. The CDA also submitted evidence that the management company for one of Alim’s supposed new addresses had no knowledge that Alim was added to the lease at that address.

The hearing officer upheld the CDA’s termination of relator’s housing assistance.

This appeal follows.

DECISION

This court has presumptive judicial review over agency decisions absent statutory language to the contrary. *In re North Metro Harness, Inc.*, 711 N.W.2d 129, 133-34 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). We defer to an administrative agency's decision but will reverse if it is "based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Carter v. Olmsted Cty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). On review, we defer to an agency's expertise and special knowledge in its field. *In re Cities of Annandale & Maple Lake*, 731 N.W.2d 502, 513 (Minn. 2007).

I. The hearing officer's decision to uphold the CDA's denial of relator's housing benefits was justified by 24 C.F.R. § 982.552(c)(1).

Federal law authorizes local agencies to administer the Department of Housing and Urban Development's (HUD) Section 8 voucher program. *Peterson v. Washington Cty. Hous. & Redev. Auth.*, 805 N.W.2d 558, 561 (Minn. App. 2011). The CDA is the local HUD agency for Dakota County. See 24 C.F.R. § 982.4 (definition of public housing agency). 24 C.F.R. § 982.552 authorizes the CDA to deny² or terminate a family's housing assistance for a variety of reasons. The CDA may deny or terminate assistance if the family violates any family obligations under the program, *id.* § 982.552 (c)(1)(i), including providing required information to the CDA that is true and complete, *id.* § 982.551 (b)(4),

² A denial of assistance includes "denying or withdrawing a voucher" that has already been granted to an applicant. 24 C.F.R. § 982.552 (a)(2) (2016).

(d), and (e) (2016). Failure to provide true and complete information to the CDA authorizes the CDA to deny or terminate Section 8 benefits. *Id.* § 982.552 (c)(1)(i).

Relator argues the CDA did not have the authority to terminate relator's housing voucher because the housing unit had not been assisted since October 31, 2016, and was not yet receiving housing assistance payments. Relator is correct that her housing voucher could not be terminated, because termination is defined as "refusing to enter into a HAP [Housing Assistance Payment] contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures." 24 C.F.R. § 982.552 (a)(3) (2016). Because none of these criteria existed, the CDA did not have the power to terminate relator's Section 8 voucher. However, the CDA did have the authority to *deny* relator's Section 8 voucher. A denial of a Section 8 voucher includes withdrawing a voucher that has already been granted. *Id.* § 982.552 (a)(2). The CDA did have the authority to revoke relator's housing assistance in the form of a denial. The hearing officer may have used imprecise language when it determined the CDA terminated relator's Section 8 voucher, but the outcome was authorized under the regulation.

II. Substantial evidence supports the CDA's and hearing officer's decision that relator provided untrue and incomplete information to the CDA.

Relator argues that, even if the CDA was authorized to take the action it did, there was not substantial evidence to show that relator provided untrue or incomplete information to the CDA. Relator argues that she provided information to the CDA that Alim was not living at the Eagan House and that no substantial evidence was presented to

suggest that he was. Also, relator claims that even if Alim was shown to be living at the Eagan House, his presence would not warrant denial of housing benefits, because relator only claimed that she would exclude Alim after she began receiving Section 8 payments. Despite relator's arguments, there was substantial evidence that relator provided untrue and incomplete information to the CDA.

In her application for reinstatement of housing benefits, relator claimed that the only residents of the Eagan House were herself and her seven children.³ She did not list Alim as a member of the household.

Relator presented evidence to show that Alim lived at two different addresses. First, relator provided a lease agreement for an apartment in Minneapolis. The hearing officer noted that Alim was not listed as tenant but as landlord. The lease agreement, to be in effect June 1, 2017 to June 1, 2018, listed the same address for both Alim and his supposed landlord. The hearing officer questioned the validity of the document.

Relator then claimed that Alim lived at a different address on Blaisdell Avenue in Minneapolis and had lived there for "quite some time." To corroborate her claim of this alternative residence, relator provided a bank statement mailed to the Blaisdell address dated July 3, 2017. The CDA's investigator spoke to the management company for the Blaisdell address, who stated that Alim was not on the lease and had never been seen on the premises. The management company informed the investigator that the unit had been

³ When the CDA noted the discrepancy in the number of children in her household—seven children or eight children—relator explained that she "forgot" to list her youngest child on the application. The hearing officer found that it was difficult to believe a mother would forget to list her child and that the discrepancy "brings into question her overall credibility."

rented by the same tenants since 2014. The investigator also spoke to Alim's probation officer, who said that Alim briefly mentioned he lived at the Blaisdell address, but the investigator concluded that there was no evidence that Alim lived anywhere but at the Eagan House.

The CDA presented other evidence at the hearing showing that Alim was still a member of the household contrary to relator's claims. Alim was never removed from the Eagan House lease and was the primary contact for the leasing company. Alim's driver's license, two parking citations, and his cell phone registration all listed the Eagan House as his address.

Given the many discrepancies, the hearing officer questioned relator's credibility. The hearing officer also noted that relator seemed aware that she could move to a different county, live with Alim there, and receive a Section 8 voucher, which seemed to indicate an intent to "play a game with the CDA" and that "any separation from [Alim] is temporary at best."

Relator further argues the hearing officer lacked substantial evidence to conclude that she violated the settlement agreement.⁴ Relator argues that she cannot have violated the settlement agreement because the settlement agreement only required her to exclude Alim from an "assisted unit." Since the Eagan House was not receiving reinstated

⁴ Relator also argues that the CDA cannot base its decision in federal law, because it did not cite federal law as a justification when it notified relator of the denial. However, relator raised this argument for the first time in her reply brief, and we may disregard an argument raised for the first time in a reply brief. See *Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002), review denied (Minn. Feb. 26, 2003). We conclude that this issue is not properly before this court and will not consider the argument.

assistance payments during this time, Alim was never present in an “assisted unit.” However, one and a half months after agreeing to provide accurate and complete information to the CDA, relator claimed on her reinstatement application that Alim was not living at the Eagan House, when substantial evidence indicates that he was.

The settlement agreement (and statutes and regulations) also required relator to provide accurate and complete information to the CDA during the reinstatement process. Relator contends that there was no evidence of dishonesty occurring after she signed the settlement agreement on April 25, 2017. But in June of 2017, relator twice applied for the Eagan House to be approved to receive Section 8 payments. In both of her applications, relator claimed that Alim was not living there. Substantial evidence shows that Alim was still living there. Relator’s applications contained inaccurate and incomplete information in violation of the settlement agreement.

Our review of the record and deference to the hearing officer’s credibility determinations, leads us to the conclusion that there is substantial evidence that Alim continued to reside at the Eagan House in contravention of the settlement agreement relator reached with the CDA and her obligation to provide true and complete information.

There was substantial evidence for the informal hearing officer to uphold the CDA’s denial of relator’s Section 8 housing voucher.

Affirmed.