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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1683**

Eileen Henderson,
Relator,

vs.

Public Housing Agency of the City of Saint Paul,
Respondent.

**Filed June 4, 2018
Reversed
Connolly, Judge**

St. Paul Public Housing Agency

Lisa R. Hollingsworth, Laura K. Jelinek, Southern MN Regional Legal Services, St. Paul,
Minnesota (for relator)

Lyndsey Olson, St. Paul City Attorney, John H. Stechmann, Assistant City Attorney,
St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the termination of her housing assistance, arguing that the
evidence was insufficient to support a finding of drug-related criminal activity and the

hearing officer erred in determining that relator's failure to disclose an arrest and dismissed charge was a material program violation. We reverse.

FACTS

Relator Eileen Henderson receives Social Security disability income due to her disabilities. On April 28, 2004, relator enrolled in a Section 8 Housing Choice Voucher Program (Section 8)—a U.S. Department of Housing and Urban Development (HUD) program that is administered by respondent Public Housing Agency of the City of St. Paul (the PHA). HUD standards require the PHA to annually recertify the eligibility of each participant family. To that end, for 11 Januaries—between January 9, 2006, and January 20, 2016—relator was required to self-certify, in relevant part, whether she had engaged in certain criminal activity related to illegal drugs.

On November 16, 2004, relator was arrested for possession of a controlled substance. In December of 2004, relator was charged with a felony—fifth-degree drug possession. Relator began Ramsey County's Adult Substance Abuse Court (ASAC) program in January of 2005 and pleaded guilty to this felony drug charge in February of 2005. The district court withheld acceptance of relator's guilty plea with the condition that she complete the ASAC program. On April 24, 2008, after relator completed the ASAC program, the district court dismissed her charge and, according to relator, "ripped up" the charging papers in the courtroom in front of her. Since her arrest in 2004, relator has not been arrested, charged, or convicted of any crime.¹

¹ At oral argument, counsel for the PHA informed the court that the 2004 arrest and charge are no longer on relator's record.

The record does not indicate whether relator was required to self-certify information regarding her drug-related criminal activity in 2005, but from 2006 to 2011, she marked, “No,” in response to the question, “Have you or any household member ever been charged, arrested for or convicted of any criminal activity related to the use, sale, distribution or manufacture of a controlled substance (illegal drugs)?” Beginning in 2012, the wording of the question was changed to, “Have you or any household member ever been arrested for, charged with or convicted of any criminal activity related to illegal drugs: the possession, use, sale, distribution, or manufacture of a controlled substance?” Again, relator marked, “No.” That question remained the same for the next four years. Each time, relator marked, “No.” In 2016, the wording of the question was again changed to, “In the last five (5) years, have you or any household member been convicted of any criminal activity related to illegal drugs: the possession, use, sale, distribution, or manufacture of a controlled substance?” Again, relator marked, “No.”

After a random criminal background check in February of 2017, the PHA discovered relator’s 2004 arrest and charge for her felony drug offense. On April 10, 2017, the PHA sent relator notice that it was terminating her Section 8 assistance because it determined that she had (1) engaged in drug-related criminal activity and (2) failed to provide true and complete information on her self-certification forms. Relator requested an informal administrative-review hearing. The hearing officer upheld the PHA’s termination of relator’s housing assistance on both grounds. The hearing officer also reviewed relator’s request for a reasonable accommodation and found that relator’s submitted evidence “does not prove the necessary connection between the disability

claimed and [relator's] arrest for drug possession and the failure by [relator] to repeatedly report that arrest.” The hearing officer also rejected relator’s argument that terminating her voucher would offend public policy because relator’s rehabilitation and community participation were not adequately considered.

This appeal follows.

D E C I S I O N

Relator challenges the hearing officer’s decision affirming the termination of her Section 8 housing assistance, arguing that there was not substantial evidence that relator engaged in drug-related criminal activity and that relator’s arrest and dismissed charge were not information necessary for the PHA to maintain its program. Based on the unique facts and circumstances of this case, we agree.

When an administrative agency terminates Section 8 housing assistance, it acts quasi-judicially. *Peterson v. Washington Cty. Hous. & Redev. Auth.*, 805 N.W.2d 558, 561 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). This court will uphold that decision unless it is “unconstitutional, outside the agency’s jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Id.* (quoting *Carter v. Olmsted Cty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998)).

Under 24 C.F.R. § 982.552(c)(1)(i) (2016), the PHA may terminate Section 8 housing assistance if any family member violates any of her obligations under 24 C.F.R. § 982.551 (2016). Specifically, the PHA is federally required to develop standards that allow it to terminate assistance if the PHA determines that any family member has violated

the family's obligation to refrain from drug-related criminal activity. 24 C.F.R. § 982.553(b)(1)(iii) (2016). A participating family also has an obligation to supply "true and complete" information that the PHA or HUD deems necessary for program administration. 24 C.F.R. § 982.551(b).

I.

Relator first argues that there is not sufficient evidence to support the hearing officer's finding that relator engaged in drug-related criminal activity. We agree.

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; and (5) evidence considered in its entirety." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). This court gives substantial deference to administrative fact-finding, and relator has the burden to prove that a decision is not supported by substantial evidence. *Id.*

The PHA's Section 8 Admissions and Occupancy Policies (AOP) defines "drug-related criminal activity" as "the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug." Relator was charged with violating Minn. Stat. § 152.025, subd. 2(1) (2004), which states, "A person is guilty of controlled substance crime in the fifth degree . . . if: (1) the person unlawfully possesses one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana[.]" The hearing officer did not make specific findings about relator's intent to manufacture, sell, distribute, or use the

drug, and there was no evidence regarding relator's intent to manufacture, sell, distribute, or use the drug. Consequently, there is insufficient evidence to support the hearing officer's determination that relator engaged in drug-related criminal activity. Therefore, the hearing officer erred by affirming the termination of relator's Section 8 housing assistance on that basis.

II.

The PHA's alternative basis for terminating relator's housing assistance was her failure to provide the PHA with true and complete information. The hearing officer agreed. The hearing officer's conclusion that relator's housing assistance should be terminated for "failure to report a guilty plea" rests on the hearing officer's finding that relator's guilty plea constituted information necessary for the PHA's administration of the program. We conclude that the facts in the record do not support the hearing officer's conclusions.

Section 8 participants are required to supply "any information that the PHA or HUD determines is necessary in the administration of the program." 24 C.F.R. § 982.551(b)(1). All of this self-reported information that is necessary for the administration of the program "must be true and complete." 24 C.F.R. § 982.551(b)(4). In 2016, the wording of the relevant question on the self-certification form was changed to, "In the last five (5) years, have you or any household member been convicted of any criminal activity related to illegal drugs: the possession, use, sale, distribution, or manufacture of a controlled

substance?” In 2017, the PHA discovered relator’s arrest, dismissed charge, and rejected guilty plea, which all stemmed from an incident in 2004.

It is undisputed that relator has not been convicted of any criminal activity related to illegal drugs. She successfully completed treatment and has been sober and doing fine for ten years. Relator argues that since the PHA now only requires that participants self-report their drug-related convictions from the past five years, her 2004 arrest, dismissed charge, and rejected guilty plea did not constitute information “necessary in the administration of the program” as required under 24 C.F.R. § 982.551(b). We agree. Since the PHA has now determined that only convictions and not arrests or charges are now relevant for the purpose of determining whether an individual qualifies or remains eligible for receiving public assistance, we are hard pressed to understand how PHA could deem it necessary to know about a dismissed criminal charge from 13 years ago for the administration of PHA’s program in 2017.

Because we reverse the hearing officer’s decision upholding the termination of relator’s Section 8 housing assistance, we need not reach relator’s arguments regarding reasonable accommodations and public policy.

Reversed.