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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1866**

Hodan Dirie,
Relator,

vs.

Metropolitan Housing and Redevelopment Authority,
Respondent.

**Filed June 11, 2018
Affirmed
Smith, Tracy M., Judge**

Metropolitan Housing and Redevelopment Authority

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 Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Relator Hodan Dirie challenges the termination of her Section 8 Rental Assistance, arguing that (1) the notice of benefit termination she received was inadequate, (2) the hearing officer relied solely on hearsay evidence in reaching her decision, and (3) the hearing officer failed to explain why she discredited Dirie's testimony. We affirm.

FACTS

In 2011, Dirie enrolled in the Section 8 Housing Choice Voucher Program (Section 8)—a U.S. Department of Housing and Urban Development (HUD) program—administered by respondent Metropolitan Housing and Redevelopment Authority (MHRA). HUD regulations provide that families receiving Section 8 benefits “may not commit any serious or repeated violation of [their] lease.” 24 C.F.R. § 982.551(e) (2017). To that end, each year Dirie was required to review and sign MHRA’s rent-assistance statement of responsibilities, which stated, in relevant part:

I understand and certify that:

- Any household members or guests must not commit any serious or repeated violation of the lease. Serious and repeated violations will include but are not limited to nonpayment of rent, utilities or other fees, moving without proper notice, disturbance to neighbors, unauthorized guests, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity.

....

- If any member of my household or guests commit serious or repeated lease violations . . . the [MHRA] will terminate my rent assistance.

A guest is defined in the statement as “a person who can verify a permanent address elsewhere and lives or stays in [the tenant’s] home less than 30 days.”

In May 2014, Dirie and her three children, including Y.J., moved into an apartment at Centennial Commons in Roseville. In March 2016, after Y.J. turned 18, he moved out of Dirie’s apartment. In April 2017, Y.J. repeatedly parked Dirie’s car in other tenants’

parking spaces. Dirie was notified that this was a lease violation and that, if Y.J. continued to park the car in other tenants' spots, the car would be towed. Y.J. apparently stopped parking the car in other tenants' spots until August 1, when the car was again found in another tenant's spot. Dirie was again notified, and she moved the car.

Eight days later, in the early morning hours of August 9, a tenant in another apartment building at Centennial Commons awoke to find a man standing in her apartment. The man fled, and the tenant called 911. When the police arrived, they saw Y.J. walking toward his mother's apartment building. Based on the victim's description of the intruder, the police stopped Y.J. Y.J. denied being the intruder, claiming he had just arrived from Hopkins. However, when the police officer indicated he was going to check and see if Y.J.'s engine was still warm, Y.J. changed his story, claiming that he had fallen asleep in his vehicle after parking it. The police brought the victim out to the sidewalk, and she identified Y.J. as the intruder. Y.J. was arrested for burglary.

Later that day, Dirie received a notice from Centennial Commons that it was terminating her lease effective September 9. On August 22, MHRA sent Dirie a letter informing her that it would be terminating her rental assistance effective September 30 due to "serious/repeated lease violations and [an] unauthorized adult in the household." Dirie challenged the termination, and an informal hearing was held on September 13. MHRA's evidence consisted almost entirely of exhibits, including a police report describing the investigation into the intrusion committed by Y.J. Following the hearing, the hearing officer concluded there was not sufficient evidence to uphold the determination that an unauthorized adult had been living in Dirie's apartment. However, the hearing officer

concluded there was sufficient evidence to conclude that there were serious and repeated lease violations and upheld the termination of benefits.

Dirie appeals.

DECISION

When a public-housing authority receives evidence, hears testimony, and makes a determination to deny an individual Section 8 benefits, it acts in a quasi-judicial capacity. *Carter v. Olmsted Cty. Hous. & Redevelopment 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.*

I. Dirie’s notice of benefit termination satisfied constitutional and regulatory due process requirements.

Dirie first argues that her benefits must be reinstated because MHRA failed to give her adequate notice of the reasons why her benefits were being terminated.¹ Whether an administrative agency has provided sufficient notice is a question of law we review de novo. *See Wilhite*, 759 N.W.2d at 257.

¹ MHRA argues that Dirie forfeited her notice argument by failing to raise it below. This argument is without merit. The requirement for notice stems from the Due Process Clause of the Fourteenth Amendment, and we have previously held that a tenant does not forfeit a constitutional challenge to the adequacy of notice by failing to raise the issue before the hearing officer. *See Wilhite v. Scott Cty. Hous. & Redevelopment Auth.*, 759 N.W.2d 252, 257 n.1 (Minn. App. 2009).

Due process requires adequate notice. *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S. Ct. 1011, 1020 (1970). In the context of Section 8, the requirements of that notice stem from both the Fourteenth Amendment and federal regulations. *See Wilhite*, 759 N.W.2d at 257. To be constitutionally sufficient, “the notice must communicate the interest at stake.” *Id.* To comply with federal regulations, “[t]he notice must (1) state the reasons for the termination, (2) advise the individual of the right to request an informal hearing to contest the termination, and (3) state the deadline for requesting an informal hearing.” *Id.* (citing 24 C.F.R. § 982.555(c)(2) (2008)).

Here, Dirie received a letter stating, “[MHRA] is terminating your rent assistance effective September 30, 2017. This action is being taken due to serious/repeated lease violations and unauthorized adult in the household.” This letter clearly “communicate[d] the interest at stake.” It also advised Dirie of the right to an informal hearing and the deadline for requesting such a hearing. Dirie argues, however, that the letter did not adequately “state the reasons for the termination” because the notice “does not inform Ms. Dirie of who in her household committed the alleged serious/repeated lease violations[,] . . . of the nature of any of the serious/repeated lease violations[,] . . . [or] of the dates on which any of the alleged violations occurred.”

Although Dirie challenges other aspects of the notice, she concedes that it adequately informed her that the August 9 burglary would be at issue during the hearing. As discussed below, this burglary was a sufficient basis for the hearing officer to conclude that a serious lease violation meriting benefit termination occurred. Therefore, because we agree with Dirie that notice regarding the burglary was adequate, we need not reach the

issue of whether Dirie had adequate notice that other lease violations would also be at issue during the hearing.

II. The hearing officer did not abuse her discretion in relying on hearsay evidence.

Dirie next argues that the hearing officer's conclusion that a serious lease violation occurred is not supported by substantial evidence because she "relied solely on hearsay evidence that would be inadmissible in a judicial proceeding," specifically the police report. We evaluate an administrative hearing officer's reliance on hearsay for an abuse of discretion. *See State ex rel. Indep. Sch. Dist. No. 276 v. Dep't of Educ.*, 256 N.W.2d 619, 627 (Minn. 1977) (*Dist. No. 276*) ("Only where it appears that the [hearing officer] clearly abused [her] discretion in relying upon inherently unreliable evidence, under the hearsay rule or otherwise, should the courts intervene.").

"The general rule is that in the absence of a special statute, an administrative agency cannot, at least over objection, rest its findings of fact solely upon hearsay evidence which is inadmissible in a judicial proceeding." *Id.* (quotation omitted). However, the federal regulations governing benefit termination hearings provide that "[e]vidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings." 24 C.F.R. § 982.555(e)(5) (2017). It is also "reasonable to assume that the [hearing officer] is in a position to judge the inherent trustworthiness and reliability of the evidence before him." *Dist. No. 276*, 256 N.W.2d at 627.

In support of her argument that hearsay alone is not substantial evidence, Dirie cites to *Carter*. In that case, we held that the statement "[unauthorized tenant] is still there" from a landlord's daughter to the HRA did not constitute substantial evidence that the

unauthorized tenant was in fact still residing in the rent-assistance recipient's apartment. 574 N.W.2d at 728, 731-32. Dirie argues that *Carter* stands for the proposition that "hearsay . . . that would be inadmissible in court [is] insufficient for the HRA to meet its burden and terminate assistance."

We disagree. First, *Dist. No. 276*, upon which *Carter* relies, provides that the general rule prohibiting reliance on solely hearsay does not apply when there is "a special statute" permitting such use. 256 N.W.2d at 627. Here, there is a federal regulation permitting such reliance, *see* 24 C.F.R. 982.555(e)(5), and we see no reason why "special statute" should not be read to include the federal regulations governing Section 8.

Second, in reaching our conclusion that the hearsay in *Carter* was insufficient, we found significant that "the record [did] not indicate what facts led the [daughter] to believe that [the unauthorized tenant] was residing with [relator] rather than visiting or even that he was present." *Id.* at 732. Here, the hearsay upon which the hearing officer relied—the police report of the burglary—contained the underlying facts which led both the officer writing the report and the individual that identified Y.J. to reach their respective conclusions. This information allowed the hearing officer to "judge the inherent trustworthiness and reliability" of the hearsay. *Dist. No. 276*, 256 N.W.2d at 627. Thus, we conclude that there was substantial evidence that a serious lease violation occurred, namely, the police report describing the burglary committed by Y.J., and that the hearing officer did not abuse her discretion in relying on that report to reach her conclusions.

Dirie also raises additional arguments about the hearing officer relying on hearsay in order to conclude that *repeated* lease violations occurred. We need not reach these

arguments, however, because we conclude that substantial evidence supports the conclusion that a *serious* lease violation occurred, and a serious lease violation is sufficient grounds for terminating Section 8 benefits. See *Wilhite*, 759 N.W.2d at 255 (“The decision is to be upheld if the lower tribunal furnished *any* legal and substantial basis for the action taken.” (emphasis added) (quotation omitted)).

III. The hearing officer did not abuse her discretion in finding that Y.J. was Dirie’s guest at the time of the burglary.

Finally, Dirie argues that the hearing officer abused her discretion in finding that Y.J. was Dirie’s guest at the time he committed the burglary. A hearing officer “abuses [her] discretion when [her] decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (quotation omitted).

When evaluating a housing and redevelopment authority hearing officer’s decision, we have indicated:

To be legally sufficient, the [officer] must make an express credibility determination, must set forth the inconsistencies in the record which have led to the rejection of the Plaintiff’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.

Carter, 574 N.W.2d at 729-30 (quoting *Garthus v. Sec’y of Health & Human Servs.*, 847 F. Supp. 675, 689 (D. Minn. 1993)).

Dirie argues the hearing officer abused her discretion because Dirie testified “that she did not know [Y.J.] was at Centennial Commons” the night of the burglary, the hearing

officer “found Ms. Dirie to be credible in her testimony,” and yet the hearing officer concluded that Y.J. was a guest of Dirie’s that evening. Dirie argues that this conclusion is “legally problematic because it failed to detail [the] reasons for . . . discounting Ms. Dirie’s credible testimony.”

We disagree that the hearing officer’s conclusion is inconsistent with the hearing officer’s finding that Dirie’s testimony was credible. Although Dirie may not have explicitly invited Y.J. to her home on the night of the burglary, the record establishes and the hearing officer found a clear “pattern of [Y.J.] coming and going from the apartment complex with Ms. Dirie’s knowledge and consent.” Dirie testified that Y.J. would visit her apartment, “helped at the apartment,” and used Dirie’s car—which, even after Y.J. moved out of Dirie’s apartment, was occasionally parked at Centennial Commons—indicating that Dirie gave Y.J. general permission to be on the property. Furthermore, Y.J. had keys to the apartment complex, was walking toward his mother’s apartment, and told police he was going “home” when he was questioned. Based on this record, we conclude that there was sufficient evidence that Y.J. was Dirie’s guest and that reaching this conclusion did not require the hearing officer to discredit Dirie’s testimony.

Affirmed.