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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1158**

Lisa A. Curtis,
Relator,

vs.

Cloquet/Carlton Housing and Redevelopment Authority,
Respondent.

**Filed April 22, 2019
Affirmed
Kirk, Judge***

Cloquet/Carlton Housing and Redevelopment Authority

Gwen Updegraff, Legal Aid Service of Northeastern Minnesota, Duluth, Minnesota (for relator)

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

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Kirk, Judge.

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

UNPUBLISHED OPINION

KIRK, Judge

Relator appeals the termination of her Section 8 housing assistance by respondent Cloquet/Carlton Housing and Redevelopment Authority (HRA), arguing that (1) her use of Section 8 assistance to rent her sister's home was not grounds for terminating her assistance, and (2) the hearing officer's decision was arbitrary and capricious. We affirm.

FACTS

Relator Lisa Curtis began renting her sister's home in 2012. In 2015, relator applied for Section 8 housing assistance with the HRA. In order to participate in the program, the HRA required relator to attend an orientation. At the orientation, the HRA program housing specialist explained the rules of the Section 8 program, including a participant's obligation to provide true and complete information to the HRA and the HRA's prohibition on renting from relatives. After being approved for the program, relator signed a housing voucher that also explained these rules. Relator claims that she missed the discussion of the prohibition on renting from relatives and did not read the voucher before signing it.

Several days after receiving the voucher, relator and her sister submitted a request for tenancy approval to the HRA asking the HRA to approve relator's tenancy at her sister's home. This request form also noted the prohibition on renting from relatives. The HRA approved relator's tenancy and began providing housing assistance in April 2015.

In February 2018, the HRA program housing specialist conducted an inspection of relator's home. During the inspection, the housing specialist discovered that relator was renting from her sister. On March 9, 2018, the HRA issued a notice of termination for

relator's Section 8 assistance based on relator's violation of the program's obligation to provide true and complete information. Relator requested a hearing to challenge the termination. After an initial decision was vacated to allow relator to obtain counsel, a hearing was held before an HRA hearing officer on May 14, 2018.

Relator appeared at the hearing with counsel. The HRA program housing specialist testified that the obligation to provide true and complete information and the prohibition on renting from relatives were both explained at the orientation. The housing voucher and request for tenancy approval were also introduced at the hearing. Relator testified that she signed both documents without reading them carefully and that she was unaware of the prohibition on renting from relatives.

The hearing officer found that relator had violated her obligation to provide true and complete information to the HRA by using her assistance to rent her sister's home. The hearing officer concluded that the HRA's termination of relator's housing assistance was authorized by law and affirmed the HRA's decision.

This certiorari appeal follows.

D E C I S I O N

When a public housing authority takes evidence, hears testimony, and makes a determination to deny or terminate an individual's Section 8 assistance, it acts in a quasi-judicial capacity. *Carter v. Olmsted Cty. Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). In general, quasi-judicial decisions made by an agency 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.” *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004) (quotation omitted). This court reviews an agency’s findings to discern whether they support the decision but does not make credibility determinations or retry the facts. *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).

A public housing authority is vested with the discretion to determine when the termination of Section 8 assistance is appropriate. *Dep’t of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 136, 122 S. Ct. 1230, 1236 (2002). 24 C.F.R. § 982.552(c)(1)(i) (2018) authorizes the HRA to terminate a participant’s Section 8 assistance if a family member violates the program’s family obligations. A “family” includes a person or group of persons “approved to reside in a unit with [Section 8] assistance.” 24 C.F.R. § 982.4(b) (2018). One of the program’s family obligations requires that a family supply “true and complete” information to the public housing authority. 24 C.F.R. § 982.551(b)(4) (2018). The regulation also prohibits the use of housing assistance to rent from relatives. 24 C.F.R. § 982.306(d) (2018).

I. The record and the law support the hearing officer’s order affirming the HRA’s termination of relator’s Section 8 assistance based on her failure to provide true and complete information.

The HRA terminated relator’s Section 8 assistance for her failure to supply true and complete information regarding the use of her housing assistance to rent her sister’s home. Relator argues that her conduct is not grounds for termination because it amounts to mere negligence.

At the termination hearing, and in the subsequent written decision, the hearing officer found that relator signed the Section 8 voucher that explained a participant's obligation to provide true and complete information to the HRA and the program's prohibition on renting from relatives. By signing this document, relator acknowledged these requirements. The voucher also informed relator that failure to provide true and complete information to the HRA was a ground for termination. The hearing officer further noted that relator signed the request for tenancy approval that similarly explained the prohibition on renting from relatives.

The hearing officer ultimately concluded that the "HRA's policy, HUD forms, and Federal Regulation all indicate that rental assistance cannot be provided to an owner who is a family member," and that by renting from her sister, relator violated her obligation to provide the HRA true and complete information. This decision is supported by the record and the law.

II. The hearing officer's decision is not arbitrary and capricious.

Relator also argues that the hearing officer's decision was arbitrary and capricious because her decision did not consider the circumstances of relator's case. 24 C.F.R. § 982.552(c)(2) allows the consideration of circumstances in deciding whether to terminate Section 8 assistance:

(2) *Consideration of circumstances.* In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA 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.

But in *Peterson v. Wash. Cty. Hous. & Redevelopment Auth.*, we held that “while the hearing officer *may* consider mitigating factors, the regulations do not require it.” 805 N.W.2d 558, 564 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). Thus, because consideration of mitigating factors is permissive, the hearing officer’s decision is not arbitrary and capricious because she declined to consider any mitigating factors.

Affirmed.