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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1189**

Kelly Cedarberg,
Relator,

vs.

Dakota County Community Development Agency,
Respondent.

**Filed April 29, 2019
Reversed
Jesson, Judge**

Dakota County Community Development Agency

Christopher Scott, 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 Johnson, Presiding Judge; Ross, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

Relator Kelly Cedarberg failed to timely report income from her short-term, part-time employment due, she alleges, to symptoms stemming from her mental illness. Following her late reports, respondent Dakota County Community Development Agency terminated her housing benefits. Cedarberg now challenges the denial of her

reasonable-accommodation request and the termination of her housing benefits. Because we conclude that the hearing officer erroneously upheld the denial of Cedarberg's reasonable-accommodation request, we reverse.

FACTS

Relator Kelly Cedarberg has been a participant in Dakota County's Section 8 Housing Choice Voucher Program since April 2015. The terms of that program required Cedarberg to report any changes in her household income to respondent Dakota County Community Development Agency (the agency) within 30 calendar days. Cedarberg agreed to abide by the requirements of the program.

In November 2016, Cedarberg submitted her annual application for recertification, in which she reported no current employment. That changed in 2017, when Cedarberg held three part-time jobs for short periods of time. On February 23, 2017, Cedarberg began working part-time at Carbone's. Later in 2017, Cedarberg was employed at Benihana from July 5, 2017 to July 15, 2017 and at Blazin' Wings from July 7, 2017 to September 24, 2017. At each of these limited-duration positions, Cedarberg worked minimal hours.

Cedarberg informed the agency about her part-time position at Carbone's in a letter dated April 4, 2017. This notification of a change in her employment did not fall within the required 30-calendar-day reporting period. But due to staff turnover at the agency, Cedarberg's late report was not addressed until August 2017, when the agency determined that Cedarberg needed to repay overpaid housing benefits. After receiving an interim rent-change notification and a repayment agreement, Cedarberg contacted the agency to inform them that she was no longer employed at Carbone's. The agency then asked

Cedarberg to provide proof of her employment status. On August 25, 2017, Cedarberg sent the agency additional paystubs from Carbone's and provided—for the first time—paystubs from her positions at Benihana and Blazin' Wings.

Throughout this time period, Cedarberg was experiencing symptoms from her mental health conditions, which include bipolar disorder and ADHD. Cedarberg's mental-health care provider noted that Cedarberg can have difficulty understanding her reporting requirements and keeping up with paperwork as a result of her mental health conditions. Further, Cedarberg's doctor was adjusting her medications during this time period and believed that the change in medications at least partially explained Cedarberg's late reports of her employment.

About six months after Cedarberg notified the agency of her part-time employment positions—at which point Cedarberg was no longer employed anywhere—the agency determined that Cedarberg's failure to timely report her employment provided a basis to terminate her housing assistance.¹ The agency sent Cedarberg a letter notifying her that her housing assistance would be terminated, and Cedarberg requested an informal hearing contesting the agency's termination of her housing benefits.

Before the informal hearing, Cedarberg requested a reasonable accommodation from the agency. Cedarberg's request was based on her contention that her documented mental health conditions prevented her from understanding her reporting responsibilities

¹ The agency did not reference Cedarberg's late report of income from her position at Carbone's as a basis for terminating her housing benefits. Instead, the agency focused on her late reports of income from her employment at Benihana and Blazin' Wings.

and keeping up with paperwork she receives. At the time of the informal hearing, Cedarberg's reasonable-accommodation request was still pending with the agency, so the hearing officer agreed to keep the record open and delay a decision until the accommodation request was decided.

In deciding Cedarberg's reasonable-accommodation request, the agency asked her to provide a plan of action to ensure her compliance with reporting requirements. Cedarberg provided a plan she developed with her caseworker, which stated that she would communicate any changes in income or employment to her caseworker, ask her caseworker for assistance when completing any necessary paperwork, and manage her mental health symptoms by attending appointments and taking her medications. After reviewing Cedarberg's proposed plan, the agency informed Cedarberg of its intent to deny her reasonable-accommodation request because her proposed plan did not show how she would correct the compliance issues. Cedarberg's counsel contacted the agency, asked if there was something additional they were looking for to ensure compliance, and noted a willingness to tailor Cedarberg's plan to the agency's needs. But the agency denied the reasonable-accommodation request, explaining that "[i]t appears that the proposed plan will not resolve the issues because it continues to put the burden of continued compliance on Ms. Cedarberg."

Shortly after the agency's denial of Cedarberg's reasonable-accommodation request, the hearing officer issued a decision summarily concurring with the agency's denial of Cedarberg's reasonable-accommodation request, noting that "the information provided [did] not sufficiently ensure that the program compliance issues that resulted in

the termination of Ms. Cedarberg's benefits will be corrected." The hearing officer further determined that termination of Cedarberg's housing benefits was warranted on the basis of misrepresentation, noncooperation, and unreported income. Cedarberg appeals.

DECISION

Cedarberg argues that her reasonable-accommodation request was improperly denied and that her housing benefits were erroneously terminated. The agency's denial of Cedarberg's reasonable-accommodation request and termination of her housing benefits is a quasi-judicial decision. And 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). We review an agency's findings to discern whether they support the decision, but do not make credibility determinations or retry the facts. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996).

In order to prevent discrimination, individuals with disabilities may request reasonable accommodations in the administration of the Section 8 housing assistance program.² *Hinneberg v. Big Stone Cty. Hous. & Redevelopment Auth.*, 706 N.W.2d 220,

² We note that Cedarberg's reasonable-accommodation request was, in nature, both retrospective and prospective. In her request for reasonable accommodation, Cedarberg asked the agency to forgive her failure to timely report income and provided the agency with a plan to ensure she would satisfy all program requirements going forward. She did not ask for different rules for herself prospectively like, for example, having 60 days to report income changes in the future. At oral argument, with respect to consideration of these types of requests, the agency noted that it sometimes considers them, and sometimes does not. But the agency did not argue that it was not required to consider a retrospective

224-25 (Minn. 2005); 24 C.F.R. § 982.53(a) (2016). When evaluating a reasonable-accommodation request, we first examine whether a request was made and whether it was reasonable. In order to prevail on a reasonable-accommodation claim, the individual requesting the accommodation “must make a prima facie showing that the accommodation she seeks is reasonable on its face.” *Hinneberg*, 706 N.W.2d at 226. To do so, the individual bears the burden “to show that her requested accommodation is (1) linked to her disability-related needs, (2) necessary to afford her an equal opportunity to enjoy Section 8 benefits and (3) possible to implement.” *Id.* (quoting *Huberty v. Washington Cty. Hous. & Redevelopment Auth.*, 374 F. Supp. 2d 768, 773 (D. Minn. 2005)). In cases where a prima facie case is established, the burden then shifts to the agency to demonstrate undue hardship. *Id.*

Here, the agency did not explicitly argue in its brief that Cedarberg failed to make a prima facie showing. *See State Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (noting that appellate courts generally decline to reach issues that are inadequately briefed). And at oral argument, counsel for the agency orally conceded that Cedarberg established a prima facie case in favor of her reasonable-accommodation request. Accepting the agency’s concession that Cedarberg established a prima facie case for her proposed reasonable accommodation, the burden then

reasonable-accommodation request or that a recipient’s request to be excused from an employment-reporting violation qualifies as a reasonable accommodation. As a result, we do not decide either question. But once an agency decides to consider a reasonable-accommodation request seeking, in part, retrospective relief—as the agency did here—it must follow the legal framework governing reasonable-accommodation requests.

shifts to the agency to demonstrate that providing the requested accommodation creates an undue hardship for the agency. *Hinneberg*, 706 N.W.2d at 226.

But nothing in the record indicates that the hearing officer considered whether the accommodation would present an undue hardship for the agency. No findings relate to this issue. And the record does not suggest that the agency presented *any* evidence or arguments to the hearing officer regarding undue hardship. The hearing officer's failure to consider this question of undue hardship—as required by caselaw—was error. *See Cole*, 686 N.W.2d at 336 (identifying “an erroneous legal theory” as a basis for reversing an agency's quasi-judicial decision). Because the agency did not meet its burden to demonstrate that Cedarberg's reasonable-accommodation request would create an undue hardship for the agency, the hearing officer's decision to uphold the denial of Cedarberg's reasonable-accommodation request was not supported by substantial evidence.³ *See Carter v. Olmsted Cty. Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 730 (Minn. App. 1998) (noting that a housing authority's decision must be based on substantial evidence, defined “as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” (quotation omitted)).

In conclusion, when an agency accepts for consideration a reasonable-accommodation request, it must follow the framework established by caselaw. Here, both the agency and the hearing officer failed to do so. The agency effectively

³ Because we conclude that it was error to deny Cedarberg's reasonable-accommodation request, we do not reach Cedarberg's additional arguments regarding whether substantial evidence supported the termination of her housing benefits and the propriety of introducing certain evidence during the informal hearing.

concedes Cedarberg made a prima facie case for her reasonable-accommodation request, yet offered no proof that the accommodation would be an undue hardship for the agency. The question of undue hardship was never even addressed by the hearing officer. Accordingly, we reverse.

Reversed.