

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1274**

Robert D. Fineran,
Relator,

vs.

Housing and Redevelopment Authority of Duluth,
Respondent.

**Filed June 7, 2021
Reversed
Bryan, Judge**

Housing and Redevelopment Authority of Duluth, Minnesota

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

Bridget A. Brine, Housing and Redevelopment Authority of Duluth, Duluth, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this certiorari appeal, relator challenges the hearing officer's decisions upholding the termination of relator's housing benefits and upholding the denial of relator's request for a reasonable accommodation. We conclude that given the language of respondent's

written administrative plan, the hearing officer erred when it made these two decisions. Therefore, we reverse.

FACTS

Relator Robert Fineran received housing benefits through respondent Housing and Redevelopment Authority of Duluth (the HRA). The HRA terminated Fineran's benefits in July 2020. Fineran appealed the termination and a separate decision denying his request for a reasonable disability-related accommodation. After a hearing in August 2020, the hearing officer upheld both decisions and Fineran appeals by writ of certiorari. We first address the relevant aspects of the housing benefits program before summarizing the administrative hearing.

A. Background of the Voucher Program

The HRA operates a section 8 housing voucher program, which is governed by United States Department of Housing and Urban Development (HUD) regulations. The purpose of the housing program is to assist low-income families with obtaining a decent place to live. 42 U.S.C. § 1437f(a) (2018). Under the section 8 program, the agency subsidizes the rental payments for a participant. 24 C.F.R. § 982.1(b) (2018). The HRA is required to adopt a written administrative plan, which establishes local policies for administering the housing program in accordance with HUD requirements. 24 C.F.R. § 982.54 (2018). The HRA may terminate assistance under the program for various reasons, some mandatory and some permissive. 24 C.F.R. § 982.552 (2018). The HRA is permitted to terminate assistance “[i]f the family violates any family obligations under the program.” 24 C.F.R. § 982.552(c)(1)(i).

In this case, the relevant obligation is specifically set forth in the HRA's administrative plan, which requires participants to provide notice to the HRA when they move out prior to the end of a lease. When a participant fails to do so, the administrative plan allows for termination. The plan, however, also includes mandatory consideration of several enumerated exceptions to termination for failing to provide this notice, including exceptions that apply when there is an emergency and when the participant has a disability:

If a family moves during the initial lease term, without permission from the [HRA] and owner, subsidy will be terminated.

....

The [HRA] will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the [HRA] will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities

In addition, the administrative plan includes specific mitigating factors that the HRA must consider when deciding whether to terminate housing benefits:

The [HRA] will consider the following factors when making its decision to terminate assistance:

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities[.] . . .

The length of time since the violation occurred, including the age of the individual at the time of the conduct,

as well as the family's recent history and the likelihood of favorable conduct in the future.

B. Administrative Hearing

Neither party submitted transcripts of the August 2020 hearing. Instead, we summarize the factual findings that the hearing officer made in his September 2020 decision and the hearing officer's summary of the evidence, which he filed with this court on November 12, 2020, pursuant to Minnesota Rule of Civil Appellate Procedure 110.03.

In December 2019, Fineran obtained a section 8 housing voucher and signed a one-year lease. In May 2020, Fineran's mental health deteriorated and he stopped taking his medications. Fineran was in and out of the hospital several times in May 2020 due to his mental illness. His symptoms included random thoughts, paranoia, losing things, poor thought process, difficulty following directions, and a tendency to wander around the city. In June 2020, the county petitioned for Fineran to be involuntarily committed as mentally ill, alleging that law-enforcement officers found him running on the freeway and dodging cars. A district court granted the county's petition, finding that Fineran was mentally ill, and ordering him to be civilly committed. Fineran was taken into custody and involuntarily hospitalized from June 9 through July 17, 2020.

During his hospitalization, Fineran was concerned about his housing. Because of his erratic behaviors, his landlord had previously notified Fineran that he would need to vacate his apartment by June 30, 2020. With the help of a charitable organization, he moved his belongings out of his apartment around July 2. He did not provide notice to the

HRA that he was vacating his apartment, nor did any of the people helping him with his mental health treatment.

During this time, Fineran's county social worker helped Fineran with his section 8 voucher. According to the social worker, Fineran's thinking remained "quite disorganized." The social worker contacted the HRA in early July 2020 and spoke with Fineran's housing specialist on July 14. The housing specialist informed the social worker that Fineran's section 8 voucher had already been terminated. After this conversation, the HRA sent Fineran a notice of termination on July 27, 2020. The notice gave the following reason for the termination: "Moved without proper notice," "Moved in July of 2020 before your 12 month lease expired on 12/31/2020." Fineran appealed the termination of his benefits on July 23, 2020. He explained that he was appealing "due to mental/medical issues occurring in May, June, and July."

On the same day that he received the notice of termination, Fineran submitted a request for a reasonable accommodation with the HRA. He listed the reasonable accommodation requested as: "maintain Section 8 voucher." Fineran explained that he needed the accommodation "due to an involuntary hospitalization because of an untreated mental health crisis." Fineran's social worker signed the accommodation request, attesting that Fineran had a disability that significantly affected his ability to perform normal activities. The HRA denied the reasonable-accommodation request. Fineran also appealed the denial of the request.

Fineran's housing specialist testified about the reasons for the termination and denial of the reasonable-accommodation request. She stated that the HRA could not grant

an exception to the notice-of-vacating requirement because “program participants were required to give HRA a pre-move out notice regardless of their mental status.”

Fineran argued that he was entitled to a reasonable accommodation based on his mental illness and maintained that the HRA failed to consider mitigating circumstances before terminating his voucher, which was contrary to the HRA’s administrative plan. The HRA argued that Fineran was not entitled to a reasonable accommodation because there was no connection between his mental illness and his failure to provide notice of vacating the apartment. In addition, the HRA argued that Fineran’s request amounted to an exception and there could be no exceptions to the notice requirement.

The hearing officer issued his report in September 2020. He found that Fineran’s mental health crisis in May and June 2020 prevented him from understanding the requirement to give notice to the HRA of his intent to move out:

This hearing officer finds that Mr. Fineran’s mental health crisis in May and June 2020, with his commitment on June 23, 2020, was a severe mental health crisis which interfered with his ability to understand that he had to give notice to HRA of his intent to move out of his apartment and that his mental illness interfered with his ability to functionally do so.

. . . .

It is the finding of this hearing officer that Mr. Fineran did not have a reasonable capacity to take acts to notify HRA that he was terminating his tenancy at the end of June 2020

. . . .

It seems quite harsh that Mr. Fineran should lose his Section 8 voucher when he did not have the capacity to understand and take the steps to notify HRA that he was moving out at the end of June 2020. The issue therefore

becomes whether HRA's notice requirements are "essential" such that it cannot reasonably grant a reasonable accommodation to excuse that failure to give notice.

The hearing officer then considered whether the HRA could make an exception to the notice requirement. The hearing officer agreed with the HRA that any exceptions would constitute waiver of an essential requirement. Based on this reasoning, the hearing officer concluded that the requested accommodation was not reasonable.

DECISION

Fineran challenges the decision upholding the denial of his request for a reasonable accommodation and upholding the termination of his section 8 housing voucher. We conclude that both of the hearing officer's decisions were erroneous because the administrative plan mandated consideration of specific exceptions. Based on this language, the accommodation Fineran requested would not alter or waive any essential program requirements.¹ In addition, the termination cannot be upheld because the HRA refused to consider these exceptions prior to termination.

The HRA acted in a quasi-judicial capacity. *Carter v. Olmsted Cty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998) (concluding that when an HRA receives evidence, hears testimony, and makes a decision regarding section 8 benefits, it acts in a

¹ The HRA also argues that it offered an alternative accommodation to Fineran. The record, however, shows this is not true. At the hearing before the hearing officer, the housing specialist mentioned to Fineran that perhaps Fineran could reapply in the future. If he did so, the HRA might not penalize Fineran for his previous failure to provide notice prior to moving out. At oral argument, the HRA conceded that the housing specialist had no authority to bind the HRA regarding future hypothetical applications and that the HRA never made any formal offers or promises regarding future applications. Because the record shows there was no alternative accommodation offered, we reject this argument.

quasi-judicial capacity). We may reverse an agency’s quasi-judicial decision when the decision is unconstitutional, outside the agency’s jurisdiction, procedurally defective, based on an erroneous application of the law, not supported by substantial evidence, or arbitrary or capricious. *Id.* We review legal questions de novo. *ITW Food Equip. Grp. LLC v. Minn. Plumbing Bd.*, 933 N.W.2d 523, 531 (Minn. App. 2019).

I. Decision Upholding Denial of Fineran’s Requested Accommodation

When analyzing reasonable-accommodation claims, courts apply a burden-shifting analysis. First, the participant must make a prima facie showing that the requested accommodation is reasonable, by showing that the accommodation is “(1) linked to [the participant’s] disability-related needs, (2) necessary to afford [the participant] an equal opportunity to enjoy Section 8 benefits and (3) possible to implement.” *Hinneberg v. Big Stone Cty. Hous. & Redev. Auth.*, 706 N.W.2d 220, 226 (Minn. 2005) (quoting *Huberty v. Wash. Cty. Hous. & Redev. Auth.*, 374 F. Supp. 2d 768, 773 (D. Minn. 2005)). If the participant makes a prima facie showing, the burden then shifts to the agency to show that the requested accommodation would cause an undue hardship under the circumstances. *Id.* An agency can prove that a requested accommodation would cause undue hardship by showing either that it “would impose undue financial or administrative burdens” or that it “would require ‘fundamental’ or ‘substantial’ modifications to its program.” *Id.* at 229.

Here, the hearing officer determined that Fineran made a prima facie showing, but concluded that the HRA met its burden to show that the accommodation was

unreasonable.² Specifically, the hearing officer concluded that making any exception to the notice requirement equates to waiving an essential requirement. Fineran challenges this reasoning. Given the language of the administrative plan, we agree with Fineran.

The language of the administrative plan requires that the HRA consider the requested accommodation: “The [HRA] *will consider* exceptions to these policies . . . to address an emergency situation over which a family has no control. In addition, the [HRA] *will allow* exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities.” (Emphasis added.) The administrative plan also requires the HRA to consider mitigating circumstances before terminating benefits in general, including the circumstances present here, when the participant has a disability: “The [HRA] *will consider* . . . [t]he extent of participation or culpability of individual family members, including whether the culpable family member is a minor *or a person with disabilities.*” (Emphasis added.) We cannot disregard the permitted

² To the extent that the HRA independently challenges the hearing officer’s determination that the requested accommodation was connected to Fineran’s disability, we disagree. The hearing officer’s quasi-judicial determination is supported by substantial evidence. *See Carter*, 574 N.W.2d at 729 (stating the standard of review of an agency’s quasi-judicial decisions); *see also In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 290 (Minn. App. 2010) (“With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency’s decision must be affirmed.” (quotation omitted)). The evidence presented shows that the accommodation was requested as a result of Fineran’s involuntary hospitalization and untreated mental health crisis. There is no dispute that Fineran’s mental health deteriorated and he was in and out of the hospital several times in May 2020. Likewise, it is undisputed that Fineran was involuntarily hospitalized in June 2020. In addition, Fineran’s social worker characterized Fineran’s thinking as “quite disorganized” during this time and attested that Fineran’s disability significantly affected his ability to perform normal activities. Based on this evidence, the hearing officer did not err in deciding that Fineran had established the requisite prima facie case.

exceptions to the notice requirement or the mandate that the HRA consider making exceptions during emergency medical situations and for people with disabilities. Because the notice requirement itself requires consideration of these exceptions, consideration or application of an exception does not fundamentally alter the nature of the voucher program or otherwise constitute a general waiver of the notice requirement. In light of the directives on this issue contained in the administrative plan, we reject the HRA's argument that there are no reasonable exceptions to the notice requirement.

The HRA relies on *Huberty* as persuasive legal authority for its position that there can be no exceptions to the notice requirement, but the HRA mischaracterizes that decision. In that case, the federal district court explained that section 8 recipients automatically lose their benefits after one year if they do not "re-certify" their eligibility. 374 F. Supp. 2d at 770. Huberty had not submitted the necessary information to recertify her eligibility and the housing authority terminated her from the program. *Id.* at 771. After Huberty received a notice of termination, she requested a hearing. Huberty provided some additional information at that hearing, but the hearing officer upheld her termination because the information provided was still not sufficient to establish eligibility. *Id.* Huberty did not appeal the hearing officer's decision. Instead, she brought a new law suit in federal court to challenge the denial of a requested accommodation. *Id.* at 770-71. The court granted the housing authority's summary judgment motion, concluding that Huberty's "unsworn assertions of compliance are insufficient to create a genuine issue of material fact." *Id.* at 774. Because Huberty had never demonstrated eligibility in the program either before or after the termination hearing, the district court characterized her requested accommodation

as a speculative determination of prospective eligibility, allowing her to continue receiving benefits indefinitely:

Indeed, the request gave HRA no assurances that [Huberty] would ever be able to respond to information requests in a timely fashion. Even the words [Huberty] chose to articulate her request indicated significant doubt regarding the outcome. [Huberty] requested HRA to “allow her time to complete her mental health treatment plan *to see if the timely response to written requests by the HRA can be achieved.*”

Id. at 774-75 (emphasis retained).

The decision in *Huberty* does not convince us to affirm the hearing officer in this case. The court in *Huberty* reached its decision in light of a factual record that left no question regarding Huberty’s ineligibility for section 8. Thus, the requested accommodation in *Huberty* would have required the HRA to make payments on behalf of someone who was not and might not ever become eligible for section 8. Moreover, the requested accommodation would excuse Huberty’s failure to demonstrate eligibility for an unlimited amount of time. By contrast, there is no similar eligibility dispute in this case. Fineran was otherwise eligible for section 8 at the time of his termination. More importantly, the requested accommodation here does not resemble Huberty’s speculative, prospective, and indefinite proposed accommodation.³ Rather, Fineran requests a one-time, retroactive application of the exceptions enumerated in the administrative plan. He does not request the HRA to excuse any future notice requirements. Finally, contrary to

³ To the extent that some statements in the HRA’s responsive brief could be interpreted as an argument that the requested accommodation would perpetuate an undue financial hardship on the HRA, we disagree. Fineran’s one-time, retroactive request could not cause undue financial hardship.

the HRA's argument on appeal, the federal court in *Huberty* did not conclude that the move-out notice requirement is essential, did not hold that there can be no reasonable exceptions to this requirement, and did not address any exceptions to any program requirement. In light of these distinctions, we conclude that, unlike the requested accommodation in *Huberty*, Fineran's requested accommodation does not fundamentally alter the nature of the voucher program.

II. Decision Upholding Fineran's Termination from Section 8

As noted above, Fineran also appeals the termination itself. We observe that the hearing officer made no independent analysis of the termination decision; it focused almost entirely on whether the requested accommodation fundamentally altered the nature of the voucher program. We have reviewed the record in this case and conclude that there is no factual dispute or argument regarding whether the HRA considered the relevant exceptions. The HRA declined to consider Fineran's medical emergency or the effect of Fineran's disability before terminating his section 8 voucher. Instead, Fineran's housing specialist testified that the termination occurred because the HRA could not grant any exception to the notice requirement, regardless of the participant's mental status. Because the administrative plan requires the HRA to consider exceptions to the notice requirement prior to termination and because the record shows that the HRA did not do so here, we also reverse the decision upholding the termination.

Reversed.