

*This opinion is nonprecedential except as provided by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
A22-0063**

In the Matter of Walter Smith’s Termination of Section 8 Benefits.

**Filed November 21, 2022
Affirmed
Florey, Judge***

St. Paul Public Housing Agency

Laura Jelinek, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for relator Walter Smith)

Lindsey M. Olson, St. Paul City Attorney, John Stechmann, Sean D. Whatley, Assistant City Attorneys, St. Paul, Minnesota (for respondent Public Housing Agency of the City of St. Paul)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this certiorari appeal from the termination of his Section 8 public housing assistance, relator argues that the hearing officer’s decision (1) is not supported by substantial evidence, (2) is arbitrary and capricious, and (3) misapplied the law because an unintentional fire is not a “serious or repeated lease violation.” We affirm.

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

FACTS

Relator Walter Smith received housing assistance from respondent Public Housing Agency of the City of Saint Paul (PHA). PHA terminated relator's housing benefits, determining that fire damage to his apartment was a violation of relator's family obligations under the Section 8 program. Relator requested an informal hearing with PHA. A hearing officer upheld PHA's decision to terminate relator's Section 8 benefits. Relator appeals by certiorari.

Five months after leasing the apartment, relator began receiving housing assistance from PHA. PHA operates a Section 8 housing program, which is funded by the United States Department of Housing and Urban Development (HUD). 42 U.S.C § 1437 (2018). The program provides rental assistance to qualified low-income families. 42 U.S.C. § 1437f(a). On October 15, 2019, at around 9:02 p.m., the Saint Paul Fire Department (SPFD) was dispatched to relator's unit in response to a report of smoke coming from the unit. Firefighters found the apartment locked with black smoke coming from the door. They forced entry and found a fire burning on the stove extending into the cabinets above. Firefighters found no one in the unit.

After a fire investigator conducted an examination, he determined that the fire started on the kitchen stove and most likely at or near the right rear burner. The ignition source was a "hot stove electric element" and the fire was caused by food being ignited in a pot. The fire investigator concluded that the fire was caused by unattended cooking which he categorized as accidental. The fire caused \$5,000 worth of damage to the unit and

\$40,000 worth of damage to the apartment building. Relator returned to his apartment after his neighbor notified him of the fire in his apartment.

Three days later, relator received a notice from Saint Paul Department of Safety and Inspections (DSI) that his apartment was condemned as unfit for human habitation. DSI explained the condemnation was based on the extensive fire damage. That same day a volunteer caseworker from the American Red Cross informed PHA that relator was seeking a new residence because relator's unit would not be habitable for at least six months because of the fire.

As a result, PHA reached out to relator's landlord to obtain more information and relator's landlord forwarded the fire inspection report to PHA. After reviewing the inspection report, PHA sent correspondence to relator informing him that his Section 8 voucher was terminated for violating provisions of his voucher agreement. Specifically, that relator damaged the unit or premises beyond ordinary wear and tear. The letter also informed relator of his right to appeal the decision before a hearing officer. Relator requested an informal hearing to appeal the termination.

On November 4, 2021, the matter came before a hearing officer. PHA presented its case first and argued that relator had negligently caused a fire in his apartment through unattended cooking which led to condemnation of the unit. PHA referenced the fire investigation report to support its argument. The director of the Housing Choice Voucher Program testified that he considered mitigating circumstances here but that the seriousness of the violation outweighed mitigating factors.

Relator presented his case and argued that he was not negligent because he does not cook and instead has a personal care assistant (PCA) cook for him. Relator asserted that the fire was caused because of a maintenance failure. Relator's mental health case worker testified that she met with relator weekly and was present with him the day of the fire from 2:00 p.m. to 3:30 p.m. She noted that relator's apartment had maintenance issues but was unsure how the fire started. As a result, the hearing officer upheld PHA's decision to terminate relator's Section 8 assistance. Relator appeals by certiorari.

DECISION

“We will uphold a housing authority's quasi-judicial decision to terminate a participant's housing benefits unless we conclude that the authority's decision is unconstitutional, outside [PHA's] jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Peterson v. Washington Cnty. Hous. & Redev. Auth.*, 805 N.W.2d 558, 561 (Minn. App. 2011) (quotation omitted).

A quasi-judicial decision not subject to the Administrative Procedure Act is reviewed on writ of certiorari by reviewing the record to determine “whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn.1992) (quotation omitted). It is not the role of this court to retry facts or make credibility determinations. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). This court will uphold the agency's decision if it provided “any

legal and substantial basis for the action taken.” *Wilhite v. Scott Cnty. Hous. & Redev. Auth.*, 759 N.W.2d 252, 255 (Minn. App. 2009) (quotation omitted).

I. Substantial evidence supports the hearing officer’s decision to uphold PHA’s termination of relator’s Section 8 assistance.

Relator argues that the hearing officer’s decision was not based on substantial evidence because the officer only relied on the fire investigation report despite relator’s submitting significant evidence to support his case. We are not persuaded.

Under Minnesota law, “the substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it.” *In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted). “Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted). We defer to the agency’s determinations “regarding conflicts in testimony, the weight given to expert testimony, and the inferences to be drawn from testimony.” *Id.* Considerable judicial deference is given to administrative fact-finding, and the burden to prove that a decision is unsupported by substantial evidence is on the relator. *CUP Foods, Inc. v. Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001). Further, “[i]f an administrative agency engages in reasoned decision-making, the court will affirm, even though it may have reached a different conclusion had it been a fact[-]finder.” *Cable Commc’n Bd. v. Nor-W. Cable Commc’n P’ship*, 356 N.W.2d 658, 669 (Minn. 1984) (quotation omitted).

Based on the record, evidence and caselaw, there was substantial evidence to support the hearing officer's decision to uphold the termination of relator's Section 8 assistance.

A. Fire investigation report

At the hearing, relator mainly argued that the fire investigation report was inauthentic and that SPFD intentionally sabotaged his apartment by placing pots and pans along the stove and cabinets. The hearing officer determined that relator's testimony was not credible and stated, "nothing in the record suggests a basis for the St. Paul Fire Department to submit a false fire report in this case."

Relator also argues that the fire investigation report was hearsay evidence and that it should not have been solely relied on. The general rule for the use of hearsay in administrative proceedings is "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." *State ex rel. Indep. Sch. Dist. No. 276 v. Dep't of Ed.*, 256 N.W.2d 619, 627 (Minn. 1977) (quotation omitted). Here, there is a special regulation which allows a hearing officer to consider evidence "without regard to admissibility under the rules of evidence applicable to judicial proceedings." 24 C.F.R. § 982.555(e)(5) (2022). For that reason, the hearing officer's reliance on the fire investigation report in making his determination was permissible.

Relator also argues that his due-process rights were violated because he did not have a chance to cross-examine the fire investigator. This argument does not apply here. Under federal regulations that govern PHA's hearings, relator is only allowed to cross-examine

witnesses who were present at the informal hearing. 24 C.F.R. § 982.555(e)(5). Here, PHA did not violate relator's constitutional rights when it did not call the fire investigator as a witness. *See Wilhite*, 759 N.W.2d at 252 (holding that Section 8 participant's constitutional right to confront and cross-examine witnesses at an informal hearing was not violated when housing authority did not call participant's landlord or townhouse manager as a witness to testify). Thus, relator's right to confront and cross-examine the fire investigator at the hearing was not violated.

The hearing officer's decision appropriately determined the fire investigation report to be the best and most reliable evidence in the record. SPFD, a neutral third party, prepared the report. The report provides specific and detailed information on what occurred the night of the fire. According to the report, the fire started on the kitchen stove, most likely at or near the right rear burner. The ignition source was a stove electric element and the first fuel ignited was probably food or cooking oil in a pot. The fire investigator concluded that the action that brought these items together was unattended cooking. The report estimated damage to the property in the amount of \$40,000 and \$5,000 worth of damage to the contents. After reviewing the report, the hearing officer determined that the report was reliable. We defer to an agency's fact-finding. *CUP Foods, Inc.*, 633 N.W.2d at 563. As a result, the hearing officer properly concluded that the fire investigation report is credible and reliable to support PHA's decision.

B. Consideration of relator's evidence

Next, relator argues that despite the significant evidence he provided, the hearing officer improperly rejected his evidence. Relator's argument is misguided. Relator

submitted into evidence letters to elected officials and government entities and letters of support from case workers about the housing inspections. The hearing officer considered the evidence and determined that “many assertions contained within the documents authored by relator are not reliable as they contain scattershot unsubstantiated allegations against numerous individuals.” Thus, the hearing officer did consider relator’s evidence but found his “assertions” to be unreliable.

C. Mechanical repairs

Relator argues that the fire stemmed from a maintenance failure. Relator testified that he provided supporting documents of his unit experiencing housing quality standard deficiencies such as frost build up around the A/C unit. He also shared concerns about his thermostat and how it looks loose. The hearing officer considered the repair issues but ultimately determined that the preponderance of the evidence supported that the fire was caused by unattended cooking.

Based on the record before us, there is substantial evidence to support the hearing officer’s decision to uphold PHA’s termination of relator’s Section 8 benefits.

II. The hearing officer’s decision was not arbitrary and capricious.

Relator argues that the hearing officer’s decision is arbitrary and capricious. He argues that the hearing officer failed to explain why he discredited relator’s and case worker’s testimony as well as evidence of relator’s rental history. We are not persuaded.

An agency’s decision is arbitrary and capricious “if the agency: (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence” *Citizens*

Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Com'rs, 713 N.W.2d 817, 832 (Minn. 2006). Further, an “agency’s conclusions are not arbitrary and capricious so long as there is a rational basis between the facts found and the choice made.” *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 120 (Minn. 2009). “If there is room for two opinions on a matter, the [c]ommission’s decision is not arbitrary and capricious, even though the court may believe that an erroneous decision was reached.” *Id.*

The hearing officer considered both the testimony of relator and his caseworker. Relator testified that he does not cook and instead has his PCA cook for him. Relator’s caseworker confirmed that he has a PCA, but was unable to confirm whether relator cooks at all. She testified that on the day of the fire, she brought relator a salad around 2:00 p.m. and was with him until 3:30 p.m. The hearing officer determined that relator’s testimony was not credible. After careful consideration, the hearing officer concluded that relator “damaged the premises by allowing a fire to start due to unattended cooking.” Based on the record before us, the hearing officer’s determination that relator was responsible for the fire was rational and not arbitrary and capricious.

Relator also argues that the hearing officer disregarded his rental report that shows he does not have lease violations. Under federal regulations, PHA can terminate a participant’s Section 8 assistance for violating “any family obligations under the program” 24 C.F.R. § 985.552(c)(1)(i). The record supports the hearing officer’s determination that relator violated his family obligations when his unit was damaged beyond ordinary and tear. 24 C.F.R. § 982.404(b)(1)(iii). The record also reflects that relator’s landlord did not

issue a formal notice of lease violation because relator's unit was condemned by the city as uninhabitable. Under the circumstances, the hearing officer did not err in disregarding relator's rental report showing no lease violations. The hearing officer's decision therefore was not arbitrary or capricious.

III. The hearing officer correctly applied the applicable law and policy when it determined that relator committed serious violations of his lease and his obligations under the Section 8 program.

Recipients of Section 8 assistance are required to adhere to the obligations governed by the Section 8 Tenant- Based Assistance: Housing Choice Voucher Program. 24 C.F.R. § 982.551. Under the family obligations of the program, relator is prohibited from committing serious lease violations and prohibited from damaging his unit beyond "ordinary wear and tear." 24 C.F.R. §§ 982.551(c)-(e); 982.404(b)(1)(iii). Relator's assertion that HUD regulations must be interpreted according to Minnesota law is unsupported by applicable legal authorities. This court interprets HUD regulations according to their plain language. *Wilhite*, 759 N.W.2d at 255.

Here, applying the plain language of the federal regulation, relator violated his family obligations when a fire occurred in his unit because of unattended cooking which caused damage beyond ordinary wear and tear. According to the fire investigation report, the fire caused \$5,000 worth of damage to the unit and \$40,000 in damage to the apartment building. PHA's termination of relator's Section 8 assistance is supported by the federal regulations that govern the Section 8 voucher program. Thus, the hearing officer correctly applied the law governing PHA's determination that relator violated his family obligations.

IV. PHA considered mitigating factors even though it was not required to do so.

PHA also considered whether mitigating factors existed before terminating relator's assistance. This court held that while PHA may consider mitigating factors, PHA is not required to do so. *Peterson*, 805 N.W.2d at 563. PHA may consider all relevant circumstances. The director of the housing voucher program testified that in every Section 8 case, he reviews the file at three stages: (1) before PHA drafts a termination; (2) once the hearing is requested; and (3) at the actual hearing.

In this case, the information first presented to the director justified a termination moving forward because of the significant damage to the apartment caused by relator. Once relator requested the hearing, the director tried to reach out to relator, but relator declined to talk. At the hearing, the director reviewed the file again and did not find new information to consider mitigating factors. The director concluded that the seriousness of the violation outweighed mitigating factors.

Based on the record and applicable legal authority, the hearing officer correctly upheld PHA's decision to terminate relator's Section 8 assistance.

Affirmed.