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TERRI A. HAZUR, CLERK
COMMON PLEAS COURT
GREENE COUNTY, OHIO
LYNN E. JACKSON

IN THE COURT OF COMMON PLEAS
GREENE COUNTY, OHIO

Plaintiff

vs.

GREENE METROPOLITAN
HOUSING AUTHORITY

Defendant

* Case No.: 2000-CV-0544

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(Judge M. David Reid)

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JUDGMENT ENTRY

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FINAL APPEALABLE
ORDER

This matter comes before the Court on Appellant's (Lynn E. Jackson) appeal from an administrative decision. Upon review, this Court hereby REMANDS the administrative decision.

On July 5, 2000, Appellant Lynn E. Jackson (hereinafter "Jackson") filed an application for Section Eight certification with Greene Metropolitan Housing Authority (hereinafter "GMHA"). On July 10, 2000, GMHA sent a denial letter to Jackson. GMHA claims the application for certification was denied because Jackson owed nine hundred and seventy six dollars (\$976.00) to GMHA from a prior tenancy in 1988. Jackson maintains that the debt was described as "Damages-Ovpay." Jackson maintains that she questioned the meaning of this description and the explanation she received was that a temporary worker entered the data when GMHA converted their documents to computer and GMHA was uncertain as to what the description meant.

On July 17, 2000, an administrative hearing was held before Keith Gunderkline (hereinafter "Gunderkline"), a GMHA hearing officer. At the hearing, Jackson and Jane Ritchie, GHMA Applications Assistant, testified. Gunderkline affirmed the decision to

deny Jackson's application for certification. Jackson filed an administrative appeal and presented the following assignment of errors.

- I. The hearing officer erred in considering evidence that was not presented in the record of the administrative hearing.
- II. The hearing officer erred in finding that there was sufficient evidence to deny the section 8 certification of Lynn Jackson.

With regard to the first assignment of error, Jackson claims she was denied her Due Process rights. "The fundamental requisite of due process of law is the opportunity to be heard." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). Due process entitles a Section Eight applicant to an opportunity to request an informal hearing if the applicant is denied eligibility because of an outstanding debt. *Davis v. Mansfield Metro. Hous. Auth.*, 751 F.2d 180, 185 (6th Cir. 1984). The applicant must receive written notice setting forth the reasons for the denial and the process for requesting a hearing. *Id.* At the hearing, the applicant must have an "opportunity to confront and cross-examine" witnesses. *Goldberg*, 397 U.S. at 269. It is "essential" that the hearing be conducted by an impartial decision maker. *Id.* at 271. Finally, "the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing." *Id.*

This Court finds that Jackson's due process rights were denied. The crux of Jackson's argument is that Gunderkline conducted an investigation following the hearing without providing Jackson an opportunity to examine or rebut the information obtained from the investigation. First, Jackson argues that Gunderkline contacted her landlord from 1988 to substantiate Jackson's testimony that there is no debt owed to said landlord. Second, Jackson argues that Gunderkline consulted Grace Clark, the Section Eight Supervisor, with respect to Jackson's account. Third, Jackson argues that Gunderkline

obtained a credit report on her, which showed a debt owed to Columbia Gas and Electric. GMHA argues that Gunderkline's investigation following the hearing did not produce any new evidence and that the credit report was not relied upon in rendering a decision. Due process requires that Gunderkline's decision be based solely on evidence produced at trial. Therefore, Gunderkline was not permitted to go outside the record. This independent investigation prevented Jackson from rebutting any evidence obtained after the hearing and her "opportunity to be heard" with respect to this evidence was denied. Gunderkline's independent investigation following the hearing violated Jackson's due process rights.

With respect to the second assignment of error, Jackson argues there was not sufficient evidence to deny her Section Eight application. Pursuant to Ohio Revised Code Section 2506.04, a court may affirm, reverse, vacate, modify, or remand an administrative decision. Ohio Rev. Code §2506.04. R.C. 2506.04 provides in part "[t]he court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinions of the court." Ohio Rev. Code §2506.04.

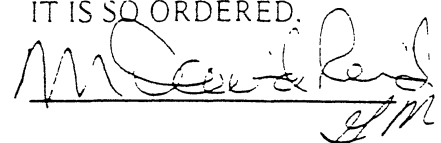
The decision of the agency must be affirmed, "if a preponderance of reliable, probative and substantial evidence exists." *Dudukovich v. Lorain Metro. Hous. Auth.*, 58 Ohio St.2d 202, 207 (1979). However, if a preponderance of reliable, probative and

substantial evidence does not exist, then the decision may be reversed, vacated, modified or remanded. *Id.* The Court of Common Pleas must give "due deference" to an administrative decision. *Kisil v. Sandusky*, 12 Ohio St.3d 30, 35 (1984). Further, the Court may not "substitute its judgment for that of the agency, especially in areas of administrative expertise." *Dudukovich*, 58 Ohio St.2d at 207.

This Court finds that GMHA's decision is unsupported by a preponderance of reliable, probative and substantial evidence. GMHA argues that Gunderkline relied on GMHA's computer record and Jane Ritchie's testimony. The computer record relied upon contained the debt owed to GMHA and described the debt as "Damages-Ovpay." Jane Ritchie was unable to explain the meaning of this term and Jackson was told a temporary worker used the terminology when GMHA computerized its records. Denying Jackson's application based on this computer record, which contained limited information and an uncertain description, which no one can explain, is not a substantiated finding. Certainly, it is not reliable, probative or substantial. Accordingly, this cause is remanded to GMHA.

Therefore, finding that Jackson's due process rights were denied and GMHA's decision is unsupported by a preponderance of reliable, probative and substantial evidence, this Court hereby REMANDS this cause to GMHA.

IT IS SO ORDERED.

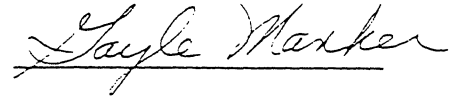

M. DAVID REID, JUDGE

SERVICE OF COPY: Copies of the above were sent to:

Kimberly Metzler Stump, 275 S. Allison Avenue, Xenia, Ohio 45385

Greene Metropolitan Housing Authority, 538 N. Detroit Street, Xenia, Ohio 45385

Michael J. Liss, Fifth Third Center, Suite 950, 110 North Main Street, Dayton, Ohio
45402

A handwritten signature in cursive script that reads "Gayle Manker". The signature is written in black ink and is positioned above a solid horizontal line.

GAYLE L. MANKER
Assignment Commissioner