

RICHLAND COUNTY
CLERK OF COURTS
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IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

PHILLIP SCOTT
CLERK OF COURTS

Ozella Robertson

Case no. 87-426-C

Judge Chilcote

Plaintiff

v.

Mansfield Metropolitan

JUDGMENT ENTRY
ON REFEREE'S REPORTS

Housing Authority


Defendant

This matter is before the Court for review of the Referee's Report filed in this case pursuant to Civil Rule 53(E).

None of the parties to this case have filed written objections to the Referee's reports within 14 days after its filing as permitted by Civil Rule 53(E)(2).

Upon examination of the Referee's report, the Court finds that it contains sufficient findings of fact and conclusions of law to allow the Court to make its own independent analysis of the issues and apply the appropriate rules of law to make a judgment in this case, and that the Referee's report make the appropriate recommendations for that judgment.

It is therefore ordered and adjudged that the Court adopts the Referee's report and the recommendations, and the Referee's recommendations shall serve as the judgment and order of this Court.


JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of this judgment entry was mailed or otherwise served this 28th day of March, 1989 on Referee James DeWeese and on Robert Goldberger, Richland County Legal Services Assoc., 35 North Park Street, Mansfield, Ohio 44902 and William F. Gandert, Mansfield Metropolitan Housing, 150 Park Avenue West, Mansfield, Ohio 44902.

(Sheryl Brown)
Secretary to the Judge

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IN THE COURT OF COMMON PLEAS, RICHLAND COUNTY, OHIO

RICHLAND COUNTY
CLERK OF COURTS

Ozella Robertson	:	Case no. 87-426-C
Plaintiff	:	
v.	:	
Mansfield Metropolitan Housing Authority	:	REFEREE'S REPORT AND RECOMMENDATION ON THE APPEAL
Defendant	:	

To Judge Max K. Chilcote:

This case is before the referee on the appeal of plaintiff from the decision of the executive director of the Mansfield Metropolitan Housing Authority ("MMHA"), affirming the decision of MMHA's hearing officer which disallowed plaintiff's continuing participation in the federal Section 8 rent subsidy program administered by MMHA. Plaintiff is represented by Attorney Robert Goldberger of Richland County Legal Services Association, and defendant is represented by its own executive director, William Gandert, who is also an attorney at law.

Pursuant to Ohio Revised Code chapter 2506, plaintiff has appealed MMHA's denial of her eligibility, contending it is contrary to law. Defendant has moved to dismiss plaintiff's appeal, contending (1) chapter 2506 does not apply to MMHA rent eligibility determinations, and (2) even if it does, the appeal was filed too late because plaintiff should have appealed from the decision of the hearing officer rather than of the executive director.

FINDINGS AND CONCLUSIONS

A. Motion to Dismiss

1. When plaintiff Ozella Robertson qualified for MMHA's rent subsidy in May, 1985, her household consisted of two people - of her and her adult son, Tracy Robertson. About September, 1986, her grandson Antonio apparently also moved in with her.

2. On April 30, 1987, plaintiff attended with her attorney, and a witness, a hearing before a hearing officer of MMHA. On May 14, 1987, the hearing officer announced his findings of fact, conclusions and decision that plaintiff's Section 8 rent assistance be terminated because of her failure to report a change in family composition (Record Exhibit I).

3. In accordance with MMHA's own procedures, plaintiff then appealed the hearing officer's decision to the MMHA executive director who, after a review of the hearing officer's report, the file documents relating to plaintiff, and the law, affirmed the hearing officer's decision on June 22, 1987.

4. The present appeal was filed on July 2, 1987.

5. Defendant contends - on the authority of an unreported decision from Hamilton County (Cincinnati Metropolitan Housing Authority v. SERB) decided in the public employer context - that a metropolitan housing authority is not a "political subdivision" whose administrative determinations are subject to appeal under O.R.C. chapter 2506. But Ohio courts, including the Ohio Supreme Court, have decided O.R.C. chapter 2506 appeals do exist from the administrative determinations of metropolitan housing authorities. Dudukovich v. Housing Authority, 58 Ohio St. 2d 202 (1979) (appeal by employee from

employment action); Topley v. Akron Metropolitan Housing Authority, case no. CV-88-4-1215 (Summit County C.P. September 30, 1988) (appeal of termination of rent subsidy). The Cincinnati MHA case, cited by defendant, notes that MHA's have repeatedly been found to be political subdivisions (see pages 9 and 10 of slip opinion attached to defendant's February 3, 1989 supplemental memorandum).

6. Defendant's argument that an MHA is a political subdivision for purposes of appeals by employees from its employment actions (Dudukovich) but not for rent subsidy appeals (this case), has no statutory basis. There is no provision in the language of O.R.C. chapter 2506 that it applies to some quasi-judicial decisions of an administrative agency, but not to others. MMHA's rent subsidy determinations, made after a quasi-judicial hearing, are decisions subject to appeal under O.R.C. chapter 2506.

7. Defendant's argument that any 2506 appeal had to be taken from the hearing officer's decision rather than the executive director's decision requires only short examination. The appeal to the executive director was provided by MMHA's own procedures. Under that procedure the executive director performed the quasi-judicial function of an appellate judge reviewing the record developed by the hearing officer. In taking that additional appeal, plaintiff was simply exhausting her administrative remedies before coming to this court. That is appropriate action to be encouraged. The 2506 appeal time runs from the executive director's decision.

8. The present appeal was appropriately filed from the executive director's decision. It was also timely filed within the 30 days allowed by O.R.C. §2507.07.

B. Merits of the Appeal

9. When Mrs. Robertson came to MMHA's office in March 17, 1987 for her annual recertification, she or her son brought MMHA a 3-10-87 verification form (Record Exhibit D) from the Richland County Department of Services which stated that Antonio had been in her home since the previous September (about 6 months). The MMHA hearing officer recited this fact (finding no. 2) and concluded at page 2 of his report that "Ozella Robertson did report a change in family composition at the time of her scheduled recertification, even though the information was somewhat buried." MMHA and the hearing officer nevertheless denied Ozella Robertson's continued eligibility "because of a violation of family obligation, i.e., failure to report a change in family composition" prior to the March 17, 1987 recertification. Hearing officer's report (Exhibit I) at p. 2.

10. The key question in reviewing the legality of MMHA's action is therefore whether there was a "family obligation" requiring Mrs. Robertson to advise MMHA of the change before the March 17, 1987 recertification meeting.

11. The hearing officer found a family obligation requiring Mrs. Robertson to immediately report a change in family composition in September, 1986 in 24 CFR 882.118:

- (a) The Family shall:
 - (1) Supply such . . . information . . . as the PHA [i.e. public housing agency, here MMHA] or HUD determine to be necessary in the administration of the program, including use by the PHA for a regularly scheduled reexamination or interim reexamination of Family income and composition in accordance with HUD requirements.

and also in the Public Housing Agency Administrative Practices Handbook for Section 8 Existing Housing Program, HUD Handbook 7420.7, chapter 10 (discussing the PHA's responsibilities), section 10-3(a)(2):

Families must be required to report any change in family composition regardless of whether the GFC would be affected. This is necessary to assure that the family remains housed in an appropriate size dwelling unit.

It is apparent from an examination of the foregoing regulations that they are not self-executing. Before the participating family has to supply the information, the PHA (here MMHA) or HUD must require or request it. Although the Handbook tells MMHA it must require its families to report changes in family size, there is no evidence in the record that it did so, other than at its periodic recertification meetings with program families. In other words, although MMHA could have required its family to come forward with such information whenever the change happened, there is no evidence that it did impose that requirement. At least, the hearing officer made no finding of such a request to Mrs. Robertson in this case.

12. 24 CFR §382.210(d)(2) permits MMHA to terminate housing assistance payments "if the participant has violated any Family obligation under the Section 8 Existing Housing Program as stated in 24 CFR 882.118." The same language is used in Section A (k.) of the MMHA Section 8 Existing Certificate/ Voucher Administrative Plan, according to the hearing officer.

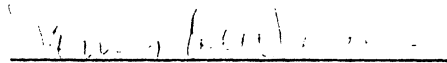
There is no evidence that Mrs. Robertson herself filled out any document fraudulently. There is no evidence or finding that Mrs. Robertson responded falsely to any questions or requests for information MMHA made to her. The hearing officer found she informed

MMHA of the change in family composition at the first annual review (Mar. 1987) after the change took place. In addition, there is a somewhat ambiguous October 15, 1986 "notice of adjustment of payments" (Exhibit L4 to the Record) prepared by MMHA counselor, D. Siegenthal, for Mrs. Robertson on which a block is marked to indicate a change in family income or composition.

The decision to deny program eligibility to Mrs. Robertson was accordingly illegal and unsupported by probative evidence within the meaning of Ohio Revised Code §2506.04.

RECOMMENDATION

The appeal of Ozella Robertson should be sustained, the finding of her ineligibility by defendant Mansfield Metropolitan Housing Authority should be reversed, defendant should be ordered to re-certify plaintiff as a Federal Section 8 Housing Subsidy recipient if she is otherwise eligible, and costs should be assessed against the defendant.

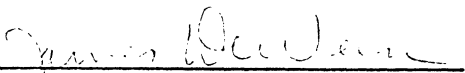

James DeWeese, Referee

CERTIFICATE OF SERVICE

Pursuant to Ohio Rules of Civil Procedure 53(E)(1), I caused a copy of the foregoing Report to be mailed this 9th day of March, 1989 to the following parties or their counsel:

Robert Goldberger
Richland County Legal Services Assoc.
35 North Park Street
Mansfield, Ohio 44902

William F. Gandert
Mansfield Metropolitan Housing
150 Park Avenue West
Mansfield, Ohio 44902


James DeWane
Referee