

IN THE LORAIN MUNICIPAL COURT  
LORAIN COUNTY, OHIO

LORAIN METROPOLITAN  
HOUSING AUTHORITY

CASE NO. 88 CVG 1065

Plaintiff

vs.

JUDGE V. PAUL TIMKO

JAMES P. CAJKA, JR.

O R D E R

Defendant

Lorain Metropolitan Housing Authority (LMHA) filed an eviction against James Cajka for non-payment of rent.

Mr. Cajka works at Torres & Son IGA super market. He works approximately 25 hours per week and is paid \$3.50 per hour. Pursuant to court order, Mr. Cajka pays \$30 per week child support to his estranged wife for the support of two minor children aged 17 and 12. She works at a Burger King.

Mr. Cajka also receives Food Stamps. Both the amount of rent charged by LMHA and the amount of Food Stamp benefits one receives are based on income.

Both LMHA and the Welfare Department claim that they must base Mr. Cajka's rent and Food Stamps on his gross income. Both include as part of his income the \$130 per month he pays as child support even though he never sees this money (the child support is deducted from his pay by wage assignment).

If Mr. Cajka had remained on the Welfare Department's General Assistance (GA) program his income would have been approximately \$124 per month in GA benefits plus \$87 per month in Food Stamp benefits. His rent would have been approximately \$40 per month.

Once he started working, his net pay was approximately \$160

per month after taxes and after \$130 per month in child support was deducted. Both LMHA and the Welfare Department respectively counted the \$130 in child support in determining his rent and his Food Stamps. As a result his rent soared to \$114 per month and his Food Stamps swooned to approximately \$27 per month. Hence, while on welfare he had an income of \$124 cash plus \$87 in Food Stamps and his rent was \$40. Once he went to work and started paying child support, his net pay was \$160 per month, his food stamp benefits were \$27 per month and his rent was \$114 per month.

There being no genuine issue of fact in this case, I hereby grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment.

I find that LMHA improperly calculated Mr. Cajka's rent by including as income child support which was automatically deducted by wage assignment from his earnings. The result of LMHA's position is to leave a working person paying child support in much worse economic shape than if he simply remained on Welfare. LMHA's calculations literally make Mr. Cajka too poor to live in public housing. I adopt the courts' reasoning in Heath v. Kentucky 704 SW 2d 659 (1985). I find that the inclusion of child support Mr. Cajka pays by wage assignment in calculating his income:

1. Violates the Brooke Amendment, 42 USC §1437 (a), because the child support Mr. Cajka pays cannot be counted as income to both he and his wife. 24 CFR §813.106(B)(7) specifically includes child support payments as income to the payee. If the very same income is included in calculating the payor's rent, the "double counting" of income results in either Mr. or Mrs. Cajka paying more than 30% of their income in

rent. LMHA simply cannot count the same income twice in calculating rent.

2. Violates 24 CFR §813.106(a) which defines income for rent calculation purposes as the "..total income received by the family.." (emphasis supplied). In Ohio, state law requires that non-custodial parents execute wage assignments so that child support is automatically deducted from their pay. As a result Mr. Cajka has never "received" the child support he is paying and hence it should not be used in calculating his annual income pursuant to 24 CFR §813.106(a).

3. Violates R.C. §3735.41 which reads in part:

"In the operatin or management of housing projects a metropolitan housing authority shall observe the following duties with respect to rentals and tenant selection:

...  
(B) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons..."  
(Emphasis supplied)

I find that Mr. Cajka clearly cannot afford to pay the rent LMHA is currently charging him, hence they are in violation of R.C. §3735.41.

I therefore order that:

1) LMHA retroactively recalculate Mr. Cajka's rent since the inception of his tenancy excluding from annual income all child support he has paid by wage assignment and to calculate his current and future rent in a like manner.

2) If there is a balance due LMHA, I order Mr. Cajka to pay the current rent plus \$10 per month on the arrearage.

3) Mr. Cajka is to immediately report to LMHA any changes in income or the amount of child support he is paying as required by his lease and federal law.

  
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Judge V. Paul Timko