

DANIEL M. HERRIGAN

2007 DEC 27 PM 3:05

SUMMIT COUNTY  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

<b>ELIZA SKIPPER</b>	:	<b>CASE NO. CV 2007-07-5114</b>
	:	
<b>Plaintiff/Appellant,</b>	:	<b>Judge Patricia A. Cosgrove</b>
	:	
<b>vs.</b>	:	
	:	<b>ORDER</b>
<b>AKRON METROPOLITAN HOUSING AUTHORITY</b>	:	<b><u>Final and Appealable Order</u></b>
	:	
<b>Defendant.</b>	:	

This cause came before the Court upon the Administrative Appeal filed by Plaintiff-Appellant Eliza Skipper. This is an administrative appeal from a decision of the Akron Metropolitan Housing Authority terminating Saunders ability to participate in the Housing Choice Voucher Program (HCVP).

On April 26, 2007, Appellant was notified of her annual reexamination appointment to be held on May 20, 2007 at 1:15 p.m. Appellant did not appear at the appointment. On May 14, 2007, Appellant was notified of the cancellation of her Section 8 subsidy with the reason marked as: "Other: Violation of family obligations #2 (copy attached) for Eliza Skipper failure to show for scheduled annual re-exam appointment on May 10, 2007 at 1:15 p.m."

Family obligation #2 states in pertinent part: "(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination of family income and composition in accordance with HUD requirements."

Appellant requested a hearing, the hearing was held and the decision of the hearing officer upheld the cancellation of the Section 8 voucher due to Appellant's failing to attend her scheduled re-examination appointment and the hearing officer further found that Appellant had engaged in a repeat pattern of missing appointments. The Hearing Officer determined that:

The Housing Authority has proven by a preponderance of the evidence that the Petitioner is in violation of Family Obligation #2 by failing to attend her scheduled re-examination appointment on May 10, 2007. This is a repeat pattern from the 2006 re-examination appointment. Therefore, the Housing Authority's cancellation of her subsidy is sustained.

Appellant asserts that she was not fully informed of the reasons for the cancellation of her subsidy and that it was a violation of due process for her previous actions to be used against her without being notified in advance. In the previous certification cycle, Appellant had missed her first reexamination appointment but was permitted to reschedule.

On August 2, 2006, Appellant was notified of an annual re-examination. (Exhibit F). Appellant missed that appointment due to family circumstances. AMHA rescheduled the appointment for September 6, 2006. Appellant attended the hearing on September 6, 2006 and her voucher was renewed for 2006. No further actions were taken against Appellant in relation to the missed 2006 appointment.

For the 2007 missed re-examination appointment, Appellant was notified that her subsidy was being cancelled for failure to appear at her annual re-exam appointment. Appellant was not notified that her previous failure in 2006 to attend a re-exam appointment would be held against her and that she would be considered a repeat offender and have her subsidy cancelled.

Appellant asserts that a rent subsidy is a property interest subject to due process protection. Edgecomb v. Housing Authority of the Town Vernon (D. Conn. 1993), 824 F. Supp. 312. The program must be administered in such a way that the participant is afforded due

process in the notice provided of alleged violations and the proffered reasons for the termination of the subsidy.

In the case at bar, the Hearing Officer noted that Appellant had previously missed a reexamination appointment and made the finding that "This is a repeat pattern from the 2006 re-examination appointment"

The standard to be applied by this Court in an administrative appeal under Chapter 2506 is set forth in RC 2506.04, which provides, in relevant part:

The 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 opinion of the court.

The Court of Common Pleas must weigh the evidence in the record, and any additional evidence admitted under RC 2506.03, and determines whether there exists a preponderance of substantial, reliable, and probative evidence to support the agency decision. *Dudukovich v. Housing Authority* (1979), 58 Ohio St.2d 202.

The Ohio Supreme Court further stated in *Dudukovich*, at 207:

We caution, however, to add that this does not mean that the court may blatantly substitute its judgment for that of the agency, especially in areas of administrative expertise. The key term is "preponderance." If a preponderance of reliable, probative and substantial evidence exists, the Court of Common Pleas must affirm the agency decision; if it does not exist, the court may reverse, vacate, modify or remand.

In weighing the evidence, the Court of Common Pleas must give due deference to the administrative agency's resolution of evidentiary conflicts, since as the finder of fact, the agency had the opportunity to observe the witnesses' demeanor and weigh their credibility. See

*Dudokovich, supra; Univ. of Cincinnati v. Conrad* (19), 3 Ohio St.2d 108, 111: *Budd Co. v. Mercer* (1984), 14 Ohio App. 3d 269, 273-274. This Court is bound by the evidence contained in the record and may not consider evidence outside the record. R.C. 2506.03 and *McAlpin v. Shirey* (1997), 121 Ohio App.3d 68.

In the case at bar, this Court finds that the decision of the Hearing Officer is not supported by a preponderance of substantial, reliable, and probative evidence. In the decision, the hearing, the Hearing Officer noted that "this is a repeat pattern", and based on the repeat pattern denied Appellant the opportunity to reschedule the reexamination.

This Court finds that due process was not accorded to Appellant in that no notice was provided that her previous failure to attend a reexamination in 2006 would be a factor in the 2007 reexamination decision.

Based on the foregoing, this Court finds that the decision of the AMHA is not supported by a preponderance of substantial, reliable and probative evidence.

IT IS ORDERED AND ADJUDGED this Administrative Appeal by the Appellant is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that the decision of the AMHA is REVERSED AND REMANDED to the administrative agency for action consistent with this opinion.

This is a final and appealable order. There is no just cause for delay.



Judge Patricia A. Cosgrove

CC: Eliza Skipper, pro se  
James Casey