

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO



ISHMAEL CHALK,)	CASE NO. 2018CV 00693
)	
Appellant,)	JUDGE HAAS
)	MAGISTRATE HAUPT
v.)	
)	
)	MAGISTRATE'S DECISION
)	
)	
STARK METROPOLITAN)	
HOUSING AUTHORITY,)	
)	
Appellee.)	

This matter came on for consideration upon an administrative appeal.

Pursuant to ORC § 2506.03 the Court held a hearing to allow for the introduction of additional evidence. The issues have been fully briefed. The Court has reviewed the entire record and a decision is hereby rendered.

Background

On January 29, 2018, Appellant, Ms. Chalk, received a Notice Termination from the Stark Metropolitan Housing Authority ("SMHA"), advising her that her housing choice voucher had been terminated on the grounds that Mr. Dashawn Myles is an unauthorized occupant living in her home at 1440 Ohio Ave. NE, Canton, Ohio (the "Residence"), and Ms. Chalk had failed to add Mr. Myles as a household member.

A grievance hearing was held on February 21, 2018. The hearing officer, Valerie Watson, upheld the termination. It is from this decision that Ms. Chalk appeals.

SMHA's Administrative Plan

SMHA's Administrative Plan governs the handling of the Section 8 housing choice voucher and other housing not owned/operated by SMHA directly (i.e. public housing"). The pertinent portion of this Administrative Plan states as follows:

Any adult guest/visitor not included on the HUD 50058 who has been in the unit more than 15 consecutive days without SMHA approval, or a total of 90 cumulative calendar days during any 12-month period, will be considered to be living in the unit as an unauthorized household member.

Absence of evidence of any other address will be considered verification that the visitor is a member of the household.

Statements from neighbors and/or the landlord will be considered in making the determination.

Use of the unit address as the guest/visitor's current residence for ANY purpose shall be construed as their permanent address.

The burden of proof that that the individual is a guest/visitor rests on the family. In the absence of such proof, the individual will be considered an unauthorized household member and SMHA will terminate assistance due to the fact that prior approval was not requested for the addition.

The hearing officer stated that "Dashawn Myles was arrested at your assisted unit on two separate occasions for domestic violence, disrupting public service and unlawful restraint. Police reports included statements from you verifying Mr. Myles' residency at your address. After the post office confirmed that mail was being delivered to your address in Mr. Myles name, the Housing Authority sent you a notice terminating you from the program."

In support of her position that Mr. Myles does not reside with her, Ms. Chalk provided a handwritten letter from Mr. Myles, as well as a copy of his 2017 W2 Tax Forms from an employer. See SMHA's exhibit F and Exhibit G.

Ms. Chalk testified that she took steps to prevent Mr. Myles from receiving mail at her address, but has been unsuccessful in doing so. Ms. Chalk denied that Mr. Myles ever stayed with her for more than fifteen consecutive days or more than ninety cumulative days in a twelve-month period.

This case also involves an appeal pursuant to R.C. 2506.04. The standard of review set forth by the statute dictates that the court must consider “‘the whole record,’ including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.”¹

The common pleas court may “affirm, reverse, vacate, or modify the order, *** or remand the cause to the officer or body appealed from with instructions to enter an order, *** consistent with the findings or opinion of the court.”²

With regard to the police reports, even if the statements attributed to Ms. Chalk are accurate, Ms. Chalk was providing information relative to a criminal act, not verifying the residence of Mr. Myles. The other documents relied on and provided by SMHA do not establish that Mr. Myles ever stayed with Ms. Chalk for

¹ *Henley v. Youngstown Bd. of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147.

² R.C. 2506.04.

more than fifteen consecutive days or more than ninety cumulative days in a twelve-month period so as to be considered an unauthorized household member.

This Court finds that the decision of the Hearing Officer for SMHA is not supported by a preponderance of substantial, reliable, and probative evidence. It is ORDERED that the Administrative Appeal is GRANTED. The decision of the SMHA is **REVERSED and REMANDED** to the hearing officer to enter a new decision consistent with the decision of this Court.

IT IS SO ORDERED.


MAGISTRATE NATALIE R. HAUPT

Adopted and Approved:


JOHN G. HAAS, JUDGE

To: Atty. Ryan W. Maxwell
 Atty. Corey Minor Smith

NOTICE TO THE PARTIES:

A party shall not assign as error on appeal the Court's adoption of any factual or finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53 (D)(3)(b).