

FILED
2012 JUL 10 PM 2:13
LINDA L. FRARY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

Jaclyn Coleman,	:	Case No. 2011 CV 1071 H
Appellant,	:	
vs.	:	MAGISTRATE'S DECISION
	:	ON ADMINISTRATIVE
Mansfield Metropolitan Housing	:	APPEAL
Authority,	:	
	:	
Appellee.	:	

This matter came on for hearing before the Magistrate on February 16, 2012 upon appellant Jaclyn Coleman's administrative appeal. Attorney Upendra Patel appeared on behalf of the appellant Ms. Coleman, and Attorney Andrew Burton appeared on behalf of the appellee Mansfield Metropolitan Housing Authority ("MMHA"). The hearing was digitally recorded.

Findings of Fact

1. Ms. Coleman is a resident of Mansfield, Ohio and at all times relevant to these proceedings has lived with her four children (ages 9, 13, 14, and 16) at 120 Rae Avenue.
2. The MMHA is an organization that provides financial rental assistance to qualifying individuals in the Mansfield area. Ms. Coleman has been a client in the MMHA program since 2000. As a participant in the program, Ms. Coleman pays \$118 in rent monthly, and MMHA pays the remainder of Ms. Coleman's rent each month

directly to the landlord. At the time that she enrolled in the program, Ms. Coleman was made aware of the obligations that she needed to satisfy to maintain her participation.

3. Since Ms. Coleman and her children began receiving assistance through MMHA, she has had no incidences of disturbing neighbors, no police visits, no difficulty with her landlord, and no criminal charges other than minor traffic violations and misdemeanors. Her neighbors feel that Ms. Coleman and her children are friendly and respectful and have caused no problems in the neighborhood.

4. On an unspecified date in the spring of 2011, Ms. Coleman was traveling in a car with friends to go to Cleveland. Her friends were smoking marijuana, and Ms. Coleman admittedly used marijuana that day as well. Consequently, Ms. Coleman failed a drug test at work that resulted in her termination by Industrial Workforce Solutions on May 4, 2011.

5. One of the obligations that must be met by program participants is the obligation to notify the MMHA if the participant experiences a change in family size or a change in income. Such a change must be reported within fourteen days.

6. On May 4, 2011, Ms. Coleman notified the MMHA that she was no longer employed. Ms. Coleman went to the MMHA office on May 20, 2011, met with MMHA officer manager Jo Wagner, and confirmed that she was no longer employed. Following this meeting, Industrial Workforce Solutions notified the MMHA by letter dated May 27, 2011, that Ms. Coleman's employment had been terminated because she had failed a drug test. Ms. Wagner contacted Ms. Coleman's employer on June 6, 2011 and confirmed the information as stated in the letter. At the request of the MMHA, the

employer supplied MMHA on June 7, 2011, with a hard copy of the results of the drug test.

7. In most instances, the MMHA's plan, policies, and obligations follow the Code of Federal Regulations ("CFR"). With regard to the obligations known as "family obligations," the MMHA plan follows the CFR exactly. These family obligations provide, in pertinent part, that "[t]he members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises"¹

8. Based upon Ms. Coleman's failure of her employer's drug test, Ms. Wagner determined that Ms. Coleman had violated her family obligations under the CFR and, on June 7, 2011, Ms. Wagner proposed to terminate Ms. Coleman's MMHA assistance. On June 9, 2011, Ms. Coleman requested a hearing.

9. An informal hearing was held by the MMHA on July 13, 2011, and the hearing officer's decision denying Ms. Coleman's appeal was issued on July 21, 2011. In her decision, the hearing officer determined that Ms. Cole's smoking of marijuana constituted use of a drug and therefore violated the programs' family obligations. Accordingly, the hearing officer found that the MMHA had grounds for terminating Ms. Coleman from the program. Ms. Coleman appealed that decision to this court pursuant to Ohio Rev. Code Chapter 2506.

10. Following her termination from Industrial Workforce Solutions, Ms. Coleman obtained employment as a state-tested nurse aid (STNA) at Crystal Care Center in

¹ 24 CFR 982.551(l).

August of 2011. In that occupation, Ms. Coleman will be required to take drug tests. As of the date of the hearing, Ms. Coleman had already taken and passed one such drug test.

11. If Ms. Coleman is terminated from the MMHA program, she will not be able to afford suitable housing in a safe neighborhood for herself and her four children.

Conclusions of Law/Recommended Judgment

1. In order to prevail on her administrative appeal, Ms. Coleman must show that the order appealed from is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.²

2. Pursuant to 24 CFR 982.551(l), the members of Ms. Coleman's household were prohibited from engaging in "drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises." This regulatory section, therefore, delineates three separate behaviors that are proscribed: 1) drug-related criminal activity, 2) violent criminal activity, and 3) other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. Contrary to the assertions of Ms. Coleman, drug-related activity need not threaten the health, safety, or right to peaceful enjoyment of other residents, etc., to be prohibited. The language concerning the threat to health, safety or right to peaceful enjoyment modifies only the last-listed activity ("other criminal activity").³ This construction is supported by the parallel list of

² Ohio Rev. Code § 2506.04; Hollinger v. Pike Twp. Bd. of Zoning Appeals, 2010 Ohio App. LEXIS 4293, *5 (Stark Cty., Oct. 18, 2010).

³ See e.g., Lawrence v. Town of Brookhaven Dept. of Housing, 2007 U.S. Dist. LEXIS 94947, *28 (E.D. NY, Dec. 26, 2007); Costa v. Fall River Housing Authority, 453 Mass. 614, 630 (2009).

prohibitions contained in 24 CFR 982.553(a)(2)(ii)(A) as well as by 24 CFR 982.553(b)(1)(iii), which states that the housing authority must establish standards for terminating assistance if "any family member has violated the family's obligation under § 982.551 not to engage in any drug-related criminal activity."

3. While Ms. Coleman could have been terminated for engaging in "drug-related criminal activity," her one-time use of marijuana on a trip to Cleveland did not rise to the level of "criminal activity." Under Ohio law, Ms. Coleman's activity could have led to a charge of only a minor misdemeanor,⁴ which, even if resulting in conviction, would not constitute a criminal record for Ms. Coleman.⁵ Because of the minor nature of Ms. Coleman's infraction, the MMHA determination that she engaged in "drug-related criminal activity" is unsupported by the preponderance of the evidence.

4. Furthermore, even if Ms. Coleman's actions constituted "drug-related criminal activity," substantial mitigating factors⁶ weigh in favor of allowing Ms. Coleman's continued participation in the MMHA program. The incident occurred one time and occurred off of the premises, and there is no evidence of ongoing drug use. Ms. Coleman and her children have been model tenants and neighbors. Furthermore, terminating Ms. Coleman from the program would result in Ms. Coleman and her four children being unable to afford safe and reliable housing. In light of these factors, the MMHA's decision terminating Ms. Coleman from the program was unreasonable.

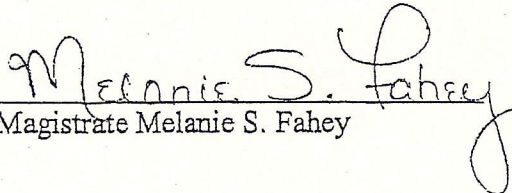
5. The July 21, 2011 MMHA decision terminating Ms. Coleman's MMHA assistance was unreasonable and is unsupported by a preponderance of substantial, reliable, and probative evidence. Therefore, the MMHA's decision should be overruled

⁴ Ohio Rev. Code § 2925.11(C)(3)(a).

⁵ Ohio Rev. Code § 2925.11(D).

⁶ See 24 CFR 982.552(c)(2)(i).

and Ms. Coleman should be allowed to continue her participation in the MMHA program.


Magistrate Melanie S. Fahey


RIGHT TO APPEAL

WITHIN FOURTEEN (14) DAYS OF THE FILING OF A MAGISTRATE'S DECISION, A PARTY MAY FILE WRITTEN OBJECTIONS TO THE MAGISTRATE'S DECISION. OBJECTIONS SHALL BE SPECIFIC AND STATE WITH PARTICULARITY THE GROUNDS OF OBJECTION. A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Magistrate's Decision was sent by regular U.S. mail this 10th day of July, 2012, to the following:

Magistrate – 2 copies
Upendra Patel
Andrew Burton



Clerk of Courts