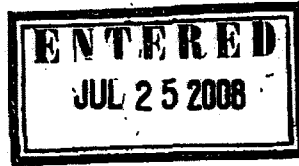


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Supreme Court No. 0081982
Attorney for Appellant

**HAMILTON COUNTY COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

MARKESHEA GOODEN,

: Case No. A0710779

Plaintiff/Appellant,

: Judge Beth Myers

-vs-

: Magistrate Bachman



CINCINNATI METROPOLITAN
HOUSING AUTHORITY,

: MAGISTRATE'S DECISION

Defendant/ Appellee.

This matter is before the court on Markeshea Gooden's timely appeal from the October 29, 2008 Hearing Officer decision upholding Cincinnati Metropolitan Housing Authority's ("CMHA") August 24, 2007 Notice of Termination of Section 8 Housing Assistance Payment ending her participation in the Section 8 Housing Choice Voucher program ("Section 8"). The appeal is filed pursuant to R.C. § 2506.04. Appellant's Motion to Stay Decision of CMHA was granted. The case was heard before the Common Pleas Magistrate on July 9, 2008, at which time the case was taken under submission.

BACKGROUND

Ms. Gooden has been a participant of the Housing Choice Voucher program since 2000. She currently resides at 1225 Bates Avenue, Cincinnati, Ohio, and has lived there for 3 years.

On August 24, 2007, Ms. Gooden received a Notice of Termination of Section 8 Housing Assistance Payment. The reason for the termination was "Unauthorized Person(s) in Unit (Donald Hales)."¹

The following statement is listed on the Notice of Termination:

UNAUTHORIZED PERSON (S) IN UNIT, (DONALD J. HALES)

06/CRB/32510 Donald Hales arrested and lists subsidized address as his residence.

06/CRB/32510 Donald Hales arrested from subsidized address.

07/CRB16513 Affidavit signed by Markesha Gooden-Kelly on 5/10/2007, acknowledges defendant lives at 1225 Bates Avenue as "spouse".

Certificate of Marriage shows Markeshea Annette Gooden marrying Donald Jamar Hales on or about 10-2-2006.

Bond for Donald Hales paid on or about 8/19/2006 by Leslie Gooden. Leslie Gooden paid said bond and also listed subsidized address as her residence and listed the same phone number as the number given by Donald Hales.

THE SECTION 8 ADMINISTRATIVE PLAN PROVIDES:

- The composition of the assisted family residing in the unit must be approved by CMHA. The family must promptly inform CMHA of the birth, adoption or court awarded custody of a child. The family must request CMHA approval to add any other family member as an occupant of the unit.²

In summary, CMHA alleged that Donald Hales lived in Ms. Gooden's home without prior approval from CMHA. Ms. Gooden requested an informal hearing on the matter on August 31, 2007, stating that "Donald Hales does not reside at my address nor does Leslie Gooden and I would like to review your evidence."³ The hearing was held on October 24, 2007 in which Gooden was represented by counsel.

At the October 24, 2007 hearing, CMHA presented a municipal court document of Donald Hales, listing his address as 1225 Bates Avenue, in addition to a police

¹ Administrative Record ("R") at 5-7.

² *Id.*

³ R. at 2-4.

complaint dated August 8, 2006, in which his address was listed as the same. The agency also presented a copy of a "Certified Abstract of Marriage" which listed Donald Jamar Hales as the Groom and Markeshea Annette Gooden as the Bride. This document indicated that the marriage was "INCOMPLETE".⁴

At the hearing, Ms. Gooden testified, under oath, that Donald Hales never resided in the home. She stated that they were a couple for a short time in the past. However, Mr. Hales was upset with her because she wanted to end the relationship, and became he violent.⁵ She testified that some of his mail came to her address in the past, but he did not live there.⁶ She testified that she did not realize that the police officer listed his address as 1225 Bates Avenue, when she signed the Domestic Violence Affidavit on May 10, 2007.

She also submitted an Affidavit from her landlord, Adam Neu. Her landlord stated, under oath, that he has "never seen any evidence, including clothes or other personal possession, of Donald Hales, or any other person besides those mentioned above, living at the residence".⁷ He further explained that maintenance personnel, who visit the unit every other month, have never reported evidence of other persons living at the address.⁸

The CMHA hearing officer ratified the termination. The hearing decision stated that "the main evidence produced at the hearing was court documents arising from two separate occasion listing Mr. Hales' address as 1225 Bates and your testimony that Mr.

⁴ R. at 20.

⁵ Transcript, page 13, lines 11-15.

⁶ *Id.* at pages 15-16.

⁷ R. at 30.

⁸ *Id.*

Hales received his mail at 1225 Bates.”⁹ The hearing officer incorrectly stated in the hearing decision that Ms. Gooden “did not present any evidence indicating that at the time [she was] notified of [her] termination from the program, he did not reside with [her].”

On November 27, 2007, Ms. Gooden filed a Notice of Appeal of CMHA's decision.

STANDARD OF REVIEW

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.¹⁰

This standard of review allows the trial court to weigh the evidence to determine whether it is reliable, probative and substantial. However, the trial court is required to give due deference to the administrative resolution of evidentiary conflicts.¹¹ Consequently, an administrative factual finding should not be disturbed without legally sufficient reasons for doing so.

Section 119.12 of the Revised Code also requires that the evidence considered by

⁹ R. at 35-36.

¹⁰ Ohio Rev. Code § 2506.04 (West 2007).

¹¹ Star Cruises v. Department of Liquor Control, No. C-950701, 1996 Ohio App. LEXIS 1013, at *4-5 (App. 1 Dist.). See also, Univ. of Cincinnati v. Conrad (1980), 63 Ohio St.2d 108, and Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619.

the court on appeal be reliable, dependable, probative and substantial.¹² In *Our Place*, the Ohio Supreme Court further defined the key terms of R.C. §119.12.¹³ Reliable evidence is evidence that is dependable, that can be confidently trusted, and where there is reasonable probability to believe that the evidence is true.¹⁴ Probative evidence is relevant and tends to prove the issue in question.¹⁵ Substantial evidence is evidence with some weight; it must have importance and value.¹⁶

DISCUSSION

Ms. Gooden argues the following in this appeal: (1) CMHA's termination of Ms. Gooden's Section 8 voucher violated the Violence Against Women Act; (2) CMHA relied on hearsay documents to justify the termination when there was overwhelmingly, competent and credible evidence to the contrary; and (3) CMHA erred in terminating Ms. Gooden's voucher because the hearing officer did not consider all evidence presented.

The court limits its analysis to the issue of the sufficiency of the hearsay evidence presented by CMHA.

24 C.F.R. § 982.555 (e)(5) states:

- "The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings."

However, the PHA cannot rely solely on hearsay evidence that is not credible, unreliable or lacks probative value.

¹² *Our Place, Inc. v. Ohio Liquor Control Comm'n.* (1992), 63 Ohio St.3d 570, 571.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Ms. Gooden argues that the Hearing Officer relied solely on hearsay evidence that lacked reliability, credibility and probative value, when there was credible evidence to the contrary. She specifically argues that the court documents presented by CMHA in her informal termination hearing are legally insufficient to establish a prima facie case. CMHA's reliance on this hearsay evidence violated HUD regulations, Ms. Gooden's statutory right to a fair hearing, and due process in this administrative hearing.

CMHA argues that the rules of evidence are not strictly applied in administrative hearings and CMHA may present hearsay evidence in Section 8 termination hearings. Specifically, CMHA argues that the hearsay documents presented at the informal hearing were just as reliable as the information presented by Ms. Gooden. This court does not find CMHA's argument persuasive.

The following is a list of the hearsay evidence submitted by CMHA:

- Certified Abstract of Marriage dated October 2, 2006;
- Recognizance for Appearance form;
- Domestic violence Complaint from May 10, 2007 and Affidavit
- Court documents from case number 06/CRB/32510.¹⁷

CMHA suggests that Ms. Gooden and Mr. Hales are married, and the word "spouse" in the domestic violence affidavit supports that contention. However, the Certified Abstract of Marriage clearly states that it is "INCOMPLETE", indicating that the two were never married.

CMHA further stated that Leslie Gooden, Ms. Gooden's stepmother, paid bond for Mr. Hales on August 19, 2006, and listed both her residence and Mr. Hales' residence as 1225 Bates Avenue. On the same form, Leslie Gooden's residence is listed as 731

¹⁷ R. at 16, 20-23.

Kentucky Ave., Marion, OH 43302.¹⁸ This shows the lack of reliability of these forms relied upon by CMHA. It is unclear who listed 1225 Bates as both Leslie Gooden and Mr. Hales' addresses or why, but the document contradicts itself. It is inconsistent on its face and is not credible.

The documents in the criminal proceedings relied upon by CMHA were created by the police officer who responded to the report. Ms. Gooden's signature on the Affidavit affirms the content of the complaint, it is not meant to verify that Donald Hales' address is correct. She also testified that she did not realize that the police officer listed Mr. Hales' address as 1225 Bates Avenue when she signed the Domestic Violence Affidavit on May 10, 2007. She testified that "when the police officer did the Complaint, he just asked me to sign it. I never looked [at] it I just, I was crying, my face was swollen."¹⁹ The documents are not reliable proof that Mr. Hale resided at 1225 Bates Avenue.

R.C. § 2506.08 requires this Court to examine the entire record to determine whether CMHA erred in terminating Ms. Gooden's voucher. CMHA has the burden of proving that Donald Hales was an "unauthorized occupant". The documents presented by CMHA were not reliable or credible. CMHA never met its burden of proof. In addition, Ms. Gooden presented competent, credible evidence that Donald Hales did not live at 1225 Bates Avenue.

As the Hearing Officer based her decision to uphold the termination solely on the court documents presented listing Donald Hales' address as 1225 Bates Avenue, the court

¹⁸ R. at 16

¹⁹ Transcript at page 16, lines 14-22.

finds that CMHA's decision terminating Ms. Gooden from the program was unsupported by a preponderance of substantial, reliable, and probative evidence.

DECISION

The decision upholding appellant Markeshea Gooden's termination from the CMHA Section 8 Voucher Program is **VACATED** and the appeal **REMANDED** to the Hearing officer to enter a new decision consistent with the findings or opinion of the court, reinstating her Section 8 voucher. Accordingly, the Motion to Vacate the Stay filed by CMHA on July 9, 2008 is **DENIED**.



MICHAEL L. BACHMAN
MAGISTRATE
COURT OF COMMON PLEAS

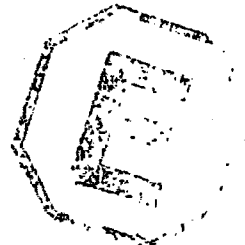


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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS
ENTER
Beth A Myers
HON. BETH A. MYERS
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

MARKESHEA GOODEN, : Case No. A0710779
Plaintiff/Appellant, : Judge Beth Myers
-vs- : Magistrate Bachman
CINCINNATI METROPOLITAN : JUDGMENT ENTRY
HOUSING AUTHORITY, :
Defendant/ Appellee.



Pursuant to the Magistrate's decision entered July 25, 2008, and Appellee's objections having been withdrawn, the Court hereby ADOPTS the decision, and it is ORDERED, ADJUDGED and DECREED that:

Cincinnati Metropolitan Housing Authority's Hearing Officer's decision to terminate Plaintiff/Appellant Markeshea Gooden from the Section 8 Voucher Program for having an "unauthorized occupant" is VACATED and the case is REMANDED to the Hearing Officer to issue a new decision that Ms. Gooden is not terminated from Cincinnati Metropolitan Housing Authority's Section 8 Voucher Program for having an "unauthorized occupant" in her rental unit.

SO ORDERED:

Date

Beth A Myers
Beth Myers, Judge

Have seen:

ENTERED
AUG 29 2008

Michael L. Bachman, Magistrate

MAGISTRATE

AUG 28 2008
HAS SEEN

ENTER

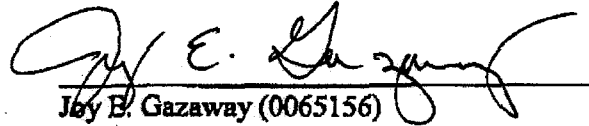
AUG 29 2008
BETH A. MYERS, JUDGE

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