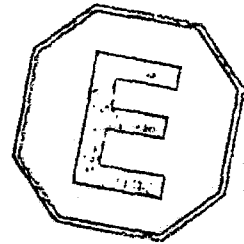


ENTERED
APR 15 2008

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



GLEND A JONES,
Plaintiff/Appellant,

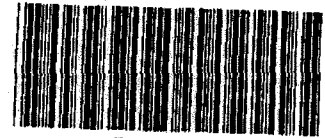
Case No. A0709492

Magistrate Michael L. Bachman
Judge Robert Winkler

-vs-

CINCINNATI METROPOLITAN
HOUSING AUTHORITY,

JUDGMENT ENTRY



D77935286

Defendant/Appellee.

Pursuant to the Magistrate's decision entered March 5, 2008, and no objections having been filed by any party, 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 Jones from the Section 8 Voucher Program is VACATED and the case is REMANDED to the Hearing Officer to issue a new decision that Ms. Jones is in good standing in Cincinnati Metropolitan Housing Authority's Section 8 Voucher Program and is eligible for and will receive forthwith a rental subsidy voucher based on her current household size and income.

SO ORDERED:

ENTER
APR 15 2008

Date

ROBERT C. WINKLER

Have seen:

Michael L. Bachman, Magistrate

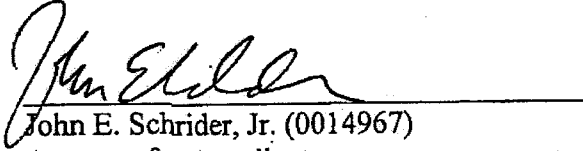
COURT OF COMMON PLEAS
ENTER
Robert Winkler
HON. ROBERT C. WINKLER
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

MAGISTRATE

APR 14 2008

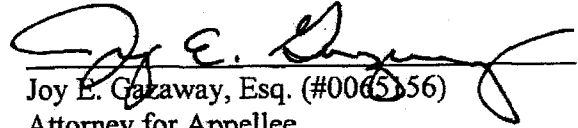
HAS SEEN

Approved by:



John E. Schrider, Jr. (0014967)
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215 East Ninth Street, Suite 500
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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



D77373110

GLEND A JONES, : Case No. A0709492
Appellant, : Judge Robert Winkler
v. :
CINCINNATI METROPOLITAN : MAGISTRATE'S DECISION
HOUSING AUTHORITY, :
Appellee. :

RENDERED THIS 5TH DAY OF MARCH, 2008.

This matter is before the court on Glenda Jones' ("Jones") timely appeal from the September 21, 2007 Hearing Officer decision upholding Cincinnati Metropolitan Housing Authority's ("CMHA") July 31, 2007 Notice of Termination of Section 8 Housing Assistance Payment ending her participation in the Section 8 Housing Choice Program ("Program").¹ The appeal is filed pursuant to R.C. § 2506.04. Appellant's Motion to Stay Decision of CMHA was denied. The case was heard before the Common Pleas Magistrate on January 31, 2008, at which time the case was taken under submission.

BACKGROUND

Jones participates in the Program through an apartment rental located at 630 Rockdale Avenue, #34, Cincinnati, Ohio. On March 24, 2006, Jones' minor son Lamar Jones, a member of Jones' family under the Program, committed an armed robbery in an apartment Laundromat located at 846 Beecher Street, Cincinnati, Ohio.² The distance between the two locations was approximately 2/3 of a mile as the crow flies or 1 ½ mile

¹ / R. at 10-12, 83-85. The Record consists of a paginated Administrative Record. A transcript of Jones' informal hearing conducted Sep. 19, 2007 was filed separately with the court ("T.p.").

² / R. at 69 (Pet.'s Ex. B – Bill of Particulars, B0610188, Dec. 12, 2006).

by road.³ Lamar Jones pleaded guilty to the lesser count of Robbery.⁴ On July 30, 2007, Jones reported to CMHA that her son was no longer a family member.⁵

On or about July 31, 2007, Jones received a letter from CMHA titled "Notice of Termination of Section 8 Housing Assistance Payment ("HAP")".⁶ The Notice indicated Jones's participation in the Program would be terminated August 31, 2007. Under the portion of the Notice entitled "Reason(s) for Termination of Housing Assistance Payment", the following statements are listed:

CRIMINAL ACTIVITY AND/OR VIOLENT CRIMINAL ACTIVITY AND FAIL (sic) TO NOTIFY CMHA AND THE LANDLORD THE INCARCERATION OF LAMAR JONES A MEMBER OF YOUR HOUSEHOLD ON A TIMELY MANNER.

- Records obtained from the Hamilton County Clerk of Courts website show that LAMAR JONES a member of your household has been convicted of the following counts: Aggravated Robbery and Possession of a firearm
- On June 12, 2007 Lamar Jones pleaded guilty to both counts and sentenced to three years of incarceration. His admission date to the Madison Correctional Institution was June (sic) 22, 2007.⁷

Jones requested a hearing. The hearing was held September 19, 2007 in which Jones was represented by counsel.⁸ In her written decision, the Hearing Officer upheld CMHA's decision to terminate Jones from the Program, but did not specifically mention Jones' failure to notify either CMHA or her landlord about the change in Jones' household composition due to Lamar's incarceration.⁹ Jones timely appealed.

³ / R. at 67-68 (Pet.'s Ex. A – Mapquest© directions).

⁴ / R. at 36 (Entry, Jun. 12, 2007, B0610188).

⁵ / T.p. at 29.

⁶ / R. at 11.

⁷ / R. at 8.

⁸ / T.p.

⁹ / R. at 83-85.

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

A strict reading of 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 evidence considered by 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

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.

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.*

DISCUSSION

Jones argues that 1) CMHA decision to terminate Jones was arbitrary, unreasonable and contrary to law; 2) Jones did timely notify CMHA about the change in her family composition; and 3) did timely notify her landlord about the change in her family composition.¹⁷ CMHA concedes the termination was solely based Lamar's criminal activity.¹⁸ The court thus limits its analysis to the issue of Lamar's criminal activity.

Crime by household members. The 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 other residents and persons residing in the *immediate vicinity of the premises* (see § 982.553).¹⁹

The PHA [Public Housing Authority] must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under § 982.551 not to engage in violent criminal activity.²⁰

CMHA will deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following reasons:

- If any family member violates any family obligation under the program as listed in Section C of this chapter. [24 CFR 982.551]
- If any family member has violated the family obligation under 24 CFR 982.551 not to engage in any drug-related criminal activity.
- If any family member has violated the family obligation under 24 CFR 982.551 not to engage in any violent criminal activity.²¹

Jones argues the Hearing Officer failed to exercise her discretion in upholding the termination by not considering several militating factors surrounding the circumstances of Jones' life and Lamar's life. Jones specifically argued her son's criminal activity did

¹⁷ / Appellant Br.

¹⁸ / Appellee Br. at 7.

¹⁹ / 24 C.F.R. § 982.551(l)(emphasis added).

²⁰ / 24 C.F.R. § 982.553(b)(2).

²¹ / R. at 14-15 (Excerpts from CMHA Administrative Plan – "Grounds for Denial or Termination of Assistance).

not occur in the immediate vicinity of the premises at issue.²² CMHA argues it was within its authority and discretion to uphold Jones' termination and that the distance between the offense and the premises does not disqualify the Hearing Officer's consideration of the offense as a condition precedent for termination.²³ CMHA relies upon a Pennsylvania Supreme Court decision as persuasive authority for the proposition that

a PHA may terminate Section 8 benefits for the violent criminal activity of a family member without having to prove that the violent criminal activity threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or threatens the health, safety, or right to peaceful enjoyment of their residences of persons residing in the immediate vicinity of the Section 8 premises.²⁴

This court does not find the Pennsylvania Supreme Court's decision persuasive. Rather, the court finds persuasive the holding of the inferior appellate court.²⁵ The appellate court affirmed the trial court's finding "that under the applicable regulation the violent crime must threaten the health, safety or right to peaceful enjoyment of the residents *in the immediate vicinity*."²⁶ The appellate court then adopted the common pleas court interpretation of the term 'immediate vicinity' to mean on the premises or next door.²⁷ The appellate court concluded that

the question of whether the [violent criminal activity] occurred within the immediate vicinity of [participant]'s residence is not a factual question. Rather, the question of what constitutes the immediate vicinity and whether the [violent criminal activity] fell within the definition of immediate vicinity is a question of law properly reviewed by the common pleas court.²⁸

²² / Appellant Br. at 8. Reply Br. at 3.

²³ / Appellee Br. at 6-7 (citing *Powell v. Housing Authority of the City of Pittsburgh*, 571 Pa. 552, 812 A.2d 1201 (Pa. 2002)).

²⁴ / *Powell*, 571 Pa. at 576.

²⁵ / *Powell v. Housing Authority of the City of Pittsburgh*, 760 A.2d 473 (Pa. Commw. Ct. 2000)).

²⁶ / *Id.* at 482 (emphasis in original).

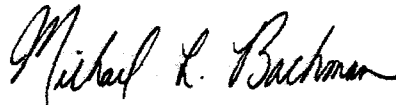
²⁷ / *Id.*

²⁸ / *Id.* at 483.

At 2/3 of a mile as the crow flies or 1 ½ mile by road, the court finds Lamar's armed robbery did not occur in the immediate vicinity of Jones' residence. Furthermore, the Hearing Officer's accordance with CMHA's desire "to provide a safe community, free from threats to safety, which encourages personal responsibility" represents an improper expansion of the term 'immediate vicinity' contained in 24 C.F.R. § 982.551(l) to include the entire community.²⁹ As the Hearing Officer based her decision to uphold the termination solely on Lamar's criminal activity, the court finds that CMHA's decision terminating Jones from the Program was not reasonable and otherwise unsupported by a preponderance of substantial, reliable, and probative evidence.

DECISION

The decision upholding appellant Glenda Jones' 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.



**MICHAEL L. BACHMAN
MAGISTRATE
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual 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).

²⁹ / R. at 85 (Decision, Sep. 21, 2007).

Copies sent by Clerk of Courts to:

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Cincinnati, OH 45202

Joy E. Gazaway, Esq.
Cincinnati Metropolitan Housing Authority
16 West Central Parkway
Cincinnati, Ohio 45202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION
HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR
ATTORNEYS AS PROVIDED ABOVE.

Date: 3-6-08 Deputy Clerk: