

CLERK OF THE COURT
CIVIL DIVISION
COURT OF COMMON PLEAS
COUNTY OF SUMMIT

2011 FEB 23 PM 2: 38)
SINCERAE JOHNSON) CASE NO. 2010-08-5472
SUMMIT COUNTY)
CLERK OF COURTS)
Plaintiff-Appellant,)
JUDGE PATRICIA COSGROVE)
v.)
AKRON METROPOLITAN HOUSING) ORDER
AUTHORITY)
Defendant-Appellee,) Final and Appealable Order

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

On December 22, 2009, Appellant was notified of the cancellation of her HCVP subsidy for violating Family Obligations #7, #11, and #20(c). (Exhibit H). Specifically, AMHA stated that Appellant's HCVP subsidy was being terminated because Tanisha Bratcher resided at the subsidized unit as an unauthorized household member. (Exhibit H). Appellant filed the instant appeal.

The Hearing Officer determined that by a preponderance of the evidence, Appellant had violated Family Obligation #7, #11, and #20(c) by allowing Tanisha Bratcher to reside at the subsidized unit for either four consecutive days or fifteen days out of a twelve month period. (Hearing Officer's Written Decision, July 12, 2010). The appeal herein is based solely on the allegation that Tanisha Bratcher

resided at the subsidized unit for either four consecutive days or fifteen days out of a twelve month period.

Appellant asserts that the decision to terminate the HCVP subsidy should be reversed because the conclusions made by the hearing officer are arbitrary, capricious, unreasonable, and unsupported by a preponderance of substantial, reliable, and probative evidence. Appellant further asserts that there is no evidence that Tanisha Bratcher "resided" in the subsidized housing for four consecutive days or fifteen days out of a twelve month period.

Elizabeth Kaisk, AMHA worker, stated that Tanisha Bratcher was an unauthorized resident in Appellant's subsidized unit because of her physical presence inside the subsidized unit in excess of the guest policy. (Hearing Transcript (HT) p. 14-15). Ms. Kaisk also testified that residency is based on physical presence and the absence of an address will be considered verification that the individual resides in the subsidized unit. (HT p. 15-16). In addition, Ms. Kaisk also testified that AMHA's Family Obligations was a short form of the applicable federal regulations and AMHA's HCVP Administrative Plan. (HT p. 10-11).

Deputy Michael Beers testified that Deputy Ekberg, lead deputy, and he visited Appellant on November 23, 2009, in order to investigate a complaint that an unauthorized adult was living in the subsidized unit and a recent shooting at said unit. (HT p. 26-28). When Deputy Beers and Deputy Ekberg arrived at Appellant's unit to investigate whether an unauthorized person was living in the subsidized unit, Tanisha Bratcher was present. (HT p. 28). Deputy Beers also

testified that Tanisha Bratcher was the individual who called the police the night of the shooting at the subsidized unit. (HT p. 32).

24 C.F.R. §982.551(h)(1) states that the family (one using the subsidized housing) must use the assisted unit for residence by the family. The unit must be the family's only residence. Additionally, 24 C.F.R. §982.551(h)(2) states that composition of the assisted family residing in the unit must be approved by PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person may reside in the unit.

Since "resident" is not defined in the 24 C.F.R. §982.551, R.C. §1.42 requires the court to read words and phrases in the context, and construed, according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

The Supreme Court of Ohio in *Prouse, Dash & Crouch, L.L.P. v. DiMarco*, 2007-Ohio-5753, stated while "resident" appears in many sections of Ohio Revised Code, See, e.g., R.C. §3773.33, R.C. § 340.02, R.C. § 2151.06, R.C. § 3.15, R.C. §4911.04, R.C. § 1907.13, R.C. §2701.04, and R.C. §1901.06, the General Assembly intentionally refused to define the term "resident" due to its many different uses. *Id.* at ¶6-7. In divorce and annulment cases the word "resident" means one who possesses a domiciliary residence, a residence accompanied by an intention to make the state of Ohio a permanent home. *Id.* at ¶ 7. For the purposes of obtaining a driver's license, a "resident" is a person who

currently either lives within Ohio or has left Ohio, for temporary purposes only, with specific intention to return to Ohio to live. *Id.*

In *State ex rel. Bigler v. Graham*, 1988 Ohio App. LEXIS 337 (Ohio Ct. App., Belmont County Jan. 26, 1988), the Seventh District court of Appeals stated that,

"A review of the law of other jurisdictions confirms the view that residence means a settled or permanent home or domicile and includes the fact of abode and intention of remaining. Interwoven through the definition of residence in a myriad of cases is an element of intent to return to a settled abode. There is an indicia of permanence to classify it as a legal residence."

Furthermore, the Court points to R.C. §3503.02(A) as guidance for a definition of residency. R.C. §3503.02(A) states that a place will be considered the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning. *Id.* at *3.

Appellee argues that mere physical presence is enough for someone to be considered a resident of a subsidized unit. If this logic were to be applied to any person living in subsidized housing then almost every person would be in violation of Family Obligation 20(c). Appellee is construing 24 C.F.R. §982.511(h)(1)&(2) to mean residency in the temporary sense of the word. However, if we construe "resident" according to the rules of grammar and common usage in conjunction with how the word is used in the Ohio Revised Code, we construe "residency", in this sense, to mean a permanent, fixed location with specific intent to remain. If we construed "resident" or "residency", as the Appellee wishes us to, then any person who visited an individual residing in subsidized housing would be a "resident" of that unit.

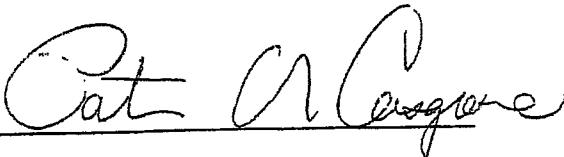
If Tanisha Bratcher was a resident there is still not enough evidence to prove that she resided at the subsidized unit for four consecutive days or fifteen days out of a twelve month period. The only evidence presented was that Tanisha Bratcher was physically present at the subsidized unit on November 11, 2009 and December 3, 2009. Appellant also testified that Tanisha Bratcher would visit the subsidized unit "maybe three times a month." (HT p. 7). However, there is no evidence indicating when Tanisha Bratcher started visiting the subsidized unit. Therefore, the total number of days that Tanisha Bratcher was physically at the subsidized unit is two days, far short of the fifteen days, and even four day, requirement.

This Court finds that the decision of the Hearing Officer for AMHA is not supported by a preponderance of substantial, reliable, and probative evidence.

IT IS ORDERED AND ADJUDGED that 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.

A handwritten signature in cursive script, reading "Pat A. Cosgrove", written over a horizontal line.

JUDGE PATRICIA A. COSGROVE