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SUMMIT COUNTY,
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

BEVERLY MIHALY	:	CASE NO. CV 2005-11-6946
	:	
Plaintiffs,	:	Judge Patricia A. Cosgrove
	:	
vs.	:	
	:	ORDER
AKRON METROPOLITAN HOUSING AUTHORITY	:	<u>Final and Appealable Order</u>
	:	
Defendant.	:	

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

Appellant applied for a federal housing assistance voucher through the Akron Metropolitan Housing Authority (AMHA) on June 27, 2002. Appellant completed the standard application process where she was asked if she had been convicted of drug related criminal offense. Appellant answered "No", which was a correct response at that time. Appellant was determined to be eligible and was placed on a waiting list. While on the waiting list, Appellant was arrested and charged with several drug crimes, to which she ultimately plead guilty to the crime of permitting drug abuse on November 13, 2003. Appellant did not report the conviction

to AMHA. Appellant was issued a voucher on July 21, 2003; Appellant's move in date utilizing the voucher has been documented as December 22, 2003.¹

On September 7, 2005, Appellant was notified of the cancellation of her Section 8 subsidy (Exhibit C) with the reason marked as: "Other: Violation of family obligations for head of household Beverly Mihaly arrested for illegal drug activity." Appellant requested a hearing, the hearing was held and the decision of the hearing officer upheld the cancellation of the Section 8 voucher due to Appellant's arrest for illegal drug activity. Appellant filed the instant appeal.

Appellant asserts in support of her appeal that the August 2003 arrest was not a "Family Obligations Violation" because Appellant was *not* a HCV Program Participant at the time of arrest or conviction. Appellant asserts that she did not become a HCV Program Participant until her move in date of December 22, 2003, *after* her arrest and conviction. AMHA argues in opposition that Appellant's conviction renders her ineligible for participation in the voucher program. AMHA asserts that a criminal conviction renders an individual, either an applicant or participant, ineligible for the voucher program.

Appellant asserts that the HCV program applies to participant families and is governed by 24 CFR 982.4(b) which defines Participant family as:

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

The Voucher contract signed by Appellant (dated July 21, 2003) contains the following language:

2. Voucher

¹ There is no copy of the HAP contract provided, but there does not appear to be a dispute as to the applicable dates, including the move in date. For purposes of this appeal, this Court will consider the move in date as the HAP contract date.

B. The voucher does not give the family any right to participate in the PHA's housing choice voucher program. The family becomes a participant in the PHA's housing choice voucher program when the HAP contract between the PHA and the owner takes effect.

3. Obligations of the Family

A. When the family's unit is approved and the HAP contract is executed, the family must follow the rules listed below in order to continue participating in the housing choice voucher program.

D. The family (including each family member) must not:

4. 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.

The standard to be applied by this Court in an administrative appeal under Chapter 2506

is set forth in RC 2506.04, which provides, in relevant part:

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.

The Court of Common Pleas must weigh the evidence in the record, and any additional evidence admitted under RC 2506.03, and determines whether there exists a preponderance of substantial, reliable, and probative evidence to support the agency decision. *Dudukovich v. Housing Authority* (1979), 58 Ohio St.2d 202.

The Ohio Supreme Court further stated in *Dudukovich*, at 207:

We caution, however, to add that this does not mean that the court may blatantly substitute its judgment for that of the agency, especially in areas of administrative expertise. The key term is "preponderance." If a preponderance of reliable, probative and substantial evidence exists, the Court

of Common Pleas must affirm the agency decision; if it does not exist, the court may reverse, vacate, modify or remand.

In weighing the evidence, the Court of Common Pleas must give due deference to the administrative agency's resolution of evidentiary conflicts, since as the finder of fact, the agency had the opportunity to observe the witnesses' demeanor and weigh their credibility. See *Dudokovich*, supra; *Univ. of Cincinnati v. Conrad* (19), 3 Ohio St.2d 108, 111; *Budd Co. v. Mercer* (1984), 14 Ohio App. 3d 269, 273-274. This Court is bound by the evidence contained in the record and may not consider evidence outside the record. R.C. 2506.03 and *McAlpin v. Shirey* (1997), 121 Ohio App.3d 68.

Standards for reviewing administrative orders indicate that this Court must affirm if the order is supported by reliable, probative, and substantial evidence and also conforms to the law. *VFW Post 8586 v. Ohio Liquor Control Comm.* (1998), 83 Ohio St.3d 79, 81. Further, the common pleas court must defer to the agency's findings of fact unless the court finds they are "internally inconsistent, impeached by evidence of a prior inconsistent statement, rest on improper inferences, or are otherwise unsupportable." *Id.*

The administrative decision issued in this matter found that Appellant had been convicted of a drug related offense and therefore AMHA was authorized to terminate her subsidy "should it wish to do so." The administrative decision further found that:

"Ms. Mihaly appears to be a credible witness. She appears not to have had knowledge of the drugs. Ms. Powell's testimony supports her own. Moreover, Ms. Mihaly is in a wheelchair. As a result, she has not been in the backyard, where trash (apparently with drug paraphernalia) was found, and she could not reach the closet shelf where the drugs were found. Lisa admitted the drugs were hers."

A review of the applicable federal regulations as well as the exhibits attached to the administrative transcript convince this Court that the decision of the agency was not supportable.

The language contained within the federal regulations and the voucher contract states that a person is not a "participant" until the HAP contract takes effect (in this case, the move in date). AMHA has not cited to, nor did this Court find, any specific language either in the voucher contract or the federal regulations that requires automatic termination of the voucher based on a criminal conviction *prior* to signing of the HAP lease, but after the initial application process.

Furthermore, commentary relating to the meaning of the term "engaging in" criminal drug activity has noted that:

The purpose of this rule is not to punish families for past behavior, but rather to discourage such behavior by imposing an obligation on the family to not engage in the proscribed activities as a condition for receiving the housing assistance. Past behavior is relevant to questions of whether a family member engages in drug-related or violent criminal activities, but by itself, may not be determinative of that issue. A family with a member who has been convicted of drug-related criminal activities may be able to show that the family member has been rehabilitated. Thus, while conviction for the proscribed activities must be considered by the PHA, it should not be the only factor considered. A PHA should have the authority to terminate or deny assistance if it can present sufficient probative evidence that a family member is engaging in an activity that meets the elements of the criminal statute relating to a drug-related or violent criminal activity.

The regulation does not automatically bar assistance to a family because of past drug-related or violent criminal activity by a family member. Rather, the PHA has the authority to determine whether denial or termination is appropriate. HUD has adopted the commenter's suggestion and has added provisions similar to the above-quoted text to the rule (see §§ 882.216(c), 882.514(g) and 887.403(c)).

55 FR 28538, *Department of Housing and Urban Development*, 24 CFR Parts 882 and 887.

The ground for termination stated by the AMHA was "Violation of family obligations for head of household Beverly Mihaly arrested for illegal drug activity." This Courts finds that based on the definitions as set forth above, that Appellant was not a HCV Program Participant at the time of her arrest and conviction and therefore was not subject to the "family obligations".

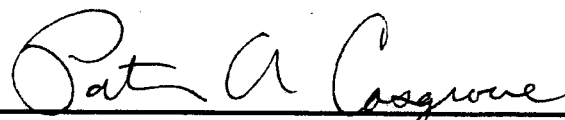
Accordingly, this Court finds that the decision of the administrative agency is not supported by a preponderance of substantial, reliable and probative evidence and that Appellant has demonstrated she can not be terminated from the HCV program for the grounds stated in the notice of termination. This Court makes no finding as to whether a termination can occur at any time based upon the standards of proscribed activity that specifically apply to HCV Program terminations.

Based on the foregoing, this Court finds that the decision of the AMHA is not supported by a preponderance of substantial, reliable and probative evidence.

IT IS ORDERED AND ADJUDGED 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.



Judge Patricia A. Cosgrove

CC: Gregory Sain
James Casey