

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

MELISSA MILLER)	
Appellant,)	CASE NO. 11 CV 000613
)	
)	
vs.)	<u>MAGISTRATE'S DECISION</u>
)	
LAKE METROPOLITAN HOUSING)	November 17, 2011
AUTHORITY)	
Appellee.)	

This matter was referred pursuant to Civ.R. 53 to address the issues raised by this administrative appeal. A hearing was held on May 12, 2011 attended by appellant Melissa Miller, a representative of appellee Lake Metropolitan Housing Authority [LMHA] and their respective counsel. Miller appeals from a February 8, 2011 decision of a LMHA staff hearing officer terminating her from the Housing Choice Voucher Rental Assistance Program [HCVP] for an unapproved change in her household composition, to wit: an unauthorized spouse residing in the household.

The standard of review applicable to this appeal is set forth in R.C.2506.04. This court when it reviews a decision of an administrative agency must consider the "whole record," including any new or additional evidence submitted under {R.C.}2506.03, and [determine] whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of the substantial, reliable, probative evidence." *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493. In undertaking this review, the common pleas court, acting as an appellate court, must give due deference to the administrative agency's determination of evidentiary conflicts, and may not substitute its judgment for the agency's. *Battaglia v. Newbury Twp. Bd. of Zoning Appeals* (Dec. 8, 2000), 11th Dist. No. 99-G-2256, 2000 WL 1804344, at 3." *Moore v. Lake County Bd. of Comms.*, Lake App. No. 98-L-247, 2002-Ohio-2978, at ¶ 5. The issue is whether there exists a preponderance

of reliable, probative and substantive evidence from the whole record to support the decision of the administrative agency.

I.

The relevant facts regarding this appeal from both the record and the additional testimony are these:

1. Miller resides at 884 Chestnut Boulevard, Willoughby, Ohio. She receives Section 8 assistance from LMHA through the HCVP based on a family composition that includes herself and her three children;

2. Miller also participates in the Family Self-Sufficiency Program [FSS], a five year program to assist LMHA families in obtaining economic independence. Enrollees in FSS accrue funds in an escrow account that is transferred to them upon their successful completion of the program. Miller was on track to complete her FSS contract around December 2012. Her escrow account had accumulated about \$7,000 at the time she was terminated from the program;

3. On November 18, 2011, Miller, n.b.m. as Romeo, married Andrae Miller. Miller is not a U.S. citizen and attends Lakeland Community College [LLC] on a F-1 visa. At the time of the marriage, Miller resided with his uncle, Emil Synister, at 893 Marshall Drive, Painesville, Ohio. Once married, Andrea became an in-county student, as opposed to an out of state student, and was now eligible for a \$7,333 reduction in his annual tuition;

4. Sometime in November 2010, Miller telephoned Tressler to inquire when her FSS monies that were held in escrow would become available and whether getting married would have an effect on it. During this conversation, Tressler advised Miller that public housing authority [PHA] and LMHA regulations require prior written approval to add a new family member, not already on the lease, who is expected to stay in the unit for more than 30 consecutive days or 90 days in a 12 month period. This same information was given to Miller when she entered the Section 8 program and was known to her as far back as 1998 when she changed her family composition to add and thereafter delete a prior husband. Miller also sat on the LMHA board making it highly unlikely that she was unfamiliar with this requirement for prior written approval before making a change to her family composition;

5. Sometime prior to December 16, 2010, Miller notified Amy Tressler, a case worker at

LMHA, of her change in marital status. Tressler in response wrote Miller on December 16, 2010 asking Miller to contact her to discuss this change; Miller did not respond;

6. Shortly after December 16, 2010, the Lake County Department of Jobs and Family Services [JFS] sent correspondence to Miller requesting employment information on Andrae to determine whether her marriage affected her food stamp and/or cash eligibility and benefit amount;

7) On January 3, 2011, Tressler received a letter from Miller. It stated "[a]s of Jan. 1, 2011, my husband will reside with me at 884 Chestnut Blvd. Any Questions [sic] please feel free to give me a call.";

8) Miller testified both at the administrative hearing and here that her January 3rd letter was intended only as a request to obtain LMHA's written approval to add her husband to her family composition, not a notice of someone actually moving in;

9. On the same date, Miller gave JFS the information it sought about Andrae. Miller failed to provide the follow up information it requested on January 5, 2011.

10. LMHA relied on Miller's letter, a postal inquiry showing that Andrae Miller changed his mailing address and correspondence from JFS dated January 28, 2011 stating that Andrae Miller was "ADDED TO HER CASE AS OF 1/11/11. THEY ARE NO LONGER RECEIVING FOOD STAMPS AS THEY ARE OVER INCOME. * * *" as verification that Andrae Miller was residing with Miller at 884 Chestnut Boulevard. LMHA did not conduct a site visit to determine whether Andrae had in fact moved in.

11. Sometime around mid-January, 2011, Andrae Miller requested that Peggy Guinn, his advisor at LLC, change his mailing address to 884 Chestnut Blvd, Willoughby, Ohio. Guinn made the change on January 26, 2011. Andrae Miller also advised her of his marriage;

12. Andrea Miller testified he never moved into Miller's Chestnut residence but made the address changes to insure that the couples financial records (they maintain joint banking accounts) are in one place and to make it easier for either one to pay the other's bills. Symister testified that Andrae Miller still resides with him, that his furniture and personal belongings remained at his uncle's Painesville residence and that Andrae continues to reside there five to six nights a week;

13. On February 7, 2011, JFS reversed its finding that Miller was over income and indicated that Miller and her three children were food stamp eligible; and

14. In 2010, Miller failed to report the receipt of workers' compensation benefit beginning in May 2010 and ignored LMHA's inquiries and a mandatory debt appointment until receipt in October 2010 of their intent to terminate her from HCVP on November 30, 2010. Miller requested a hearing and ultimately avoided termination but had to repay \$810 to LMHA.

II.

Based on the above factual finding, these conclusions of law issue:

1. The testimony of Melissa Miller that she did not intend to live with her husband, Andrae Miller lacks credibility. Miller's letter to LMHA cannot reasonably be interpreted to state that she only planned to live with her husband after LMHA authorized a change in family composition when it did not state that;

2. Andrae admits that he lives at the Chestnut address somewhere between one, two or three nights a week. Taken at face value, it supports the conclusion that Andrae expected to stay at the Chestnut residence at least 90 days within a twelve month period and contradicts both Miller's and Andrae's uncle testimony. This supports the LMHA finding that Miller violated LMHA policy and an obligation Miller agreed to LMHA when she accepted assistance to not add a family member without prior approval;

3. Miller's addition of her husband also violated 24 CFR 982.551(h)(2);

4. Actions of Miller with respect to JSF and LMHA and those of Andrae in changing his mailing address both with the post office and the college support that Miller intended to reside at the Chestnut address, whether it be found on a permanent basis as this writer believes or the require 90 cumulative days over a twelve month period. Evidence that they shared banking accounts, the use of car and paid one another's financial obligations underscore the conclusion that they were residing together;

5. LMHA policy states that "[f]amilies must request PHA approval to add a new family member * * * . This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days, or 90 cumulative days within a twelve month period, and

therefore no longer qualify as a "guest". Requests must be made in writing and approved by the PHA prior to the individual moving in the unit." was then required to request and receive PHA approval to add a new family member prior to the new family member moving in.";

6. 24 CFR 982.551(h)(2) states, in pertinent part, "[t]he composition of the assisted family residing in the unit must be approved by the PHA. * * * The family must request PHA approval to add any other family member as an occupant of the unit. * * * ; and

7. Miller violated an LMHA obligation. The latter is based on 24 CFR 982.551(h)(2).

III.

Reviewing the evidence presented at the hearing as well as that which is in the record, this writer finds that there exists a preponderance of reliable, probative and substantive evidence to support the decision of the administrative agency to terminate Melissa Miller from the HCVP. The decision therefore should be affirmed.



KENNETH R. ROLL, Magistrate

WITHIN FOURTEEN DAYS OF THE FILING OF A MAGISTRATE'S DECISION, A PARTY MAY FILE WRITTEN AND SPECIFIC OBJECTIONS TO THE MAGISTRATE'S DECISION. IF ANY PARTY TIMELY FILES OBJECTIONS, ANY OTHER PARTY MAY ALSO FILE OBJECTIONS NOT LATER THAN TEN DAYS AFTER THE FIRST OBJECTIONS ARE FILED. IF A PARTY MAKES A REQUEST OR FINDINGS OF FACT AND CONCLUSIONS OF LAW IN Civ.R. 52, THE TIME FOR FILING OBJECTIONS BEGINS TO RUN WHEN THE MAGISTRATE FILES A DECISION INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF THE COURT ISSUES AN IMMEDIATE ORDER ADOPTING A DECISION, THE FILING OF A TIMELY OBJECTION SHALL OPERATE AS AN AUTOMATIC STAY OF EXECUTION OF THAT ORDER UNTIL THE COURT RULES ON THE OBJECTION(S) AND VACATES, MODIFIES OR ADHERES TO THE ORDER PREVIOUSLY ENTERED.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW, 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).

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing Magistrate's Decision was sent by regular mail to the parties and/or attorneys on this _____ day of _____, 2010.

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