

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY
CIVIL DIVISION**

LYNDSEY J. PAULEY,

APPELLANT,

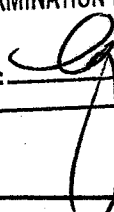
VS.

**COLUMBUS METROPOLITAN
HOUSING AUTHORITY**

APPELLEE.

CASE NO. 07CVF-12-17104

**FINAL APPEALABLE ORDER
JUDGE BESSEY**

TERMINATION NO.	10
BY:	

BESSEY, J.

JUDGMENT ENTRY & FINAL APPEALABLE ORDER

**COLUMBUS METROPOLITAN HOUSING AUTHORITY DECISION
REVERSED**

Introduction

Appellant, Lyndsey J. Pauley appeals the decision of the Columbus Metropolitan Housing Authority, Appellee, denying her a hardship exemption from the \$50.00 minimum rent charged for her public housing. Appellant's hardship exemption is governed by 42 USCS § 1437.

Appellant learned of the hardship exemption when Appellee filed suit in Franklin County Municipal Court to evict her for non-payment of rent. That action was stayed because Appellee failed to properly notify Appellant of her right to request a hardship exemption.

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Appellant thereafter requested a hardship exemption from paying the minimum \$50.00 rent charged by Appellee. After an informal hearing denying her request, Appellant appealed to a Columbus Metropolitan Housing Authority Hearing Officer. On November 13, 2007, Hearing Officer Harris conducted a formal hearing concerning Appellant's request for a hardship exemption. The exemption, if granted, would have excused Appellant's nonpayment of the \$50.00 per month rent and reduced her rent to \$0.00. As a practical matter, Appellant could not then be evicted for non-payment of rent.

On November 20, 2007, Hearing Officer Harris notified Appellant of her decision. That decision ordered that "CMHA will proceed with lease termination for non-payment of rent." (Hearing Officer's Decision, Part V.) The decision was based on the decision's sole finding of fact, "[N]o change in circumstances." (Hearing Officer's Decision Part III.)

Appellant assigned as error the finding of fact. Appellant offers that the finding of fact improperly ignored facts in the record and subordinated applicable federal law to local occupancy policy. The Hearing Officer's decision found Appellee had justified its informal denial of Appellant's exemption request, stating, "Per PHA Admissions & Occupancy Policy, client circumstances due to non-compliance with Federal, State, or Locally funded (Rebuilding Lives) program." The decision did not address either 42 USCS § 1437 or 24 CFR § 5.630 (Exhibit I).

STANDARD OF REVIEW

Ohio Revised Code Chapter 2506 governs appeals from decisions of the commission to the common pleas court. Under R.C. 2506.04, the standard of review in the common pleas courts is different from that employed in the court of appeals. *Henley v. City of Youngstown Bd. of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147, 2000 Ohio 493, 735 N.E.2d 433. Considering the whole record, the common pleas court must determine whether the administrative decision is unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence. *Id.* In discharging its obligation, the trial court is required to examine the evidence, weighing it to determine whether a preponderance of substantial, reliable, and probative evidence supports the commission's decision. *Id.*; *Krumm v. Upper Arlington City Council*, Franklin App. No. 05AP-802, 2006 Ohio 2829, at P9, citing *Dudukovich v. Lorain Housing Auth.* (1979), 58 Ohio St.2d 202, 207, 389 N.E.2d 1113. Due deference must be given to the agency's resolution of evidentiary conflicts. *Krumm, supra*, at P8, citing *Budd Co. v. Mercer* (1984), 14 Ohio App.3d 269, 14 Ohio B. 298, 471 N.E.2d 151, paragraph two of the syllabus. The administrative decision is presumed to be valid, placing the burden of persuasion upon the party contesting the decision. *Id.*, citing *Klein v. Hamilton Co. Bd. of Zoning Appeals* (1998), 128 Ohio App.3d 632, 636, 716 N.E.2d 268. see *Meyers v. City of Columbus* (10th District), Case No. 07AP-958, 2008 Ohio 3521, at P6-P7.

FACTS AND LEGAL ANALYSIS

For the reasons set forth below, the court finds the sole finding of fact, "No change in circumstances.", unreasonable and unsupported by the preponderance of substantial, reliable, and probative evidence. Similarly, for the reasons set forth below, the court finds the decision not in accordance with applicable law.

On November 13, 2007 at 2:11 p.m., a formal hearing concerning Appellant Pauley's request for an exemption from payment of the minimum rent of \$50.00 per month for her apartment at Appellee Columbus Metropolitan Housing Authority commenced before Hearing Officer Harris. Appellant was represented by counsel, Donna Mayer, Esq., of the Columbus Legal Aid Society. Appellee appeared through Claude Nesbit, Director of Public Housing, Columbus Metropolitan Housing Authority (CMHA).

Mr. Nesbit explained that Appellant obtained residency at CMHA through a federally funded program from which Appellant was terminated due to non-compliance. As part of that program Appellee was provide a copy of Exhibit 3-B which discussed Exemption to Minimum Rent and how to obtain a Special Hardship Review. Although Exhibit 3-B consists of only one page, it appears to be a middle page of a larger document. Section D. 3 of that Exhibit advises that a family may be evicted as a result of the imposition of the \$50.00 minimum rent requirement if "[I]ncome decreased due to the resident household's failure to comply with an economic self-sufficiency program or work activities will not be

permitted to" (sic). Exhibit 3-B ends mid sentence. The records provide no further information completing the section. The court finds the record unreliable because the evidence supporting Appellee's explanation of their action, is, at best, incomplete. Without the whole document, the evidence offered by Appellee is not probative of a factual basis for denying Appellant's application for exemption from the minimum monthly rent requirement. In like manner, this evidence is not substantial due to its incompleteness and can not form a basis on which to deny Appellant's exemption application.

In contrast, the preponderance of the evidence demonstrates Appellant's application for exemption from the \$50.00 per month minimum rent at CMHA should have been granted. In fact, using Appellee's Exhibit 4, the preponderance of the evidence demonstrates Appellant fits within the exemption from minimum rent under section B, allowing an exemption from minimum rent when, "The family has lost eligibility for or is pending eligibility for a Federal, State, or Locally funded Training and or Assistance Program..." Likewise, Exhibit I, setting forth 24 Code of Federal Regulations at § 5.630, establishes the same exemption from payment of Minimum rent. That regulation states that an exemption from minimum rent must be granted if the family is awaiting an eligibility determination for federal assistance. Nothing in the CMHA Exhibit 4 defeats this exemption.

The evidence shows, by at least a preponderance, that at the time of Appellant's application for Exemption from the Minimum Rent of CMHA, Appellant

was awaiting an eligibility determination for a Federal Assistance Program, namely SSI Disability. (Tr. P. 20, L. 11 – P. 21, L. 9). Additionally, Appellant offered Exhibit F documenting that on July 24, 2007, Appellant applied for Supplement Security Income under Title XVI of the Federal Social Security Act.

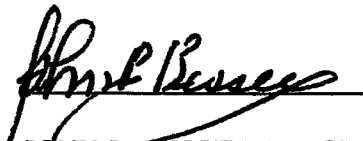
Federal Law at 42 USCS § 1437 a (3) (B) (i)(I) provides that a public housing agency (such as CMHA) shall immediately grant an exemption from the application of the minimum monthly rental amount when the family is awaiting an eligibility determination for a Federal assistance program. The statute is clear and needs, in this case, no interpretation, merely application.

And applying this statute mandates CMHA immediately grant Appellant exemption from the minimum monthly rent until her eligibility for SSI is determined.

CONCLUSION

Accordingly, this court REVERSES the determination below and orders CMHA to grant Appellant an exemption from the \$50.00 minimum monthly rent until Appellant's eligibility to receive SSI under Title XVI of the Social Security Act is determined.

It is so ORDERED.


JOHN P. BESSEY, JUDGE

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