IN THE COURT OF APPEALS OF IOWA

No. 0-582 / 10-0196
Filed September 9, 2010

FELICIA DANIELS,
Petitioner-Appellant,

vs.

CITY OF DES MOINES
MUNICIPAL HOUSING AGENCY,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Recipient of housing assistance appeals a decision of the district court denying her petition for writ of certiorari and upholding termination of her housing assistance. **REVERSED AND REMANDED.**

Laura Jontz, Des Moines, for appellant.

Gary D. Goudelock Jr., Des Moines, for appellee.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Felicia Daniels appeals the decision of the district court denying her petition for writ of certiorari and upholding the decision of the City of Des Moines Municipal Housing Agency (DMMHA) to terminate her Section 8 rental subsidy through DMMHA. We reverse and remand.

I. Background Facts and Proceedings.

On February 25, 2009, DMMHA notified Daniels her Section 8 Housing Assistance Program rental subsidy would be terminated on March 31, 2009, for the following reasons:

> 1. Violation of obligations of the Family, 24 CFR 982.552(a)(1), 982.551(e) & 982.552(c)(1)(i) Family may not commit any serious or repeated violation of lease—Tenant Repairs, 2nd fail inspection.
> 2. Violation of obligations of the Family, 24 CFR 982.552(a)(1) & 982.551(c), 982.404(b-1, b-2, b-3) & 982.552(b) (c)(1)(i) Housing Quality Standards breach caused by family.
> b-iii—Tenant Repairs—2nd fail inspection.
> 1. Right rear bedroom, remove writing from walls and doors
> 2. Repair/replace non-working smoke detector outside of bedroom (missing battery).
> 3. Install missing light globe in kitchen.

On February 27, 2009, Daniels submitted a written request for a hearing, stating the termination of her housing certificate was "unjustified."

An unrecorded hearing before a hearing officer was held on March 24, 2009. The hearing officer's handwritten notes in their entirety are as follows:

> 3-24-09 2:30
> Felicia Daniels-participant
> Jessica Kolnes-Case Manager
> Dave Bettis-Inspector
>
> signings of lease since
> 8^-October 15, 04
> Landlord did not do anything
> she did it all that passed

smoke detector
not repaired properly
bad repair
writing on wall
light globe not working-could not reach

On April 7, 2009, the hearing officer issued a written decision incorporating DMMHA's Exhibits 1 through 9 into the record. The hearing officer summarized the DMMHA's evidence as Exhibit 7 (copy of January 15, 2009 letter of failed first inspection and attached inspection summary report stating what the deficiencies were and which party was responsible for each deficiency), Exhibit 8 (copy of letter sent to the landlord showing an extension was granted until February 19, 2009, for re-inspection), and Exhibit 9 (copy of February 19, 2009 letter of re-inspection stating "deficiencies noted during previous inspection had not been corrected" and notifying Daniels that termination of assistance was recommended, and attached inspection summary report).

The hearing officer noted the "position of the participant" was that the "landlord was not willing to repair any items that he was responsible for"; the participant "repaired all of the items that passed the second inspection"; and the "participant stated that she could not believe her subsidy was going to be terminated because of a smoke detector that did not work, writing on a wall, and a light glob[e] that the participant could not reach to fix."

The hearing officer found: (1) the exhibits "provide documentation of the participant's violation of Section 8 program regarding the Housing Quality Standards inspection"; (2) "the participant was aware that damage caused by the participant, the participant's family, or guests could lead to termination of rental assistance;" and (3) the "participant stated all of the items that passed the

second inspection were fixed by the participant." Based on his findings, the hearing officer ruled Daniels's "fail[ing] to repair tenant damages by the second inspection date" violated federal regulations and upheld DMMHA's termination of Daniels's benefits.

In May 2009, Daniels filed a petition for writ of certiorari challenging the termination of her housing subsidy. She asserted the bedroom wall and door did not have serious defects, the home had five properly functioning smoke detectors, and the kitchen had adequate lighting, and consequently, the alleged breaches of the Housing Quality Standards ("HQS") were not HQS breaches under 24 C.F.R. § 982.401 (defining HQS). She asserted the DMMHA acted illegally and violated her due process rights. She also asserted substantial evidence did not support its decision and that the hearing record was inadequate to conform to constitutional and regulatory requirements.

On December 29, 2009, the district court upheld the DMMHA's termination of housing assistance. The district court rejected Daniels's constitutional claim, noting she received notice that her assistance would be terminated; the notice provided the procedure for requesting a hearing; the notice listed the specific violations that resulted in termination; and the hearing process complied with regulations. The court noted there were deficiencies in the hearing officer's ruling and that "[i]t is difficult to tell from the record whether the hearing officer's decision is supported by substantial evidence on all grounds." However, the district court concluded:

> The second stated reason given for terminating Daniels's assistance was that there were serious or repeated violations of the lease. The decision notes that the tenant failed a second

> inspection. While it is not clear from the record whose responsibility it was to replace the battery in the smoke detector or the globe on the light fixture, it is clear the tenant was responsible for the defacement of the walls of the leased property. That defacement, and the failure to repair the damage, are specific violations of the lease. Violation of the terms of the lease is a valid reason for termination of assistance. There is substantial evidence in the record to support the termination for failure to comply with the terms of the lease.

Daniels appeals, arguing the informal hearing record failed to comply with constitutional or regulatory requirements, and the district court erred in ruling substantial evidence supports the agency's decision to terminate the housing voucher.

II. Scope and Standard of Review.

Certiorari actions in the district court are proper when an inferior board/tribunal, exercising judicial functions, exceeds its authority or otherwise acts illegally. Iowa R. Civ. P. 1.1401. An illegality is established if the tribunal has not acted in accordance with a statute; if its decision was not supported by substantial evidence; or if its actions were unreasonable, arbitrary, or capricious. *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 64 (Iowa 2001).

Our review of a district court certiorari ruling is generally at law. Iowa R. Civ. P. 1.1412 (stating appeal from a district court's judgment in a certiorari proceeding is "governed by the rules of appellate procedure applicable to appeals in ordinary civil actions"). We are bound by the findings of the fact-finder if they are supported by substantial evidence in the record. *Perkins*, 636 N.W.2d at 64. Evidence is substantial when "a reasonable mind would accept it as adequate to reach a conclusion." *Id.* (citation omitted). We review constitutional challenges de novo. *Id*.

III. Statutory and Regulatory Framework

We begin with an overview of the housing voucher program. Congress established the Section 8 housing assistance program in order to help low income families obtain a "decent place to live." 42 U.S.C. § 1437f(a). Under Section 8, the Secretary of Housing and Urban Development ("HUD") enters into contracts with state and local public housing agencies ("PHA's") and funds them. *See id.* §§ 1437f(b)(1), 1437f(o)(1)(A). PHA's are authorized to receive applications from eligible persons seeking housing assistance, approve or deny applications, provide vouchers to approved applicants, and terminate vouchers. *See id.* §§ 1437c-1(d), (o).

The HUD regulations specify the circumstances in which a PHA may terminate a participant family's Section 8 voucher assistance. See 24 C.F.R. §§ 982.551, .552.

The HUD regulations also describe the process that a PHA must follow before terminating a participant family's Section 8 subsidy. *See id.* § 982.555 (entitled "Informal hearing for participant"). A PHA must provide a participant family with a pre-termination hearing if the PHA's proposed termination of a tenant's Section 8 assistance is "because of the family's action or failure to act." *Id.* § 982.555(a)(1)(v), (a)(2). In such cases, a PHA "must give the family prompt written notice" that includes "a brief statement of the reasons for the [proposed termination]" and "[s]tate that . . . the family may request an informal hearing on the decision." *Id.* § 982.555(c)(2)(i)-(ii).

Hearing procedures are also described:

(1) Administrative plan. The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) Discovery-

(i) By family. The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) By PHA. The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) Documents. The term "documents" includes records and regulations.

(3) Representation of family. At its own expense, the family may be represented by a lawyer or other representative.

(4) Hearing officer: Appointment and authority.

(i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) Evidence. The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) Issuance of decision. The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

Id. § 982.555(e). We note that DMMHA provided excerpts of the federal regulations and its Administrative Plan to the district court. These Administrative Plan excerpts do not contain DMMHA's "procedures for conducting informal hearings for participants." *Id.* § 982.555(e)(1).

IV. Analysis.

A PHA, here DMMHA, *may* terminate voucher assistance if a participant family "violates *any* family obligations." *Id.* § 982.552(c)(1)(i)[1] (emphasis added). Family obligations are defined by 24 C.F.R. § 982.551(a)–(o) and include, among other things, supplying necessary information, refraining from causing a breach of HQS, allowing PHA inspection, and refraining from serious or repeated violation of the lease. *See id.* § 982.551(b), (c), (d), (e).

A. "Violation of obligations of the Family, 24 C.F.R. 982.552(a)(1) & 982.551(c), 982.404(b-1, b-2, b-3), and 982.552(b) (c)(1)(i) Housing Quality Standards Breach Caused by Family."

[1] 24 C.F.R. § 982.552 provides in pertinent part:

> (a) Action or inaction by family—
>
> . . . .
>
> (c) Authority to deny admission or terminate assistance.
>
> (1) Grounds for denial or termination of assistance. The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:
>
> (i) If the family *violates any family obligations under the program* (see § 982.551). . . .
>
> . . . .
>
> (2) Consideration of circumstances. In determining whether to deny or terminate assistance because of action or failure to act by members of the family:
>
> (i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(Emphasis added.)

One "Violation of obligation of the Family" cited by DMMHA for terminating Daniels's subsidy was "Housing Quality Standards Breach Caused by Family b-iii–Tenant Repairs–2nd fail inspection." The letter lists three "2nd fail inspection" items: writing on walls and doors, a missing battery in a smoke detector, and a missing light globe in the kitchen.

Section 982.404(b) provides:

> (b) Family obligation.
>
> (1) The family is responsible for a breach of the HQS that is caused by any of the following:
>
> (i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant;
>
> (ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or
>
> (iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).
>
> (2) If an HQS breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours. For other family-caused defects, the family must correct the defect within no more than 30 calendar days (or any PHA-approved extension).
>
> (3) If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with § 982.552.

Since there is no allegation in the letter pertaining to failure to pay utilities or to provide or maintain any appliances, we presume the "b-iii Tenant Repairs" referenced by DMMHA asserts the family "damage[d] the dwelling unit or premises (damages beyond ordinary wear and tear)" causing a breach of the housing quality standards for which the family is responsible. 24 C.F.R. § 982.404(b)(1)(iii).

It is true that DMMHA has the "authority to . . . terminate assistance . . . [i]f the family violates any family obligations under" section 981.551. *Id.* § 982.552(c)(1)(i). And, the hearing officer did make findings that Daniels failed an inspection and "was aware that damage caused by the participant . . . could lead to termination." But these findings do not constitute a finding of violation of a family obligation.

Even if we assume the three listed items (writing on wall, missing battery from smoke detector, and missing light globe) were family-caused damages and qualify as "damages beyond ordinary wear and tear" under section 982.404(b)(1)(iii), this addresses only half of the equation required to conclude there is a violation of a family obligation. Section 982.404(b) states the family "is responsible for a breach of the HQS that is caused" by the damages to the housing unit; here, the hearing officer made no findings that the family-caused damages "caused" a breach of housing quality standards or what that breach might be.[2]

The district court did not uphold the termination of Daniels's subsidy on this ground because it was "difficult to tell from the record whether the hearing officer's decision is supported by substantial evidence" on this ground. We agree with the district court that the record provided is inadequate to make such a

[2] Housing quality standards or HQS are defined by both federal regulation, *see* 24 C.F.R. § 982.401, and the PHA standards. The hearing officer incorporated by reference Exhibit 3, which states under "Housing Standards" that "DMMHA requires all dwelling unites approved and continuing in the program to meet any applicable city housing codes; HQS as set out by [HUD] . . . and the following additional requirements: . . . ." The incorporation of Exhibit 3 does not, standing alone, establish a "HQS breach caused by family" under 24 C.F.R. § 982.551(c).

conclusion and any termination of Daniels's Section 8 housing subsidy cannot be upheld on this reason stated by DMMHA.

B. "Violation of obligations of the Family, 24 C.F.R. 982.552(a)(1), 982.551(e), & 982.552(c)(1)(i) Family may not commit any serious or repeated violation of lease – Tenant Repairs, 2nd fail inspection."

The district court upheld the DMMHA's termination of Daniels's housing subsidy on the basis that substantial evidence supported a finding that the family had committed a repeated violation of the lease as asserted in the first reason for termination listed in the February 25, 2009 letter, but referred to by the district court as the "second stated reason." However, the district court limited its affirmance of the finding of a repeated violation of the lease to the "defacement of the walls of the leased property." The district court wrote:

> While it is not clear from the record whose responsibility it was to replace the battery in the smoke detector or the globe on the light fixture, it is clear the tenant was responsible for the defacement of the walls of the leased property. That defacement, and the failure to repair the damage, are specific violations of the lease. Violation of the terms of the lease is a valid reason for termination of assistance. There is substantial evidence in the record to support the termination for failure to comply with the terms of the lease.

This ruling of the district court is based upon the "dwelling rental agreement," which was signed by Felicia Daniels on March 18, 2008, and submitted to the hearing officer as Exhibit 5 (under the terms of the lease the tenant "shall . . . [n]ot deliberately or negligently . . . deface . . . a part of the premises"). The district court's ruling is correct—as far as it goes.

C. Due process.

The hearing officer noted the "Position of the Participant," from which we discern Daniels presented evidence or statements of extenuating circumstances she felt should be considered in deciding whether her subsidy should be terminated. He wrote:

> The participant stated that the landlord was not willing to repair any of the items that he was responsible for. The participant repaired all of the items that passed the second inspection. The participant stated that she could not believe her subsidy was going to be terminated because of a smoke detector that did not work, writing on a wall, and a light globe that the participant could not reach to fix.

Termination of benefits is required under some circumstances. *See* 24 C.F.R. § 982.552(b). For example, a PHA must terminate assistance "for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents." *Id.* § 982.552(b)(1).

But termination of Daniels's benefits under the provisions cited by DMMHA was not required. *See id.* § 982.552(a)(1) (stating "a PHA *may . . .* terminate assistance . . . because of the family's action or failure to act" (emphasis added)); § 982.552(c)(1)(i) (stating the "PHA *may* . . . terminate program assistance . . . [i]f the family violates any family obligations under the program" (emphasis added)). "In determining whether to deny or terminate assistance because action or failure to act by members of a family:"

> [t]he PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family or members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

Id. § 982.552(c)(2)(i).

In *Goldberg v. Kelly*, 397 U.S. 254, 262-63, 90 S. Ct. 1011, 1017-18, 25 L. Ed. 2d 287, 296 (1970), the Supreme Court recognized that procedural due process was applicable to the termination of welfare benefits. The Court concluded that "minimum procedural safeguards" include: a hearing at a meaningful time and in a meaningful manner, *Goldberg*, 397 U.S. at 267, 90 S. Ct. at 1020, 25 L. Ed. 2d at 299; that the recipient have timely and adequate notice detailing the reasons for proposed termination, *id*. at 267-68, 90 S. Ct. at 1020, 25 L. Ed. 2d at 299; an effective opportunity to defend by confronting any adverse witnesses and by presenting the recipient's own arguments and evidence orally, *id*. at 268, 90 S. Ct. at 1020, 25 L. Ed. 2d at 299; the recipient must be allowed to retain an attorney if the recipient so desires, *id*. at 270, 90 S. Ct. at 1022, 25 L. Ed. 2d at 300; and finally,

> the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And, of course, an impartial decision maker is essential. He should not, however, have participated in making the determination under review.

Id. at 271, 90 S. Ct. at 1022, 25 L. Ed.2d at 301.

In the context of Section 8 pre-termination hearings, one court has stated:

> While the hearing is informal, the governing regulation, 24 C.F.R. § 982.555(e)(6), "speaks of a hearing officer making both '[f]actual determinations' and a 'decision.' In particular, it refers to factual determinations relating to 'individual circumstances.'" Reading 24 C.F.R. § 982.555(e)(6) and § 996.552(c)(2)(i) together, it is clear that, in a case such as this, *the decision of a hearing officer must, at a minimum, reflect factual determinations relating to*

> *the individual circumstances of the family (based on a preponderance of the evidence at the hearing); demonstrate that he is aware of his discretionary authority under 24 C.F.R. § 982.552(c)(2)(i), to take all relevant circumstances (including mitigated circumstances) into account; and indicate whether he either did or did not choose to exercise that discretion in favor of mitigating the penalty (here termination of Section 8 benefits) in a particular case.*

Carter v. Lynn Hous. Auth., 880 N.E.2d 778, 785-86 (Mass. 2008) (citations and internal footnotes omitted). We find this due process analysis consistent with the requirements Iowa statutes and rules impose on decision makers in other contexts. *See Lewis Cent. Educ. Ass'n v. Iowa Bd. of Educ. Exam'rs*, 625 N.W.2d 687, 693 (Iowa 2001) ("The court can only make [the determination that the agency's discretion was exercised in a manner not arbitrary and capricious] if the [agency's] statement of reasons provides the necessary information as to how the agency power was exercised."); *see also State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000) (noting that in sentencing context, "at least a cursory explanation must be provided to allow appellate review of the trial court's discretionary action" and a failure to provide such reasons requires remand for amplification of the record).

The hearing officer's decision before us provides this court no way to discern whether the hearing officer exercised his discretion in considering the evidence presented. *See Costa v. Fall River Hous. Auth.*, 903 N.E.2d 1098, 1114 (Mass. 2009) (reversing and remanding where "[t]he grievance panel's decision is not adequate for us to perform the necessary reviewing function in the present case"). The hearing officer noted the "position of participant" from which we infer some awareness of Daniels's individual circumstances, but the decision

"reflect[s] no factual determinations relating to those individual circumstances." *Carter*, 880 N.E.2d at 785. There is no indication the hearing officer was aware he had any discretion in the matter. The paucity of the hearing officer's findings, coupled with his failure to indicate any awareness that he was explicitly authorized to exercise his discretion to take into account relevant and mitigating circumstances, is contrary to our jurisprudence and is not sufficient to terminate Daniels's Section 8 assistance.

We therefore reverse and remand to the district court with instructions to sustain the writ and to remand to the DMMHA for further proceedings consistent with this opinion.

REVERSED AND REMANDED.