

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LATONYA FLOYD,

Plaintiff,

v.

**HOUSING AUTHORITY OF COOK
COUNTY,**

Defendant.

Case No. 12 CH 14563

ORDER

This case came before the Court for hearing on Plaintiff's Petition for Certiorari. The Court has received and reviewed the Petition, the Administrative Record, Plaintiff's Memorandum of Law in Support of her Petition for Review, Defendant's Response in Opposition, and Plaintiff's Reply Memorandum. The Court has also reviewed the various exhibits, relevant case and statutory law, and the oral arguments of counsel.

THE COURT FINDS AS FOLLOWS:

The Petition for Certiorari in this case seeks judicial review of Defendant Housing Authority of Cook County's ("HACC") final decision to uphold Plaintiff LaTonya Floyd's ("Floyd") termination from HACC's Housing Choice Voucher ("HCV") Program. Pursuant to 24 C.F.R. 982.552(c)(1)(i), HACC has the authority to terminate program assistance for an HCV participant "if the family violates any family obligations under the program." Such "family obligations" include accurately reporting the composition of the assisted family residing in the unit. (24 C.F.R. 982.551(h)(2).) HACC also has the authority to terminate program assistance if

a participant is found to have committed fraud in connection with the HCV Program. (24 C.F.R. 982.551(k).)

In its final decision, the hearing panel determined that HACC proved by a preponderance of the evidence that Floyd had violated 24 C.F.R. 982.551(h)(2) and 24 C.F.R. 982.551(k). (R.

3.) Floyd asks the Court to reverse HACC's final decision or, in the alternative, remand the matter to the administrative agency for a hearing *de novo*.

The HCV Program is a tenant-based rental assistance program authorized through the United States Department of Housing and Urban Development and administered by state and local entities called Public Housing Agencies ("PHAs"). The goal of the HCV Program is to assist low-income families by making partial rent payments directly to the landlords of various rental properties. The tenant's share of the overall rent is determined through a formula which takes into account various forms of the tenant's income, including amounts received by a tenant's spouse or co-head of household.

At all relevant times, Floyd and her four minor children resided at 1282 N. Williams Drive, Palatine, Illinois 60074. (Compl. ¶ 2.) Floyd's children include Jharinan Floyd (age 15), Israel Floyd (age 11), Zaire Clark (age 9), and Rufus Clark Jr. (age 5)¹. (Memo. Supp. at 2.) HACC is the PHA responsible for administering the HCV Program in Palatine, Illinois, where Floyd's tenancy is subsidized. (*Id.*)

An HCV participant since 2003, Floyd has been required to complete yearly renewal applications. In her 2006-2008 renewal applications, Floyd indicated that she lived only with her children. (R. 19, 23, 27.) These renewal applications did not specifically ask for Floyd's marital status. However, in Floyd's 2009-2011 renewal applications, she indicated that her marital status

¹ The Court notes that Floyd's Memorandum in Support of Her Petition for Review lists only these four children, but her Petition for Certiorari lists a fifth child, Q'uran Clark (age 3). The reason for this discrepancy is unknown but does not affect the Court's adjudication of this matter.

was “single.” (R. 29, 32, 36.) On all relevant renewal applications, Floyd attested that she had completed the forms to the best of her knowledge and belief. (R. 19, 23, 27, 30, 34, 38.)

Despite her representations that she was “single” at the times she completed her renewal applications, ~~Floyd had married Rufus Lee Clark Sr. (“Clark”) on April 3, 2004. (R. 6.)~~ Floyd contends that she never lived with Clark. Instead, Floyd states that Clark lived with his sister at 7800 South Laflin, in Chicago, at all relevant times. (R. 3.) During the course of their marriage, Floyd also asserts that she was a frequent victim of abuse at the hands of Clark. (Memo. Supp. at 4.)

On September 29, 2004, Floyd filed a police report against Clark, alleging “domestic trouble” and listing Clark’s residence as 7800 South Laflin, in Chicago. (R. 44.) On October 17, 2004, Floyd filed a second police report against Clark, again listing his address as 7800 South Laflin.

On March 2, 2006, Floyd obtained an Order of Protection against Clark. (R. 40-43.) On May 27, 2010, Floyd obtained a second Order of Protection against Clark. (R. 46-48.) Subsequently, Floyd filed for divorce on December 21, 2010, obtaining a judgment for dissolution of marriage on August 1, 2011. (R. 49-51.) Finally, on January 19, 2012, Floyd obtained a plenary Order of Protection against Clark. (R. 52-55.) In Floyd’s Petition for Order of Protection, she stated that Clark “has called the Housing Authority trying to get me kicked off housing. He has threatened to put me and my children on the streets by trying to get me kicked off housing.” (R. 60.)

On or around July 20, 2011, Clark walked into HACC’s main office and provided it with documents purporting to show that he resided at Floyd’s residence at 1282 North Williams

Drive². (Resp. Opp. at 4.) These documents included a marriage license³, a 2009-2010 Vehicle Sticker Application, an Illinois State Identification Card, a 2009 W-2 wage and tax statement, a ST-556 sales tax transaction return, a guaranteed automobile protection contract addendum, and a vehicle financing contract. (R. 6-13.)

Following its receipt of the documents provided by Clark, HACC transmitted a Notice of Termination to Floyd on December 27, 2011. (R. 4.) The Notice of Termination indicated that HACC was taking its termination action as a result of Floyd's violation of 24 C.F.R. 982.551(h)(2) (relating to the use and occupancy of the unit) and 24 C.F.R. 982.551(k) (relating to fraud and other program violations). (*Id.*) Specifically, the Notice of Termination stated that "HACC received information that you married Rufus Lee Clark on April 3, 2004. You did not report your marriage or Rufus Lee Clark's presence in the subsidized unit..." (*Id.*)

Floyd subsequently requested an informal hearing, which was held on February 23, 2012. (R. 2.) At the hearing, Floyd appeared *pro se* and provided the only live testimony. (*Id.*) HACC's evidence consisted of the documents provided by Clark, as well as Floyd's renewal applications for the years 2006-2011. (R. 2-3.) On March 23, 2012, the hearing panel issued a written order and decision upholding HACC's decision to terminate Floyd's participation in the HCV Program. (R. 3.) Floyd subsequently filed her Petition for Certiorari.

Floyd raises five broad issues in her Petition for Certiorari: (1) the hearing panel's finding that Floyd provided inaccurate information regarding her family composition was against the manifest weight of the evidence because it was based solely on hearsay documents that had no indicia of reliability, (2) the hearing panel's decision was incorrect as a matter of law because, absent a finding of fraud, Floyd's alleged failure to provide accurate information regarding her

² Clark seemingly provided these documents to HACC on a voluntary basis and without solicitation from HACC.

³Floyd does not deny that she was previously married to Clark from 2004-2011. The Court notes that this marriage license does not reflect the address of Floyd and/or Clark.

household composition was not sufficient to support the termination of her assistance, (3) the record provides no support for a finding that Floyd committed fraud, so any such finding would be against the manifest weight of the evidence, (4) the hearing panel's decision must be reversed because the panel failed to consider mitigating circumstances that warrant a lesser penalty, and (5) in the alternative, the matter should be remanded for hearing *de novo* because the administrative record is not sufficient to facilitate meaningful review.

I. Standard of Review

The Illinois Administrative Review Law does not apply to this case because the enabling statute for HACC does not expressly incorporate the Illinois Administrative Review Law. In such situations, the common law writ of certiorari is the method for reviewing an administrative decision. *Russell v. Dept. of Natural Res.*, 183 Ill. 2d 434, 441 (1998). The substantial differences that formerly existed between common law certiorari and administrative review actions are no longer recognized by Illinois courts. *Smith v. Dept. of Public Aid*, 67 Ill. 2d 529, 541-42 (1977). As such, the hearing panel's final decision is reviewable by common law certiorari.

A trial court's role in reviewing an administrative agency's ruling is to determine whether the agency's decision is just and reasonable in light of the evidence presented in the record. *Foster v. Civil Service Commission*, 255 Ill. App. 3d 30, 34 (1st Dist. 1993). The reviewing court may not consider any evidence outside of the administrative record. 735 ILCS 5/3-110 (2008). While questions of fact and law are both reviewable, questions of law are subject to *de novo* review. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004). In contrast, questions of fact can only be reversed if they are against the manifest weight of the

evidence. *Id.* A finding is against the manifest weight of the evidence if “the opposite conclusion is clearly evident” or where the finding is “unreasonable, arbitrary, and not based upon any of the evidence.” *Id.*

II. Relevant Regulations

In reaching its decision to terminate Floyd’s participation in the HCV Program, the hearing panel found that Floyd violated the following regulations:

24 C.F.R. 982.551(h)(2)

“The composition of the assisted family residing in the unit must be approved by the 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 members as an occupant of the unit. No other person (i.e., nobody but members of the assisted family) may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).”

24 C.F.R. 982.551(k)

“The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.”

III. Reliance on Hearsay Evidence

Floyd argues that the hearing panel’s decision to terminate her participation in the HCV Program was based entirely on hearsay evidence. Although Floyd acknowledges that hearsay evidence may be admissible in administrative hearings, she argues that it is improper for a hearing panel to rely entirely on hearsay evidence. Citing *Kurdi v. DuPage County Housing Authority*, 161 Ill. App. 3d 988 (2d Dist. 1987), Floyd contends that hearsay evidence with no indicia of reliability is an insufficient basis to support the termination of a participant’s HCV assistance. Here, Floyd posits that hearsay documents provided by her abusive ex-husband lacked any semblance of reliability.

HACC responds that the hearing panel was entitled to consider hearsay evidence pursuant to 24 C.F.R. 982.555(e)(5), which states that “The PHA and 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.”

As such, HACC argues that the hearing panel had authority to weigh the evidence as it saw fit. Citing *Gumma v. White*, 345 Ill. App. 3d 610 (1st Dist. 2003), HACC argues that this Court is not permitted to find that the hearing panel’s final decision was against the manifest weight of the evidence merely because there was conflicting evidence.

The Court begins by noting that Floyd acknowledges that hearsay evidence was properly admissible in the administrative hearing. (Reply at 2.) Rather than challenging the admissibility of the hearsay evidence, Floyd questions the weight that the hearing panel assigned to such hearsay evidence. To answer this question, the Illinois Appellate Court has provided clear guidance in a case extremely similar to the one before this Court.

In *Kurdi*, the DuPage County Housing Authority terminated plaintiff’s rent subsidy after it learned that plaintiff’s husband was living at the subsidized unit and providing unreported income. *Kurdi*, 161 Ill. App. 3d at 990. Plaintiff contended that she was separated from her husband and that he was providing no assistance. *Id.* The Housing Authority’s contention was supported at the administrative hearing by several pieces of hearsay evidence⁴. The only other evidence provided by the Housing Authority were housing applications in which plaintiff used her maiden name. *Id.* While acknowledging the general admissibility of hearsay evidence in

⁴ The hearsay evidence in *Kurdi* included forms completed by three former employers of plaintiff’s husband. The forms listed the husband’s home address as the subsidized unit. The evidence also included the statement of an unidentified person who claimed that the husband was living with plaintiff. *Kurdi*, 161 Ill. App. 3d at 990.

administrative hearings⁵, the Court applied factors first used in *Calhoun v. Bailar*, 626 F.2d 145, 148 (9th Cir. 1980), to determine to what extent such evidence should be considered⁶. These factors included: (1) the possible bias of the declarant; (2) whether statements are signed and sworn as opposed to anonymous, oral, or unsworn; (3) whether or not the statements are contradicted by direct evidence; (4) availability of the declarant and whether or not the opponent subpoenaed the declarant; (5) credibility of the declarant or witness testifying to the hearsay; and (6) whether the hearsay is corroborated. *Kurdi*, 161 Ill. App. 3d at 993. Applying these factors, the *Kurdi* court held that the hearsay evidence was unreliable and therefore should not have been assigned weight. *Id.* Without other evidentiary support for the hearing officer's decision, the Housing Authority's termination of plaintiff's assistance was reversed as against the manifest weight of the evidence. *Id.* at 995.

Here, as in *Kurdi*, the reliability of the hearsay evidence is highly questionable. Specifically, it is not difficult to see the extreme bias that Clark could potentially hold against Floyd. As elucidated in the Administrative Record, Floyd had filed at least two police reports against Clark and obtained three Orders of Protection against him. Additionally, Floyd filed for divorce in December 2010 and obtained a Judgment for Dissolution of Marriage in August 2011. Given the recent dissolution of a tumultuous marriage, it is probable that Clark bore a bias against Floyd. The existence of such a bias is supported by the fact that Clark voluntarily provided the hearsay documents to HACC, seemingly with the intention of getting Floyd terminated from the HCV Program⁷.

⁵ In *Kurdi*, the hearsay evidence was admissible pursuant to 24 C.F.R. 882(b)(6)(iv), which uses identical language to 24 C.F.R. 982.555(e)(5).

⁶ As the *Calhoun* court noted, "it is not the hearsay nature *per se* of the proffered evidence that is significant, it is its probative value, reliability and the fairness of its use that are determinative." *Calhoun*, 626 F.2d at 148.

⁷ The Court notes that the January 19, 2012 plenary Order of Protection entered by Judge Joel Greenblatt went as far as prohibiting Clark from entering HACC's offices. (R. 53.)

Additionally, the hearsay documents were contradicted by direct evidence at the administrative hearing. Specifically, Floyd, appearing *pro se* at the hearing, provided the only live testimony before the hearing panel and stated that Clark resided with his sister at 7800 South Laflin during the pendency of their marriage. (R. 3.) Furthermore, Floyd provided the hearing panel with copies of police reports, dated as early as 2004, that indicated that Clark was living at 7800 South Laflin. (R. 44-45.) Floyd also testified that it had been unbeknownst to her that Clark was using her mailing address. (*Id.*)

Moreover, it is unclear why HACC elected not to elicit direct testimony from Clark. Although the hearsay documents were admissible in the administrative proceeding, admissibility must be balanced against the necessity of a fair hearing. “A fair hearing before an administrative agency includes the opportunity to be heard, [and] the right to cross-examine adverse witnesses...” *Abrahamson v. Illinois Dept. of Professional Reg.*, 153 Ill. 2d 76, 94-95 (1992). In the instant case, the hearing panel’s decision to rely solely on hearsay documents deprived Floyd of the right to meaningfully cross-examine Clark with respect to the credibility of his contentions that he resided in the subsidized unit with her during the course of their marriage.

For the foregoing reasons, the Court finds that the hearsay documents provided by Clark and assigned significant weight by the hearing panel clearly do not meet the test for reliability used by the Illinois Appellate Court in *Kurdi*, and, therefore, should not have been assigned weight by the hearing panel.

This Court must now determine whether, absent the unreliable hearsay documents, the hearing panel’s determinations that Floyd violated 24 C.F.R. 982.551(h)(2) and 24 C.F.R. 982.551(k) are against the manifest weight of the evidence.

As noted above, 24 C.F.R.982.551(h)(2) provides that “[t]he composition of the assisted family *residing in the unit* must be approved by the PHA” (emphasis added.) Aside from the unreliable hearsay documents provided to the hearing panel by Clark, HACC failed to proffer additional evidence suggesting that Clark was residing in the subsidized unit during the pendency of his marriage to Floyd. As such, the hearing panel’s finding that he was residing in the subsidized unit is against the manifest weight of the evidence.

The Court also notes that, even if, *arguendo*, the hearsay documents had been admissible, they were largely circumstantial and did not necessarily lead to the conclusion that Clark was living at the subsidized property at all relevant times. The documents provided to HACC by Clark included a 2009-2010 Vehicle Sticker Application, an Illinois State Identification Card, a 2009 W-2 wage and tax statement, a ST-556 sales tax transaction return, a guaranteed automobile protection contract addendum, and a vehicle financing contract. The significance of these documents presupposes that Clark was being truthful while completing them. This presupposition is belied by Floyd’s direct testimony in which she claimed that Clark never resided with her and that he was using her mailing address without her knowledge or approval.

24 C.F.R. 982.551(k) provides that “[t] he members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.” Here, HACC relied on Floyd’s 2009-2011 renewal applications in which she stated that she was “single,” as well as Floyd’s admission that she was married to Clark during that time period. As such, this finding was not based on unreliable hearsay documents provided by Clark, and the finding will require further analysis.

IV. Finding of Fraud

Floyd argues that the Administrative Record does not support a finding that Floyd committed fraud, and, therefore, the hearing panel's determination that she violated 24 C.F.R. 982.551(k) is against the manifest weight of the evidence. Specifically, Floyd notes that HUD's *Housing Choice Voucher Program Guidebook* provides that a "failure to report changes as required, such as the failure to notify the PHA of a change in family composition or income" is an "error/omission" rather than "fraud/abuse." (See *Housing Choice Voucher Program Guidebook*, Chapter 22-2.)

Floyd also contends that the Administrative Record establishes that she never intended to deceive HACC regarding her marital status or the composition of her household. Specifically, HACC's "ECS System Notes" indicate that Floyd "wanted us to [know] she [is] filing a order of protection on off again, on again on her husband Mr. Rufus Clark...and she wanted us to knew" [*sic*]. (R. 68.) Floyd notes that her notice to HACC referred to Clark as her husband and occurred well before Clark provided a copy of their marriage certificate to HACC. Floyd contends that she listed her marital status as "single" because she never lived with Clark during the pendency of their turbulent marriage.

HACC responds that the Administrative Record contains sufficient evidentiary support for a finding that Floyd committed fraud in connection with the HCV Program. HACC refers to *HUD Occupancy Handbook*, Directive 4350.3 REV-1, which provides that fraud occurs under PHA regulations where "a tenant knowingly provides inaccurate or incomplete information" to the PHA. (*HUD Occupancy Handbook* 8-12.) HACC contends that a finding of fraud requires a showing that: (1) the tenant was made aware of the program requirements and prohibitions, and (2) the tenant intentionally misstated or withheld some material information. *Id.* Here, HACC

notes that, at each yearly recertification, Floyd was aware that she had a duty to accurately report her family composition. Floyd now acknowledges that she was married during the relevant time period despite the fact that she claimed that she was “single” on her renewal applications.

The Court begins by noting that HACC’s reliance on the *HUD Occupancy Handbook* is misplaced. The plain language of the *HUD Occupancy Handbook* explicitly states that “This handbook does not apply to...Housing Choice Voucher Program.” (*HUD Occupancy Handbook* Chapter 1-2(D)(4).) As such, HACC should not have relied on the *HUD Occupancy Handbook* for guidance on termination from the HCV Program.

The *Housing Choice Voucher Program Guidebook*, on the other hand, provides useful guidance on distinguishing between “errors/omissions” and “fraud/abuse.” (*See Housing Choice Voucher Program Guidebook* Chapter 22.2). In pertinent part, Chapter 22.2 provides that:

“This chapter uses the terms ‘error’ and ‘omission’ to identify situations in which a family or owner does not comply with program requirements...An error or omission may be intentional or unintentional. Some will affect family payment and subsidy amounts; others will not. It is important that PHAs carefully analyze the unique circumstances of the case to determine how to best handle the situation.”

On the other hand:

“‘Fraud’ and ‘abuse’ mean a single act or pattern of actions made with the intent to deceive or mislead, constituting a false statement, omission, or concealment of a substantive fact. Fraud and abuse result in the payment of housing choice voucher program funds in violation of program requirements. It often occurs when families or owners intentionally fail to report required information or report incorrect information to obtain benefits to which they are not entitled.”

Despite the guidance provided in the *Housing Choice Voucher Program Guidebook*, courts have noted that the definition of “fraud” has not been provided in statutes or regulations regarding Section 8 rental subsidies. *See, e.g., Dowling v. Bangor Housing Authority*, 910 A.2d 376 (Maine 2006). In *Dowling*, the Supreme Judicial Court of Maine elected to apply the elements of that state’s common law tort of fraudulent misrepresentation. This Court notes that

such an application is instructive, as the Illinois Supreme Court has also formulated elements of fraudulent misrepresentation. *Board of Education v. A, C, & S, Inc.*, 131 Ill. 2d 428 (1989).

These elements are: (1) a false statement of material fact, (2) knowledge or belief of the falsity by the party making it, (3) intention to induce the other party to act, (4) action by the other party in reliance on the truth of the statement, and (5) damage to the other party resulting from such reliance. *Id.* at 452.

Applying the discussion of fraud in the *Housing Choice Voucher Program Guidebook* as well as the common law elements of fraudulent misrepresentation in Illinois, it becomes clear that the crucial inquiries in the instant case are whether Floyd intended to deceive or mislead HACC and whether her misrepresentations allowed her to obtain benefits to which she was not entitled. The Court finds that the Administrative Record does not provide sufficient evidence to support the hearing panel's finding that Floyd committed fraud.

First, the Administrative Record indicates that Floyd provided un rebutted testimony that she reported her marriage to the Iowa Housing Authority immediately after Floyd married Clark in 2004⁸. (R. 3.) Second, HACC's own "ECS System Notes" reflect that Floyd contacted HACC on May 27, 2010 to voluntarily inform it that she was seeking an Order of Protection against "her husband, Mr. Rufus Clark." (R. 68.) Finally, it is exceedingly probable that Floyd genuinely considered herself "single" at the time that she was completing her renewal applications. Specifically, Floyd contends that she never resided with Clark, nor did she seemingly have a traditional marital relationship with him.

Moreover, the Administrative Record contains a complete dearth of evidence suggesting that Floyd's representation that she was "single" resulted in her obtainment of benefits to which

⁸ The Iowa Housing Authority was the PHA that initially approved Floyd's participation in the HCV Program, prior to her move to Cook County, Illinois.

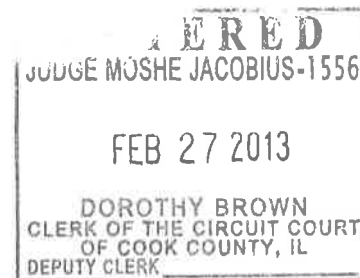
she was not entitled. Specifically, the Administrative Record contains no indication that Clark provided Floyd with any additional household income that would have resulted in a decrease to her HCV Program benefits. In fact, the record lacks any detailed breakdown of how Floyd's HCV Program benefits were even calculated.

Without adequate supporting evidence suggesting a finding to the contrary, Floyd's misstatement that she was "single" is clearly in the vein of a *de minimis* "error or omission," rather than "fraud or abuse," as contemplated by 24 C.F.R. 982.551(k). As such, the hearing panel's finding that Floyd committed fraud is against the manifest weight of the evidence.

Having found that the hearing panel's conclusions that Floyd violated 24 C.F.R. 982.551(h)(2) and 24 C.F.R. 982.551(k) were against the manifest weight of the evidence, it is unnecessary for this Court to consider Floyd's alternative arguments in support of her Petition for Certiorari.

IT IS, THEREFORE, ORDERED that the Order and Decision issued by the Housing Authority of Cook County on March 23, 2012 is hereby reversed as against the manifest weight of the evidence. HACC is ordered to restore Floyd's full benefits under the Housing Choice Voucher Program.

ENTERED:



February 27, 2013

Judge Moshe Jacobus

No. 1556