

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

RONALD JENKINS, JR.,)

Appellant,)

vs.)

HOUSING AUTHORITY CITY)
OF PITTSBURGH,)

Appellee.)

CIVIL DIVISION

SA-12-001154

**MEMORANDUM IN SUPPORT OF
ORDER and ORDER OF COURT**

Filed by the Honorable
JUDITH L. A. FRIEDMAN

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CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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FILED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

RONALD JENKINS, JR.,)	
)	
Appellant,)	SA-12-001154
)	
vs.)	
)	
HOUSING AUTHORITY CITY)	
OF PITTSBURGH,)	
)	
Appellee.)	FRIEDMAN, J.
)	

MEMORANDUM IN SUPPORT OF ORDER

INTRODUCTION

The Housing Authority of the City of Pittsburgh (“HACP”) terminated the Section 8 benefits of Ronald Jenkins (“Mr. Jenkins”) based on an allegation that Mr. Jenkins engaged in violent criminal activity. A grievance hearing was eventually held and the termination of benefits was upheld. The matter then came to the Court of Common Pleas as a Statutory Appeal.

According to the decision of the Hearing Officer, Mr. Jenkins was “charged with DUI, defiant trespassing, driving while operating privilege is suspended and fraudulent use or removal of registration plate.” The Hearing Officer found credible the testimony of two security guards at the Northview Heights housing project that “the vehicle [he was] driving was trying to avoid the gatehouse and driving erratically [and concluded that he was] thereby interfering with the safety, health and right to peaceful enjoyment of others.” The Hearing Officer also equated the erratic driving with “violent [criminal] activity.” As a result, she upheld the termination of Mr. Jenkins’s Section 8 benefits. As set forth below, we conclude her decision was without a legal foundation and we therefore grant the appeal and order the benefits reinstated.

DISCUSSION

The criminal charges filed by the police are not in the nature of “violent criminal activity,” so there is no legal basis for the Hearing Officer’s first conclusion, that the conduct of Mr. Jenkins invokes both Section 982.551(1), which sets forth “family obligations,” and Section 982.553(b)(2), which sets forth violations of family obligations that may result in termination of benefits.

The cases on “violent criminal activity” that HACP cites to the contrary are stretches at best. HACP cites to a Louisiana State Supreme Court that “expressly disagreed with the United States Supreme Court’s decision in Leocal v. Ashcroft, 543 U.S. 1 (2004),” as well as to an Arkansas state case and a Fifth Circuit federal case that both pre-date Leocal. Leocal, according to HACP, holds that a “DUI conviction is not a crime of violence under 18 U.S.C. §16.” The DUI charge is the highest criminal charge filed against Mr. Jenkins. According to the U. S. Supreme Court, it is not a crime of violence under federal law. As far as we are aware, it is not regarded as a crime of violence under the laws of Pennsylvania either.

The Louisiana State Supreme Court may feel able to rule differently from the United States Supreme Court. However, we must obey the Pennsylvania Supreme Court in matters involving state law and the United States Supreme Court in matters involving federal law. The Hearing Officer also has the same constraints.

Since there was no basis in law for the Hearing Officer’s conclusion that Mr. Jenkins’s conduct was a “crime of violence,” this aspect of her decision is, *ipso facto*, a “manifest and flagrant abuse of discretion” and is also “a purely arbitrary execution of the agency’s duties or functions,” the alternative standards HACP says apply. We may be bound by the Hearing

Officer's findings of fact, so long as they are based on evidence presented at the hearing, but we are not bound by her incorrect conclusions of law.

The question that remains is whether or not a *different* "family obligation," not to engage in "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," is also one that may result in the *termination* of benefits under Section 982.553(b). According to Mr. Jenkins, this kind of conduct can result in a *denial of an application* for benefits but it is not listed as conduct that may result in *termination of existing Section 8 benefits*. HACP does not discuss whether or not Section 982.553(b) allows termination of benefits for *every* failure to comply with the list of "family obligations," or only for specifically stated failures. Rather, HACP ignores this issue completely. Mr. Jenkins, in his Reply Brief, refers to recent Commonwealth Court precedent that stands for the opposite principle, that the "state [here, the HACP] does not have the discretion to expand the reasons enumerated in the Code of Federal Regulations for denying or terminat[ing] Section 8 benefits, "citing to Cain v. Allegheny County Housing Authority, 986 A.2d 947, 951 (Pa. Comwlth. 2009).

Since this second basis for the Hearing Officer's decision is also without legal foundation, there is again an abuse of discretion and an erroneous conclusion of law.

CONCLUSION

The appeal of Ronald Jenkins must be granted and his Section 8 benefits reinstated. See Order filed herewith.

By the Court
Quidman, J.

June 26, 2013

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

RONALD JENKINS, JR.,)	
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Appellant,)	SA-12-001154
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HOUSING AUTHORITY CITY)	
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)	
Appellee.)	FRIEDMAN, J.
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ORDER OF COURT

AND NOW, this 26th day of June, 2013, after consideration of the record below and the briefs of counsel, and for the reasons set forth in the accompanying Memorandum in Support of Order, it is hereby ordered that the appeal of Ronald Jenkins, Jr. is granted and the Housing Authority of the City of Pittsburgh us hereby ordered to reinstate his Section 8 benefits forthwith.

By the Court
Friedman, J.

FILED

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COURT OF COMMON PLEAS
ALLEGHENY COUNTY