

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

Judge Kathleen G. Kennedy

CONSUELLA SIMS, )  
Plaintiff, )  
 )  
v. )  
CHICAGO HOUSING AUTHORITY, )  
an Illinois Municipal Corporation, )  
Defendant. )

14 CH 9395

FEB 18 2015

Circuit Court - 1718

OPINION AND ORDER

Defendant, the Chicago Housing Authority (CHA), terminated Plaintiff, Consuella Sims, from the Section 8 Housing Choice Voucher (HCV) Program. Plaintiff asks the court to reverse CHA's decision pursuant to her Petition for Judicial Review by Writ of Certiorari. For the reasons that follow, Plaintiff's Petition is granted, and CHA's decision is reversed.

PROCEDURAL HISTORY

Plaintiff filed her Petition on June 4, 2014. CHA filed the administrative record on June 16, 2014, which it supplemented on July 1, 2014. In August 2014 Cabrini Green Legal Aid filed its appearance for Plaintiff, as well as a Motion to Accelerate, which the court granted. Plaintiff filed her memorandum in support of her Petition on August 29, 2014, the CHA filed its response on October 14, 2014, and Plaintiff filed her reply on October 20, 2014. The court heard oral argument on November 11, 2014 and took the case under advisement. On December 11, 2014 the court ordered additional briefing on the source and the limits, if any, of CHA's authority to expand the family obligations and mandatory/discretionary terminations beyond what is listed in 24 C.F.R. 982.551

and 24 C.F.R. 982.552. Both parties filed additional briefs, and the court again took the case under advisement.

## ADMINISTRATIVE RECORD

### Evidence

On February 14, 2014 CHA issued Plaintiff an Intent to Terminate (ITT) letter.

The ITT notified Plaintiff:

[W]e are proposing termination of your participation in the [HCV] effective 3/31/2014 for violation of the following:

The criminal background report indicates the family did not pass the standard for continued participation in the voucher program for due to [sic] household member, Keith Vaughns Jr., engaging in violent criminal activity. Mr. Vaughns was convicted of Felony - aggravated unlawful use of a weapon, Cook County Case Number 2013CR0413101.

(R. at 20). The ITT indicated: "Based on this infraction the family has violated the [HCV] Family Obligations." *Id.* Further, the ITT specified the Family Obligations as follows:

The family (including each family member) must not:

Engage in or allow guest [sic] to engage in drug related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons in the immediate vicinity of the premises.

Possess or use [sic] illegal possession and use of a firearm or aggravated assault weapon in violation of federal, state, or local criminal or civil laws.

The family (including each family member) must:

Notify CHA of the arrest of a household member within 10 days of the occurrence for violent or criminal activity against persons or property, or involving alcohol, gangs, drugs and/or weapons.

*Id.*

On February 20, 2014 Plaintiff submitted her request for an informal hearing “due to my son Keith S. Vaughns no longer resides in my household. I sent in request for him to be removed.” (R. at 22). The hearing took place on May 5, 2014, before Hearing Officer Denis Guest, with CHA presenter Lee Hauserman, CVR Housing Services enforcement coordinator Camille Yancy, and Plaintiff present.

Yancy testified on behalf of CHA. She explained that the family obligations “are a list of rules and regulations that the participants and family members and guests must adhere to in order to maintain the family’s assistance under the HCV program.” (Hearing Transcript (T.) at 18-19). Participants sign vouchers or similar forms containing the family obligations at the time of their admission to the program, in connection with requests for moving papers, and during the recertification process. Plaintiff signed her voucher on June 13, 2012, which lists at section four, “Obligations of the Family.” (R. at 24). Subsection B lists 14 actions that “the family must” take, including number 14, “Notify CHA of the arrest of a household member within 10 days of the occurrence for violent or criminal activity against persons or property, or involving alcohol, gangs, drugs, and/or weapons.” (*Id.*). Subsection D lists 14 actions that “the family (including each family member) must not” take, including number four, “Engage in or allow guests to engage in drug-related criminal activity or violent criminal activity or other 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” and number 12, “Possess or use a firearm or aggravated assault weapon in violation of federal, state or local criminal or civil laws.” (R. at 24-25). Yancy testified

that CHA keeps a family's information in a system called YARDI. She specifically noted that Plaintiff listed Keith as a household member on her February 14, 2014 family review. Further, the memo review, which is "basically a diary of different interactions or events that took place under a participant's account," contains no report, by Plaintiff or anyone else, of Keith's arrest. (T. at 22-24).

Hearing Officer Guest admitted Exhibit 7, which is a certified statement of Keith's conviction. Exhibit 7 reflects that Keith was charged on February 26, 2013 with three counts of aggravated unlawful use of weapon/VE (vehicle) (720 ILCS 5/24-1.6 (A)(1)), three counts of aggravated U UW on person (720 ILCS 5/24-1.6 (A)(2)), and one count of unlawful possession of handgun under (age 18) (720 ILCS 5/24-3.1 (A)(1)). On October 29, 2013 he pled guilty to two counts of aggravated unlawful use of weapon/VE (vehicle), 720 ILCS 5/24-1.6 (A)(1). That section provides:

Sec. 24-1.6. Aggravated unlawful use of a weapon. (a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm.

720 ILCS 5/24-1.6(a)(1).

Plaintiff testified to what she observed and heard about her son's arrest on February 14, 2013, which occurred shortly after she dropped him off at her sister's house. She told Hearing Officer Guest, "I did notify the CHA." (T. at 31). She also testified that she "didn't know if it did not happen at my premises or around my premises that I had to report it to them...So I didn't even think to get in touch with

CHA because it wasn't near my house or my premises. And at the time my son wasn't residing there." (T. at 31). Plaintiff stated that she did not report to the CHA that Keith was no longer living with her permanently because "his clothes and stuff was still in my house, he just wasn't there. He'll come back and forth, but he wasn't living there on an everyday basis." (T. at 32-33).

#### Decision Letter

On May 29, 2014 CHA issued the Informal Hearing Decision Letter upholding the decision to terminate Plaintiff's housing assistance. The Letter includes Hearing Officer Guest's summary of the evidence, findings of fact, and analysis of CHA's three grounds for termination, which he characterized as Count 1, engage in violent criminal activity; Count 2, possess a firearm in violation of state law; and Count 3, notify CHA of the arrest of a household member within 10 days. In addition, Hearing Officer Guest explained his consideration of three factors, (1) the seriousness of the case, especially with respect to how it would affect other residents; (2) the extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or a victim of domestic violence, dating violence, or stalking; and (3) the length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future. He wrote:

1. The CHA recognizes Gun Related Criminal Activity [sic] a serious violation of Family Obligations. Consuela [sic] Sims offered no testimony to rebut the allegation that Keith Vaughns Jr. was listed as a Family [sic] on her Family Review when he was arrested and convicted for Gun Related Criminal Activity.
2. Consuela [sic] Sims is solely responsible for violations of her Family Obligations. She is not a minor and offered no evidence that she is a person with

disabilities or a victim of domestic violence, sexual violence, dating violence, or stalking.

3. Consuela [sic] Sims ignored the arrest and conviction of Keith Vaughns Jr. and tried to explain everything away with testimony that a man in a black truck told her that Keith Vaughns Jr. was not the one with a gun. This lack of accountability is not consistent with future favorable conduct.

R. at 13-14. Hearing Officer Guest then concluded as to each count that CHA's decision was consistent with CHA policy and established by the preponderance of the evidence.

Hearing Officer Guest erroneously found that Keith was convicted of weapon charges related to both a vehicle and his person, when the conviction related solely to a vehicle.

#### STANDARD OF REVIEW

HCV participants may obtain judicial review of CHA's final termination decision through a petition for writ of certiorari. The writ of certiorari brings before the court the entire record of CHA's action for the court to determine, from the record alone, whether CHA proceeded according to applicable law. See *Stratton v. Wenona Community Unit Dist. No. 1*, 133 Ill. 2d 413, 427 (1990).

The standards of review are essentially the same under the writ of certiorari and the Illinois Administrative Review Law. *Finnerty v. Personnel Board of the City of Chicago*, 303 Ill. App. 3d 1, 8 (1st Dist. 1999). The applicable standard, which determines the amount of deference given to the administrative agency's decision, depends on whether the question presented is one of law, of fact, or a mixed question of law and fact. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). In *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210-11(2008), the court summarized the three standards of review: (a) an administrative agency's

findings and conclusions on questions of fact are deemed *prima facie* true and correct, and a court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence, which occurs if the opposite conclusion is clearly evident; (b) an agency's decision on a question of law, such as an agency's interpretation of the meaning of the language of a statute, is not binding on the court, thus, the court's review is independent and not deferential; and (c) an agency's decision on a mixed question of fact and law, which is a decision on whether the rule of law as applied to the established facts is or is not violated, receives a clearly erroneous standard of review, in which the court determines whether it is left with the definite and firm conviction that a mistake has been committed.

#### ANALYSIS

Plaintiff argues several grounds for reversal: (1) the hearing officer's finding that Keith Vaughns engaged in violent criminal activity was against the manifest weight of the evidence; (2) the decision to terminate on the basis of the possession or use of a firearm or aggravated assault weapon and the failure to notify of arrest was arbitrary and capricious; (3) the hearing officer's finding that Keith Vaughns violated the family obligation prohibiting the possession or use of a firearm or aggravated assault weapon in violation of Illinois law was against the manifest weight of the evidence; (4) the termination of Plaintiff's housing assistance based on her failure to report Keith Vaughns' arrest constitutes a "penalty" disproportionate to the offense; and (5) the hearing officer failed to consider several mitigating circumstances. As discussed below

two of these grounds mandate reversal in this case, and as a result, the other grounds become moot.

Termination based on violent criminal activity was clearly erroneous.

CHA determined that Plaintiff's son, a household member, engaged in violent criminal activity as evidenced by his conviction for aggravated unlawful use of a weapon. Plaintiff does not challenge CHA's authority, but rather, the sufficiency of the evidence to terminate her on this basis. Although Plaintiff refers to the manifest weight of the evidence standard, the issue presents a mixed question of law and fact to be reviewed under the clearly erroneous standard.

As Plaintiff points out, CHA incorporated in its administrative plan HUD's definition of violent criminal activity: "any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage." 24 CFR §5.100; CHA Administrative Plan for the Housing Choice Voucher Program, Effective Date: December 1, 2012 (Plan 2012) at 12-5. As Plaintiff argues, the Illinois criminal offense of which Keith was convicted includes possession only and no element of force. The CHA offered no evidence about Keith's offense other than the certified statement of his conviction. Thus, termination based on Keith's violent criminal activity was clearly erroneous.

The CHA notified Plaintiff of its intent to terminate the family's assistance based on the violation for violent criminal activity, and Hearing Officer Guest characterized Count 1 in those terms, although he also referred to "Gun Related Activity." (R. at 13).



CHA failed to respond to Plaintiff's argument about the lack of evidence supporting the violent criminal activity ground, perhaps tacitly acknowledging its validity. An attempt by CHA to support Plaintiff's termination on the ground of "other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity" could not succeed. Just as CHA failed, in light of the elements of the offense, to establish that Keith's criminal activity was violent, CHA failed, in light of the location of the offense, to establish the threat to other residents and persons residing in the immediate vicinity. Thus, CHA's termination of Plaintiff's assistance based on Keith Vaughn's felony convictions must be reversed as clearly erroneous.

CHA lacks regulatory authority to terminate based on either the possession or use of a firearm or aggravated assault weapon or the failure to notify of arrest.

Plaintiff argues that CHA exceeded its authority by terminating her assistance based on grounds not found in the program requirements established by the United States Department of Housing and Urban Development (HUD): (1) illegal possession of a firearm or aggravated assault weapon in violation of law, and (2) failure to notify of an arrest. She contends that HUD regulations provide a limited number of grounds for the termination of assistance by a Public Housing Authority (PHA) such as CHA, and do not authorize PHAs to add to that number. Thus, she argues that HUD intended the grounds for termination listed in 24 C.F.R. 982.552 and 24 C.F.R. 982.553 to be exclusive. This issue presents a question of law which is reviewed de novo.

### *CHA's Authority*

The federal government authorizes rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f. HUD administers the program through rules codified at 24 C.F.R. 982, *et seq.*, and authorizes local PHAs to administer the program in their geographical areas. Each PHA “must adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements.” 24 C.F.R. 982.54(a). Those program requirements are issued by HUD headquarters as regulations, Federal Register notices, or other binding program directives. 24 C.F.R. 982.52(a).

### *Family Obligations*

The purpose of 24 C.F.R. 982.551 is to state the obligations of a participant family under the program, which are referred to as “family obligations” or “obligations of the family.” Although the PHA must adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements, 24 C.F.R. 982.54, nothing in Section 982.551 permits the PHA to add to the obligations HUD imposes on participant families. In its rulemaking HUD explained that “[t]he family is responsible for compliance with all family obligations, and the [P]HA may terminate assistance for any violation.” 60 FR 34684 (July 3, 1995).

By its terms Section 982.551 is a complete and exclusive list of family obligations. Yet CHA’s family obligations include several not found in the HUD regulations, including two at issue here: (1) the family must “[n]otify CHA of the arrest of a household member within 10 days of the occurrence for violent or criminal activity

against persons or property, or involving alcohol, gangs, drugs and/or weapons”, and 2) the family must not “[p]ossess or use a firearm or aggravated assault weapon in violation of federal, state or local criminal or civil laws.” (R. at 24-25). The CHA exceeded its authority by requiring its program participants to comply with additional family obligations that are not among the HUD requirements.

#### *Termination of Assistance*

HUD authorizes PHAs to terminate assistance for a program participant because of the family’s action or failure to act as described in Sections 982.552 or 982.553. 24 C.F.R. 982.552. Section 982.552 lists mandatory and discretionary termination events for HCV Program Voucher participants. In its rulemaking HUD explained that Section 982.552 “defines when the [P]HA may... terminate assistance because of an action or failure by a member of the family. However, the [P]HA decides whether and how to exercise this authority and discretion in the circumstances of a particular case.” 60 FR 34687 (July 3, 1995). Thus, HUD requirements define when, but give the PHAs the discretion to determine whether or how to terminate a program participant. HUD does not authorize individual PHAs to add to the HUD requirements found in Section 24 C.F.R. 982.552. This is the area in which HUD, not the PHA, has the “discretion to issue program regulations consistent with statutory requirements (see 42 U.S.C. 3535(d)), including regulations on...termination of assistance by the [P]HA for criminal activity by members of an applicant or participant family.” 60 FR 34660, 34688 (July 3, 1995).

HUD’s Housing Choice Voucher Guidebook (HUD Guidebook) further illustrates HUD’s termination requirements based on a family’s action or failure to act.

HUD Guidebook §§3.2, 15.4. The HUD Guidebook is not binding on the court, but it is entitled to notice as an official interpretation of regulations with which it is not in conflict. See *Burroughs v. Hills*, 741 F.2d 1525, 1529 (7th Cir. 1984). Section 3.2 of the HUD Guidebook requires a PHA's administrative plan to detail any PHA policies for discretionary terminations of assistance. Section 15.4 lists the reasons a PHA may terminate assistance under 24 C.F.R. 984.552, with the addition of language regarding absence from the unit.

At issue here is CHA's authority to terminate assistance under Section 982.552(c)(1)(i), "[i]f the family violates any family obligations under the program (see § 982.551)," and Section 982.552(c)(1)(xi), "[i]f the family has been engaged in criminal activity or alcohol abuse as described in § 982.553." 24 C.F.R. 982.552(c)(1)(i), (xi). Section 982.553 requires PHAs to "establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under § 982.551 not to engage in violent criminal activity," defined in the regulations as "any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage." 24 C.F.R. 5.100.

The plain regulatory language makes it clear that Sections 982.551-982.553 provide the exclusive bases, both mandatory and discretionary, for termination of assistance. The regulations also make it clear when PHA local policies and procedures

come into play. Here, Section 5.100, as adopted and incorporated by Section 982.4, defines violent criminal activity. CHA lacks the authority to change that definition.

The CHA, in its Administrative Plan, Section 12-I.E, properly exercised its authority to make discretionary HUD termination policies, codified at 24 C.F.R. 982.553(b) and 982.551(l), mandatory CHA termination policies. However, CHA then improperly added to the regulatory definition of violent criminal activity, including a “CHA Policy” mandating termination of a family if “any household member... has engaged in any of the following criminal activities, within the past five (5) years... Illegal possession and use of a firearm or aggravated assault weapon in violation of federal, state or local criminal or civil laws.” (Plan 2012 at 12-4).

CHA, through its Administrative Plan’s “CHA Policy” and HCV Program Voucher Family Obligations, exceeded the authority granted to it by HUD to establish local policies. HUD’s requirements are clear. In order for CHA to terminate for criminal activity, the activity must 1) be drug-related, 2) be violent, as defined by 24 C.F.R. 5.100, or 3) threaten the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate premises. In order for CHA to terminate for a violation of a HCV Program Voucher Obligation of the Family, the family must “violate[s] any family obligations under the program (see § 982.551).” 24 C.F.R. 982.552(c)(i).

CHA argues that 60 FR 34684-34688 (July 3, 1995) modifies the statement of family obligations in order to give PHAs discretion to terminate for any violation. CHA contends that “the [P]HA has...the power to adopt and implement local policies, and to

decide the application of local policies to particular cases.” 60 FR 34688 (July 3, 1995). Further, CHA asserts that the court must give deference and controlling weight to its interpretation of administrative regulations. While courts give deference to an agency’s findings of fact, an agency’s finding on a question of law or an interpretation of a statute, including a statute it is charged with administering, is not binding upon the court, and is reviewed *de novo*. *Richard’s Tire Company v. Zehnder*, 295 Ill. App. 3d 48, 56 (2d Dist. 1998).

A PHA, such as CHA, is limited to the reasons for termination codified in Sections 982.551-982.553. While HUD’s Guidebook and the Federal Register support the proposition that PHAs maintain some authority to establish local policies and procedures, they do not support the proposition that the grounds for termination codified in Sections 982.552-982.553 are subject to revision or addition by a PHA. CHA’s Administrative Plan’s “CHA Policy” in Section 12-I.E does not simply establish CHA-specific procedures for termination of assistance or supply definitions for CHA terms. Instead, CHA, without authority, created new requirements which are not found in, and are therefore not in accordance with, HUD requirements. CHA offers no regulatory authority for its expansion of HUD’s definition of “violent criminal activity” codified at 24 C.F.R. 5.100, and its establishment of additional family obligations not imposed by HUD in 24 C.F.R. 982.551.

#### *Move to Work Program*

Additionally, CHA argues that its status as a “Move to Work” program (MTW), authorizes additional flexibility in establishing termination policies. While MTW PHAs

receive more flexibility, including potential waivers of certain provisions of the United States Housing Act and HUD's requirements, the MTW agreements require the waived provisions to be noted in the MTW Plan. (Chicago Housing Authority Amended and Restated MTW Agreement, at 2). Other federal, state, and local requirements continue to apply to the PHA notwithstanding any term contained in the MTW Agreement. *Id.* Nothing in CHA's Amended Move to Work Agreement, MTW Agreement Attachment C: Statement of Authorizations, MTW Agreement Attachment D: Housing Authority Specific Provisions, or the six MTW Agreement Amendments indicates that HUD authorized CHA, through the MTW, to add to HUD's requirements for assistance termination and family obligations.

*Termination based on possession of a firearm in violation of state law and the failure to notify CHA of an arrest within 10 days*

As determined above, CHA exceeded its authority by including additional family obligations on the HCV Program's Voucher and by adding "CHA Policy" language to CHA Administrative Plan's Section 12-1.E, Mandatory Policies. (Plan 2012 at 12.4). HUD's "Obligations of Participant" regulation, 24 C.F.R. 982.551, does not ban the "possession or use of a firearm or aggravated assault weapon in violation of federal, state or local criminal or civil laws" or require participating families to "[n]otify [PHA's] of the arrest of a household member within 10 days of the occurrence for violent or criminal activity against persons or property, or involving alcohol, gangs, drugs and/or weapons." CHA implemented these family obligations independent of HUD's regulations and outside of CHA's authority.

Additionally, CHA's Administrative Plan's Section 12-1.E's "CHA Policy" mandates termination of assistance if "any household member... has engaged in any of the following criminal activities within the past five years... Illegal possession and use of a firearm or aggravated assault weapon in violation of federal, state or local criminal or civil laws." (Plan 2012 at 12-4). This is not in accordance with HUD's requirements in 24 C.F.R. 982.552 or 24 C.F.R. 982.553. CHA implemented this mandatory termination policy independent of HUD's regulations and outside of CHA's authority. Because CHA exceeded its regulatory authority by terminating Plaintiff's assistance based on possession of a firearm in violation of state law (Count 2), and failure to notify of arrest within 10 days (Count 3), the termination must be reversed.

WHEREFORE, IT IS HEREBY ORDERED: Plaintiff's Petition for Judicial Review by Writ of Certiorari is granted, and CHA's decision to terminate Plaintiff's HCV Program Voucher assistance is reversed.

Judge Kathleen G. Kennedy  
ENTER: FEB 18 2015  
Circuit Court 1718