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Tennessee Housing Development Agency, Petitioner, v. Ronnisha Franklin, Respondent

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BEFORE THE TENNESSEE HOUSING DEVELOPMENT AGENCY

IN THE MATTER OF:

**Tennessee Housing Development
Agency**
Petitioner

v.

Ronnisha Franklin
Respondent

DOCKET NO: 32.00-109469J

INITIAL ORDER

This contested case was heard in Knoxville, Tennessee, on February 4, 2011, before Rob Wilson, Administrative Judge, assigned by the Secretary of State to sit for the Tennessee Housing Development Agency. The Petitioner was represented by Bruce Balcom, General Counsel for THDA. The Respondent Ronnisha Franklin was represented by Charity J. Miles, Esq.

The issue in this matter concerned the Petitioner's request to terminate the rental assistance provided through the Agency to the Respondent. After consideration of the evidence and the arguments of the parties, it is determined that the request should be denied, and the Respondent's assistance should continue. This decision is based upon the following.

FINDINGS OF FACT

1. For approximately six years the Respondent has received Section 8 rental assistance for her household, which includes herself and two children. Prior to the present issue, the Respondent had always been in compliance with program rules.

2. THDA determined that sometime during the first half of 2010 the Respondent started receiving child support from Gabriel White. Mr. White is the father of Respondent's son, but does not reside with Respondent. The Respondent had not listed Mr. White on her rental assistance application. The Child Support Modification Order from the Knox County Juvenile Court stated that child support had been set because "the parties no longer reside together." Because of this statement on the modification form, THDA concluded that the parties must have been living together previously, and proposed to terminate the Respondent's rental assistance due to the fact that she never listed Mr. White as a member of her household.

3. Respondent testified that a clerk at the Knox County Juvenile Court told her that she could not petition for support unless there was a modification of circumstances, and suggested that Respondent list as a modification the fact that Mr. White was no longer living with Respondent. The Respondent was not told, nor did she understand, that the Juvenile Court Modification of Child Support Order would have any affect upon her rental assistance through the Section 8 program.

4. Gabriel White testified that he never lived in Respondent's home. The State introduced as an exhibit an unofficial Whitepages.com printout which listed Gabriel White's address as 1205 Woodberry Drive, but Mr. White explained that he was a co-signor on a loan with Respondent and that is why some documents list his address as the same as Respondent's address.

5. An informal hearing concerning rental assistance was held on August 25, 2010.

The Respondent explained that Mr. White has never resided in her home.

6. After the informal hearing on August 25, 2010, the hearing officer issued a letter, dated September 1, 2010, which upheld Respondent's housing termination for a violation of family obligations.

RELEVANT LAW

1. The Tennessee Housing Development Agency (THDA) Rental Assistance Program qualifies as a Public Housing Authority (PHA) under Section 8, Tenant Based Assistance: Housing Choice Voucher Program, as found in the Code of Federal Regulations, 24 CFR 982.

2. According to federal regulations, participants in the Section 8 housing assistance program "must supply any information that the PHA . . . determines is necessary in the administration of the program." 24 CFR 982.551(b).

3. "Any information supplied by the family must be true and complete." 24 CFR 982.551(b)(4).

4. According to 24 CFR 982.551(h)(2), an assistance recipient must notify THDA of changes in household composition:

The composition of the assisted family residing in the unit must be approved by the PHA. . . . The family must request PHA approval to add any other family member as an occupant of the unit.

5. The PHA may terminate rental assistance for several stated reasons, including violation of "any family obligations under the program." 24 CFR 982.552(c)(i). These responsibilities include notification of a change in the family composition.

6. The PHA has some discretion in its decision to terminate rental assistance:

(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.

ANALYSIS and CONCLUSIONS OF LAW

In considering the totality of the circumstances present in this case, it is determined that the Respondent's rental assistance should not be terminated. The Respondent wrote (on the form) that she and Mr. White were no longer living together because it was the only way to obtain the necessary modification required to establish child support. She wrote this statement on the advice of a court clerk and was not told that this statement signified that Mr. White once lived with her or that it would affect her rental assistance. It is clear from the facts of the case and from the demeanor of the Respondent and other witnesses at the hearing that she never intended to mislead authorities or to receive assistance to which she was not entitled.

The State argued that the Respondent's child support modification form proved that Mr. White once resided in Respondent's household. However, the facts show otherwise. Ms. Franklin's explanation of why the Juvenile Court Modification Form states that the parties are no longer living together is both credible and convincing. Furthermore, Mr. White's testimony stating that he has never resided in Respondent's household is also deemed credible.

Additional support for this decision is found in the federal rules cited in Paragraph 6, *supra*. For example, the seriousness of the violation should be considered in light of all the circumstances of the case. Here, the violation resulted from the advice of a court clerk which caused the Respondent to misunderstand the situation. There was no culpability or intent to deceive, and there were no serious consequences. Furthermore, the Respondent lives with her

two minor children, who would suffer devastating effects from the loss of rental assistance. All these factors indicate that the Respondent's rental assistance should continue.

Based upon the foregoing, it is hereby determined that the State's request to terminate the Respondent's Section 8 rental assistance should be denied, and that the assistance should be continued.

This Initial Order entered and effective this 11th day of March, 2011.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this _____ day of _____ 2011.



Thomas G. Stovall, Director
Administrative Procedures Division