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Law

11-16-2007

DEVELOPMENT AGENCY, Petitioner, Docket
No: 32.00-095983JV. TREVA STEVERSON,
Respondent.

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This contested case was heard in accordance with the provisions of the Uniform Administrative Procedures Act, T.C.A. §4-5-301, *et seq.* See *THDA Plan of Administration*, Chapter 16, Section III, page 5.

After consideration of the evidence offered, the arguments of counsel and the *pro se* party, and the entire record in this matter, it is determined that Petitioner TDHA failed to meet its burden of proof in this matter. Petitioner THDA's action to terminate Respondent from the Section 8 rental assistance program is **DISMISSED**.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Since 2005, the Respondent has been receiving Section 8 rental assistance for an apartment in Mt. Juliet, Tennessee. Section 8 rental assistance recipients are required to undergo an annual recertification process.

2. As part of the annual recertification process, the person receiving section 8 rental assistance is required to report their income. The program is based upon the ability to pay rent and the amount of income the Section 8 recipient or renter makes.

3. Five personal declarations of income were completed by Respondent over the period of time Respondent received section 8 rental assistance.

4. On 6/1/06, Respondent filled out a "zero income statement". On 4/1/07, Respondent filled out a "zero income statement."

5. In 2005, Respondent reported workers compensation benefits and unemployment benefits. At various times Respondent reported income from employment at St. Thomas Hospital and Ranstad Staffing Services.

6. It is not clear from the evidence presented at the hearing how TDHA received Paul Cox's name in connection with Respondent, or how TDHA determined that it should contact Mr. Cox.

7. Carol McEwen, senior rental assistant specialist, testified on behalf of TDHA.

8. Ms. McEwen testified that she contacted Paul Cox. Mr. Cox told her that Respondent had worked for him in a cleaning service. Ms. McEwen further testified that Mr. Cox had told her that Respondent had worked for him since February 2005, and was paid \$10 per hour for thirty to 40 hours of work per week. According to Ms. McEwen, Mr. Cox also told her that he did not pay Respondent with checks, but paid her in cash.

9. Mr. Cox was not subpoenaed to testify at the hearing. Nor did TDHA provide an affidavit of Mr. Cox, or a deposition of Mr. Cox.

10. Ms. Steverson testified, credibly, that she knew Mr. Cox through a man she was dating. She also testified that Cox ran an automotive detail company.

11. Ms. Steverson testified that she had never worked for Mr. Cox. She testified, further, that she did not even know Mr. Cox in 2005.

12. When Ms. Steverson received the letter of termination from TDHA, she immediately contacted Ms. McEwen, and informed her that she had never worked before for Mr. Cox.

CONCLUSIONS OF LAW

1. The Tennessee Housing Development Agency (THDA) contracts with the U.S. Department of Housing and Urban Development (HUD) to oversee and administer Section 8 Housing Assistance within the state of Tennessee. THDA's responsibilities include administration and review of the U.S. Housing Choice Voucher Program (Section 8).

2. The "voucher program" for rental assistance under Section 8 (o) of the United States Housing Act of 1937, 42 U.S.C.A. 1437f (o), was one of the low-income housing assistance programs enacted for "the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C.A. §1437f (a.)

3. The Code of Federal Regulations, 24 CFR 982.1(a) states, in pertinent part:

(1) In the HUD Housing Choice Voucher Program (Voucher Program) and the HUD certificate program, HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing. Both programs are generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the programs.

4. Eligibility for a housing voucher is determined by the PHA based on the total annual gross income and family size and is limited to US citizens and specified categories of non-citizens who have eligible immigration status.

5. In general, the family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live. By law, a PHA must provide 75 percent of its vouchers to applicants whose

incomes do not exceed 30 percent of the area median income. Median income levels are published by HUD and vary by location. Income limits apply only at admission to the voucher program and at relocation (portability). Income limitations are not applied at recertification. A family whose income increases so that it is above the extremely low or very low income limit may continue on the program as long as they are otherwise eligible. *See THDA Plan of Administration*, Chapter 3, Section III, page 5. *See also* 24 CFR 982.201 and 24 CFR 982.353.

6. Families who participate in the voucher program must abide by a series of rules and regulations, often referred to as "family obligations," in order to maintain their voucher eligibility, including accurately reporting all changes in household income and/or family composition so the amount of their subsidy can be updated accordingly.

7. Under *See THDA's Plan of Administration*, Chapter 15, Section I, A., Family Obligations/Responsibilities and Appointments, "Family Requirements" include:

Under the HCV program, participant families are required to follow the obligations and responsibilities set forth below. Families must do the following:

(1) Supply within the time allowed (typically fifteen days) such certification, release, information or documentation as THDA or HUD determines necessary for annual and interim recertification of family income and composition.

(3). Supply only information that is true and complete.

8. In this matter, Respondent submitted income information. THDA contacted Paul Cox. Mr. Cox told THDA's senior rental assistance specialist, Ms. McEwen, that Respondent had worked for him thirty to forty hours per week at \$10 per hour. Mr. Cox told Ms. McEwen that he paid her in "cash". No employment records from Mr. Cox were requested or subpoenaed by the THDA.

9. TDHA contested case hearings are conducted in accordance with the Administrative Procedures Act.

10. T.C.A §4-5-313 of the Administrative Procedures Act, states in pertinent part:

In contested cases:

(1) The agency shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

11. Rule 801 (c) of the *Tennessee Rules of Evidence* provides:

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

12. Rule 802 of the *Tennessee Rules of Evidence* states:

Hearsay Rule. ---*Hearsay is not admissible* except as provided by these rules or otherwise by law. (Emphasis added.)

13. There are no hearsay exceptions in the *Tennessee Rules of Evidence* which allow Mr. Cox's statements to be admitted into evidence.

14. All testimony regarding Paul Cox's statements is excluded as inadmissible hearsay. The facts which THDA attempted to establish through the hearsay testimony could have been easily established, if true, by

subpoenaing Mr. Cox to the hearing, by furnishing an affidavit by Mr. Cox, or by deposing Mr. Cox (if he was unavailable as a witness). There was nothing to establish that Mr. Cox had ever employed Respondent: no employment records, no verification of social security number, no documents, no testimony subject to cross-examination, etc.

15. The hearsay testimony was offered for the proof of the matter asserted: that Respondent had received additional income from Mr. Cox. Such evidence is not even reliable hearsay. If THDA wished to depend on Mr. Cox's statements for purposes of the hearing, it should have subpoenaed Mr. Cox and presented his testimony subject to cross-examination. Accordingly, all testimony regarding the hearsay statements of Mr. Cox is excluded from consideration in this matter.

16. Ms. Steverson testified, credibly, that she knew Mr. Cox casually as an acquaintance. She also testified, credibly, that she never worked for Mr. Cox.

17. THDA bears the burden of proof in this case. It must show by a preponderance of evidence that Respondent was employed during the relevant time and failed to report extra income to THDA.


18. As defined by the *Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies*, Rule 1360-4-1-.02(7), "preponderance of the evidence" means the greater weight of evidence, or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

19. THDA has failed to carry its burden of proof that the Respondent violated the Section 8 rental assistance program. No credible evidence was presented that Respondent earned extra income which she did not declare or report to THDA.

For all the above reasons, this matter is **DISMISSED, AND RESPONDENT SHALL NOT BE TERMINATED FROM THE SECTION 8 VOUCHER PROGRAM.**

It is so ordered.

This Order is entered and effective this 30th day of January, 2008.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looping initial "T".

Thomas G. Stovall, Director
Administrative Procedures Division