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TENNESSEE HOUSING DEVELOPMENT
AGENCY, Petitioner, v. AMBER COLLINS,
Respondent

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**BEFORE THE TENNESSEE
HOUSING DEVELOPMENT AGENCY**

IN THE MATTER OF:

**TENNESSEE HOUSING
DEVELOPMENT AGENCY,**

Petitioner

v.

AMBER COLLINS,

Respondent

DOCKET NO: 32.00-109465J

INITIAL ORDER

This contested administrative case was heard on March 22, 2011, before Rob Wilson, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Housing Development Agency (“THDA” or “the Agency”). Mr. Bruce Balcom, General Counsel for THDA, represented the Petitioner. Amber Collins, the Respondent, was represented by David Kozlowski, Esq., of the Legal Aid Society.

The issue in this matter concerned THDA’s request to terminate Respondent’s rental assistance for her alleged failure to report all of her income to THDA. After consideration of the evidence and the arguments of the parties, it is determined that the request should be denied, and Ms. Collins’ assistance should continue. This determination is based upon the following findings of facts and conclusions of law.

FINDINGS OF FACT

1. Amber Collins receives rental assistance from THDA; the amount is dependent upon several factors, including the amount of the recipient’s income. As a condition for receiving THDA rental assistance, the Respondent was required by law to disclose all sources and amounts of her income, and to report any changes in the amount of income within fourteen (14) days of the effective date of those changes.

2. In early 2010, the voucher paid one hundred per cent of Ms. Collins' rent. Additionally, the Collins family received a utility allowance of \$50.00 per month to assist in payment of the family's utility bill.

3. In March of 2009 the Collins family was scheduled for an annual home inspection and recertification. Ms. Collins reported that she was no longer receiving child support, and her expenses suggested that she had a utility bill of approximately \$150.00 per month, with the only income being the \$50.00 utility allowance. As a result, the case manager concluded that Ms. Collins had income that she was not reporting.

4. Ms. Collins explained that family and friends were helping her with her expenses so she could pay her utility bill and keep the lights on. Ms. Collins did not provide to THDA any written verification of who was assisting her with payment of the utility bill.

5. On May 20, 2010, the rental assistance manager at THDA sent Ms. Collins a notice telling her that her rental assistance was going to be terminated due to the fact that requested information was not supplied. Ms. Collins filed an appeal, a hearing was conducted on July 27, 2010, and Ms. Collins' termination of rental assistance was upheld. Ms. Collins filed a request for a contested case hearing.

CONCLUSIONS OF LAW & ANALYSIS

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(a)(2), the family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim examination of family income and composition in accordance with HUD requirements.

5. 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.

6. The Tennessee Housing Development Agency must rely on the grounds for termination as set forth in the federal regulations. A public housing agency cannot expand or modify the grounds contained in the regulation. Hill v. Richardson, 740 F. Supp. 1393, 1397-99 (S.D. Ind. 1990); In Re Sweeney, 215 B.R. 97, 103 (Bankr. E.D. Penn. 1997).

In this case, the Tennessee Housing Development Agency seeks to terminate Ms. Collins' rental assistance for the sole reason that she was unable to provide written verification of money that was given to her by family or friends to pay her utility bill. There is no proof or suggestion that Ms. Collins committed fraud. There is no indication that the provision of a written verification would have changed the calculation of the rent that Ms. Collins would pay.

As noted, a family participating in the voucher program must provide information for use in reexamination of family income. Ms. Collins explained that she received cash gifts from family and friends to help her pay her utility bill after she lost her child

support. There is no requirement in the federal regulations that she get written statements from whichever family members or friends gave or loaned her money to pay her utility bill. The following appears in the THDA Applicant manual:

WHAT TYPE OF INCOME MUST BE REPORTED?

Certain information must be reported to THDA for a correct determination of the amount of rental assistance. Failure to report required information could cause an overpayment of assistance. The head of household is solely responsible for ensuring that all sources and amounts of income received by the entire household are properly reported to THDA. All income to which any household member has access must be reported to THDA. This includes (but is not limited to): wages, welfare assistance, Social Security, disability, unemployment, child support, other family support, etc. If a family member or friend gives you money to help with bills, you must report this income. If you share a joint checking or savings account with a friend or family member (whether or not they live with you), this income must be reported.

The manual does not state that section 8 participants are required to list with specificity the name and address of each and every family member or friend who gives them money, only that the income be reported. Ms. Collins stated that friends or family members gave her approximately \$100 to pay her utility bill. She has complied with the requirement. There has been no disruption in the administration of the voucher program by THDA, and there is no violation of any obligation. Ms. Collins' inability to obtain written verification or explanation of who gave her the money to pay her utility bill should have no impact on her participation in the section 8 voucher program.

Additionally, termination of participation in the Section 8 voucher program must not be disproportionate to the asserted offense. See Gist v. Mulligan, 886 N.Y.S. 2d 172, 173 (N.Y. App. 2009) ; DuPont v. Donovan, 873 N.Y.S. 2d 510, 2008 WL 4901159 (N.Y.

Sup., Oct. 27, 2008). Termination of Ms. Collins' rental assistance is not appropriate in this matter.

For the foregoing reasons, the decision of the Tennessee Housing Development Agency to terminate Ms. Collins' Housing Voucher is REVERSED.

This Initial Order entered and effective this 13th day of June, 2011.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 13th day of June, 2011.



Thomas G. Stovall, Director
Administrative Procedures Division