

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tarai Harris :
 :
 v. : No. 124 C.D. 2012
 : Submitted: August 10, 2012
 Housing Authority of the City :
 of Pittsburgh, :
 Appellant :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE LEAVITT

FILED: November 2, 2012

The Housing Authority of the City of Pittsburgh (Authority) appeals an order of the Court of Common Pleas of Allegheny County (trial court), which reinstated Tarai Harris’ public housing assistance benefits. In doing so, the trial court reversed the determination of the Authority’s grievance hearing officer, which the trial court held was not supported by substantial evidence. In this case, we consider the Authority’s argument that the trial court erred by disregarding uncorroborated hearsay evidence on which the hearing officer relied in terminating Harris’ benefits. Finding no merit to the Authority’s argument, we affirm the trial court’s order.

Harris is a participant in the Authority’s Housing Choice Voucher Program, also known as the “Section 8 program,” which provides housing to low-income families at a reduced cost. See Section 8(a) of the Housing and

Community Development Act of 1974, 42 U.S.C. §1437f(a).¹ Harris currently resides at 3103 Ashlyn Street in Pittsburgh.² On November 29, 2010, the Authority notified Harris that it was terminating her participation in the voucher program due to “[d]rug related criminal activity” and an “[o]ccupancy and family member violation.” R.R. 9a, 10a.³ Harris objected, and a grievance hearing was held on March 10, 2011.

Kari Ogbara, the Authority’s Housing Specialist, testified that on October 15, 2010, narcotics detectives executed a search warrant at Harris’ residence. They arrested Daryl Leeper and charged him with possession with intent to deliver controlled substances, delivery of controlled substances, and tampering with evidence. Ogbara testified that Harris and her three children are the only individuals listed on the lease as occupants of the Ashlyn Street residence. Ogbara confirmed that Harris’ benefits were terminated for drug-related criminal activity.

Next, Joy Miller, the Authority’s Public Safety Director testified. Miller testified that she is in charge of reviewing any information on criminal activity she receives about any Section 8 participant. She stated that she learned

¹ The Section 8 program is funded by the federal government, but administered by local public housing authorities. 42 U.S.C. §1437f(o). The local housing authority assesses whether participants remain in compliance with the regulations.

² The transcripts spell Harris’ address as: “Ashland Street.” *See* Reproduced Record at 31a (R.R. ___). The address the Authority used in its correspondence to Harris is spelled: “Ashlyn Street.” *See* R.R. 9a.

³ Specifically, Harris was charged with violating 24 C.F.R. §§ 5.100, 982.551(l), 982.553(b)(1) (all related to termination for a household member engaging in drug-related criminal activity), and 982.551(h)(2), 982.552(b)(5), (c) (all related to termination for having an unauthorized person residing in participant’s home).

about the criminal activity at Harris' residence through a newspaper article. Counsel for Harris objected to this evidence as inadmissible hearsay.

Harris testified on her own behalf. She stated that Leeper did not reside with her, but was present in her home on the morning of the raid because he was helping her move furniture. She produced a written confirmation of furniture delivery, to which the Authority objected. Counsel for the Authority moved to enter the police report from the night of Leeper's arrest into evidence, stating that the report showed that Leeper told the police his address was 3103 Ashlyn Street; Harris objected to this evidence. Harris then provided documents, both in Leeper's name, which listed Leeper's address as "1535 Summerdale Street."⁴ The Authority objected.

At the conclusion of testimony, counsel for the Authority stated that she had subpoenaed the arresting officer but he was not present for the hearing. The hearing officer ruled that the police report was inadmissible. She advised Harris that she would receive a decision letter within 10 days and concluded the hearing.

On March 28, 2011, the Authority sent Harris a letter informing her that the grievance hearing was continued so that the officers involved in the case could be subpoenaed.

On May 12, 2011, a second grievance hearing was held. Harris' attorney objected to the second hearing because she believed the record had been closed following the first hearing and did not recall the Authority having requested

⁴ The transcripts spell Leeper's address as: "Somerdale Street." *See* R.R. 37a, 52a. The address the Authority used in its correspondence to Leeper is spelled: "Summerdale Street." *See* R.R. 11a.

a continuance. The hearing officer noted Harris' objection and proceeded with the hearing.

Michael Reddy, a narcotics detective, testified for the Authority. Reddy stated that, based upon an informant's tip, detectives placed Harris' Ashlyn Street residence under surveillance. On October 14, 2010, the detectives saw Leeper leave the Ashlyn Street residence, make a drug deal, and return to the same address. Based upon their observations, the detectives obtained a search warrant for 3103 Ashlyn Street. While conducting their search, the detectives found Leeper in his underwear and junk mail addressed to "Darryl Leeper" at "3103 Ashlyn Street." R.R. 49a, 51a. Reddy stated a small amount of drugs were found inside the home. Reddy conceded that he did not personally find drugs on Leeper's person, but he believed Leeper flushed drugs down the toilet; counsel for Harris objected to that testimony. On cross-examination, Reddy testified that he never observed Leeper conduct a drug deal at the Ashlyn Street residence, and that he only witnessed Leeper exit the residence once.

Following the second hearing, the hearing officer concluded that Harris' testimony was not credible. The hearing officer held that the Authority properly terminated Harris' participation in the Section 8 program.

Harris appealed to the trial court. The trial court granted her appeal and held that there was insufficient non-hearsay evidence to support the Authority's charge that Leeper was an unauthorized resident of 3103 Ashlyn Street. The trial court reinstated Harris' benefits, and the Authority appealed to this Court.

On appeal,⁵ the Authority argues that the trial court erroneously disregarded all hearsay evidence in contravention of federal regulations. The Authority contends that under 24 C.F.R. §982.555(e)(5),⁶ the evidentiary rules applicable in judicial proceedings, such as the rule against hearsay, do not apply to housing authority hearings. The Authority asserts that, based upon all of the evidence, including the hearsay evidence, the trial court erred in granting Harris' appeal.

Harris responds that the trial court properly found that the hearing officer abused her discretion by scheduling a second hearing because the record closed at the conclusion of the first hearing.⁷ Further, Harris alleges that the hearsay testimony accepted by the hearing officer was not competent evidence to support a finding that Harris violated her Section 8 family obligations or that a member of Harris' household engaged in drug-related criminal activity.

We begin with a review of the applicable law. Regulations of the U.S. Department of Housing and Urban Development authorize a local housing

⁵ Our review is limited to whether the findings of fact are supported by substantial evidence, whether constitutional rights were violated, or whether an error of law was committed. *Zajac v. Altoona Housing Authority*, 626 A.2d 1271, 1272 (Pa. Cmwlth. 1993).

⁶ This section provides that during the hearing, “[t]he [public housing authority] and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.” 24 C.F.R. §982.555(e)(5).

⁷ The trial court rightfully questioned the propriety of the second hearing, noting that there was enough evidence to make a decision after the first hearing, just not a decision in favor of the Authority. It is well established that in administrative hearings, parties should not be permitted to have a second opportunity to supplement the evidence in support of their case. *Primecare Medical, Inc. v. Unemployment Compensation Board of Review*, 760 A.2d 483, 488 (Pa. Cmwlth. 2000). However, because the trial court ultimately considered the evidence adduced at the second hearing, so will we.

authority to terminate Section 8 housing benefits if a participant violates any of their obligations. The family obligation states:

The composition of the assisted family residing in the unit must be approved by the PHA [(public housing authority)] The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit

24 C.F.R. §982.551(h)(2). The criminal activity obligation states: “The members of the household may not engage in drug-related criminal activity” 24 C.F.R. §982.551(l). A local authority may terminate the Section 8 benefits of any participant “[i]f the family violates any family obligations under the program[,]” or “for criminal activity by a household member” 24 C.F.R. §§982.552(c)(i), 982.553(c).

A hearing is required to determine whether a participant has violated any of his or her obligations. Regarding hearing procedures, Section 554 of Pennsylvania’s Local Agency Law provides: “Local agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received.” 2 Pa. C.S. §554. In interpreting the standard for the admissibility of evidence under the Local Agency Law, this Court has stated:

The hearsay rule, however, is not a technical rule of evidence but a fundamental rule of law which ought to be followed by administrative agencies at those points in their hearings when facts crucial to the issue are sought to be placed upon the record and an objection is made thereto.

State Board of Medical Education and Licensure v. Contakos, 346 A.2d 850, 852 (Pa. Cmwlth. 1975) (citations omitted). Accordingly, it is well-settled in Pennsylvania administrative agency law that

[h]earsay evidence, *properly objected to*, is not competent evidence to support a finding [in an administrative hearing] Hearsay evidence, *admitted without objection*, will be given its natural probative effect and may support a finding of the [hearing officer], *if it is corroborated by any competent evidence in the record*, but a finding of fact based *solely* on hearsay will not stand.

Zajac, 626 A.2d at 1275 (quoting *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 369-70 (Pa. Cmwlth. 1976)) (emphasis in original).

The Authority asks this Court to reject this longstanding precedent and follow our Supreme Court's non-binding plurality opinion in *Ceja v. Unemployment Compensation Board of Review*, 493 Pa. 588, 427 A.2d 631 (1977), which criticized the *Walker* rule as too rigid and impractical. The Authority also contends that the Local Agency Law must be applied consistently with the federal regulations, which the Authority asserts are more liberal in allowing hearsay evidence.

The Authority's arguments lack merit. To begin, the Supreme Court itself has rejected its *Ceja* analysis in several subsequent decisions.⁸ We decline the Authority's invitation to question the long standing precedent of *Walker* and its progeny. That precedent has established that the *Walker* rule applies to housing

⁸ See, e.g., *Rox Coal v. Workers' Compensation Appeal Board (Snizaski)*, 570 Pa. 60, 75-76, 807 A.2d 906, 915 (2002) (adopting and reaffirming the *Walker* rule); *Joyce v. Workmen's Compensation Appeal Board (Odgen/Allied Maintenance)*, 545 Pa. 135, 144, 680 A.2d 855, 859-60 (1995); *LeGare v. Unemployment Compensation Board of Review*, 498 Pa. 72, 78, 444 A.2d 1151, 1154 (1982).

authority administrative grievance hearings, which are subject to the Local Agency Law under 2 Pa. C.S. §751.⁹ *See Zajac*, 626 A.2d at 1275-76 (“Pennsylvania local agency law with respect to the admissibility of evidence controls.”) Although hearing procedures under the Local Agency Law must comply with applicable federal regulations, the hearsay rule is a fundamental rule of law which our courts have held should be followed during administrative hearings. *Id.* at 1276. Pennsylvania has simply chosen to provide greater due process protections in administrative grievance proceedings challenging termination of Section 8 benefits than might otherwise be required by the federal regulations.

Applying the foregoing principles to the instant case, we hold that the trial court did not err by disregarding the Authority’s hearsay evidence. At the first hearing, the testimony established only that Leeper was arrested at Harris’ residence for a crime that did not occur on the premises. Further, Ogbara’s testimony that Leeper provided Harris’ address as his own was properly excluded as inadmissible hearsay because Ogbara received this information from a third party. The evidence offered at the second hearing, which consisted primarily of Officer Reddy’s testimony, was insufficient to cure the deficiencies in the Authority’s case. The admissible evidence from both hearings established only that Leeper was involved in drug-related criminal activity somewhere off of Harris’ premises and was arrested in Harris’ home wearing underwear. Officer Reddy testified that he observed some junk mail addressed to Leeper at Harris’

⁹ “[T]his . . . shall apply to all local agencies regardless of the fact that a statute expressly provides that there shall be no appeal from an adjudication of an agency, or that the adjudication of an agency shall be final or conclusive, or shall not be subject to review.” 2 Pa.C.S. §751(a).

address; he personally did not find any drugs on Leeper's person or in Harris' home.

In summary, the trial court did not err in finding there was insufficient non-hearsay evidence to support the Authority's termination of Harris' participation in the Section 8 program for "drug related criminal activity" and an "occupancy and family member" violation. Accordingly, the order of the trial court is affirmed.

MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tarai Harris	:
	:
v.	: No. 124 C.D. 2012
	:
Housing Authority of the City	:
of Pittsburgh,	:
Appellant	:

ORDER

AND NOW, this 2nd day of November, 2012, the order of the Court of Common Pleas of Allegheny County, dated December 23, 2011, in the above-captioned matter is hereby AFFIRMED.

MARY HANNAH LEAVITT, Judge