

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Belajac	:	
	:	
v.	:	No. 1319 C.D. 2009
	:	Submitted: March 26, 2010
Allegheny County Housing Authority,	:	
Appellant	:	

**BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: June 30, 2010

The Allegheny County Housing Authority (Authority) appeals from an order of the Court of Common Pleas of Allegheny County (trial court), dated June 29, 2009. The trial court reversed the Authority’s decision to terminate the federally subsidized housing benefits of Christopher Belajac (Belajac).¹ We reverse the trial court.

¹ Housing is subsidized by the federal government pursuant to Section 8 of the United States Housing Act (Section 8), *as amended*, 42 U.S.C. § 1437f. The Section 8 program is administered by the Department of Housing and Urban Development (HUD). On the local level, the Section 8 program is administered by public housing agencies (PHAs), which are required by Section 982.54 of the HUD regulations to “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. HUD requirements are “issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.” 24 C.F.R. § 982.52.

Belajac has been involved in the Section 8 program since 1995. In November of 2002, Belajac was arrested and charged with indecent assault, endangering the welfare of children, corruption of minors, and involuntary deviate sexual intercourse. The charges related to conduct involving a five-year-old female victim, which occurred August 3, 2002, at 3250 Gaylord Avenue, Dormont, Pennsylvania, Belajac's subsidized unit at the time. On advice of counsel, Belajac plead guilty to indecent assault and corruption of minors on September 24, 2003, and, as a result, was required to register as a sex offender with the Pennsylvania State Police for a period of ten years.

In 2005, Belajac moved to his current subsidized unit located at 2903 Voelkel Avenue, Apartment 1, Dormont, Pennsylvania. On August 25, 2008, the Authority sent notification to Belajac that it intended to terminate his Section 8 assistance for violating his family obligations² and for being a lifetime registered sex offender.³ Belajac timely requested an informal hearing which took place on October 30, 2008. At the hearing, Belajac presented evidence through his stepfather and mother, Mr. and Mrs. Jack Mills, that he suffered a severe head injury in 1991, resulting in diminished competency, memory loss, high frustration levels, and temperament problems. Belajac also presented letters of support from citizens of his community.⁴ Speaking on behalf of the Authority, Investigating

² Section 8 benefits may be terminated if the family violates any of the family obligations listed in 24 C.F.R. § 982.551. *See* 24 C.F.R. §§ 982.552(c)(1)(i), 982.553(b)(2).

³ Pursuant to 24 C.F.R. § 982.553(a)(2)(i), the Authority "must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program."

⁴ A letter from Russell J. McKibben, Chief of Police of the Borough of Dormont, explained that Belajac's family has had a hard time since Belajac's brain injury and that Belajac **(Footnote continued on next page...)**

Officer Sarah Tallent recommended that Belajac's Section 8 assistance be terminated due to the nature of his crime. Investigating Officer Tallent stated that it was the rule of the Authority that Section 8 assistance be terminated for a "sex offender of any type" and that she was "99% certain . . . there is no leniency" for sex offenders under the HUD regulations. (R.R. 75a-76a.)

On November 10, 2008, the hearing officer upheld the Authority's decision to terminate Belajac's Section 8 assistance. The hearing officer held that Belajac's Section 8 assistance could not be terminated pursuant to Section 982.553(a)(2)(i) of the HUD regulations, finding that Belajac was subject to a ten-year registration requirement as a sex offender, not a lifetime registration requirement. The hearing officer, however, terminated Belajac's Section 8 assistance based on violation of the family obligation to refrain from engaging in criminal activity. Specifically, the hearing officer determined:

5. The Section 8 Administrative Plan specifically authorizes termination from the program for violation of family obligations.
6. The Section 8 Administrative Plan lists the obligations of its participants in Section 2.3. In

(continued...)

"requires constant overseeing from concerned family members and others to get through each day." (Reproduced Record (R.R.) 21a.) Chief McKibben also explained that Belajac "is basically a good and friendly person who for the most part is not a problem in [the] community," except for occasional instances of over-consumption of alcohol. *Id.* A letter from Glenn A. Wells, Belajac's landlord, explained that Belajac "has been an admirable tenant and has had a good tenant-neighbor relationship in his building" and that "there has never been a complaint regarding his conduct." (R.R. 23a.) Finally, a letter from Rev. Daniel T. Callahan, pastor at Dormont Presbyterian Church, explained that Belajac "regularly attends . . . weekly Sunday morning worship service" and has "helped in the church with various church projects." (R.R. 24a.)

subsection K, the Plan states that members of the household may not engage in any “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.”

7. Based on the above, it is this Hearing Officer’s opinion that the [Authority] is not mandated to terminate a sex offender who is subject to a 10 year reporting requirement, but it may do so.
8. Here, termination is based on an incident that occurred within the last 6 years. The incident occurred while [Belajac] was on the Section 8 program. The incident and conviction was not reported. Further, the incident and [Belajac]’s conviction is not too remote in time because until 2014 he will have a continuing obligation to register as an offender.
9. The entire purpose of the registration obligation is to warn the public, presumably for the protection of the community, thus highly suggesting in and of itself that having a registered sex offender in the community and on the Section 8 program threatens the safety of other residents and those in the immediate vicinity of the premises.
10. When the [Authority] was asked at the hearing about its views as to whether a non-lifetime registrant should be terminated, . . . Investigating Officer [Tallent] expressed her view that a sex offender of any kind should not be permitted to continue on Section 8 assistance, especially in this case where the victim was 5 years old. Thus, both in general and based on the circumstances of this case, the [Authority] has requested to terminate [Belajac]’s participation in Section 8.
11. Having found that the [Authority] is authorized to terminate [Belajac] and has valid reasons for doing so in this case, [Belajac]’s Section 8 assistance is terminated.

(R.R. 18a (internal citations omitted).)

Belajac appealed the hearing officer's decision to the trial court, arguing, *inter alia*, that there was not a requisite showing that Belajac engaged in conduct that "threaten[ed] the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises." 24 C.F.R. § 982.551(l). By order dated June 29, 2009, the trial court granted Belajac's appeal, finding that the hearing officer relied on an improperly restrictive interpretation of the applicable regulations in terminating Belajac's Section 8 assistance. In its amended memorandum in support of the June 29, 2009 order (Amended Memorandum), the trial court opined:

The Decision of the hearing officer reveals she simply accepted the fact that [the Authority] has the power to terminate [Belajac] and then adopted the view of . . . Investigating Officer [Tallent] that was stricter than the applicable regulations.

. . . .

The [Authority] offered no other reason for the termination of *this* person's Section 8 benefits except an opinion that its own rules should be different than they are.

The Findings of Fact made by the Hearing Officer reveal that [Belajac]'s mental challenges are severe due to a brain injury. . . . The Hearing Officer also credited the support of the Chief of Police and others "who attest to [[Belajac]'s] character and do not wish to see him removed from the Section 8 program." [(R.R. 17a.)]

The appeal must be granted as there was no *evidence* to support the Decision to terminate [Belajac]'s Section 8 benefits.

(Amended Memorandum, 1-3 (emphasis in original).)

On appeal,⁵ the Authority argues: (1) the trial court erred in holding that the applicable regulations and law did not permit termination of Belajac’s Section 8 assistance; (2) the trial court erred in substituting its discretion for that of the hearing officer; and (3) the trial court erred in holding that there was no evidence to support the hearing officer’s decision to terminate Belajac’s Section 8 assistance.⁶

We address, first, the Authority’s contention that the trial court erred in holding that the Authority was not permitted to terminate Belajac’s Section 8 assistance under the applicable regulations and law. The Authority points to the Rule 1925 opinion issued by the trial court in response to the Authority’s statement of matters complained of on appeal (1925 Opinion) where the trial court stated, “[t]he *sole* basis for the decision of the Hearing Officer was a non-existent regulation, promulgated by . . . Investigating Officer [Tallent] and not by HUD.” (1925 Opinion, 5 (emphasis in original).) The Authority asserts that the hearing

⁵ Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. *Allegheny Co. Housing Auth. v. Liddell*, 722 A.2d 750, 752 (Pa. Cmwlth. 1998).

⁶ The Authority also argues (1) the trial court erred in holding that the hearing officer and the Authority were required to consider all of the circumstances prior to terminating Belajac’s Section 8 assistance, and (2) the trial court erred in holding that neither the Authority nor the hearing officer exercised discretion and considered the circumstances prior to terminating Belajac’s Section 8 assistance. Based on our review of the record, we are not convinced that the Amended Memorandum encompasses the above holdings. Notwithstanding, to the extent that the above holdings are “implicit” in the Amended Memorandum, they will be addressed in our discussion of the Authority’s remaining arguments.

officer's decision to terminate Belajac's Section 8 assistance was not premised on Investigating Officer Tallent's "non-existent regulation" that no sex offender should receive Section 8 assistance, but, rather, because Belajac's August 3, 2002 criminal conduct against a minor child violated the family obligation found at 24 C.F.R. § 982.551(l). (R.R. 18a.) We agree.

Pursuant to Section 982.552(c)(1)(i) of the HUD regulations, the Authority is permitted to terminate Section 8 assistance "[i]f the family violates any family obligations under the program." 24 C.F.R § 982.552(c)(1)(i). The family obligation set forth in Section 982.551(l) of the HUD regulations provides: "The members of the household may not engage in . . . 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." 24 C.F.R. § 982.551(l). Thus, it is beyond question that the Authority is permitted to terminate Section 8 assistance based on a participant's violation of the family obligation to refrain from engaging in "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." *Id.*

A review of the hearing officer's decision evidences that the hearing officer terminated Belajac's Section 8 assistance based on violation of Section 982.551(l) of the HUD regulations, not Investigating Officer Tallent's "non-existent regulation" that no sex offender should receive Section 8 assistance. The hearing officer expressly recognized that a participant may be terminated from the Section 8 program for violation of family obligations, and went on to state that "members of the household may not engage in any '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.” (R.R. 18a.) Furthermore, the hearing officer stated that the Authority “is not mandated to terminate a sex offender who is subject to a 10 year reporting requirement, but it *may* do so,” expressly rejecting Investigating Officer Tallent’s opinion that all registered sex offenders must be barred from Section 8 housing. (R.R. 18a (emphasis added).) Therefore, we find that the hearing officer’s termination of Belajac’s Section 8 assistance was premised on her conclusion that Belajac violated the family obligation at Section 982.551(l) of the HUD regulations. Our inquiry does not end here, however, as we must determine whether the hearing officer properly terminated Belajac’s Section 8 assistance for violation of a family obligation.

In determining whether to terminate Section 8 assistance due to violation of a family obligation, Section 982.552(c)(2)(i) of the HUD regulations instructs the Authority that it “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 . . . termination of assistance on other family members who were not involved in [the violation of the family obligation].” 24 C.F.R. § 982.552(c)(2)(i). Belajac argues that the hearing officer’s decision was an abuse of discretion because the hearing officer did not consider “all relevant circumstances” prior to terminating Belajac’s Section 8 assistance. Citing this Court’s opinion in *Housing Authority of York v. Dickerson*, 715 A.2d 525 (Pa. Cmwlth. 1998), *allocatur denied*, 560 Pa. 676, 742 A.2d 172 (1999), the Authority counters that consideration of *all* of the circumstances in each case is discretionary, not mandatory.

In *Dickerson*, the trial court reversed the PHA’s decision to terminate the participants’ Section 8 assistance based on the violent criminal activity of the participants’ resident grandson. The trial court determined that it was bound by our decision in *Housing Authority of York v. Ismond*, 700 A.2d 559 (Pa. Cmwlth. 1997), *affirmed*, 556 Pa. 436, 729 A.2d 70 (1999), where we held that the PHA was required to consider the mitigating factors listed in then-existing Section 882.216(c)(2) of the HUD regulations, formerly 24 C.F.R. § 882.216(c)(2), before terminating Section 8 assistance. *Dickerson*, 715 A.2d at 526. Reversing the trial court, we refused to apply *Ismond*, noting that the language contained in Section 882.216(c)(2) of the HUD regulations was amended when Section 982.552(c)(1) of the HUD regulations was enacted.⁷ *Id.* Important to our decision to abandon *Ismond* was the commentary accompanying the HUD regulations. Notably, the language relied upon in *Ismond*—“conviction for the proscribed activities . . . should not be the only factor considered”—was absent from the new comments to the HUD regulations. *Id.* at 527 (quoting *Ismond*, 700 A.2d at 562). Instead, the new comments included language directly contrary to *Ismond*:

Comments [from the public in response to publication of the proposed rule] suggest that HUD should not merely allow the HA to consider “all” circumstances of each case, but should require that the HA consider all the circumstances. *This comment is not adopted.* In this rule, HUD does not enumerate or prescribe all the factors that can or should be considered by the HA. Rather, the rule confirms that the HA has ample discretion to

⁷ The regulation at issue in *Dickerson* was Section 982.552(c)(1) of the HUD regulations. *Dickerson*, 715 A.2d at 526. The language previously found in Section 982.552(c)(1) of the HUD regulations is now located in Section 982.552(c)(2)(i) of the HUD regulations, with minor changes. 64 Fed.Reg. 56915.

consider the factors of a particular case. *Given this discretion, the HA should have flexibility to make a practical determination and consideration in particular cases. The HA exercise of discretion should not be paralyzed, and opened to challenge by mandating consideration of “all” circumstances in “all” cases.*

Dickerson, 715 A.2d at 527 (quoting 60 Fed.Reg. 34689) (emphasis in original) (alterations in original). Thus, under Section 982.552(c)(2)(i) of the HUD regulations, PHAs are not required to consider *all* factors and circumstances in each case, but, rather, have discretion to determine which factors and circumstances to consider. *Id.* at 526-27.

Here, a review of the hearing officer’s decision reveals that the hearing officer did consider the mitigating circumstances presented at the informal hearing before terminating Belajac’s Section 8 assistance, despite the fact that the hearing officer was not required by law to do so. *Id.* The hearing officer acknowledged Belajac’s disability and the character evidence submitted on Belajac’s behalf, stating:

1. This is a most difficult case because it is obvious to the Hearing Officer that [Belajac] has some mental challenges. It is equally obvious that [Belajac] has a solid family who supports him, as well as others, such as the Chief of Police, who attest to his character and who do not wish to see him removed from the Section 8 program.

(R.R. 17a.) The hearing officer also acknowledged the remoteness in time of Belajac’s conviction to the date of the informal hearing.⁸ (R.R. 17a-18a.)

⁸ The hearing officer determined that Belajac’s conviction was not prohibitively remote due to the fact that Belajac had a continuing obligation to register as a sex offender until 2014. **(Footnote continued on next page...)**

Notwithstanding these mitigating circumstances, however, the hearing officer determined that the seriousness of Belajac’s criminal activity warranted termination of his Section 8 assistance. Notably, the hearing officer pointed out that the victim of Belajac’s criminal conduct was only five years old. The hearing officer went on to explain that Belajac’s obligation to register as a sex offender was “highly suggesti[ve]” that Belajac “threatens the safety of other residents and those in the immediate vicinity of the premises” due to the fact that the purpose of the registration requirement is the protection of the community.⁹ (R.R. 17a-18a.) Accordingly, the trial court erred in holding that the Authority failed to follow the governing HUD regulations in terminating Belajac’s Section 8 assistance.

We address, next, the Authority’s argument that the trial court erred in substituting its discretion for that of the hearing officer in reversing the hearing officer’s decision to terminate Belajac’s Section 8 assistance. The Authority points to the 1925 Opinion, where the trial court opined:

(continued...)

In addition, the hearing officer explained that the period of time between Belajac’s conviction and the Authority’s decision to terminate Belajac’s Section 8 assistance was due to Belajac’s failure to report the conviction to the Authority. The hearing officer stated, “[t]here is no evidence that the [Authority] had knowledge of the conviction at the time it occurred. . . . [T]he conviction was discovered during a background check, rather than through normal reporting requirements of Belajac.” (R.R. 17a.) Although the hearing officer found that Belajac’s Section 8 paperwork was prepared by his mother and that the failure to report the conviction was not intentional, her discussion at least addresses the question of why the Board acted to terminate Belajac’s Section 8 assistance when it did.

⁹ Although not specifically referenced by the hearing officer, we note that Section 9791(b) of the Registration of Sexual Offenders Act (commonly referred to as “Megan’s Law”) provides, in pertinent part: “It is hereby declared to be the intention of the General Assembly to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification.” 42 Pa. C.S. § 9791(b).

The Findings of Fact made by the Hearing Officer reveal that [Belajac]’s mental challenges are severe due to a brain injury, that his mother handled his Section 8 paperwork and unintentionally failed to report the criminal conviction that underlies this dispute. The Hearing Officer also credited the support of the Chief of Police and others “who attest to [Belajac]’s character and do not wish to see him removed from the Section 8 program.”

(1925 Opinion, 3 (internal citations omitted).) The Authority contends that the above statement demonstrates that the trial court improperly substituted its discretion for that of the hearing officer by deciding that mitigating circumstances warranted Belajac’s continued receipt of Section 8 assistance. Belajac counters that the trial court did not substitute its discretion for that of the hearing officer, but rather, correctly determined that the hearing officer erroneously relied on an impermissible interpretation of the HUD regulations, rather than the evidence presented at the informal hearing.

In *Allegheny County Housing Authority v. Liddell*, 722 A.2d 750, 753 (Pa. Cmwlth. 1998), this Court discussed a court’s scope of review when reviewing local agency action that by law is committed to the agency’s discretion. We stated:

[C]ourts will not review the actions of governmental bodies or administrative tribunals involving acts of discretion, in the absence of bad faith, fraud, capricious action or abuse of power; they will not inquire into the wisdom of such actions or into the details of the manner adopted to carry them into execution. It is true that the mere possession of discretionary power by an administrative body does not make it wholly immune from judicial review, but the scope of that review is limited to the determination of whether there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the agency’s duties or functions.

That the court might have a different opinion or judgment in regard to the action of the agency is not a sufficient ground for interference; *judicial* discretion may not be substituted for *administrative* discretion.

Liddell, 722 A.2d at 753 (emphasis in original). In *Liddell*, the PHA terminated the participant's Section 8 assistance due to the drug-related criminal activity of a resident of the participant's subsidized housing. Noting that the participant had been a problem-free resident who did not participate in the drug-related activity and could not afford suitable alternative housing if evicted, the trial court reversed the PHA's decision to evict the entire household, and, instead, evicted only the offending resident. This Court reversed, holding that the trial court exceeded its authority and erroneously substituted its discretion for that of the PHA by inquiring into the wisdom of the PHA's decision to evict the entire household. *Id.*

Here, whether to terminate a participant's Section 8 assistance for violation of a family obligation is a decision committed to the discretion of the Authority by the HUD regulations. As decided above, the applicable regulations and law permitted the hearing officer to terminate Belajac's Section 8 assistance for violation of the family obligation set forth at Section 982.551(1) of the HUD regulations and gave the hearing officer the discretion to determine which factors and circumstances to consider. The trial court essentially reweighed the mitigating circumstances and, based upon those circumstances, determined that the hearing officer did not have "valid reasons" for terminating Belajac's Section 8 assistance. (1925 Opinion, 3.) Thus, the trial court improperly inquired into the wisdom of the hearing officer's decision as it related to the consideration of mitigating circumstances. Accordingly, we agree with the Authority that the trial court impermissibly substituted its discretion for that of the hearing officer by deciding

that the circumstances of Belajac's case warranted the continued receipt of Section 8 assistance.

Finally, we address the Authority's contention that the trial court erred in holding that there was no evidence to support the hearing officer's decision to terminate Belajac's Section 8 assistance. The Authority points to the 1925 Opinion where the trial court stated:

[T]he hearing officer stated, in effect, that the Investigating Officer's opinion of what the applicable rules should be, constituted "valid reasons" for [the Authority]'s decision to terminate [Belajac]'s Section 8 assistance. . . .

The [Authority] offered no other reason for the termination of *this* person's Section 8 benefits except an opinion that its own rules should be different than they are.

(1925 Opinion, 4-5 (emphasis in original).) The Authority argues that the hearing officer's decision was clearly supported by evidence establishing that Belajac was convicted of sexually abusing a five-year-old female victim. We agree.

As discussed above, the omphalos of the hearing officer's decision to terminate Belajac's Section 8 assistance for violation of the family obligation to refrain from criminal activity was the seriousness of Belajac's criminal conduct. Vital to the hearing officer's decision were the following findings: (1) Belajac pled guilty to indecent assault without consent in 2003; (2) Belajac's guilty plea caused Belajac to become subject to the sexual offender registration program for a period of ten years; (3) Belajac is currently registered as a sex offender; and (4) the victim of Belajac's criminal conduct was five years old. Our review of the record demonstrates that these findings were supported by substantial evidence at the

informal hearing by the following: (1) the criminal complaint from the County of Allegheny Bureau of Police detailing Belajac's August 3, 2002 criminal conduct; (2) Belajac's criminal docket sheet; (3) Belajac's sexual offender registration paperwork from the Pennsylvania State Police; (4) the August 25, 2008 notice of intention to terminate Belajac's Section 8 assistance; (5) Investigating Officer Tallent's testimony concerning Belajac's August 3, 2002 criminal conduct; (6) Belajac's stepfather's testimony concerning Belajac's August 3, 2002 criminal conduct; and (7) testimony from Belajac, his mother, and his stepfather admitting that Belajac is a registered sex offender. Therefore, the trial court erred in holding that there was no evidence to support the hearing officer's decision to terminate Belajac's Section 8 assistance.

Accordingly, we reverse the trial court's order.

P. KEVIN BROBSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher Belajac	:	
	:	
v.	:	No. 1319 C.D. 2009
	:	
Allegheny County Housing Authority,	:	
Appellant	:	

ORDER

AND NOW, this 30th day of June, 2010, the order of the Court of Common Pleas of Allegheny County, dated June 29, 2009, is hereby REVERSED.

P. KEVIN BROBSON, Judge