

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1461**

In the Matter of Robert Estelle's Termination of Section 8 Benefits.

**Filed June 14, 2021
Affirmed in part and reversed in part
Worke, Judge**

St. Paul Public Housing Agency

Robert C. Estelle, Stillwater, Minnesota (pro se relator)

Lyndsey M. Olson, St. Paul City Attorney, Sean D. Whatley, Assistant City Attorney,
St. Paul, Minnesota (for respondent St. Paul Public Housing Agency)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Relator challenges the termination of his section 8 housing benefits, arguing that (1) he did not violate agency rules, (2) he was denied a reasonable accommodation, (3) the termination violated COVID-19 moratoriums, (4) the decision was not based on substantial evidence, and (5) his procedural due-process rights were violated when his benefits were terminated before an informal hearing. We affirm in part and reverse in part.

FACTS

Relator Robert Estelle is an adult with a disability who qualified for section 8 housing benefits. Estelle originally received these benefits through the housing program

administered by Metro Housing and Redevelopment Authority (Metro HRA), but in the fall of 2018, Estelle transferred his benefits to the program administered by respondent St. Paul Public Housing Agency (SPPHA). Estelle added his adult son who has a disability to his household.

On November 16, 2018, Estelle signed a request for tenancy approval (RFA) form listing a residence in St. Paul where he and his son would be residing. The RFA was also signed by Dawn Kaltenhauser and names her as the owner of the property. The RFA requires certification that the “owner (including principal or other interested party) is not the parent, child, grandparent, grandchild, sister or brother of any member of the family” renting the unit unless SPPHA has provided a reasonable accommodation. Part B of the Housing Assistance Payments (HAP) contract between Kaltenhauser and SPPHA reiterates the same.

On December 3, 2018, Estelle signed a housing voucher issued by SPPHA. The voucher required Estelle to read and initial next to the conditions of the voucher program. Estelle initialed all conditions, including the requirement to provide true and complete information and the requirement he not receive housing assistance while residing in a unit owned by a close family member of his household without prior approval. Estelle also signed and initialed a family-obligations-certification form which again reiterated that he must supply complete and true information, and that failure to do so could result in the termination of benefits.

Following SPPHA’s approval of his housing voucher, Estelle and his son began renting the St. Paul residence. Although the lease agreement lists Kaltenhauser as landlord,

the property is owned by the Dawn Marie Kaltenhauser Trust (the Trust), with Kaltenhauser serving as sole trustee. Despite renting to Estelle, Kaltenhauser listed the residence as a residential homestead on the Trust's 2019 property taxes.

SPPHA began investigating the relationship between Estelle and Kaltenhauser after discovering that Estelle's social security checks were being sent to Kaltenhauser's address. SPPHA learned that Estelle's son was listed as a relative and taxpayer on the Trust's 2019 property taxes. When questioned about the relationship, Estelle admitted that Kaltenhauser was his ex-wife and his son's mother.

SPPHA contacted Metro HRA to inquire into whether Estelle had received prior approval. Metro HRA denied granting a reasonable accommodation. SPPHA then sent Estelle notice that his benefits would be terminated for violating the terms of his voucher agreement and family obligations. Estelle submitted a timely request for an informal hearing to contest the termination. SPPHA then issued a letter terminating the HAP contract with Kaltenhauser for failure to disclose a family relationship.

An informal hearing was held on October 21, 2020. Estelle argued that because the property was owned by the Trust, SPPHA was incorrect in determining that he violated the program rules by entering into a lease with Kaltenhauser. Estelle did not argue that SPPHA denied him a reasonable accommodation. The hearing officer concluded that Estelle violated the program rules and upheld SPPHA's decision to terminate Estelle's section 8 benefits. This certiorari appeal followed.

DECISION

When a public housing authority (PHA) receives evidence, hears testimony, and makes a decision regarding section 8 benefits, it acts in a quasi-judicial capacity. *Carter v. Olmsted Cty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). In general, an agency's quasi-judicial decision will be upheld unless the decision is unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous application of the law, not supported by substantial evidence, or arbitrary or capricious. *Id.* It is not the role of this court to retry facts or make credibility determinations. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). This court will uphold the agency's decision if it provided "any legal and substantial basis for the action taken." *Wilhite v. Scott Cty. Hous. & Redev. Auth.*, 759 N.W.2d 252, 255 (Minn. App. 2009) (quotation omitted).

Section 8 violation

Estelle first argues that he did not violate section 8 rules when he rented from the Trust because Kaltenhauser does not own the residence. Federal regulations govern the administration of SPPHA's housing program. *See In re Ali*, 938 N.W.2d 835, 838 (Minn. 2020) (applying federal regulations in reviewing a local housing agency's eligibility decision). 24 C.F.R. § 982.552(c)(1)(i) (2020) provides that a PHA may terminate benefits if a family member violates any obligations of the program. These obligations include supplying true and complete information about anything that the PHA determines is necessary to administer the program. 24 C.F.R. § 982.551(b)(1), (4) (2020). The regulations also prohibit the use of section 8 benefits to rent units owned by close family

members without an accommodation being granted. 24 C.F.R. § 982.306(d) (2020).¹ The regulations define “owner” as including a “principal or other interested party.” 24 C.F.R. § 982.306(f) (2020).

Estelle argues that because the Trust, not Kaltenhauser, owns the unit that he and his son rented, he did not need to disclose to SPPHA Kaltenhauser’s status as his son’s mother. We disagree. Although the Trust owns the property, Kaltenhauser meets the regulatory definition of “owner” as her relationship to the Trust establishes her as an interested party. Kaltenhauser is the sole trustee and settlor of a living trust made in her name. All of Kaltenhauser’s personal property belongs to the Trust. Kaltenhauser—not the Trust—is listed as the landlord in the lease agreement. Kaltenhauser also filled out the RFA form as the unit’s owner and did not indicate that she was signing on behalf of the Trust as its trustee. Lastly, Kaltenhauser was able to qualify the unit as a homestead on the Trust’s 2019 property taxes as a result of her son residing in the unit. The evidence in the record strongly supports the determination that Kaltenhauser qualifies as an owner under 24 C.F.R. § 982.306(f).

Estelle argues that he did not understand the conditions of the voucher program when he signed the required forms. However, the general principle is that, absent fraud or misrepresentation, a person who signs a document stands by the terms of the document regardless of whether they read or understood the document. *See Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982).

¹ The text of the regulation mirrors the language present on the voucher and RFA forms signed by Estelle.

Finally, Estelle argues that even if it was a program violation to rent from Kaltenhauser, this single, unintentional error does not justify terminating benefits without giving Estelle a chance to cure his mistake. But Estelle cites no binding authority that SPPHA is required to extend such an opportunity. Although Estelle may believe that termination of his benefits is a disproportionate response to his misrepresentation, the regulations give a PHA discretion in determining whether a violation is serious enough to warrant termination. *See* 24 C.F.R. § 982.552(c)(1).

The determination is also consistent with the spirit and purpose of the regulations. Allowing benefit recipients to rent from close family members invites fraud and abuse as close family members are more likely than neutral parties to forgive the nonpayment of rent. And the Department of Housing and Urban Development described the purpose of this rule when it was proposed in 1997 as restricting section 8 resources to those who do not have the option of seeking housing from family members. Section 8 Rental Voucher and Certificate Programs Restrictions on Leasing to Relatives, 62 Fed. Reg. 10786-01 (March 10, 1997) (supplementary information). Reversing the hearing officer's determination would circumvent these policy goals.

Because Kaltenhauser is the owner of the unit Estelle's household rented, and is also the mother of Estelle's son, Estelle should have disclosed this information to SPPHA and sought an accommodation. His failure to do so provided SPPHA sufficient justification to terminate his benefits. We therefore affirm the termination of Estelle's section 8 benefits.

Reasonable accommodation

Estelle argues that SPPHA failed in its duty to provide a reasonable accommodation when the need was obvious and requested. Estelle also argues that SPPHA did not follow proper procedures or give him notice regarding the availability of accommodations.

Estelle did not make this argument at his informal hearing. Estelle also did not respond to or dispute SPPHA's argument at the hearing that Estelle never applied for a reasonable accommodation. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the [lower tribunal] in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). Because Estelle raised this issue for the first time on appeal, it is not properly before this court and we decline to address it.

Moratoriums

Estelle argues that the termination of his housing benefits during the COVID-19 pandemic violated state and national moratoriums, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Emergency Executive Order Number 20-14, and a September 2020 order issued by the Center for Disease Control and Prevention. The moratoriums upon which Estelle relies, however, halt evictions; they do not prevent otherwise justified termination of section 8 housing benefits. *See* Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, § 4024, 134 Stat. 281 (2020) (instituting temporary moratorium on eviction filings); Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292, 55,292 (Sept. 4, 2020); Emerg. Exec. Order No. 20-14, *Suspending Evictions and Writs of*

Recovery During the COVID-19 Peacetime Emergency (March 23, 2020) (instituting suspension of evictions).

As such, these moratoriums do not apply to SPPHA or this case.

Sufficiency of the evidence

Estelle argues that the hearing officer failed to rely on sufficient evidence when making the decision. Estelle specifically argues that the hearing officer failed to properly consider his and his son's disabilities and mitigating factors.

We will reverse a PHA's decision to terminate assistance if the decision is unsupported by substantial evidence. *Peterson v. Washington Cty. Hous. & Redev. Auth.*, 805 N.W.2d 558, 561 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 563 (quotation omitted). The relator "must demonstrate that the administrative agency's findings are not supported by the record when considered in its entirety." *Carter*, 574 N.W.2d at 730. This court applies an abuse-of-discretion standard of review to determine if the decision is supported by substantial evidence. *Id.*

Here, the hearing officer relied on substantial evidence when making the decision. While Estelle is correct that the hearing officer did not explicitly consider Estelle's or his son's disabilities, the central issue presented to the hearing officer was whether Estelle and his son rented a unit from a close family member. The hearing officer relied on the lease agreement, the RFA form, the Trust's property taxes, and the facts stipulated to by both

parties to determine this issue. Estelle's and his son's disabilities were immaterial in determining if Kaltenhauser was an owner of the unit rented by Estelle's household.

Estelle's and his son's disabilities would be material in determining if Estelle was entitled to receive an accommodation. However, no evidence in the record indicates that Estelle ever requested an accommodation, and the hearing officer found it undisputed that Estelle never requested an accommodation. Because this fact was undisputed, the hearing officer had no need to investigate further into Estelle's or his son's disabilities.

Lastly, Estelle argues that the hearing officer did not consider mitigating factors. With regard to termination of benefits due to actions of the family, section 8 regulations provide:

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.

24 C.F.R. § 982.552(c)(2)(i) (2020). The use of "may" in the regulatory language gives discretion to the hearing officer and the agency to consider mitigating factors when making a decision but does not require them to do so. *Peterson*, 805 N.W.2d at 564.

Here, SPPHA provided testimony at the hearing that it had considered mitigating circumstances such as Estelle's son's disability, but noted that it is extremely rare to not terminate benefits for this reason when a serious program violation occurred. The hearing officer also reiterated in the decision that SPPHA is not required to consider mitigating circumstances. Estelle argues that the hearing officer gave too much weight to the evidence

presented by SPPHA, but does not point to any evidence that the hearing officer should have considered instead. Therefore, because the hearing officer's decision was based on substantial evidence contained in the entire record, we conclude that the hearing officer did not abuse his discretion when he upheld the termination of Estelle's benefits.

Due process

Lastly, Estelle argues that SPPHA violated his due-process rights by terminating his housing assistance payments before his informal hearing. When a PHA terminates assistance for a participant's family because of their action, "the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract." 24 C.F.R. § 982.555(a)(2) (2020).

Both parties agree that Estelle received his last housing assistance payment in July 2020. Estelle's hearing was on October 21, 2020. Because the regulations required SPPHA to continue paying Estelle benefits until he had the opportunity for an informal hearing, he is entitled to any benefits for which he was not paid until the October 21, 2020 hearing. Thus, we reverse SPPHA's termination of Estelle's benefits prior to his hearing date.

Affirmed in part and reversed in part.