**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**June 28, 2016**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2015AP1198** **Cir. Ct. No. 2014CV4186**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**TOYA WILLIAMSON,**

**PLAINTIFF-APPELLANT,**

**V.**

**HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed*.

Before Curley, P.J., Brennan and Brash, JJ.

¶1 PER CURIAM. Toya Williamson appeals from an order of the circuit court that affirmed a decision by a hearing examiner for the Housing Authority of the City of Milwaukee to terminate Williamson from its rent assistance program. Williamson contends that the hearing examiner gave

improper importance to completion of a form and failed to consider "all relevant circumstances." We reject Williamson's arguments and affirm.

## BACKGROUND

¶2 The rent assistance program in which Williamson was enrolled involved "Section 8" housing assistance. The Section 8 rent assistance program was created by Congress "[f]or the purpose of aiding low-income families in obtaining a decent place to live." *See* 42 U.S.C. § 1437f(a) (2012) & 42 U.S.C. § 1437(a)(4) (2012). The Department of Housing and Urban Development (HUD) contracts with and funds public housing authorities to provide localized rent assistance programs to eligible participants.

¶3 Williamson first enrolled in the Housing Authority's rent program in 2007. The Housing Authority is required to reexamine "family income and composition at least annually." *See* 24 C.F.R. § 982.516(a)(1) (2015).[1] On June 13, 2013, the Housing Authority mailed Williamson a notice that her reexamination appointment was scheduled for August 19, 2013. Included with the notice was a multi-page personal declaration form. The form directs the applicant to complete the form in advance and bring the form to the appointment. The form also cautions that if the applicant "fail[s] to complete and sign this form fully, your voucher will not be issued and your certification will not be complete."

¶4 Williamson failed to return the personal declaration form and other documents at the reexamination appointment, but she was given until

[1] All references to the Code of Federal Regulations are to the 2015 version unless otherwise noted.

September 3, 2013, to submit the missing documents. Williamson provided some of the missing documents, but she still failed to return the personal declaration form. On October 2, 2013, the Housing Authority mailed a notice to Williamson that it was terminating her from the rent assistance program. Williamson requested an informal pre-termination hearing, to which she was entitled.

¶5 The informal hearing was held on November 7, 2013. Williamson told the hearing examiner that her failure to return the personal declaration form was an honest mistake. At the close of the hearing, the examiner gave Williamson until November 15, 2013, to return the form. Williamson did not submit the form by the deadline. When she finally submitted it on November 18, 2013, several questions were unanswered or incomplete. The hearing examiner upheld the termination. Williamson sought certiorari review from the circuit court, *see* WIS. STAT. § 68.13(1) (2013-14),[2] which affirmed the hearing examiner's decision. Williamson appeals.

## DISCUSSION

### *I. Standard of Review*

¶6 "Judicial review on certiorari is limited to whether the agency's decision was within its jurisdiction, the agency acted according to law, its decision was arbitrary or oppressive and the evidence of record substantiates the decision." ***State ex rel. Ortega v. McCaughtry***, 221 Wis. 2d 376, 385, 585 N.W.2d 640 (Ct. App. 1998). We review the agency's decision and not the circuit court's. *See*

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

***Lilly v. Wis. Dep't of Health and Soc. Servs.***, 198 Wis. 2d 729, 734, 543 N.W.2d 548 (Ct. App. 1995). We afford the agency decision a presumption of correctness. *See* ***State ex rel. Ziervogel v. Wash. Cty. Bd. of Adjustment***, 2004 WI 23, ¶13, 269 Wis. 2d 549, 676 N.W.2d 401.

¶7 Application of the appropriate legal standard is a question of law that we review independently. *See* ***id.***, ¶14. An arbitrary decision is one that is "unreasonable or does not have a rational basis." *See* ***Olson v. Rothwell***, 28 Wis. 2d 233, 239, 137 N.W.2d 86 (1965). "When the sufficiency of the evidence is challenged, we are limited to the question of whether there is substantial evidence to support the hearing examiner's decision." ***Kitten v. State Dep't of Workforce Development***, 2001 WI App 218, ¶19, 247 Wis. 2d 661, 634 N.W.2d 583. "Substantial evidence is the quantity and quality of evidence which a reasonable person could accept as adequate to support a conclusion." ***Id.***

*II. The Personal Declaration Form*

¶8 The hearing examiner terminated Williamson from the rent assistance program "because of the family's action or failure to act" by failing to return the personal declaration form. Williamson conceded that "[s]he filled out the form but neglected to bring it to the appointment" and that once it finally was submitted, it was incomplete. However, she argues that this case:

> is a perfect example of the elevation of form over substance.… The form … was seven pages long, on legal length paper, with 26 questions and an additional 26 questions contained in charts. Rather than sit down with the participant, to help her complete the form during her recertification appointment, the agency chose to terminate the benefits flowing to her and her family.
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> …. If Ms. Williamson were in school, answering 47 questions out of 52 would normally land her a grade of "B", or 90%. Not a bad score.

> That [the Housing Authority] would terminate the rent assistance under these circumstances, makes absolutely no sense.

Williamson also asserts that the Housing Authority, which is supposed to verify certain facts, like an applicant's income, "bears the responsibility for determining a participant's income and other eligibility factors[, so it] should not try to shift that responsibility to the family."

¶9 While Williamson offers multiple reasons why she should avoid consequences for her failure to complete the required personal declaration form,[3] she does not, and, frankly, cannot dispute the legal foundation of the termination decision: federal law requires a participant to supply any information requested by the housing authority for the required annual reexamination, and the participant may be terminated for failing to do so.

¶10 A participant "must supply any information that the [Housing Authority] … determines is necessary in the administration of the program…. 'Information' includes any requested certification, release or other documentation." *See* 24 C.F.R. § 982.551(b)(1). The participant must also "supply any information requested … for use in a regularly scheduled

[3] For example, Williamson contends that the Housing Authority spent more time and resources to terminate her from the program "than it would have spent simply assisting [her] fill out the form, during her recertification appointment." However, she cites no authority to suggest the Housing Authority has any such obligation and, in any event, her argument overlooks the fact that she failed to bring the form to the appointment.

Williamson also complains about the length of the personal declaration form, but she cites no authority to show that the form is somehow improper. While the Department of Housing and Urban Development's handbook provides an exemplar form that is one page long, this does not somehow invalidate the Housing Authority's form.

reexamination … of family income and composition." *See* 24 C.F.R. § 982.551(b)(2); *see also* 24 C.F.R. § 982.516(a)(1) (requiring reexamination).

¶11 A housing authority may "terminate assistance for a participant under the programs because of the family's action or failure to act as described" in the regulations. *See* 24 C.F.R. § 982.552(a)(1). One specified ground for termination is "[i]f the family violates any family obligations under the program (see § 982.551)," which includes the obligation to "supply any information" requested by the housing authority. *See* 24 C.F.R. § 982.552(c)(1)(i); *see also* 24 C.F.R. § 982.551(b)(1).

¶12 The hearing examiner determined that Williamson was properly terminated from the program because of her "[f]ailure to complete a certification/recertification of family income and composition within [her] scheduled interview appointment(s)…. [She] failed to provide the completed Personal Declaration Form." Williamson argues this decision "unreasonably, and improperly" elevates the form "to a position of supreme importance" in the eligibility decision. We do not view the situation so simplistically.

¶13 Williamson failed to satisfy her obligation to provide information requested by the Housing Authority despite being given three chances over five months to return the necessary form. Federal regulations permit termination when a participant fails to meet program obligations. When Williamson finally returned the form, it was incomplete, so the required annual reexamination remained incomplete.[4] We therefore conclude that the hearing examiner applied a proper

[4] Based on information provided when the form was ultimately returned, the hearing examiner noted that there had been a change in the household size, which might have impacted (continued)

legal standard to conclude that Williamson's participation could be terminated for failure to complete and return the personal declaration form, and that this decision is supported by sufficient evidence.

*III. Relevant Circumstances*

¶14 "In determining whether to deny or terminate assistance because of action or failure to act by members of the family," the housing authority "may consider all relevant circumstances such as the seriousness of the case … 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." *See* 24 C.F.R. 982.552(c)(2)(i).

¶15 Williamson complains that the hearing examiner failed to consider many of the "relevant circumstances" in this case. She notes that under the Housing Authority's "own policy," she could have had a proxy to assist her with the completion and submission of her paperwork, but the hearing examiner "ignored this area of inquiry." She complains that the hearing examiner failed to consider "the impact of the loss of rent assistance benefits on any other members of the household," "the circumstances surrounding the termination, particularly, the agency's request for information which it could have obtained, directly," and "'the seriousness of the case,' i.e., that Ms. Williamson's alleged failure was relatively minor." Williamson further contends that the hearing examiner failed to consider that Williamson helped her ninety-five-year-old grandmother, that Williamson's son had attention deficit hyperactivity disorder and obsessive

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the "bedroom size voucher" for which Williamson was eligible, and which would have required a new lease to be executed.

compulsive disorder, and that Williamson herself has a disability. Williamson thus asserts that by failing to consider all of the relevant circumstances, the hearing examiner's decision was arbitrary.

¶16 Prior to the termination hearing, Williamson was provided a "mitigating circumstances attachment" that advised, among other things, that the applicant has "the burden of proof to show that he/she falls under the mitigating circumstances provided" and that "mitigating circumstances must have a direct relationship to the action or inaction of the applicant/participant which resulted in the termination[.]" Williamson does not challenge either of these standards.

¶17 Williamson's argument with respect to a proxy is conclusory—she does not tell us how a proxy would have helped her submit the personal declaration form on time. Further, Williamson does not establish that the Housing Authority was required to provide her with a proxy, or that she asked for a permitted referral to a social services agency. In any event, the Housing Authority's "own policy" notes that "use of a proxy does not remove the responsibilities of the applicant/participant to complete their program requirements for participation."

¶18 Williamson does not indicate that she offered any evidence of the impact of the loss of rent assistance benefits on other members of the household, and the hearing examiner is not required to guess at those impacts. On appeal, Williamson does not identify what, if any, impact there was. Also, while the Housing Authority perhaps "could have obtained" and is required to verify certain information, some responsibility for initially establishing eligibility for the assistance program must belong to the applicant, which is undoubtedly the point of the form Williamson failed to return.

¶19 We reject the assertion that Williamson's failure was "relatively minor." She failed to return the required personal declaration form not once but three times, even though she had apparently completed most of it before her reexamination appointment. When it was returned, it was incomplete. It appears that the Housing Authority *was* willing to overlook the first failure as "relatively minor," but Williamson's ongoing failure to return the form in a timely fashion kept the Housing Authority from completing a required annual reevaluation in accordance with federal law. Williamson also does not explain why assisting her elderly grandmother—who, as best we can tell, is not a part of Williamson's household—should be considered as a relevant or mitigating factor.

¶20 With respect to disabilities, while the examiner is allowed to consider "mitigating circumstances related to the disability of a family member," *see* 24 C.F.R. § 982.552(c)(2)(i), Williamson does not identify for this court what those mitigating circumstances were: the mere fact that her son has disabilities does not, in and of itself, explain away her failure to return the personal declaration form on time, three times. And, while Williamson claims to have a disability herself, she does not tell us what that disability is or how it impacted her ability to satisfy her federally required obligations to the rent assistance program, nor does she indicate when she ever informed the hearing examiner of her disability.[5] As noted above, the burden was on Williamson to demonstrate that she had mitigating circumstances with a "direct relationship" to her inaction.

[5] Williamson asserts that the hearing examiner could have asked and should have known, since Williamson receives Supplemental Security Income payments, which are a form of disability payment. However, the Housing Authority asserts, and Williamson does not dispute, that a direct inquiry by the hearing examiner would have put the Housing Authority in violation of the Fair Housing Act, which prohibits discrimination based on disability.

¶21 We are not persuaded that the hearing examiner failed to consider relevant factors at the hearing. The "relevant circumstances" which Williamson complains were not considered do not appear to have been presented at the hearing. Issues not raised at the hearing cannot be raised and considered for the first time on appeal. *See* ***State v. Outagamie Cty. Bd. of Adjustment***, 2001 WI 78, ¶55, 244 Wis. 2d 613, 628 N.W.2d 376. Thus, we reject Williamson's claim that the decision was arbitrary.

*IV. Costs*

¶22 The Housing Authority asserts that Williamson's arguments only ask this court to re-weigh the evidence that was before the hearing examiner. The Housing Authority implies that Williamson's appeal is frivolous and requests this court award "its costs and fees incurred in defense against this action." However, "parties wishing to raise frivolousness must do so by making a separate motion to the court[.]" ***Howell v. Denomie***, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621. A statement in a brief is insufficient to raise the issue. *See* ***id.*** No separate motion has been filed, so the Housing Authority is entitled to costs only to the extent permitted by WIS. STAT. RULE 809.25(1)(a)1.

*By the Court.*—Order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.