

1/11/2018

[REDACTED]

APPELLANT

v.

MARYLAND DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT

* BEFORE SUSAN A. SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: DHCD [REDACTED] 07-17-36317

* * * * *

REVISED DECISION¹

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STATEMENT OF THE CASE

The Appellant has been receiving rental assistance under the Housing Choice Voucher Program (HCVP). On October 31, 2017, the Department of Housing and Community Development (DHCD) informed the Appellant that his participation in the HCVP would be terminated, effective November 30, 2017, because he violated his family obligations by committing serious violations of his lease, and because he engaged in activity that threatened the health, safety and right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. On November 13, 2017, the Appellant appealed the decision.

¹ COMAR 28.02.01.27C provides that a final decision may be revised at any time on the judge's own initiative due to a clerical mistake. The Decision issued on January 8, 2018 erroneously dated DHCD Exhibit 8 incorrectly. This Revised Decision is issued to correct that clerical mistake.

On December 13, 2017, I conducted a hearing at the Office of Administrative Hearings- [REDACTED] Maryland. Amy Grasso, Assistant Attorney General, represented the DHCD. The Appellant represented himself.

The contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the Office of Administrative Hearings (OAH), and the Procedures for Appeals in the Administrative Plan for the Section 8 HCVP, govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 28.02.01; 24 Code of Federal Regulations (C.F.R.) § 982.54(a); (b) (2017).

ISSUE

Did the DHCD properly terminate the Appellant's participation in the HCVP?

SUMMARY OF THE EVIDENCE

Exhibits

The DHCD submitted the following exhibits, which were admitted into evidence:

DHCD Ex. #1- Voucher, dated June 20, 2016

DHCD Ex. #2- Voucher, dated June 20, 2017

DHCD Ex. #3- Housing Assistance Payment (HAP) Contract, for a lease term from August 30, 2017 through July 31, 2018

DHCD Ex. #4- Lease, dated August 30, 2017

DHCD Ex. #5- Letter from [REDACTED] Community Manager of [REDACTED] to the Appellant, dated October 17, 2017

DHCD Ex. #6- Email from [REDACTED] to [REDACTED] Subsidy Officer Supervisor, DHCD, dated December 7, 2017

DHCD Ex. #7- Email chain between [REDACTED] the Appellant, [REDACTED] and [REDACTED] dated November 3, November 6 and November 7, 2017

DHCD Ex. #8- Email chain between Amy Grasso and [REDACTED] Public Information Officer, [REDACTED] dated December 7 and October 13, 2017, with attached [REDACTED] Police Department Incident Report, dated October 13, 2017, Petition for Emergency Evaluation, dated October 13, 2017, and Acknowledgement of Delivery and Transfer of Custody, [REDACTED] [REDACTED] dated October 13, 2017

DHCD Ex. #9- Email chain between Amy Grasso and [REDACTED] dated December 7 and December 11, 2017

DHCD Ex. #10-Notice of Termination of Assistance, dated October 31, 2017

DHCD Ex. #11-Request for Hearing, received by the OAH on November 13, 2017

DHCD Ex. #12-Email from [REDACTED] to [REDACTED] dated October 13, 2017, with photograph attached

DHCD Ex. #13-Email chain between [REDACTED], [REDACTED] Amy Grasso and [REDACTED] [REDACTED] dated October 13, 2017 and December 11, 2017

DHCD Ex. #14-Resident Concern Form of [REDACTED], dated October 13, 2017

DHCD Ex. #15-Resident Concern Form of [REDACTED] dated October 16, 2017

DHCD Ex. #16-Photograph, undated

DHCD Ex. #17-Petition for Peace Order in the District Court of Maryland for [REDACTED] of [REDACTED] against the Appellant, dated October 16, 2017

DHCD Ex. #18-Temporary Peace Order in favor of [REDACTED] dated October 16, 2017

DHCD Ex. #19-Final Peace Order in favor of [REDACTED] dated October 23, 2017

DHCD Ex. #20-Petition for Peace Order in the District Court of Maryland for [REDACTED] of [REDACTED] against the Appellant, dated October 16, 2017

DHCD Ex. #21-Temporary Peace Order in favor of [REDACTED] dated October 16, 2017

DHCD Ex. #22-Final Peace Order in favor of [REDACTED], dated October 23, 2017

DHCD Ex. #23-Letter from the Appellant to [REDACTED] and [REDACTED] dated October 17, 2017

DHCD Ex. #24-Email from [REDACTED] to [REDACTED] dated November 20, 2017

DHCD Ex. #25-Email chain between [REDACTED] and [REDACTED] dated December 8, 2017

DHCD Ex. #26-Letter from the Appellant to [REDACTED] dated October 28, 2017

The Appellant did not submit any exhibits for admission into evidence.

Testimony

The DHCD presented the testimony of the following witnesses:

1. [REDACTED] Subsidy Officer Supervisor
2. [REDACTED] Regional Property Manager, [REDACTED]
3. [REDACTED] Onsite Property Manager, [REDACTED]

The Appellant testified on his own behalf.

FINDINGS OF FACT

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Appellant has had a voucher under the HCVP since June 20, 2016.
2. The Appellant lives at [REDACTED] in [REDACTED] Maryland, which is owned by [REDACTED]. He began leasing an apartment at [REDACTED] on September 1, 2017.
3. The Appellant's lease with [REDACTED] prohibits him from disturbing his neighbors' peaceful enjoyment of the premises. The lease also prohibits him from engaging in threats of violence. The lease sets forth that a threat of violence constitutes a material violation of the lease.
4. On October 12, 2017, [REDACTED], also a resident of [REDACTED] was doing laundry in the common laundry room. [REDACTED] assisted her. Ms. [REDACTED] went to the laundry room alone at first to put Ms. H [REDACTED]'s clothes in the washer. The Appellant was reading

a newspaper sitting near the laundry room and appeared to be intoxicated. Ms. [REDACTED] returned to Ms. H [REDACTED]'s apartment and reported that she had an encounter with the Appellant wherein he used racially insulting statements toward her.

5. Ms. H [REDACTED] went back and forth between her apartment and the laundry room several times, checking the laundry and turning it over from the washer to the dryer.

6. At some point after 10:00 p.m. when Ms. H [REDACTED] went to the laundry room, she found two post-it notes sitting on a newspaper on the clothes dryer. Written on both post-it notes was "2 Assholes [REDACTED] & [REDACTED]" Also sitting on the newspaper was a shotgun shell.

7. [REDACTED] was also a resident of [REDACTED].

8. Ms. H [REDACTED] reported this matter first thing the following morning to [REDACTED] [REDACTED] the Onsite Property Manager of [REDACTED]. While describing the incident to Ms. B [REDACTED], Ms. H [REDACTED] was visibly shaken and crying. Ms. B [REDACTED] advised Ms. H [REDACTED] to call the police, which she did.

9. The police responded to the Appellant's apartment, and took him to [REDACTED] [REDACTED] for a psychiatric evaluation. Ms. H [REDACTED] and Mr. H [REDACTED] ultimately obtained Peace Orders against the Appellant from the [REDACTED] District Court.

10. On October 12, 2017, the night of the incident, the Appellant left a voicemail message for Ms. B [REDACTED] at approximately 9:42 p.m. The Appellant's voice was slurred, and he had difficulty forming words. He complained of Ms. H [REDACTED] and Mr. H [REDACTED] not following rules, and said that he contacted the Secretary of "Housing." Some of the message was difficult to decipher.

11. On November 20, 2017 at 8:45 p.m., the Appellant left a voicemail message for [REDACTED] Regional Property Manager of [REDACTED]. In that voicemail message, the

² Ms. H [REDACTED]'s first name is actually spelled [REDACTED], not [REDACTED] as it appeared on the post-it notes.

Appellant's speech was slurred and slow, and he had difficulty formulating words. He complained that Mr. H [REDACTED] was violating the smoking policy of [REDACTED] smoking in all of the hallways and leaving cigarette butts. The message went on for several minutes, and much of the message was difficult to decipher.

12. The Appellant has left multiple long messages in which he sounded intoxicated on different occasions at 2:00-3:00 a.m. on the voicemail of [REDACTED] the DHCD Subsidy Officer Supervisor. He has also left similar messages with Ms. F [REDACTED] and Ms. B [REDACTED] on multiple occasions.

DISCUSSION

The HCVP is maintained by the DHCD pursuant to a contract between the DHCD and the United States Department of Housing and Urban Development (HUD). The HCVP is designed to assist qualified households with rental assistance. *See* 24 C.F.R. § 982.1 (2017). Once a household is approved, the voucher pays a portion of the household's rent directly to the landlord on a monthly basis. Each voucher must be recertified annually, and each housing unit must be inspected annually at the time of recertification. *Id.* § 982.405(a). A local Public Housing Authority (PHA) is required to develop and adopt an administrative plan that establishes the local policies for administration of the HCVP. *Id.* § 982.54(a), (b).

A family that participates in the HCVP has certain obligations with which it must comply to be eligible for continued assistance. The obligations applicable to this case are set forth as follows:

(a) Purpose. This section states the obligations of a participant family under the program.

....

(e) Violation of lease. The family may not commit any serious or repeated violation of the lease. Under 24 CFR 5.2005(c), an incident or incidents of actual

or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated lease violation by the victim, or threatened victim, of the domestic violence, dating violence, sexual assault, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim.

....

(l) Crime by household members. The members of the household may not engage in drug-related criminal activity or 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 (see § 982.553). Under 24 CFR 5.2005(b)(2), criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household, or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or an affiliated individual of the tenant, as defined in 24 CFR 5.2003, is the victim.

(m) Alcohol abuse by household members. The members of the household must not abuse alcohol in a way 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(e), (l) and (m).

The DHCD can terminate a HCVP participant for several reasons. Section 982.552 states, in relevant part:

(c) *Authority to deny admission or terminate assistance—*

(1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see § 982.551). See § 982.553 concerning denial or termination of assistance for crime by family members.

....

(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.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

24 C.F.R. §982.552(C)(1)(i) and (2).

The burden of persuasion in a hearing concerning the termination of a participant from the HCVP rests with the DHCD, as the party asserting the affirmative of the household's violation of its obligations under the HCVP. *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996). The DHCD must prove its charges by a preponderance of the evidence. 24 C.F.R. § 982.555(e)(6).

██████████ J ██████████ Subsidy Officer Supervisor, DHCD, testified that the DHCD first learned of the incident of October 12, 2017 when it received a copy of a letter that Ms. B ██████████ sent to the Appellant to address the incident. DHCD Ex. #5. That letter informed the Appellant that his action of leaving the post-it notes and bullet³ for Ms. H ██████████ referencing both Ms. H ██████████ and Mr. H ██████████ constituted a serious threat to residents of ██████████ and therefore, he violated his lease. The letter also informed the Appellant that ██████████ was terminating his lease and he must vacate the premises within 30 days.

Ms. J ██████████ testified that the Appellant has displayed "unusual" behavior since he has been receiving assistance under the HCVP. She said that he frequently left long messages on her voicemail at 2:00 to 3:00 a.m., and would talk until the voicemail recording timed out. She noted that in those messages, his speech was slurred, as if he was under the influence of alcohol or drugs.

³ The Appellant testified that it was a shotgun shell not a bullet.

Ms. B [REDACTED] saw Ms. H [REDACTED] on the morning of October 13, 2017, the morning after the incident occurred. When Ms. B [REDACTED] arrived at work that day, Ms. H [REDACTED] was waiting for her, before the office opened. Ms. B [REDACTED] described Ms. H [REDACTED]'s demeanor as "visibly shaken and crying." Ms. B [REDACTED] told Ms. H [REDACTED] to contact the police, which she did. Ms. B [REDACTED] said that she has also witnessed the Appellant exhibiting unusual behavior, and she has listened to many voicemail messages in which he sounded intoxicated.

Ms. F [REDACTED] testified regarding the messages she has received from the Appellant on her voicemail. At the hearing, she played one message that Ms. B [REDACTED] received on the night of the incident, October 12, 2017, at 9:42 p.m. The Appellant's voice was slow and slurred and it sounded like he had difficulty formulating words. His message complained that Mr. H [REDACTED] had been drinking, and not abiding by the terms of the lease. It went on to state that everyone else complies with the rules except for Mr. H [REDACTED]. The Appellant left this message shortly before Ms. H [REDACTED] returned to retrieve her laundry at some point after 10:00 p.m. that night, when she found the post-it notes and the shotgun shell. Ms. F [REDACTED] also played a message that she received on November 20, 2017 at 8:45 p.m. The Appellant's voice was slow and slurred, and he complained that Mr. H [REDACTED] had been violating the no smoking policy by smoking in the halls of every floor and leaving cigarette butts around the building. He complained that [REDACTED] had not enforced the no-smoking policy. The message continued for quite a long time.

In her testimony, Ms. F [REDACTED] noted that the October 12, 2017 incident has caused friction among the residents of [REDACTED] hardly anyone came to their holiday party, which is usually so popular that they run out of food. According to Ms. F [REDACTED] the residents are afraid and concerned.

The Appellant conceded that he left the post-it notes and the shotgun shell, and admitted that it was a mistake. However, he said that he does not own a shotgun; he had shotgun shells from hunting years ago. He was heavily medicated and very upset when he left the post-it notes and the shotgun shell; however, he does not know why he did it. The Appellant said that when the police responded to Ms. H [REDACTED]'s report, they did not find any weapons in his apartment. He called the incident a "prank," but insisted there was no threat of danger to Ms. H [REDACTED] or Mr. H [REDACTED]. The Appellant stated at the hearing that he stands by the fact that they are both "assholes," but did not understand why they felt threatened. He explained that Mr. H [REDACTED] and Ms. H [REDACTED] have serious mental health issues and Mr. H [REDACTED] has threatened him. The Appellant also asserted that Mr. H [REDACTED] has knocked on his door in the days preceding the hearing. The Appellant did not answer the door because of the peace order. The Appellant accused Mr. H [REDACTED] of exhibiting erratic behavior, including drinking and cursing in the day room. The Appellant does not believe that his own drinking constituted a threat to anyone. He does not object to moving somewhere other than [REDACTED] however he feels he should not lose his voucher because of one mistake. In the Appellant's opinion, since he has not spoken to Mr. H [REDACTED] or Ms. H [REDACTED] in months, the matter is resolved.

The Appellant did not dispute the incident; he argued that it did not constitute threatening behavior. I disagree. His action pointedly singled out two residents of [REDACTED], called them "assholes" and included a shotgun shell to accentuate his point. I have no reason to believe that either Ms. H [REDACTED] or Mr. H [REDACTED] had any knowledge as to whether the Appellant owned a gun, and given the placement of the shotgun shell, it would be logical if they assumed that he did. The mental stability of Ms. H [REDACTED] and Mr. H [REDACTED] has no bearing on this case. The Appellant's actions would appear threatening to anyone. As a participant in the HCVP, the Appellant is forbidden

from acting in such a way that constitutes a serious violation of his lease. A threat of violence constitutes a material violation of the Appellant's lease with [REDACTED] DHCD Ex. #4. I found Ms. B [REDACTED]'s testimony to be credible that Ms. H [REDACTED] was "visibly shaken" when she reported the incident, and regardless of whether Ms. H [REDACTED] suffers from anxiety or some other mental disorder, it is understandable why her demeanor presented in that fashion. The Appellant's actions constituted a threat of violence against two residents of [REDACTED] and disturbed the peaceful enjoyment of those residents by his actions. This was a material violation of his lease and a violation of his family obligations. Further, there was no dispute that the Appellant left multiple long voicemail messages for Ms. B [REDACTED] and Mr. F [REDACTED]. His voice was slurred, he had difficulty forming words, his words were rambling, and he sounded as if he was intoxicated. Ms. H [REDACTED]'s letter summarizing the incident of October 12, 2017 said that the Appellant appeared intoxicated. He clearly was intoxicated, as demonstrated by the voicemail message that he left for Mr. B [REDACTED] at 9:42 p.m. that evening, just prior to when he left the post-it notes and the shotgun shell. The Appellant did not dispute that he left the messages or that he was intoxicated. In fact, he testified in the hearing that he did not feel that his drinking was a threat. I conclude that his alcohol abuse has threatened the safety and peaceful enjoyment of the premises by other residents, in violation of his family obligations. 24 C.F.R. §982.551(e), (m);⁴ 24 C.F.R. § 982.552(C)(1)(i).

Mr. H [REDACTED] has moved out of the building where the Appellant lives into a cottage across the street, still in [REDACTED]. There was some testimony among the DHCD's witnesses that the Appellant has been stalking Mr. H [REDACTED] by watching him out of the window, taking pictures

⁴ The DHCD argued that the Appellant also violated the family obligation set forth in 24 C.F.R. Section 982.551(l), by engaging in criminal activity that threatened the health, safety and peaceful enjoyment of the premises by other residents. Although there is no doubt that the Appellant's threatening behavior could be considered criminal activity, the Appellant has not been convicted of any crime. Therefore, I decline to find that the Appellant violated the family obligation set forth therein.

of Mr. H [REDACTED] with his tablet, and often moving his car near Mr. H [REDACTED]'s cottage. The Appellant countered that he does not have a tablet, he does not take pictures, and everyone sits near the window in the common area. Further, Ms. H [REDACTED] sent an email to Ms. F [REDACTED] on December 8, 2017 saying that her girlfriend found a bullet in front of Ms. H [REDACTED]'s car. DHCD Ex. #25. The Appellant countered that allegation by stating that the police took all of his shotgun shells when they responded to the incident; therefore, he could not have left a shotgun shell by Ms. H [REDACTED]'s car. I did not place any weight upon the testimony regarding these alleged actions. The evidence was insufficient to establish that the Appellant was actually "stalking" Mr. H [REDACTED] and there was no evidence to indicate that the Appellant left another shotgun shell near Ms. H [REDACTED]'s vehicle. Regardless, based on my analysis as set forth above, I conclude that the DHCD established that the Appellant violated his family obligations under the HCVP, and the termination of the Appellant's participation in the HCVP was proper.

CONCLUSION OF LAW

I conclude that the DHCD established that it properly terminated the Appellant's participation in the HCVP. *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996); 24 C.F.R. §§ 982.551-.552 (2017); Administrative Plan for the Section 8 Housing Choice Voucher Program.


ORDER

I **ORDER** that the decision of the Department of Housing and Community Development to terminate the Appellant's participation in the Housing Choice Voucher Program is

AFFIRMED.

January 11, 2018
Date Decision Issued

Signature Appears on Original

Susan A. Sinrod 
Administrative Law Judge

SAS/cj
#171598

REVIEW RIGHTS

A party aggrieved by this final administrative decision may file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business, within thirty (30) days of the date the decision is mailed. Md. Code Ann., State Gov't § 10-222 (Supp. 2017); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

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