

2014 IL App (1st) 121965-U
No. 1-12-1965
Order Filed June 30, 2014

SIXTH DIVISION

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

SONYA NORMAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 CH 2119
)	
THE CHICAGO HOUSING AUTHORITY,)	
an Illinois municipal corporation,)	Honorable
)	Neil H. Cohen,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 **HELD:** The circuit court's order upholding an administrative hearing officer's decision was affirmed. The hearing officer's decision to terminate the plaintiff's participation in the

Chicago Housing Choice Voucher Program was not clearly erroneous; the plaintiff was aware her plea of guilty to felony drug possession could result in her termination from the program; the record established that the hearing officer considered one or more of the relevant factors in terminating the plaintiff's participation in the program; and the plaintiff failed to establish that she pleaded guilty to felony drug possession because she lacked the incentive to litigate.

¶ 2 The plaintiff, Sonya Norman, appeals from an order of the circuit court of Cook County, affirming a decision by an administrative hearing officer terminating the plaintiff's participation in the Chicago Housing Authority's (the CHA) Chicago Housing Choice Voucher Program (HCV program). On appeal the plaintiff contends that: (1) the hearing officer failed to consider the relevant factors prior to terminating her participation in the HCV program; (2) the hearing officer's decision was against the manifest weight of the evidence; and (3) the plaintiff's bargained-for guilty plea to unlawful possession of drugs did not preclude her participation in the HCV program. For the reasons set forth below, we determine that the hearing officer's decision was not clearly erroneous and affirm the order of the circuit court.

¶ 3 The plaintiff had been a participant in the CHA's HVC program since 1995. In 2005, she signed the HCV program participant family obligations form. By signing the form, the plaintiff understood that "[t]he family must not participate in illegal drug or violent criminal activity" and "must not engage in illegal use of a controlled substance; or abuse of alcohol that threatens the health and safety or right to peaceful enjoyment of the premises by other residents." She acknowledged that "any violation of my family obligations may result in my family's termination from the program."

¶ 4 In February 2007, the plaintiff was arrested and charged with illegal possession of a controlled substance (720 ILCS 570/402(c) (West 2006)), a class 4 felony. On April 18, 2007, while the felony case was pending, the plaintiff signed another HCV program participant family obligations form agreeing to the conditions that family and guests shall not engage in "any drug-related activity," *** or "the use of illegal drugs or abuse of alcohol that threatens the health, safety, or right of peaceful enjoyment of other residents and persons in the immediate vicinity of the premises." She again acknowledged that any violation of the obligations could result in termination from the HCV program.

¶ 5 By letter dated January 18, 2008, the CHA notified the plaintiff that she needed to move because her landlord's contract with the CHA had been terminated. She was advised that she would continue to receive her housing subsidy until she moved. The plaintiff would receive her moving papers as long as her criminal background check was acceptable.

¶ 6 On July 28, 2008, the plaintiff pleaded guilty to felony drug possession. By agreement, she was sentenced to 24 months' probation. As a condition of probation, the plaintiff was required to submit to random drug testing and to perform community service.

¶ 7 On July 22, 2010, the plaintiff's probation was terminated satisfactorily. On May 26, 2011, the plaintiff filled out an application for continued eligibility for participation in the HCV program. In response to the question "[h]as any household member(s) engaged in criminal activity within the last five years?" she answered "No."

¶ 8 On July 29, 2011, the CHA notified the plaintiff of its intent to terminate her participation in the HCV program because the criminal background check indicated that the plaintiff "did not pass the standard for continued participation in the Housing Choice Voucher Program."

The notification specified the following violation of the family obligations under the HCV program:

"The family (including each family member) must not: Engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right of peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises."

¶ 9 The plaintiff requested a hearing, which was held on November 18, 2012. At the hearing, the plaintiff testified as follows. In February 2007, the plaintiff and Ford Ranson, the father of her daughter, drove to a store in Naperville to return a chair. Mr. Ranson was driving a cargo van he had borrowed from a friend. After returning the chair, they were leaving the parking lot when the van was pulled over by police. After the plaintiff showed the police officers her driver's license, they ran a check of her name and then began searching the van. The search revealed a small clear package which the officers told her they had found "on" her purse. The contents tested positive for drugs. The plaintiff denied that the drugs were hers. The officers placed her under arrest and told her that the Department of Children and Family Services (DCFS) would take her daughter away and that she would be sentenced to five years in prison if she was found guilty. The plaintiff maintained that she did not "do" drugs.

¶ 10 While she continued to deny the drugs found in the van were hers, the plaintiff ultimately pleaded guilty to the drug charge in exchange for two years' probation. The plaintiff explained that her plea of guilty was prompted by her fear of losing custody of her daughter and because she just wanted the case to be over. The conditions of her probation included submitting to drug testing and community service. The plaintiff was tested for drug-use

during her two-year probation period and never tested positive for drugs. She performed her community service at a YMCA.

¶ 11 In connection with her 2008 move to a new residence, the plaintiff informed Mr. Humble, a special initiatives coordinator for the HCV program, that she had a "case." Mr. Humble told her that he would inform the CHA. The plaintiff believed that the CHA had performed a criminal background prior to her receiving her moving papers.

¶ 12 On cross-examination, the plaintiff denied the drugs found in the van were hers. She thought they might have belonged to Mr. Ranson, but she was not sure. The plaintiff did not ask Mr. Ranson to testify on her behalf in her drug possession case before pleading guilty because she did not know whether the drugs belonged to him, or if the police planted the drugs in the van. She only knew that the drugs were not hers.

¶ 13 The plaintiff acknowledged that she received her moving papers prior to the entry of her guilty plea to the drug charge. She understood that by pleading guilty to the drug charge, she was jeopardizing her participation in the HCV program. The plaintiff admitted that she had a previous drug-related arrest. She further admitted that she did not tell the CHA that she had a felony drug charge pending against her, only that she had a "case." The plaintiff did not think she needed to explain further because she thought the background check would disclose that information. She further admitted that when she filled out the May 2011 continued eligibility form, she did not disclose her drug-related arrest. On redirect examination, the plaintiff stated that at the time of her arrest, she did not know she was going to have to move.

¶ 14 Testifying on behalf of the plaintiff at the administrative hearing, Mr. Ranson confirmed the plaintiff's testimony regarding the circumstances of the stop of the van by police and the plaintiff's arrest. He explained that the friend he borrowed the van from operated a variety

store and that the van contained a large amount of merchandise, including purses, belts and candy. Mr. Ranson did not know where the drugs came from or that they were in the van when he borrowed it.

¶ 15 On cross-examination, Mr. Ranson testified that the police were focused on the plaintiff, and they never asked him if the drugs were his. At the police station following the plaintiff's arrest, a police officer told him that if he admitted that the drugs were his, the plaintiff might be released. Mr. Ranson denied that the drugs found in the van were his but acknowledged that, since the February 2007 incident he had been arrested for drugs and sentenced to two years in the Department of Corrections. Mr. Ranson knew that the drugs in the van did not belong to the plaintiff. While the plaintiff and he might have discussed the situation, he was not asked to testify on her behalf in her drug possession case.

¶ 16 Among the plaintiff's exhibits was a letter from the DuPage County probation department confirming that the plaintiff's probation had been terminated satisfactorily on July 22, 2010. The letter further explained that "[I]n general, when a defendant's case is satisfactorily terminated it is an indication that all conditions of Probation were fulfilled." Enclosures listed at the bottom of the letter listed a successful termination of community service report, but there was no mention of a report relating to her successful completion of the drug testing. In support of her ongoing efforts to rehabilitate herself, the plaintiff submitted two letters from the Ounce of Prevention Fund, an educational program for children, outlining her involvement with that organization.

¶ 17 On December 11, 2011, the hearing officer issued an informal hearing decision letter terminating the plaintiff from the HCV program. The letter stated in pertinent part as follows:

"Felony drug possession charges are serious charges and Ms. Norman necessarily admitted guilt in court, under oath when she pled guilty. Ms. Norman cannot have it both ways. The letter she submitted from the Probation Department indicates that she successfully completed her probation and community service but it is silent on whether Ms. Norman passed all her required drug tests as she asserted. Neither of the letters Ms. Norman submitted from the Ounce of Prevention Fund corroborate her testimony that she volunteered there. The letters only indicate her daughter was enrolled in a program there and that Ms. Norman took part in a study. Ms. Norman's testimony is simply not credible and I find favorable conduct in the future unlikely."

¶ 18 On January 20, 2012, the plaintiff filed a petition for *certiorari*. The parties filed responsive briefs. On June 15, 2012, the circuit court affirmed the decision to terminate the plaintiff from the HCV program. This appeal followed.

¶ 19 ANALYSIS

¶ 20 A. Standard of Review

¶ 21 The applicable standard of review depends on the issue raised. This court reviews pure questions of law *de novo*. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 525 (2008). Factual findings are deemed *prima facie* true and correct and will be affirmed unless they are against the manifest weight of the evidence (*Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)). The issue before us is a mixed question of law and fact and is subject to the "clearly erroneous" standard of review. *Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568, 571 (2010). An agency's decision may be deemed clearly erroneous only where the reviewing court, considering the entire record, is left with the definite and firm conviction that a mistake has

been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 22 As in all cases of administrative review, it is the decision of the agency not the determination of the circuit court that is the subject of our review. See *Landers*, 403 Ill. App. 3d at 571 (although the method of review was a writ of *certiorari*, an appeal is considered in the same manner as any other appeal from administrative review proceedings). "It [is] the hearing officer's duty to determine the credibility of the witnesses and the weight afforded their testimony." *East St. Louis School District No. 189 v. Hayes*, 237 Ill. App. 3d 638, 647 (1992).

¶ 23 B. Discussion

¶ 24 The plaintiff acknowledges that she pleaded guilty to unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2007)), a class 4 felony. She further acknowledges that she was required to comply with the family obligations of the HCV program, which included that she was not to engage in drug-related activity. The plaintiff maintains that she was innocent of the drug possession charge but chose to plead guilty rather than risk losing custody of her daughter. Therefore, she contends that her drug conviction did not violate the terms of her participation in the HCV program.

¶ 25 1. *Failure to Consider Factors Prior to Termination*

¶ 26 In determining to deny or terminate assistance, a public housing authority "may consider all relevant circumstances ****." 24 C.F.R. § 982.552 (c)(2)(i) (2010). In her written decision, the hearing officer set forth the factors, one or more of which the CHA considers in its decision to terminate assistance: the seriousness of the case, especially with respect to how it would affect other residents; the extent of participation or culpability of individual

family members; evidence that the household member has been rehabilitated successfully; and the length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future.

¶ 27 The plaintiff contends that the hearing officer failed to consider these factors prior to terminating the plaintiff's participation in the HCV program. The plaintiff argues that the hearing officer did not consider her continued denial of the drug charge and her explanation that her guilty plea resulted from her fear that she might lose custody of her daughter. The plaintiff further argues that since she rented a private home, the "seriousness" of her drug offense would not affect other residents. She points out that she successfully fulfilled the conditions of her probation, which included drug testing, as confirmed by the letter from the DuPage County probation department. The plaintiff asserts that the hearing officer's factual findings that the plaintiff had not shown that she successfully completed drug testing or that she did not continue to do volunteer work after the completion of her community service were contrary to the facts presented. Finally, the plaintiff maintains that the hearing officer failed to consider that her arrest occurred almost four years prior to the hearing.

¶ 28 Unlike her community service, the letter from the probation department did not list a report on the plaintiff's successful completion of the required drug testing. That provides a possible explanation for why the hearing officer discounted the information from the DuPage County probation department confirming that successful termination of her probation indicated that the plaintiff had fulfilled all the conditions of her probation which included drug testing. The August 19, 2011, letter from Jackie Robinson, on behalf of the Ounce Prevention Fund, did state that the plaintiff continued to volunteer her services.

¶ 29 The plaintiff does not cite any authority requiring the hearing officer to find each factor unfavorable to the HCV program participant before a decision to terminate is proper. In the present case, the hearing officer clearly gave consideration to the seriousness of the offense and the plaintiff's culpability for the offense factors. We note that in arguing that her conduct does not affect other residents, the plaintiff overlooks the fact that her daughter resides with her. The hearing officer also considered whether the plaintiff would engage in similar conduct in the future. While maintaining that she did not use drugs, the plaintiff then acknowledged a prior drug-related arrest. When she filled out the May 2011 continued eligibility form, she denied that she had been arrested in the prior five years. Therefore, the hearing officer concluded that continued good conduct on the plaintiff's part was unlikely.

¶ 30 Based on the record, we conclude that the hearing officer considered one or more of the relevant factors in determining that the plaintiff's participation in the HCV program should be terminated.

¶ 31 *2. Manifest Weight of the Evidence*

¶ 32 The plaintiff contends that the circuit court erred in affirming the decision of the hearing officer because the decision was against the manifest weight of the evidence. The correct standard is whether the hearing officer's decision was clearly erroneous. *Landers*, 403 Ill. App. 3d at 571. In order to find the decision to terminate the plaintiff's participation in the housing assistance program clearly erroneous, we must have the definite and firm conviction based upon the entire record that a mistake has been made. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395.

¶ 33 The plaintiff maintains that the CHA failed to present any evidence that she was involved in any drug-related activity or contradicting her reason for pleading guilty to the drug

charges. The plaintiff maintains that her criminal history showed no prior arrests for a drug-related offense. While she states that this information was contained in "Defendant's Dispositive Report of Probation," the letter from the DuPage County probation department did not contain her criminal history. In addition, she provided no record cite to where the information might otherwise be found. We note that the plaintiff received probation under section 410 of the Criminal Code of 1961 (720 ILCS 570/410 (West 2008)). Under that section, a prior arrest was not a bar to receiving probation for drug possession.¹ In any event, at the hearing, she was questioned and testified as follows:

"Q. Now, you mentioned earlier that you don't use drugs. But you've been arrested - - prior to this occasion, you've been arrested for drugs, haven't you?

A. Yes I have. "

¶ 34

While it is true that the hearing officer's credibility determinations are not immune from review (see *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 465 (2009)), in this case, the hearing officer's determination that the plaintiff was not a credible witness was amply supported by the record. Despite her claim that she did not use drugs, she then admitted a prior arrest for a drug-related offense. She maintained that she was innocent of drug possession but admitted she did not ask Mr. Ranson to testify on her behalf. Instead, the plaintiff pleaded guilty even though she knew that her daughter and she might lose their home as a result. Finally, on the May 2011 continued eligibility form, she denied that she had been arrested within the past five years.

¹ Under section 410, the conviction entered is for imposing the conditions of probation and discharge, but is not a conviction for purposes of the Controlled Substances Act or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. 720 ILCS 570/410(g) (West 2008). In the present case, it was not her conviction, but her guilty plea which indicated her involvement with drugs that was the focus of whether her participation in the HCV program should be terminated.

¶ 39 *Talarico* does not support the plaintiff's argument. Unlike the defendant in *Talarico*, the plaintiff had an incentive to litigate. She maintained her innocence, she had a witness who could testify on her behalf that the drugs were not hers, and she was aware that her conviction on the drug charge would place her continued participation in the housing voucher program at risk. Her guilty plea was not based on any reduction of the charges. She was eligible for the sentence of probation she received. There was no credible evidence that she chose to plead guilty solely to retain custody of her daughter.

¶ 40 CONCLUSION

¶ 41 We conclude that the decision of the CHA hearing officer was not clearly erroneous. Therefore, we confirm the CHA's termination of the plaintiff's participation in the HCV program and affirm the order of the circuit court.

¶ 42 Decision of the CHA confirmed; circuit court affirmed.