

No. 1-10-2074

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KELLIE NAPOLEON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 CH 5655
)	
CHICAGO HOUSING AUTHORITY,)	
A MUNICIPAL CORPORATION,)	Honorable
)	Martin S. Agran,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment of circuit court of Cook County affirming the CHA's termination of plaintiff from the federally subsidized housing choice voucher program affirmed.
- ¶ 2 Plaintiff Kellie Napoleon, *pro se*, appeals from an order of the circuit court of Cook County denying her writ of *certiorari*. On appeal, plaintiff contests the decision of defendant, the Chicago Housing Authority (CHA), to terminate her participation in the Housing Choice Voucher (HCV) Program of the United States Department of Housing and Urban Development (HUD) in Chicago.

¶ 3 The facts, as gleaned from the pleadings filed in the circuit court, show that the CHA is a principal corporation that administers the HCV program in Chicago. As part of this program, defendant pays housing rental subsidies for eligible families in Chicago. Participants of the HCV program must abide by the program's participant family obligations, which provides, in relevant part, that a family may not commit any serious lease violation, and must notify the Public Housing Authority (PHA), such as the CHA, and the owner of the subsidized unit of their intent to move before they do so. 24 C.F.R. § 982.551(e), (f) (2008). The HCV requires PHAs to terminate assistance or deny admission to a family that has been evicted from "housing assisted" under the HCV program for a serious lease violation (24 C.F.R. § 982.552(b)(2) (2008)), and further provides that a PHA may terminate a family for violating any of the family obligations or if another PHA has terminated assistance to the family (24 C.F.R. § 982.552(c)(1)(I), (iii) (2008)). In addition, the CHA has its own policies which include, in relevant part, that a participant must be terminated from the program if the family has been evicted from a federally assisted housing unit in the last five years and if the family has been previously terminated from the HCV program.

¶ 4 The record in this case shows that plaintiff was first a participant in the Iowa Housing Authority (IHA) section 8 rental assistance (housing assistance) program which was part of the HCV program. The IHA subsidized plaintiff's rent for an apartment in Iowa City, Iowa, and her lease ran from April 1, 2008, through March 31, 2009.

¶ 5 On January 29, 2009, plaintiff sent her landlord a seven-day written notice that she intended to vacate the property in Iowa City, and in February 2009, she moved her children from the Iowa City school district to Chicago, had her mail forwarded to a Chicago address and conducted food stamp transactions in Illinois. Plaintiff did not notify the IHA of her move. In February 2009, plaintiff also applied to participate in the CHA's HCV program. As part of the

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enrollment, plaintiff completed a form which discussed the federal regulations governing disbursement of federal housing benefits, including that a family must not commit any serious lease violation, and must notify the PHA and the owner before moving out of the subsidized unit. Her request to move from the IHA to the CHA assisted housing was initially approved, but later denied by the IHA based on its belief that plaintiff was possibly in violation of a family obligation. The IHA sent a letter to the CHA indicating such, and informing the CHA that upon further investigation, plaintiff may be terminated from its housing assistance program. The record does not positively show that the CHA received this letter, and the CHA subsequently accepted plaintiff into its assisted housing program.

¶ 6 On February 10, 2009, an eviction notice was filed in Iowa against plaintiff for non-payment of her rent and late fees. The notice included a hearing date of February 23, 2009, and the necessity of plaintiff to appear, but she did not. That same month, the IHA notified plaintiff that she was being terminated from its housing assistance program because she was evicted for a serious lease violation, and violated her family obligations by moving without notifying the IHA.

¶ 7 Plaintiff appealed the IHA's decision, and a hearing was held on March 10, 2009. No copy of the transcript of that hearing has been included in the record on appeal. Following the hearing, the hearing officer upheld the termination of plaintiff from the IHA's housing assistance program based on the eviction order and her failure to notify the IHA of her move. The hearing officer noted in his decision that although plaintiff testified as to why she believed her landlord had insufficient grounds to evict her, she did not appeal the eviction order. The hearing officer also observed that plaintiff maintained that the eviction was rescinded, but the court records show that it was not. He further observed that the eviction order was for non-payment of rent and late fees, which is a family obligations violation for which housing assistance can be terminated.

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¶ 8 The hearing officer further observed that plaintiff asserted that she was at her apartment during the time in question, and only traveled to Chicago on one or more occasions. However, the hearing officer found from the following evidence that plaintiff had moved to Chicago: plaintiff's seven-day notice dated January 29, 2009, to her landlord of her intent to vacate, the records showing she used no water in her Iowa City unit after February 2, 2009, United States Postal Service verification that her mail was forwarded to Chicago in February 2009, and records showing that she made no food stamp transactions in Iowa after February 2, 2009, but, rather, conducted such transactions in Illinois. The hearing officer thus concluded that the preponderance of the evidence supported both of the IHA's grounds to terminate plaintiff's housing assistance, *i.e.*, eviction for non-payment of rent, and failure to notify the IHA of her move.

¶ 9 On May 26, 2009, the IHA forwarded to the CHA the letter it had previously sent to the CHA regarding its denial of plaintiff's request to transfer to the CHA's housing assistance program. The IHA informed the CHA that it had since held a hearing which resulted in plaintiff being terminated from the HCV program. The IHA noted that the CHA had accepted plaintiff into its HCV program, and requested "assistance with this issue."

¶ 10 A couple of weeks later, the IHA sent the CHA a copy of its hearing officer's decision upholding its termination of plaintiff's HCV assistance, and a letter informing the CHA that eviction alone from a HCV assisted unit requires termination. The IHA further informed the CHA that on April 27, 2009, the Iowa District court had awarded a judgment of \$817.87 in favor of plaintiff's landlord for unpaid rent, late fees, utilities, and damages to its rental unit.

¶ 11 On July 29, 2009, the CHA sent plaintiff notice of its intent to terminate her participation in the HCV program. The CHA informed plaintiff that in addition to her violations of the Code of Federal Regulations (Code) (24 C.F.R. §982.1 *et seq.* (2008)) which led to her termination

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from the IHA program, she was in violation of the CHA's policies which provided for termination if the family has been evicted from federally assisted housing in the past five years and any PHA has terminated assistance under the program for the family. The CHA further informed plaintiff that she was ineligible to receive subsidized assistance from any HUD funded program.

¶ 12 A hearing was held on the matter, but no copy of a transcript from that hearing has been included in the record. Following the hearing, the hearing officer sent plaintiff notice of his decision to terminate her HCV assistance which he indicated was based on the testimony, documents and evidence presented at the hearing. The hearing officer noted in his decision that plaintiff insisted that the grounds for eviction and termination were unsupported by the facts, and that she presented numerous documents which were unrelated to the hearing. He also noted that the CHA was seeking to terminate plaintiff from its program because the IHA terminated her assistance, which made her ineligible for continued program assistance. The hearing officer observed that plaintiff was afforded the opportunity for due process on two occasions prior to the CHA's informal hearing, namely, an eviction proceeding and an informal hearing by the IHA, but she failed to prevail on either occasion. The hearing officer concluded that the CHA established by the preponderance of the evidence that plaintiff violated the program rules and was ineligible for continued participation.

¶ 13 On December 22, 2009, plaintiff informed the CHA that her prior termination from the HCV program in Iowa City had been rescinded. The CHA did not find any evidence that there had been a rescission.

¶ 14 On February 9, 2010, plaintiff filed in the circuit court a *pro se* petition for judicial review by common law writ of *certiorari*. She alleged that the CHA's decision was not in accordance with the law.

¶ 15 The CHA filed a motion to dismiss alleging that plaintiff's complaint was defective in that it failed to set forth sufficient facts explaining how its decision was not in accordance with the law. The CHA also noted that plaintiff violated its policies and the Code.

¶ 16 In response, plaintiff alleged that her benefits were terminated unfairly due to the lack of communication between the CHA and the IHA, and that she only was evicted because she was not properly notified of the court date. She also maintained that she did not move out of her Iowa apartment as evidenced by her furniture which was still in the unit, and the landlord accepting her rent for February and March.

¶ 17 The CHA filed a reply alleging that plaintiff had taken issue with the IHA's ruling in her response, but that the propriety of that ruling is not properly before the circuit court. The CHA also noted that it had no choice but to terminate given the mandatory termination nature of the violations at issue.

¶ 18 The circuit court found that the CHA's decision was not against the manifest weight of the evidence. In doing so, the court noted that the Code requires the PHAs to terminate program assistance for a family evicted for a serious violation of the lease, which, in this case, was non-payment of rent. The court also noted that the Code requires participants to notify the PHA before moving out, and plaintiff failed to do so. Based on its findings, the court denied plaintiff's writ of *certiorari*. This appeal follows.

¶ 19 A common-law writ of *certiorari* is the general method for obtaining circuit court review of administrative actions when the statute conferring power on the agency does not expressly adopt the Administrative Review Law (735 ILCS 5/3-102, 107(a) (West 2008)), and provides for no other form of review. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253 (2001). In this case, the statute conferring power on the agency, 24 C.F.R. §982.1 *et seq.* (2008), does not provide for administrative review, and thus, a writ of *certiorari* was the appropriate method to seek review.

An appeal from that type of proceeding is considered in the same manner as any other appeal from an administrative review proceeding, and thus, we review the administrative agency's decision and not that of the circuit court. *Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568, 571 (2010).

¶ 20 That said, we observe that it is readily apparent that plaintiff has failed to comply with the format for appeals as mandated by the supreme court. This includes her failure to present a coherent and cohesive argument, and to cite to relevant authority or pages in the record relied upon for her facts and argument. Ill. S. Ct. R. 341 (eff. July 1, 2008). We also observe that plaintiff's reply brief consists of copies of documents from the record which she has written on, and an email she wrote to herself as a reply for this appeal. Although the deficiencies in plaintiff's briefs provide cause for dismissing the appeal (*Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 125 (2003)), we will entertain it since we have the benefit of defendant's cogent brief, and the essential issue is apparent, namely, the propriety of the CHA's decision to terminate plaintiff's participation in the Chicago area HCV program (*Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001)).

¶ 21 Since the issue presented involves a mixed question of fact and law, we will not reverse the agency's decision unless it is clearly erroneous. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390-91 (2001). A decision is clearly erroneous if the record leaves the reviewing court with the firm and definite conviction that a mistake has been made. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395. For the reasons which follow, we find that this is not such a case.

¶ 22 The Code mandates the PHAs to terminate a participant from the HCV program where the participant has been evicted from "housing assisted" under the program for a serious lease violation. 24 C.F.R. § 982.552(b)(2) (2008). The CHA, as a PHA running the HCV program in

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Chicago, is required to follow that mandate. The CHA's policy also requires termination where the participant has been evicted from federally assisted housing in the past five years, and/or has been terminated from the HCV program by another PHA. Here, plaintiff was evicted from her HCV assisted housing unit in Iowa City for failure to pay rent and late fees. She did not appeal that eviction, and the IHA subsequently terminated her HCV benefits based on her eviction for a serious lease violation and for moving without notifying the agency. The evidence thus discloses a number of grounds upon which the CHA was required to terminate plaintiff's benefits, and no error in its decision to do so.

¶ 23 Plaintiff maintains, however, that she was evicted from her apartment due to a lack of notice of the court date and retaliation by her landlord for her contacting an attorney about her safety and decent living at his apartment complex. She further maintains that she did not move out of the Iowa unit, but, rather, only went to Chicago to get her daughter's birth certificate, and that her circumstances did not amount to a mandatory termination situation. We observe that we may only consider the evidence which was before the CHA at its hearing. *Franz v. Edgar*, 133 Ill. App. 3d 513, 523 (1985). Plaintiff, as appellant, had the burden of presenting a sufficiently complete record to support her claim of error; however, she did not provide this court with a copy of the transcript of the hearing which produced the decision she appeals. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Therefore, any doubts arising from the incomplete record are held against her. In sum, the record, as provided, does not support any of plaintiff's assertions, and we, thus, assume that the CHA's decision was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392.

¶ 24 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.