

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Lenora Washington,
Petitioner

v
MSHDA HCV,
Respondent

Docket No. 2010-721

Agency No. Washington 7006

Agency: Michigan State Housing
Development Authority

Case Type: Appeal HCV (Section 8)
Termination

Issued and entered
This 6th day of October, 2010
by Robert J. Meade
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Attorney Michael Chielens appeared on behalf of Petitioner, Lenora Washington (Petitioner). Brandy Westcot appeared on behalf of the Michigan State Housing Development Authority (MSHDA or Respondent).

This matter concerns an appeal filed under the Section 8 Housing Choice Voucher Program, *Section 8 of the United States Housing Act of 1937, 42 USC 1473f* (HCV Program). On October 9, 2008, the Respondent notified Petitioner that her participation in the HCV Program would be terminated effective immediately. On or about October 20, 2008, Petitioner filed an appeal and request for hearing with the Respondent. On July 21, 2010, the State Office of Administrative Hearings and Rules (SOAHR) received a Request for Hearing from the Respondent. On July 23, 2010, SOAHR issued a Notice of Hearing setting a telephone hearing for August 19, 2010 at

9:00 a.m. The August 19th hearing was adjourned per the Petitioner's request and rescheduled for September 30, 2010 at 9:00 a.m. The September 30, 2010 hearing commenced as scheduled.

PETITIONER'S WITNESSES:

Lenora Washington

RESPONDENT'S WITNESSES:

Brandy Westcot

PETITIONER'S EXHIBITS:

- Exhibit 1: Wingate Apartments Lease, dated May 1, 2006
- Exhibit 2: Wingate Apartments Lease, dated May 30, 2006
- Exhibit 3: Wingate Apartments Lease, dated April 1, 2010
- Exhibit 4: Affidavit of Karen Gorman, dated September 29, 2010
- Exhibit 5: Doctor's Note, dated December 20, 2006
- Exhibit 6: Verification of Special Needs, dated December 27, 2006
- Exhibit 7: Verification of Special Needs, dated January 9, 2006 (sic) January 9, 2007

RESPONDENT'S EXHIBITS:

- Exhibit A: Household, Income, Asset, and Expense Declaration (HIAED), dated November 4, 2006
- Exhibit B: HUD-50058, dated January 25, 2007
- Exhibit C: HIAED, dated October 6, 2007;
- Exhibit D: HUD-50058, dated January 15, 2008
- Exhibit E: State of Michigan Remittance Advice, dated August 26, 2008
- Exhibit F: Payee Registration, dated January 1, 2007; W-9 Request for Taxpayer Identification Number and Certification, dated December 20, 2006; Adjustment Notification, dated January 31, 2008; Annual Re-Examination Notice, dated October 4, 2007
- Exhibit G: Lexis-Nexis Address List for 216 Charles Street SE, Grand Rapids, Michigan, dated August 16, 2010
- Exhibit H: Driver's License History for Wesley Washington, various dates
- Exhibit I: Vehicle Registration Report for Wesley Washington, dated May 28, 2008
- Exhibit J: Vehicle Registration Report for Wesley Washington, dated August 12, 2008

- Exhibit K: Telephone Listings for Lenora and Wesley Washington, dated October 2008
- Exhibit L: Real Property Ownership and Deed Transfers Report for Wesley Washington, Property Assessment for 351 Hogadone Ave SW, Grand Rapids, Michigan, 2007 Tax Year
- Exhibit M: 2007 Michigan Individual Income Tax Return for Wesley Washington
- Exhibit N: 2007 1040 Information for Wesley Washington
- Exhibit O: Application Denial/Program Termination, dated October 9, 2008
- Exhibit P: Rental Unit Information, dated December 20, 2006
- Exhibit Q: Applicant/Tenant Authorization, Certification and Consent, dated November 4, 2006
- Exhibit R: HAP Contract, dated January 26, 2007
- Exhibit S: HCV Program Voucher, dated December 13, 2006
- Exhibit T: Voucher Briefing Packet, dated December 13, 2006
- Exhibit U: 24 CFR 982.551 Obligations of Participant; 24 CFR 982.552 Family Obligations; Denial and Termination of Assistance
- Exhibit V: MSHDA Policy and Procedures Manual Chapter XIV: Terminations; Chapter XXX: Authorized Members of Household, Visitors/Guests; Chapter XXIX: Fraud

ISSUE AND APPLICABLE LAW

Did the Respondent properly terminate Petitioner from the HCV Program?

24 CFR 982.551 provides, in pertinent part:

Section 982.551 Obligations of participant.

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

(b) Supplying required information

(1) The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). "Information" includes any requested certification, release or other documentation.

* * * *

(4) Any information supplied by the family must be true and complete.

* * * *

(h) Use and occupancy of unit

(1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

(2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

* * * *

(j) *Interest in unit.* The family must not own or have any interest in the unit.

* * * *

24 CFR 982.552 provides in pertinent part:

Section 982.552 PHA denial or termination of assistance for family.

(a) *Action or inaction by family.*

(1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or §982.553.

* * * *

(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.

* * * *

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(v) *Nondiscrimination limitation and protection for victims of domestic violence.* The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of §5.105 of this title, and with the requirements of 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, and stalking.

MHSDA – Office of Housing Voucher Programs Policy and Procedures Manual provides, in pertinent part:

Chapter XIV: Terminations

* * * *

Section B: Reasons for Termination (24 CFR 982.551, 24 CFR 982.552 and 24 CFR 982.553)

Terminate assistance to Housing Choice Voucher (HCV) Program participants in the following situations.

* * * *

4. For Violations of Family Obligations (24 CFR 982.551, 24 CFR 982.552, and Voucher [HUD 52646]) such as:

1. Failure of the family to supply true and complete information needed by MSHDA or HUD to administer the HCV program. Information includes documentation related to the verification of Social Security numbers, citizenship and eligible immigration status, calculation of income, family composition, or signatures on consent forms. 24 CFR 982.551

* * * *

5. The family owns or has an interest in the unit. 24 CFR 982.551(j)

* * * *

11. Failure to request MSHDA approval to add another family member as an occupant of the unit. 24 CFR 982.551(h)(2)

* * * *

17. If any member of the family commits fraud (including income fraud), bribery, or any other corrupt or criminal act in connection with any federal housing program (24 CFR 982.552(c)(iv)); OR, if any member of the family has committed fraud in connection with any federal or state funded benefit program, e.g., TANF, Social Security Administration programs.

* * * *

Chapter XXX: Authorized Members of the Household, Visitors/Guests

Section A. Authorized Members of the Household, Visitors and Guests

All household members must be eligible and approved by the PHA (MSHDA) to receive assistance under the Housing Choice Voucher Program 24 CFR 982.551(h)(2). The composition of the household must be approved by MSHDA. The lease between the owner and the family must contain the names of all persons who will reside in the unit approved for assistance. The Housing Assistance Payment (HAP) Contract is between MSHDA and the owner for the benefit of approved family members. The contract unit may only be used for residence by the PHA-approved household members. 24 CFR 982.551(h)(1)

Any person not included on the lease who resides in the rental unit 14 or more consecutive days without MSHDA approval, or a total of 30 days in a 12-month period, is considered to be living in the unit as an unauthorized household member. Statements from neighbors, the landlord, DHS workers, copies of police reports, or other documentation would be considered in making the determination that a person is residing in the unit.

Absence of evidence of any other address is considered verification that the visitor/guest is a member of the household. Further, use of the unit address as the visitor/guest's current residence for any purpose not explicitly temporary, i.e. voter's registration, driver's license, vehicle registrations, etc., is construed as evidence of permanent residence.

The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual is considered an unauthorized member of the household and the rental assistance must be terminated.

* * * * *

Chapter XXIX: Fraud

Section A: Definition

HUD has identified, and MSHDA has adopted the following definition of fraud.

Fraud: Refers to a single act or pattern of actions that constitute a material, false statement, misrepresentation, omission, or concealment of a substantial fact made by any participant (i.e. tenant, landlord, employee, or contractor) with the intent to deceive or mislead. This includes, but is not limited to, any of the following activities:

- Tenant's failure to report (or underreporting) of any household income;
- Landlord's accepting additional rent moneys from tenants, entering into "side-leases," etc.;
- Bribery or kickbacks;
- False claims;

- Theft or embezzlement;
- Forgery or alteration of documents;
- Destruction or concealment of records;
- Profiting from a conflict of interest; or
- Other behavior as related to fraud.

* * * *

FINDINGS OF FACT

Based on the entire record in this matter, including the witness testimony, the exhibits and the pleadings, the following findings of fact are established:

1. Petitioner has participated in the HCV Program since January 12, 2007. Petitioner's assisted unit was located at 351 Hogadone SW, Grand Rapids, Michigan 49504. [Exhibit A]. Petitioner's approved household always consisted of just herself. [Exhibits A, B, C and D].
2. In September 2008, Respondent received a complaint from its finance department because a check to Petitioner's landlord, Wesley Keith Washington, was returned by the post office as undeliverable. [Exhibit E].
3. When Petitioner entered the HCV Program, Wesley Washington listed his address as 216 Charles Street SE, Grand Rapids, Michigan, 49507. Wesley Washington also requested a Taxpayer Identification number using the Charles Street address and he used the same address when he completed his annual reexamination with the Respondent on October 4, 2007. [Exhibit F]. When Respondent did a tenant search at 216 Charles Street SE, however, it did not locate anyone by the name of Wesley Washington. [Exhibit G].
4. When Respondent ran a driver's license history for Wesley Washington, it discovered that he completed a Driver License Application on January 3, 2007

using the assisted unit address of 351 Hogadone Ave SW, Grand Rapids, Michigan 49504 as his own address. On June 22, 2007, Wesley Washington completed another Driver License Application using the assisted unit as his own address. On November 20, 2008, after Petitioner had been served with the Termination Notice, Wesley Washington submitted a Driver License Address Change, changing his address to 3100 Wingate Drive SE, Kentwood, Michigan 49512. [Exhibit H].

5. A Vehicle Registration Report indicates that Wesley Washington registered a 1995 GMC Yukon using the assisted unit address on January 16, 2007, September 4, 2007 and May 28, 2008. [Exhibit I]. Wesley Washington also registered a 2000 Cadillac Deville using the assisted unit address on August 12, 2008. [Exhibit J].
6. A Lexis-Nexis for government telephone report from October 2008 shows that Lenora Washington and Wesley Washington were listed using the same telephone number at the assisted unit address. [Exhibit K].
7. A Real Property Ownership report from the CLEAR database shows that Wesley Washington took a homeowner's property exemption for the assisted unit address in tax year 2007. A Property Assessment report for the assisted unit address also shows Wesley Washington as the owner. [Exhibit L].
8. A 2007 Michigan Individual Income Tax Return for Wesley Washington was filed using the assisted unit address. The tax return shows that Mr. Washington had \$22,753 in adjusted gross income that was never reported to Respondent. A W-2

form attached to the tax return shows that Mr. Washington listed the assisted unit as his address with his employer, Lear Corporation. Finally, the tax return shows that Mr. Washington earned \$5680.00 income from a business that is listed as being run out of the assisted unit. [Exhibit M].

9. A 2007 1040 Electronic Filing Report for Wesley Washington shows that he listed the Petitioner as a dependent on his tax return as his parent when filing his federal taxes and that he listed the assisted unit as his own address on the tax return. [Exhibit N].
10. On a Rental Unit Information form dated December 20, 2006, Wesley Washington certified that he, as the owner/landlord of the assisted unit, would not occupy the assisted unit as his primary residence and that he was not related to the tenant. [Exhibit P].
11. On an Applicant/Tenant Authorization, Certification, and Consent form, Petitioner certified on November 4, 2006 that she was the only household member at the assisted unit. [Exhibit Q]. Petitioner's HAP Contract, which she certified on January 26, 2007, also indicates that she is the only person authorized to reside in the assisted unit. An attachment to the Contract indicates that Petitioner understood that her family could not own or have any interest in the contract unit and that the owner is not a relative of the Petitioner. [Exhibit R].
12. A Wingate Apartments lease for 3100 Wingate Drive SE, Apartment 3C, Kentwood, Michigan 49512, dated May 1, 2006 shows that Tiffany Talbert and her daughter Taysha Gillepsie occupied the apartment. [Exhibit 1].

13. A Wingate Apartments lease for 3100 Wingate Drive SE, Apartment 3C, Kentwood, Michigan 49512, dated May 30, 2006 shows that Tiffany Talbert, her daughter Taysha Gillepsie, and her friend Wesley Washington, occupied the apartment. [Exhibit 2].
14. A Wingate Apartments lease for 3100 Wingate Drive SE, Apartment 3C, Kentwood, Michigan 49512, dated April 1, 2010 shows that Tiffany Washington, her daughter Taysha Gillepsie, and her husband Wesley Washington now occupied the apartment. [Exhibit 3].
15. Karen Gorman, resident manager for Wingate Apartments, indicated in an Affidavit dated September 29, 2010 that she has personal knowledge that Wesley Washington has resided in apartment 3C since May 30, 2006.
16. Petitioner testified that she and her son, Wesley Washington, moved into the home located at 351 Hogadone Ave SW, Grand Rapids, Michigan 49504 in 2000 or 2001. Petitioner confirmed that her son Wesley Washington is the owner of the home located on Hogadone and that he moved out in May or June of 2006 to the 216 Charles Street SE address, before then moving in with his girlfriend, now wife, Tiffany Washington at the Wingate Apartment address in May or June of 2006.
17. Petitioner further testified that when she was being considered for the HCV Program, she disclosed to her housing agent, Rachel Jacko, that her son owned the property where she was going to reside and that he was going to be her landlord. According to Petitioner, Ms. Jacko informed her that her son could be

her landlord provided Petitioner obtained medical documentation that she was disabled and that it would not be wise for her to move. Petitioner then obtained Exhibits 5, 6, and 7 and provided them to Ms. Jacko. According to Petitioner, Ms. Jacko accepted Exhibit 7 as proof that Petitioner was disabled and allowed her to continue to reside in the unit owned by her son.

18. Petitioner was aware of the need to follow all rules and guidelines established under the HCV Program and to provide full, complete and truthful information to Respondent. [Exhibits Q, R, S, and T].

CONCLUSIONS OF LAW

In an administrative hearing, the moving party must prove its position by a preponderance of the evidence. *Michigan State Employees Assoc v Michigan Civil Service Com*, 126 Mich App 797, 802; 338 NW2d 220 (1983). As such, Respondent has the burden of proof in this matter to show, by a preponderance of the evidence, that Petitioner was properly terminated from the HCV Program. Proof by a preponderance of the evidence requires the trier of fact to determine that the evidence supporting the existence of a contested fact outweighs the evidence supporting its nonexistence. *Martucci v Detroit Police Commissioners*, 322 Mich 270; 33 NW2d 789 (1948). The Respondent alleges that Petitioner should be terminated from the program for the following violations:

1. Other: MSHDA investigated a complaint and substantiated that you violated HUD Regulations and MSHDA Policy in that:
 - (1) The tenant and landlord are related, i.e. mother and son.

- (2) Landlord utilizes the assisted unit as his primary residence.
- (3) Failure to report true and complete information to MSHDA.

The Respondent has proven, by a preponderance of the evidence, that Petitioner is related to her landlord in violation of 24 CFR 982.551(j). Petitioner admitted at the hearing that her landlord, Wesley Washington, is her son and that he owns the home in which the assisted unit is located. Tax records in evidence also support the relationship and the fact that Wesley Washington owned the home where the assisted unit was located.

The Respondent has failed to prove, by a preponderance of the evidence, that Wesley Washington used the assisted unit as his primary residence, in violation of 24 CFR 982.551(h)(2). Chapter XXX of the MSHDA Policy Manual, Authorized Members of the Household, Visitors/Guests, provides, "Any person not included on the lease who resides in the rental unit 14 or more consecutive days without MSHDA approval, or a total of 30 days in a 12-month period, is considered to be living in the unit as an unauthorized household member." The policy further provides, "The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual is considered an unauthorized member of the household and the rental assistance must be terminated." Here, the evidence that Wesley Washington used the address at the assisted unit to apply for a driver's license, register vehicles, and file his taxes is outweighed by Petitioner's testimony that he has not resided at the assisted unit since May or June 2006, which is supported by the leases from Wingate Apartments and the Affidavit of the property manager.

The Respondent has also failed to prove, by a preponderance of the evidence, that Petitioner failed to provide true and complete information to the Respondent, contrary to 24 CFR 982.551(b)(4). Given that it has been determined that Wesley Washington was not using the assisted unit as his primary residence, Petitioner did provide true information when she certified that she was the only resident in the assisted unit.

The only question remaining is whether Petitioner should be terminated from the HCV Program because she and her landlord were related. Under the circumstances, it is recommended that Petitioner not be terminated for this violation. The undisputed evidence is that Petitioner informed her housing agent of the relationship and that the housing agent obtained from Petitioner proof of disability that made it allowable for her to reside in the unit owned by her son. While the Respondent asserted at the hearing that the proof was not on the proper forms, it did not present the housing agent to dispute that she had, in fact, requested that Petitioner complete the forms and then informed Petitioner that the relationship was acceptable because of her disability.

Accordingly, it is concluded that Respondent has not met its burden of proof in this matter to show by a preponderance of the evidence that Petitioner was properly terminated from the HCV Program.

PROPOSED DECISION

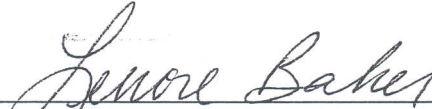
Based on the above findings of fact and conclusions of law, the undersigned administrative law judge recommends that Petitioner's termination from the HCV Program be overturned.

A handwritten signature in black ink, appearing to read "Robert J. Meade", written over a horizontal line.

**ROBERT J. MEADE
ADMINISTRATIVE LAW JUDGE**

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by first class mail at their respective addresses as disclosed by the file on the 6th day of October, 2010.



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