



STATE OF MICHIGAN

JENNIFER M. GRANHOLM GOVERNOR MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

DETROIT

KEITH MOLIN EXECUTIVE DIRECTOR

brysonc@michigan.gov

April 30, 2009

Valencia Norman
8232 Lauder
Detroit, MI 48228

Re: Informal Hearing Request

Dear Ms. Norman:

Enclosed is the Michigan State Housing Development Authority's decision regarding the Informal Administrative Hearing held at your request on Wednesday, April 1, 2009. If you have any questions concerning your hearing, you may contact Carl Bryson at (517) 373-6004.

Sincerely,



Richard Eusani
Office of Legal Affairs

RE/ bg

cc: Carl Bryson, Hearings Coordinator
Brandy Westcot, Compliance Enforcement Coordinator
Ann Mueller, Resource Specialist
Molly Bopp, Housing Agent



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JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
DETROIT

KEITH MOLIN
EXECUTIVE DIRECTOR

MEMORANDUM

April 16, 2009

To: Christopher LaGrand
From: Richard Eusani
Re: Informal Hearing
Section 8 Housing Choice Voucher Program
Participant: Valencia Norman

An informal hearing in this matter was held at 11:00 a.m. on April 1, 2009. Present at the hearing were Richard Eusani, the hearing officer; Brandy Westcot, the MSHDA representative; Kara Hart-Negrich, law clerk for the Legal Department; and Valencia Norman, the program participant.

RELEVANT EVIDENCE

Ms. Norman is a participant in the Section 8 Housing Choice Voucher Program. She entered the program in August, 2007, at a unit on Lauder in Detroit with her five children. On December 1, 2008, Ms. Norman was notified of her termination from the Housing Choice Voucher program by letter due to unreported income, an unauthorized person living in the unit, and committing fraud in connection with a federally subsidized housing program.

Ms. Westcot presented information from an HCV *Key to Own* pre-application evaluation filled out by Ms. Norman on July 21, 2008. The pre-application showed that Ms. Norman receives \$761.00 in child support per month. This source of income was not disclosed to the Authority when Ms. Norman filled out her Household, Income, Asset, and Expense Declaration in either 2007 or 2008.

Ms. Westcot stated that she further investigated Ms. Norman's background by running an Enterprise Income Verification ("EIV") report, which showed that Ms. Norman had earned approximately \$205 in the third and fourth quarters 2007 and an additional \$5,207.00 during 2008, neither of which was reported. Further, Ms. Westcot stated that she found that Ms. Norman's husband, Adrian Norman, listed the Lauder unit as his residence on his State identification card, (which was issued December 12, 2007), voter registration, and with his parole officer. However Ms. Norman had not listed Adrian Norman as residing at the unit on her Household, Income, Asset, and Expense Declaration in either 2007 or 2008.

During the hearing, Ms. Norman admitted to having received child support; however she said she only received it after turning in her application materials to the Authority for the first time. She stated that because she received child support sporadically, she was unsure how to report this added income to the Authority.

Ms. Norman also admitted to earning the \$205 in 2007 and \$5,207.00 during 2008. However she believed she had notified the Authority of this income. She stated that she was not working,



and that she did not have a source of income at the time she filled out her initial application and at the time of recertification. She also stated that she believed that she had previously notified the Authority of her earnings.

Ms. Norman admitted that Adrian Norman was her husband and the father of her children, but denied that he ever lived at the Lauder unit. She stated that they had been married in the past, then divorced, then had remarried in July, 2007. She further stated that she had hoped that Mr. Norman would live with her and the children, and that she was disappointed that he did not do so. She stated that Mr. Norman had been residing in Pontiac with his sister since being released from prison on April 24, 2007. Ms. Norman stated that Adrian Norman used the Lauder address without her permission. She also denied any acquiescence in allowing him to use her address as his own. She did state that, although he did not reside in the Lauder unit, he would occasionally spend the night there.

Ms. Westcott provided an email from Adrian Norman's parole officer, Sherene Webb. Ms. Webb stated that on August 25, 2008, she performed a visit to the Lauder unit where she found Adrian Norman absent, but spoke with his daughter. Ms. Webb further stated that she received a phone call from a woman who she believed was Ms. Norman on September 5, 2008, stating that Adrian Norman did reside at the Lauder address. Ms. Norman denied speaking with Ms. Webb and stated that anyone could have called Ms. Webb pretending to be her.

Ms. Norman stated that Mr. Norman had gone to prison for identity theft and he was capable of using her address without her knowledge. The criminal records that Ms. Westcott presented confirmed that Mr. Norman was convicted and imprisoned for identity theft. Ms. Norman reiterated that Mr. Norman had lived with his sister in Pontiac since being released from prison.

Ms. Norman admitted making a mistake failing to properly notify MSHDA of her income, apologized for not do so, stating that she had not realized she had made this mistake. She also stated that, prior to receiving her voucher, she and her five children had been living in a homeless shelter and, if her voucher were terminated, she and her children would be homeless.

I gave Ms. Norman until April 13, 2009 to provide the Authority with evidence pertaining to Mr. Norman residing at a different location. However, the deadline passed and I have not received any information or documents from Ms. Norman.

RELEVANT LAW

24 CFR 982.551 states in relevant part:
982.551 Obligations of participant.

(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.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

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

(h) Use and occupancy of unit.—

(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).

(k) Fraud and other program violation. The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

24 CFR 982.552 states in relevant part:

982.552 PHA denial or termination of assistance for family.

(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.
- (iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program.

(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.

MSHDA's Housing Choice Voucher Policy/Procedure Manual Chapter XV: Terminations of Assistance and HAP Contracts states in relevant part:

- Section A: When MSHDA Must Terminate Assistance to Participants:
 - Assistance must be terminated for violations of family obligations listed in 24 CFR 982.551 and on the Voucher (HUD 52646) such as:
 - 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, eligible immigration status, calculation of income, family composition, or signatures on consent forms.

The elements for proving fraud are as follows:

- (1) a material representation;
- (2) falsity of the material representation;

- (3) the tenant's knowledge that the material representation was false at the time he or she makes it, or recklessness in making the material representation without any knowledge of its truth and as a positive assertion;
- (4) the tenant's intent in making the material representation that (in this case) MSHDA should act upon it;
- (5) action by MSHDA in reliance upon it; and
- (6) injury to the MSHDA as a consequence of the reliance. 10 Mich. Civ. Jur. Fraud and Undue Influence Section 7; In re Livingston, 389 B.R. 1 (E.D. Mich. 2008).

Each of the foregoing legal elements must be proved with a reasonable degree of certainty and each must be found to exist. *Cooper v. Auto Club Insurance Association*, 481 Mich. 399, 751 N.W.2d 443 (2008).

According to the Michigan Secretary of State Website, to apply for a state identification card Adrian Norman was required to show proof of Michigan residency. In order to satisfy this requirement, he would need to provide at least two documents with his name and Michigan address. Documents accepted include a utility or credit card bill, a bank statement, a lease or rental agreement, a pay stub or earnings statement with the name and address of the employer, life, health, auto or home insurance policy, or Michigan title and registration showing his current residential address. It is noted on the Secretary of State Website that "residency documents in a family member's name may be used if the family relationship can be established by other forms of documented proof."

DISCUSSION AND RECOMMENDATION:

Ms. Norman was terminated from the HCV program due to allegations that she failed to report income, that an unauthorized person was living in her unit, and that she had committed fraud in connection with a federally subsidized housing program.

As to the claim of fraud, there was not sufficient evidence presented to prove all of the elements of fraud, and this charge cannot be sustained.

Ms. Norman did not disclose the income she earned during 2007 or 2008 on her 2008 recertification. She also did not notify the MSHDA agent of income she earned during this period and also failed to report any child support she had received. Ms. Norman acknowledged this stating that she had not realized she had made this mistake. However, the amount of income in question was not significant, and she and her children are still an extremely low-income family. If Ms. Norman had disclosed this income, she would not have been ineligible for the HCV program, but would have received a lower subsidy amount and had to pay a higher portion of the rent. As I will explain below, complete termination of her subsidy seems to be too extreme a penalty for this violation.

The issue of Mr. Norman's residence is a thornier issue. Ms. Westcott presented several documents on which Mr. Norman listed the Lauder address as his residence. The email from the probation officer was hearsay evidence and, while not "inadmissible" is of limited value. Since the probation officer was not present, I was not able to question the probation officer to determine the depth of her knowledge regarding Mr. Norman's residence and evaluate her credibility. Ms. Westcott also presented Mr. Norman's State ID card as evidence of his residence. In order for Mr. Norman to obtain a state identification card he needed to have documents containing the Lauder address and his name, but residency documents in a family member's name may be used if a family relationship can be established by other forms of proof.

There were definitely documents showing that **Ms. Norman** lived at the address and, since they were legally married, Adrian Norman could prove a valid family relationship. Ms. Norman claimed that Mr. Norman did not live at the address and had used the address as his residence without her knowledge or acquiescence. As she stated, given the fact that he went to prison for identity theft, he certainly had the ability, and also a history, of obtaining documents illegitimately. Further, Ms. Norman appeared to me to be both embarrassed and very disappointed that Mr. Norman would not live in the same house with his wife and children.

As the "trier of fact", part of my duty as hearing officer is to weigh the evidence and the credibility of the witnesses. I believe that Ms. Norman was telling the truth. Consequently, when weighing the evidence on the issue of Mr. Norman's residence I do not believe that there was a preponderance of evidence sufficient to prove that he lived at the Lauder residence. This is particularly true where the consequence of this decision is the termination of Ms. Norman and her family from the HCV program. The consequences are severe and the decision must be weighed carefully.

Ms. Norman would still be eligible for the program had she reported her income. As the regulations allow, I have considered all relevant circumstances of this case and the effects of termination of assistance on other family members, particularly Ms. Norman's five children, who were not involved in the alleged violations. Based upon the evidence presented and my review of the relevant HUD regulations, as stated above, I believe that terminating her assistance and forcing Ms. Norman and her children to likely become homeless, is too extreme a punishment. I will note that Ms. Norman did clearly violate the requirement to report her income and, as a consequence, she received excessive HAP benefits that she must pay back.

DECISION:

After thoroughly considering all relevant circumstances, I must recommend that Ms. Norman's termination from the Housing Choice Voucher program be overturned. However, HCV staff shall calculate the amount of HAP payments that were overpaid as a result of this unreported income, and Ms. Norman must sign and comply with an agreement to repay the excess subsidy she received. Ms. Norman must sign the agreement within 14 days after HCV staff prepares it and transmits it to her, and if she fails to do so, she shall be terminated from the HCV program. Further, if she fails to abide by the agreement she shall be terminated from the HCV program.

I concur in _____ the recommendation set forth above.



Christopher L. LaGrand
Director of Legal Affairs

Date 4/28/09