



STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING

GARY HEIDEL
INTERIM EXECUTIVE DIRECTOR

October 12, 2010

*Via First Class Mail
and Certified Mail*

Debra Gillespie
633 W. Portage Avenue #211
Sault Ste. Marie, MI 49783

Dear Ms. Gillespie:

Enclosed is the determination regarding the Informal Administrative Hearing held at your request on April 15, 2010. Should you have any questions about the decision, you may contact me at (517) 241-3334.

Sincerely,

Jon Stuckey
Hearing Officer

JS/amb
Enclosure
cc: Brandy Westcot





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GARY HEIDEL
INTERIM EXECUTIVE DIRECTOR

September 14, 2010

TO: Christopher LaGrand
Director of Legal Affairs

FROM: Jon Stuckey
Hearing Officer, Housing Choice Voucher Program

RE: Informal Hearing: Section 8 Housing Choice Voucher Program
Participant: Debra Gillespie

An informal hearing in this matter was held at 10:00 a.m. on April 15th, 2010. Present at the hearing were Jon Stuckey, the Hearing Officer; and Brandy Westcott, MSHDA Compliance Enforcement Coordinator. Debra Gillespie, the program participant, and Joseph Kwiatkowski, Ms. Gillespie's attorney, joined by telephone.

EVIDENCE

Ms. Gillespie was provided notice of termination from the Housing Choice Voucher Program (the "Program") dated November 20, 2009. The termination notice listed two violations of MSHDA Policy and HUD Regulations as the grounds for the termination:

1. Current use of illegal drugs
2. Unauthorized person has utilized the assisted unit as their primary residence.

Current use of illegal drugs

MSHDA alleged that Ms. Gillespie was currently using illegal drugs. Ms. Westcott offered the following evidence and supporting testimony:

1. A copy of an Internet Criminal Access Tool ("ICHA") dated April 12, 2010. The ICHAT report shoes Ms. Gillespie pled guilty to felony controlled substance – delivery/manufacture less than 50 grams.
2. A copy of MSHDA Form 77 [Supplemental Information]. Ms. Westcott testified that the form contained information from her interview with the landlord of West Ridge Apartments. The landlord stated that Ms. Gillespie represented a threat to the safety and peaceable enjoyment of the neighborhood by other residents due to the fact she was selling drugs on the premises.
3. A copy of a lease addendum titled Criminal Activity signed by Ms. Gillespie and dated December 7, 2005. The lease addendum states that any Drug Related Criminal Activity engaged in, on, or near the premises by any tenant is grounds for termination of tenancy.
4. A copy of a lease addendum titled Drug Free Housing signed by Ms. Gillespie and dated



December 7, 2005. The lease addendum states that criminal drug activity is a material violation of the lease and good cause for termination of tenancy.

Ms. Gillespie's attorney, Mr. Kwiatkowski, spoke on her behalf related to this charge. He stated that Ms. Gillespie gave four prescription pills to a person and that the location where the transfer took place was not anywhere near Ms. Gillespie's apartment complex. He went on to state that Ms. Gillespie admitted her guilt to illegal transfer of a prescription drug and that this was a one time offense. He concluded by stating that there is no evidence of illegal drug use on the part of Ms. Gillespie as she had a valid prescription for the drugs.

Unauthorized person has utilized the assisted unit as their primary residence

MSHDA alleged that Christina Marie Stocking, Ms. Gillespie's daughter, was residing in the unit located at 633 W. Portage Ave., Sault Sainte Marie, MI 49783 ("Portage Ave Unit"). Ms. Westcot offered the following evidence and supporting testimony:

1. A copy of MSHDA Form 1792 [MSHDA Housing Choice Voucher ("HCV") checklist] signed by Ms. Gillespie and dated November 3, 2005. Ms. Gillespie certified on the form that she is the only person residing at the Portage Ave Unit over the age of 18.
2. A copy of MSHDA Form 51aE [HCV Family Composition] signed by Ms. Gillespie and dated November 3, 2005. Ms. Gillespie certified on the form that the only residents of the Portage Ave Unit are herself and her six year old son.
3. A copy of MSHDA Form 1890 [Household, Income, Asset, and Expense Declaration] signed by Ms. Gillespie and dated September 25, 2006. Ms. Gillespie certified on the form that the only residents of the Portage Ave Unit are herself and her six year old son.
4. A copy of MSHDA Form 1890 [Household, Income, Asset, and Expense Declaration] signed by Ms. Gillespie and dated September 18, 2007. Ms. Gillespie certified on the form that the only residents of the Portage Ave Unit are herself and her seven year old son.
5. A copy of MSHDA Form 1890 [Household, Income, Asset, and Expense Declaration] signed by Ms. Gillespie and dated September 15, 2008. Ms. Gillespie certified on the form that the only residents of the Portage Ave Unit are herself and her eight year old son.
6. A copy of a driver license application and a copy of a Michigan ID card from the Michigan Department of State for Christina Marie Stocking. Ms. Stocking listed the Portage Ave Unit as her primary residence on her driver license application and Michigan ID card which was dated May 16, 2008.
7. A copy of a driver license application and a copy of driver license from the Michigan Department of State for Christina Marie Stocking. Ms. Stocking listed the Portage Ave Unit as her primary residence on her driver license application and driver license which was issued October 15, 2008.

8. A copy of a vehicle registration report showing a 1997 Ford Expedition registered to Ms. Stocking at the Portage Ave Unit address.
9. A copy of Ms. Stocking's 2008 Michigan tax return [MI-1040] listing the Portage Ave Unit as her Home address.
10. A written statement from Jane Duffield, the site manager for West Bridge Apartments, of which the Portage Ave Unit is a part of. Ms. Duffield's statement indicated that Ms. Stocking's vehicle had been a problem at the property and that several tenants had indicated to her that Ms. Stocking was residing at the Portage Ave unit.
11. A copy of a voter's registration card for Ms. Stocking which indicated her address as that of the Portage Ave unit.
12. A copy of a Lexis Nexis Report on Ms. Stocking which indicated that the only address ever on record for Ms. Stocking was the Portage Ave Unit. The report also listed the Portage Ave unit as the address of record for Ms. Stocking's vehicle registration, voter registration card, and driver license.
13. A copy of HUD Form 52646 [Housing Choice Voucher] signed by Ms. Gillespie and dated November 28, 2005. Item 4(B)(9) states that the family must request PHA written approval to add any other family member as an occupant of the unit.
14. A copy of MSHDA Form PBV 145 [Project Based Voucher Briefing Packet] and a copy of the Guidelines for Tenants for Section 8 Housing Choice Voucher Program. Ms. Gillespie signed the briefing packet on December 7, 2005 and certified that she had been briefed and received a copy of the Guidelines for Tenants brochure. Bullet number 2 under Your Responsibilities as a Tenant states that only persons listed on the lease agreement and approved by the landlord and MSHDA can occupy the unit. Bullet number 8 under the same section states that the tenant must notify their housing agent immediately of any family size changes.
15. A copy of 70/30 Tax Exempt Bond Lease Agreement signed by Ms. Gillespie. Section 3 of the lease – Occupancy, lists only Ms. Gillespie and her son as occupants of the Portage Ave Unit. Section 8(m) states that the tenant will not give any accommodations to any roomers, lodgers, or visitors for an extended stay.

Ms. Gillespie testified that Ms. Stocking was her daughter and that Ms. Stocking only occasionally stayed with her in the Portage Ave Unit for very brief periods of time. She stated that her daughter lived with her boyfriend and moved frequently between Sault Saint Marie, Detroit, and Florida. Ms. Gillespie claimed that Ms. Stocking used her address solely as a place to get her mail and as an address to get her driver license.

LEGAL STANDARDS

- I. MSHDA Housing Voucher Programs Policy and Procedures Manual Chapter XIV: Terminations states in relevant part:
 - Section A: Definitions

Currently Engaging In: With respect to behavior such as illegal use of a drug or other criminal activity, *currently engaging in* is defined by MSHDA as having occurred within the last twelve months.

Drug: A controlled substance as defined in Section 12 of the Controlled Substances Act. [21 USC 802]

Drug-Related Activity: The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug.

- Section B: Reasons for Termination

- (2) For criminal and/or drug related crimes and behaviors

- Terminate HCV assistance when:

- 4. Any household member is currently engaged in the illegal use of a drug. 24 CFR 982.553(b)(A)
 - 5. There is reasonable cause to believe that a household member's illegal drug use, or pattern of illegal drug use, may threaten or interfere with the health, safety, or right of peaceful enjoyment of the neighborhood by other residents. MSHDA defines a pattern of abuse as two or more occurrences of alcohol-related or drug-related offenses within the previous 12 months. 24 CFR 982.553(b)(3) and 24 CFR 982.553(b)(B)

- (4) For violations of Family Obligations

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

- II. MSHDA Housing Voucher Programs Policy and Procedures Manual Chapter XIII: Absences From Unit

- Section J: Visitors

- Any adult not included in the lease who resides in the rental unit more than 14 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.

- Absence of evidence of any other address is considered verification that the visitor is a household member.
- Use of the unit address as the visitor's current residence for any purpose not explicitly temporary, is construed as 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, since prior approval was not requested for the additional household member.

III. 24 CFR 982.551: Obligations of the participant

- (b) Supplying required information
 - (4) Any information supplied by the family must be true and complete.
- (e) Violation of lease. The family may not commit any serious or repeated violation of the lease.
- (h) Use and occupancy by the family
 - (2) The composition of the assisted family residing in the unit must be approved by the PHA. ... 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.
- (k) Fraud and other program violation
 - (1) 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.

IV. 24 CFR 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.
 - (xi) If the family has been engaged in criminal activity or alcohol abuse as described in 24 CFR 982.553

V. 24 CFR 982.553: Denial of admission and termination of assistance for criminals and alcohol abusers

- (b) Terminating assistance
 - (1) Terminating assistance for drug criminals
 - (i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines:
 - (A) Any household member is currently engaged in any illegal use of a drug.

- (iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under Sec 982.551 not to engage in any drug-related criminal activity.
- (c) Evidence of criminal activity. The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted of such activity.

DISCUSSION

As discussed more thoroughly above, the participant was terminated from the Program for the following reasons: (1) Current use of illegal drugs and (2) Unauthorized person has utilized the assisted unit as their primary residence.

As to the first issue, I find that there is a preponderance of the evidence showing that Ms. Gillespie engaged in drug-related criminal activity. The ICHAT report shows that Ms. Gillespie pled guilty to felony controlled substance delivery/manufacture (MCL 333.7401) in March 2010. Section A of Chapter XIV of the MSHDA Housing Voucher Programs Policy and Procedures Manual defines Drug-related activity as "the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug." Ms. Gillespie's admission of guilt at the hearing and guilty plea demonstrate that she did engage in drug-related activity. 24 CFR 982.553 and 24 CFR 982.553 allows a PHA to terminate assistance for any family when it determines that any family member engages in drug-related activity. Therefore, based on Ms. Gillespie's admission of guilt at the hearing and her guilty plea in March 2010 to felony controlled substance delivery charges, MSHDA's termination on this basis should be upheld.

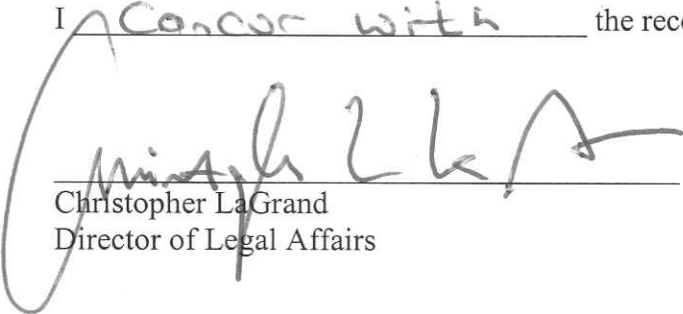
As to the second issue, I find that there is a preponderance of the evidence that demonstrates that Ms. Stocking resided in the Portage Ave Unit with Ms. Gillespie. Seven exhibits were presented showing the Portage Ave Unit as Ms. Stocking's address. Most persuasive were copies of Ms. Stocking's Michigan ID and driver's licenses, voter registration card, vehicle registration, 2008 Michigan tax return, and the Lexis Nexis report which all listed the Portage Ave Unit as Ms. Stocking's only address. Section J of Chapter XIII of the MSHDA Housing Voucher Programs Policy and Procedures Manual states "*Absence of evidence of any other address is considered verification that the visitor is a household member*" and "*Use of the unit address as the visitor's current residence for any purpose not explicitly temporary, is construed as permanent residence.*" Section J also states that "*the burden of proof that the individual is a visitor rests on the family.*" Although Ms. Gillespie contends that Ms. Stocking only visited her for limited periods of time, the evidence presented demonstrates that Ms. Stocking's only address of record is the Portage Ave Unit. Therefore, based on the facts and MSHDA Policy, MS. Stocking should

be regarded as a household member and not a visitor. 24 CFR 982.551, 24 CFR 982.553, and the MSHDA Housing Voucher Programs Policy and Procedures Manual, Section B state that failure by the family to supply true and complete information is a valid reason for termination from the program. MSHDA's termination on this basis should be upheld.

DECISION

Based on the evidence presented, I find that a preponderance of the evidence exists to show that Ms. Stocking resided with Ms. Gillespie in the Portage Ave Unit in violation of the Program and that Ms. Gillespie engaged in drug-related activity. I recommend that the participation of Debra Gillespie in MSHDA's Housing Choice Voucher Program be terminated.

I Concur with the recommendation set forth above.



Christopher LaGrand
Director of Legal Affairs

Date: 10/7/10