

FIRST DIVISION
December 30, 2011

No. 1-09-3528

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL HUGHES and CAROLINE)	Petition for Review of an Order
WILLIAMS-HUGHES,)	of the Chief Legal Counsel of the
)	Illinois Department of Human
)	Rights.
Petitioners-Appellants,)	
)	
)	
v.)	No. 08 CH 0669
)	
)	
ILLINOIS DEPARTMENT OF HUMAN)	
RIGHTS, Rocco J. Claps, Director;)	
Raymundo R. Luna, Acting Chief Legal)	
Counsel for the Department of Human)	
Rights; and DEKALB HOUSING)	
AUTHORITY, Brett S. Brown, Executive)	
Director)	
)	
Respondents-Appellees.)	

JUSTICE HALL delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** The Illinois Department of Human Rights' finding of a lack of substantial evidence of housing discrimination based on disability is supported by the record. As a result we find that the chief legal counsel did not abuse his discretion by sustaining the Department's dismissal of the petitioners' complaint.

¶ 2 In 2004, petitioners Michael Hughes and Caroline Williams-Hughes applied to the Dekalb Housing Authority (DHA) for a housing voucher pursuant to Section 8 of the Housing and Community Development Act of 1974, codified at 42 U.S.C.A. § 1437f (2006). The program is funded and administered by the United States Department of Housing and Urban Development (HUD) and is implemented locally by public housing authorities. See generally *Khan v. Bland*, 630 F.3d 519, 523 (7th Cir. 2010). A main objective of the program is to assist "low-income families in obtaining a decent place to live." § 1437f(a). Eligibility for the program is determined by income. *Bland*, 630 F.3d at 524.

¶ 3 In November 2006, petitioners received a letter from the DHA asking them to verify their eligibility for the Section 8 subsidy. After completing the verification process, petitioners received a follow-up letter notifying them that they were scheduled to attend an orientation or briefing meeting to be held on January 17, 2007. The letter notified petitioners that their attendance was mandatory and that the attendance of any household members age 18 and older was also mandatory.

¶ 4 Carol Herrington, a Housing Choice Voucher Administrator with the DHA stated that administrative rules of both HUD and the DHA required that all household members age 18 and older attend a briefing prior to issuance of a housing voucher because the income of an 18-year-old is counted as part of a family's total income. The amount of income affects the subsidy

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granted to a family.

¶ 5 After petitioners failed to attend the briefing on January 17, 2007, the DHA sent them a letter requesting their attendance at a briefing scheduled for February 14, 2007. The DHA also requested petitioners to bring their daughter Neeshelle to the briefing since she would be turning eighteen years of age on the 20th of February. The petitioners subsequently attended the briefing but Neeshelle failed to attend.

¶ 6 The DHA nevertheless provided petitioners with a housing voucher but notified them that the voucher would not be approved for process until their daughter Neeshelle attended a briefing. Mr. Hughes signed a form acknowledging receipt of the housing voucher which had an issuing date of February 14, 2007, and an expiration date of April 15, 2007. The voucher provided that it would expire on the date indicated (April 15, 2007) unless the family requested an extension in writing and the housing authority granted a written extension.

¶ 7 Mr. Hughes submitted a letter to the DHA requesting the housing authority to allow his daughter to attend a specially scheduled briefing after she finished school so that she would not miss any class time. Neeshelle was a high school senior and petitioner expressed concern that if she missed any class time she might fall behind or jeopardize her chances of obtaining a college scholarship.

¶ 8 On March 13, 2007, Ms. Herrington had a telephone conversation with Attorney Adrian Barr, from Prairie State Legal Services, Inc., inquiring as to whether the DHA would be willing to schedule a special briefing for Neeshelle outside of school hours. Ms. Herrington explained that the housing authority had made special accommodations for individuals in the past but that it

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could not make such an accommodation merely based on a student's class attendance. According to Ms. Herrington, Attorney Barr never indicated that Neeshelle required special accommodations due to a disability. Ms. Herrington informed the attorney that the petitioners would be invited to the next scheduled briefing.

¶ 9 Susan Lesorgen, a Housing Choice Voucher case manager, sent petitioners a letter dated March 15, 2007, informing them that she had left a telephone message for them that same day concerning upcoming dates of briefing meetings their daughter could attend. In the letter, she stated that the next briefings were scheduled for March 21 and 22, 2007, and that there were two meetings on each of those days, one at 9:00 a.m. and the other at 1:30 p.m. She further stated that she had scheduled petitioners' daughter to attend the briefing to be held on March 22nd in order to give petitioners as much lead time as possible.

¶ 10 On March 22, 2007, about ten minutes before the scheduled briefing, petitioners contacted the DHA and notified administrators that they would not be attending the briefing because Mr. Hughes had been hospitalized. Ms. Michelle Perkins, an Operations Coordinator at the DHA, stated that she agreed to reschedule a briefing meeting for petitioners but that she required them to provide her with proof that Mr. Hughes had been in the hospital on March 22, 2007. Petitioners never provided such proof.

¶ 11 On March 28, 2007, Ms. Lesorgen received a letter from Mr. Hughes wherein he expressed concern that he had not received a return call from the DHA regarding his inability to attend the briefing held on March 22, 2007. He also expressed his belief that administrators at the DHA had treated him and his family unfairly.

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¶ 12 Mr. Hughes sent a letter dated April 5, 2007, to Ms. Lesorgen inquiring about the status of his section 8 housing voucher and requesting a response in writing. Ms. Lesorgen responded in a letter dated April 11, 2007, advising Mr. Hughes to refer to the materials he received at the briefing he attended on February 14, 2007, regarding program requirements, voucher extensions, and family obligations. Mr. Hughes responded in a letter dated April 11, 2007, to Ms. Lesorgen again inquiring about the status of his section 8 housing voucher.

¶ 13 Ms. Herrington sent a letter dated April 16, 2007, to Mr. Hughes informing him that his section 8 housing voucher had expired on April 15, 2007, and that his file had been closed because all household members age 18 and older had failed to attend a briefing meeting prior to the expiration date.

¶ 14 In late April of 2007, petitioners contacted the Hope Fair Housing Center, alleging that the DHA had denied them the opportunity to rent subsidized housing because of Mr. Hughes' disabilities and his daughter's disability. In May 2007, the executive director of the Center wrote the DHA requesting that petitioners be provided a reasonable accommodation by extending their housing voucher so that they could attend the required briefing meeting. The DHA responded with a letter detailing all of the opportunities provided to the petitioners to attend the required briefing.

¶ 15 The DHA further responded that the petitioners could reapply for a voucher and that the waiting list was not long. A case manager from the Center ultimately determined that the Center had done all it could to assist petitioners and she advised them to reapply for a voucher but if they were still dissatisfied that they could file a complaint with HUD or the Illinois Department

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of Human Rights (Department).

¶ 16 On September 17, 2007, petitioners filed a housing discrimination complaint with the Department. Petitioners alleged that the DHA discriminated against them by: failing to accommodate their daughter's learning disorder by refusing to schedule a special briefing for her outside of school hours; failing to accommodate Mr. Hughes' physical disabilities (congestive heart failure, seizure disorder and cluster headaches), by refusing to extend the briefing meeting scheduled for March 22, 2007; and subjecting them to discriminatory terms and conditions by refusing to issue them a housing voucher.

¶ 17 Petitioners claimed that if the acts alleged in the complaint were proven, then they amounted to violations of Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act (Fair Housing Act) as amended, 42 U.S.C. § 3601 *et seq.*, which prohibits discrimination in the housing sector. The DHA filed a verified response denying the material allegations in the complaint.

¶ 18 The Department conducted an investigation and afterwards dismissed petitioners' complaint for lack of substantial evidence. The dismissal was affirmed by the Department's chief legal counsel. Petitioners now seek review of the chief legal counsel's decision.

¶ 19 ANALYSIS

¶ 20 The chief legal counsel's decision reviewing a dismissal is a final and appealable order. 775 ILCS 5/7-101.1(A) (West 2004). The standard of review is whether the decision was arbitrary and capricious or an abuse of discretion. *Anderson v. Chief Legal Counsel, Illinois Dept. of Human Rights*, 334 Ill. App. 3d 630, 634, 778 N.E.2d 258 (2002).

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¶ 21 A decision is arbitrary and capricious if it contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an explanation which is so implausible that it runs contrary to agency expertise. *Deen v. Lustig*, 337 Ill. App. 3d 294, 302, 785 N.E.2d 521 (2003); *Owens v. Dept. of Human Rights*, 403 Ill. App. 3d 899, 917, 936 N.E.2d 623 (2010). An abuse of discretion is found when a decision is reached without employing conscientious judgment or when the decision is clearly against logic. *Lustig*, 337 Ill. App. 3d at 302. We review the chief legal counsel's decision and not the decision of the Department. *Lustig*, 337 Ill. App. 3d at 302.

¶ 22 The Illinois Human Rights Act (the Human Rights Act) (775 ILCS 5/1-101 *et seq.* (West 2008)) and the Fair Housing Act are similar in language and intent and therefore Illinois courts may rely upon federal law in interpreting and determining whether housing discrimination has occurred. *Turner v. Human Rights Commission*, 177 Ill. App. 3d 476, 487, 532 N.E.2d 392 (1988); *Atkins v. City of Chicago Comm'n on Human Relations*, 281 Ill. App. 3d 1066, 1074, 667 N.E.2d 664 (1996); see also *Wirtz Realty Corp. v. Freund*, 308 Ill. App. 3d 866, 877, 721 N.E.2d 589 (1999) ("section 3-102.1(k) of the Illinois Human Rights Act is nearly identical to section 3604(f)(9) of the Fair Housing Act").

¶ 23 In the absence of direct evidence of discrimination, claims of housing discrimination are evaluated under the burden-shifting framework the United States Supreme Court first articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). See generally *Zaderaka v. Illinois Human Rights Commission*, 131 Ill. 2d 172, 178-79, 545 N.E.2d 684 (1989).

¶ 24 A plaintiff bears the initial burden of establishing a *prima facie* case of housing

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discrimination by a preponderance of the evidence; if a plaintiff succeeds in establishing a *prima facie* case, a rebuttable presumption of discrimination arises and the burden then shifts to the defendant to rebut the presumption by articulating a legitimate nondiscriminatory reason for the challenged action; if the defendant satisfies this burden, the burden shifts back to the plaintiff to prove that the nondiscriminatory reason asserted by the defendant was merely a pretext for the discrimination. *Cavalieri- Conway v. Butterman & Associates*, 992 F. Supp. 995, 1005 (N.D. Ill. 1998).

¶ 25 To establish a *prima facie* case of housing discrimination based on their alleged disabilities, petitioners must show that: (1) Mr. Hughes and his daughter suffered from disabilities; (2) the DHA knew or should reasonably be expected to know of the disabilities; (3) accommodation of the disabilities may be necessary to afford petitioners an equal opportunity to use and enjoy the dwelling; and (4) the DHA refused to make such accommodations. See generally *Janush v. Charities Housing Development Corp.*, 169 F. Supp. 2d 1133, 1135 (N.D. Cal. 2000).

¶ 26 Mr. Hughes alleges that he suffered from congestive heart failure, seizure disorder and cluster headaches, and that he proffered that he was receiving social security benefits as a result of these disabilities. However, Mr. Hughes' alleged disabilities are not relevant to the course of events that led to the expiration of the housing voucher because he satisfied his personal obligations by actually appearing at the briefing meeting held on February 14, 2007. Mr. Hughes' appearance at the meeting established that he did not require a reasonable accommodation in order to obtain the housing voucher and that the DHA therefore could not have failed to provide

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him with a reasonable accommodation in this regard.

¶ 27 In relation to the petitioners' daughter's alleged learning disability, a review of the record indicates that the petitioners failed to establish the last three elements of the *prima facie* case. In regard to the second element, no evidence was presented that the DHA knew or reasonably should have known of Neeshelle's alleged learning disability during the relevant time period. A review of the record indicates that the petitioners did not provide the DHA with any information concerning their daughter's alleged learning disability during the relevant time period prior to expiration of the housing voucher.

¶ 28 Petitioners' request to the DHA to schedule a special briefing for Neeshelle outside of school hours was not based on her alleged learning disability but rather on petitioners' concerns that if she missed any class time she might fall behind and jeopardize her chances of obtaining a college scholarship. Petitioners did not provide the DHA with any information concerning their daughter's alleged learning disability during the relevant time period. Such information was provided only after petitioners were notified that their housing voucher had expired. Petitioners failed to meet their burden of establishing that the DHA was aware of their daughter's alleged learning disability during the relevant time period.

¶ 29 In regard to the third element, petitioners have not established that accommodating Neeshelle's alleged learning disability was necessary to afford petitioners an equal opportunity to obtain subsidized housing. Petitioners have not shown that Neeshelle's alleged learning disability had anything to do with the reasons as to why the DHA refused to schedule a special briefing for her outside of school hours. In other words, petitioners have not shown that "but for"

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their daughter's alleged learning disability, the DHA would have scheduled a special briefing for her outside of school hours. See *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F. 3d 737, 755 (7th Cir. 2006) (issue as to whether a particular accommodation is necessary cannot be reached until plaintiff shows that "but for" its disability, it would have received the ultimate benefit being sought).

¶ 30 In regard to the fourth and final element, petitioners have not established that the DHA refused to accommodate petitioner's daughter in scheduling a briefing meeting. A review of the record shows that personnel at the DHA made repeated attempts to schedule briefing meetings to encourage petitioners' daughter's participation.

¶ 31 In sum, petitioners failed to establish that the DHA had any information regarding their daughter's alleged learning disability during the relevant time period prior to expiration of the housing voucher. Petitioners also failed to establish that their daughter either required a reasonable accommodation on the basis of an alleged learning disability during the relevant time period or that she was denied such an accommodation.

¶ 32 The Department's finding of lack of substantial evidence is supported by the record. As a result, we find that the chief legal counsel did not abuse his discretion by sustaining the Department's dismissal of the petitioner's complaint.

¶ 33 We affirm the chief legal counsel's order.

¶ 34 Affirmed.