

SIXTH DIVISION
September 30, 2015

No. 1-13-3836

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

TONYA BURCH,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	13 CH 5116
)	
THE CHICAGO HOUSING AUTHORITY,)	
an Illinois Municipal Corporation,)	Honorable
)	Franklin U. Valderrama,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Rochford concurred in the judgment. Justice Delort specially concurred in the judgment.

ORDER

Held: The Chicago Housing Authority violated plaintiff's procedural due process rights by failing to provide her with proper notice required under federal law for termination of her participation in the Section 8 Housing Choice Voucher Program.

¶ 1 Plaintiff Tonya Burch appeals from a judgment of the circuit court affirming a decision of the defendant Chicago Housing Authority (CHA) terminating her federally subsidized housing benefits under the Section 8 Housing Choice Voucher Program (HCV Program). For the reasons that follow, we reverse and remand with directions.

¶ 2 In March 1998, plaintiff became a participant in the HCV Program. The program is a federally-funded program in which the United States Department of Housing and Urban Development (HUD) provides rent subsidies to eligible families to assist them in renting privately owned housing. See 42 U.S.C. § 1437f(o); 24 C.F.R. § 982.1(a)(1) (2006); *Khan v. Bland*, 630 F.3d 519, 523-25 (7th Cir. 2010). The program is governed by the Code of Federal Regulations (Federal Code) (24 C.F.R. § 982.1 *et seq.* (2008)) and is administered on the local level by governmental entities called public housing agencies or PHA's (24 C.F.R. § 982.1(a)), such as the CHA.¹ Under the HCV Program, plaintiff's landlord received a voucher from the CHA to subsidize a portion of plaintiff's rent for a house located at 6715 South Throop Street, Chicago, Illinois. See 24 C.F.R. § 982.451 (2006).

¶ 3 On August 24, 2012, the CHA notified plaintiff of its intent to terminate her benefits under the HCV program. The reason given in the notice was as follows:

"The criminal background report indicates that Michael Burch, household member, did not pass the standard for continued participation in the Housing Choice Voucher Program.

The HCV Program Voucher Family Obligations state:

¹ The CHA is a municipal corporation operating under the Illinois Housing Authorities Act (310 ILCS 10/1 *et seq.* (West 2012)) for the purpose of providing safe and decent housing for low income persons. *Castro v. Chicago Housing Authority*, 360 F.3d 721, 724 (7th Cir. 2004).

The family (including each family member) must not:

Engage in or allow guest to engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right of peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

Possess or use a firearm or aggravated assault weapon in violation of federal, state or local criminal or civil laws."

¶ 4 Plaintiff, appearing *pro se*, challenged the proposed termination at an informal administrative hearing held on December 14, 2012. A representative of the CHA testified that his agency was proposing to terminate plaintiff's participation in the HCV Program for two primary reasons. The first reason given was that plaintiff's son, Michael Burch, had violated the family obligations requirements of the HCV Program by engaging in a pattern of violent criminal activity and being convicted of aggravated unlawful use of a weapon, a Class 4 felony. In March 2010, Michael Burch pled guilty to aggravated unlawful use of a weapon in violation of section 24-1.6(a)(1) of the Criminal Code of 1961 (720 ILCS 5/24-1.6(a)(1) (West 2010)). He was sentenced to two years' probation and was credited for six months' time served. His probation was terminated unsatisfactorily. In addition, between 2008 and 2012, he had been arrested for six other criminal offenses such as mob action, domestic battery, and aggravated assault.

¶ 5 The second reason given was that at her annual recertification for the HCV Program in 2011, plaintiff failed to acknowledge Michael Burch's various arrests and his conviction for aggravated U UW. Plaintiff answered "No" to a question on the application as to whether any household members had engaged in criminal activity within the last five years. Plaintiff also signed a "Family Obligations" form which provided that each family member must not "Engage

in any drug related criminal activity (including use of an illegal drug) or violent criminal activity or illegally possess weapons or other criminal activity." The form further provided that plaintiff understood that any violation of her family obligations would result in her family's termination from the program.

¶ 6 Plaintiff testified that prior to receiving documents from the CHA in regard to the hearing, she was unaware of most of Michael Burch's criminal activity. She testified that none of his criminal activity occurred at her house or while he was with her. Plaintiff requested that her son be taken off of her voucher rather than terminating her from the HCV Program.

¶ 7 On January 4, 2013, the hearing officer issued a decision terminating plaintiff's benefits under the HCV program. One of the stated reasons for the decision was a violation of a family obligation under the HCV Program; specifically, "household member Michael Burch has recently been arrested and convicted of firearm-related criminal activity, and has been arrested for other violent criminal activity." The other stated reasons for the decision were findings that plaintiff had refused to accept responsibility for her son's criminal conduct, she had never petitioned the CHA to officially remove him from her voucher, and she had knowingly concealed his criminal background at her annual recertification for the HCV Program in 2011.

¶ 8 On February 21, 2013, plaintiff, acting *pro se*, filed a petition for judicial review by writ of *certiorari* in the circuit court. In her petition, plaintiff alleged that the decision to terminate her from the HCV program was contrary to the law. On November 12, 2013, the circuit court entered a memorandum opinion and order denying plaintiff's petition for writ of *certiorari* and affirming the hearing officer's decision to terminate plaintiff from the HCV program. This appeal followed.

¶ 9

ANALYSIS

¶ 10 Plaintiff contends the CHA violated her due process rights because it failed to provide her with proper notice required under federal law for termination of her participation in the HCV Program. We agree.

¶ 11 Participants in programs such as the HCV Program enjoy a property interest in continued occupancy of subsidized housing which constitutes a statutory entitlement subject to procedural due process protection. See *Robinson v. District of Columbia Housing Authority*, 660 F. Supp. 2d 6, 20 (D.D.C.2009). In *Goldberg v. Kelly*, 397 U.S. 254, 266-71 (1970), the United States Supreme Court outlined procedural due process requirements of a pretermination hearing involving welfare benefits: (1) timely and adequate notice detailing the reasons for termination; (2) an opportunity to appear at the hearing, present evidence and oral argument and confront and cross-examine adverse witnesses; (3) the right to be represented by counsel; (4) a right to a decision rendered by an impartial decisionmaker; (5) a right to have that decision based solely on rules of law and evidence presented at the hearing; and (6) a right to a statement by the decisionmaker setting forth the reasons for the decision and the evidence upon which it was based.

¶ 12 Following *Goldberg*, the federal government promulgated rules in accordance with the Court's decision. See 55 Fed. Reg. 28538, 28541 (July 11, 1990) ("PHAs must adopt written informal pretermination hearing procedures for participants, which fully meet the requirements of *Goldberg v. Kelly*"). The Federal Code provides that a PHA may terminate a participant's Section 8 benefits if the family violates any family obligations under the program (24 C.F.R. § 982.552(c)(1)(i) (2006)) or engages in criminal activity (24 C.F.R. § 982.552(c)(1)(xi) (2006)). However, prior to any hearing for termination, the PHA must provide the family with "prompt

written notice" containing a "brief statement of reasons for the decision." 24 C.F.R. 982.555(c)(2)(i) (2008). Although the Federal Code does not discuss the amount of information that must be contained in the "brief statement," courts have found that "the notice must, at the very least, inform the resident of the situation so that she can make an intelligent response." *Jones v. Lansing Housing Comm'n*, No. 5:03-CV-123, 2003 WL 26118817, at *6 (W.D. Mich. 2003).

¶ 13 The purpose of the written notice is "to inform the tenant of the allegations so that he can prepare a defense." *Driver v. Housing Authority of Racine County*, 289 Wis. 2d 727, 739 (Wis. App. 2006) (quoting *Edgecomb v. Housing Authority of Town of Vernon*, 824 F. Supp. 312, 314-15 (D. Conn. 1993)). The notice must be " 'sufficiently specific ... to enable [the tenant] to prepare rebuttal evidence to introduce at his hearing appearance.' " *Edgecomb v. Housing Authority of Town of Vernon*, 824 F. Supp. 312, 315 (D. Conn. 1993) (quoting *Billington v. Underwood*, 613 F.2d 91, 94 (5th Cir. 1980)). In order to effectively rebut adverse evidence at the hearing, the notice must alert the tenant of the nature of this evidence. *Driver*, 289 Wis. 2d at 739. "A notice that does not indicate the nature of the proscribed acts or when the acts were committed is insufficient." *Jones*, 2003 WL 26118817, at *6 (citing *Edgecomb*, 824 F. Supp. at 315).

¶ 14 After reviewing the CHA's intent to terminate letter and cases decided by other courts facing a similar issue, it is evident that the termination letter did not comply with Federal Code regulations or the Supreme Court's mandate in *Goldberg*. The notice of intent to terminate was insufficient and misleading because it failed to indicate that plaintiff's own actions were being considered as grounds for terminating her participation in the HCV Program. At the pretermination hearing, the CHA representative testified that one of the primary reasons the

CHA was proposing to terminate plaintiff's participation in the HCV Program was because the agency believed she had knowingly concealed Michael Burch's criminal background when she completed her annual recertification for the HCV Program. Moreover, the hearing officer stated he was upholding the CHA's decision to terminate plaintiff's participation in the HCV Program based in part on his findings that plaintiff had refused to accept responsibility for her son's criminal conduct, she had never petitioned the CHA to officially remove him from her voucher, and she had knowingly concealed his criminal background at her annual recertification for the HCV Program in 2011.

¶ 15 It was the responsibility of the CHA to put plaintiff on notice as to the precise conduct she allegedly engaged in that warranted terminating her participation in the HCV Program. Due process imposes the burden of providing adequate notice on the government, not on the individual. *Driver*, 289 Wis. 2d at 743. Without that specific information, plaintiff could not have known how to prepare rebuttal evidence to introduce at her pretermination hearing or to adequately defend against the claims and allegations asserted against her by the CHA. Due process "requires such information in order for the tenant to adequately prepare for the hearing and to understand what factors motivated the final decision, particularly where more than one potential ground for termination exists." *Id.* at 746.

¶ 16 CHA argues that its notice complied with due process requirements because prior to the pretermination hearing, it provided plaintiff with all the relevant criminal records and documents it would be relying on at the hearing. With this argument, the CHA is effectively contending that any deficiency in its notice was cured by the plaintiff's "actual notice" of the conduct at issue. See, e.g., *Pratt v. Housing Authority for City of Camden*, Civil Action No. 05-0544 (NLH), 2006 WL 2792784, at *9 (D.N.J. Sept.27, 2006). This argument fails because even if the CHA

provided plaintiff with the criminal records and documents it planned to rely on at the pretermination hearing, the agency never put plaintiff on notice that her own actions were being considered as grounds for terminating her participation in the HCV Program. More importantly, courts have determined that recognizing an "actual notice" exception to the regulatory requirement of written prehearing notices would relieve housing authorities of their due process burden of providing Section 8 recipients with proper and adequate notice and would invite housing authorities to avoid fully complying with federal regulations if they believed a recipient already knew the alleged basis for his or her termination from the program. See *Driver*, 289 Wis. 2d at 743-46; *Pratt*, 20063 WL 2792784, at *9-10.

¶ 17 Plaintiff finally contends that prior to terminating her participation in the HCV Program, the CHA failed to properly consider her request for reasonable accommodations, citing 24 C.F.R. § 982.552(c)(2)(iv) (2006) (mandating that if the tenant is disabled, the PHA's final decision with respect to denial of Section 8 assistance must consider whether a reasonable accommodation would enable the tenant to continue receiving her rental subsidy). Plaintiff made requests for reasonable accommodation as she suffers from breast cancer and has been undergoing treatment since 2006. However, in light of our holding, we need not address this argument.

¶ 18 We find the CHA violated plaintiff's procedural due process rights because it failed to provide her with the proper notice required under federal law for termination of her participation in the HCV Program. We reverse the order of termination and the judgment of the circuit court. We order the CHA to reinstate plaintiff's Section 8 voucher *instanter*.

¶ 19 Reversed and remanded with directions.

JUSTICE DELORT, specially concurring:

¶ 20 I join the majority's order in full. I write separately to emphasize that this case illustrates the need for governmental bodies to properly plead administrative charges. The CHA's notice of intent to terminate benefits merely mentioned a "criminal background report" on Burch's son, but did not advise Burch of the "what, when, and where" necessary for her to be on proper notice so she could defend against the charges. The mere fact that a "report indicate[d]" something is hardly a proper basis for a governmental body to deprive someone of her legally vested rights. The correct way to set out the charges would be to specifically state the facts included in the report, such as the specific nature of the son's crimes (*i.e.*, unlawful use of a weapon), the dates on which they were committed, and the convictions resulting therefrom. By merely parroting the bare text of regulations, the CHA improperly short-cut the process and ran afoul of the standards of due process, as interpreted by the case law cited in the majority's order. The CHA then compounded its error by expanding the hearing to include issues not presented in the charges and then relying on its findings regarding those issues to further bolster its determination. See *supra*, ¶ 14.