2016 IL App (1st) 151920-U

FIFTH DIVISION
August 26, 2016

No. 1-15-1920

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARGARET STEPHENS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 18858
	)	
CHICAGO HOUSING AUTHORITY,	)	Honorable
	)	Neil Cohen,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* The finding by the administrative law judge (ALJ) that plaintiff's Earned Income Disallowance (EID) benefits had ended, requiring her to pay a higher rent, was not clearly erroneous and we affirm.

¶ 2 Plaintiff-appellant Margaret Stephens (plaintiff) appeals *pro se* from an order of the circuit court of Cook County affirming the decision of an administrative law judge (ALJ) in favor of defendant-appellee Chicago Housing Authority (CHA) to terminate her benefits under the Earned Income Disallowance (EID) program in July, 2013. Plaintiff disputes that decision and asks this court to reverse the circuit court ruling and to receive "credit [for] the remaining EID." We hold that the ALJ's decision was not clearly erroneous and affirm the circuit court's judgment.

¶ 3 We note that plaintiff's brief fails to adhere to the supreme court rules governing appellate review. In particular, her brief is not in compliance with Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) in that it fails to provide an argument portion with citation of authorities and pages of the record relied on. A party's *pro se* status does not relieve her of the burden of complying with procedural rules. *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 425 (2005), citing *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). However, we have ascertained the issues plaintiff raises based upon the record and the CHA's cogent brief. Thus, we choose to review the merits of plaintiff's appeal. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008), citing *Twardowski*, 321 Ill. App. 3d at 511.

¶ 4 Plaintiff, a public housing resident living with her adult son, Andrew Stephens, at a CHA apartment building at 13078 South Ellis Avenue in Chicago, received a Notice of Rent Adjustment in June 2013. The notice, from the CHA's agent, East Lake Management Group, Inc. (East Lake), advised plaintiff that her rent would increase beginning on July 1of that year. The amount was based on an interim adjustment and Plaintiff’s annual salary. Plaintiff initially sought an informal hearing which was held on June 17, 2013, and resulted in a CHA finding that

plaintiff's rent would increase to $435 on July 1. Pursuant to the CHA Resident's Grievance Procedure, plaintiff sought a formal hearing with the City of Chicago's Department of Administrative Hearings (Department), contending that she was denied EID benefits when she received a rent increase prematurely and that the amount of the rent was improperly calculated. The formal hearing on August 7, 2013, conducted by an administrative law judge (ALJ), was also attended by: Synetta Brown, property manager at Altgeld-Murray Homes for East Lake; East Lake regional manager Kenzella Greer; and East Lake compliance specialist Marilyn Ortiz (Ortiz).

¶ 5 Plaintiff testified at the hearing that when she began her CHA tenancy in 2007 or 2008, she did not have a job and her monthly rent was $75. When she began working and became eligible under the EID program, it was her understanding that she could continue to pay only the $75 rent for 12 months, that she would then be required to pay an increased rate of $262 for another 12 months, and after the second 12-month period she would have to pay $435. In February 2013, plaintiff began paying $262 monthly, an amount which disallowed or excluded 50% of increased income attributable to new earnings. She continued paying that amount through June, when she received the notice from East Lake that her rent as of July 1, 2013 would increase to the "flat rent," *i.e.*, the maximum rent, of $435 per month. Plaintiff protested that since her rent was supposed to be $262 for 12 full months, she should not have to pay the $435 maximum rent until the second 12-month period ended in February 2014. Plaintiff also contested the calculated amount of rent, arguing that her combined annual income and that of her son was

only $17,568, not the $17,900 calculated by CHA.[1] Questioned by the ALJ about her employment starting date, plaintiff testified that she began working on June 21, 2011, signed employment verification forms to that effect, and received her first paycheck in July. At that time she was not quite sure she was in the EID program because she was not sure the job was going to continue, "but it just happened to continue on."

¶ 6 Synetta Brown, property manager at plaintiff's CHA building, testified that the starting date of the EID program is when the individual starts to work. Plaintiff began working in June 2011. Brown testified that plaintiff's "start date" was June 20, 2011, and the 24-month EID program began on July 1, 2011. Consequently, plaintiff's 24-month program ended in July 2013, at which time she was required to pay the full $435 flat rent based on her income. During the first 12-month EID period, 100% of plaintiff's increase in income was disallowed or disregarded for purposes of calculating her rent, and for those 12 months she was required to pay only the $75 monthly rent she had paid up to that time. After 12 months, beginning on July 1, 2012, she was required to pay $262 monthly. However, due to a CHA administrative error, plaintiff was not directed to pay $262 monthly rent until February 2013. Thus, for the seven months from July 2012 to February 2013, she received the benefit of a rent amount lower than what she was required to pay.

¶ 7 The record on appeal contains a written notice to plaintiff from East Lake, dated December 28, 2012, that her new monthly income-based rent of $262 would become effective February 1, 2013. Attached was a lease addendum showing that the beginning of the term of the

[1] Although plaintiff contested the calculations of her income-based rent at the administrative hearing, she does not do so on appeal. Accordingly, we accept the parties' assertion that plaintiff's rent at the 50% rate is $262 and at the 100% rate is $435.

lease was February 1, 2013, and the end of the lease was January 31, 2014. At the hearing, the ALJ questioned Brown about the notice of rent adjustment, asking whether the $262 rent had to end on July 1, 2013. Brown replied that it did end on that date and the flat rent of $435 became effective.

¶ 8 East Lake regional manager Kenzella Greer testified that she and property manager Brown had met informally with plaintiff and explained the EID program to plaintiff. Greer acknowledged that administrative errors were made but asserted that the errors redounded to the benefit of plaintiff, and CHA was not seeking to recover the seven months of underpaid rent.

¶ 9 East Lake compliance specialist Marilyn Ortiz testified that the EID program was offered only one time "in the lifetime of the tenancy of the resident." The $435 base rent became applicable when plaintiff's 24-month program ended in July 2013.

¶ 10 On August 8, 2013, the ALJ found by a preponderance of the evidence in favor of CHA and against plaintiff. The ALJ found that, according to the testimony and documents submitted to her, plaintiff began working on June 20, 2011. After reviewing applicable sections of the CHA Rules and Regulations and the EID program, the ALJ concluded that CHA property manager Brown had accurately described the EID program as applicable to plaintiff and that her EID had terminated on July 1, 2013.

¶ 11 Plaintiff timely petitioned for *certiorari*, seeking judicial review of the ALJ's decision. On May 6, 2015, following arguments by the parties in motions and briefs, the circuit court entered an order affirming the decision of the ALJ. Plaintiff now appeals from the administrative review decision of the circuit court.

¶ 12 On appeal, plaintiff contends that CHA "initiated an inaccurate lease agreement" with her and improperly charged her with seven months of excessive rent for the period from July 1, 2013, through January 31, 2014. Plaintiff asserts that, pursuant to the lease for the period from February 1, 2013, through January 31, 2014, she qualified for 50% EID at the monthly rental of $262. However, in July 2013, only five months into the lease period, her rent was raised to $435, resulting in seven months of rent overpayment. The CHA responds that plaintiff's rent was properly raised to the $435 level on July 1, 2013 because on that date, 24 months after plaintiff's EID began, both 12-month periods of eligibility were completely used and EID was terminated.

¶ 13 The CHA is a municipal corporation operating under the provisions of the Housing Authorities Act (310 ILCS 10/1 *et seq.* (West 2012)), which did not adopt the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). As a result, the proper vehicle to seek a judicial review of the CHA's final administrative decision in this case was by means of a common law writ of *certiorari. Rodriguez v. Chicago Housing Authority*, 2015 IL App (1st) 142458, ¶ 12. However, an appeal from the decision rendered in such a proceeding is treated as any other appeal for administrative review, and accordingly, we review the decision of the administrative agency, and not the determination of the circuit court. *Id.* ¶ 13.

¶ 14 We consider the purely factual findings of the agency to be *prima facie* true and correct, and they will not be disturbed unless they are contrary to the weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). Findings are against the weight of the evidence when an opposite conclusion is clearly evident from the record. *Id.* We also give deference to an administrative agency's interpretation of the statute it is charged with enforcing. *Hadley v. Illinois Dept. of Corrections,* 224 Ill. 2d 365, 370 (2007).

Courts, however, are not bound by an agency's interpretation that conflicts with the statute in question, is unreasonable, or is otherwise erroneous. *Id.* Where, as here, the agency's ultimate determination is a mixed question of fact and law, the "clearly erroneous" standard applies. *Senno v. Department of Healthcare and Family Services*, 2015 IL App (1st) 132837, ¶ 41. An agency's decision will be deemed clearly erroneous only where the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 15 The Earned Income Disallowance (or Disregard) program (EID) is a program funded by the U.S. Department of Housing and Urban Development (HUD) and administered by the CHA, which allows public housing tenants who have been out of work to return to work without having their rents increase immediately. Under the program, exceeding the minimum annual income is disregarded one time in the first 12-month period, and a 50% income increase is waived for the second 12-month period. 24 C.F.R. § 960.255(b)(1) (2012).[2]

¶ 16 Here, the question of whether plaintiff's EID benefits terminated on July 1, 2013, presents a mixed question of fact and law. The ALJ found as a matter of fact, and plaintiff acknowledged, that her employment began in June 2011. The record supports that finding. CHA witnesses testified, and the ALJ also found, that plaintiff's 24-month EID benefit period began on the first of the following month, July 1, 2011, and ended on June 30, 2013, at which time plaintiff was required to pay the full flat rent of $435. Plaintiff admitted that property manager Synetta Brown

[2] The program was adopted by the Illinois General Assembly effective August 4, 2011. 310 ILCS 10/8.22 (West 2012).

"was complaining it should've gotten started June right away and stuff like that. So that's two years if you count it that way."

¶ 17 However, plaintiff disputed the start date of her EID program. She contends that, according to Management and Occupancy Offices worksheets, she qualified for 100% EID during her lease period from February 1, 2012, through January 31, 2013, and that a 50% EID was given for the 2013-2014 year lease renewal. She testified at the hearing that "the 50 percent kicked in" in February. Ortiz, the compliance specialist, responded, "But it shouldn't have." Ortiz explained that the $262 should have "kicked in" the previous July.

¶ 18 The record indicates that plaintiff's argument mistakenly tied her participation in the EID program to the date of her lease. In December 2012, she signed a CHA lease stating that the monthly rent for her apartment would be $262 for the lease period from February 1, 2013, to January 31, 2014. The erroneous rent amount in the written lease was the result of CHA's own clerical error in failing to timely require plaintiff to begin paying the increased $262 rent as of July 2012. Thus, plaintiff's contention that the second 12-month EID period did not begin until February 2013 and, therefore, would not end until February 2014, was contrary to the CHA's interpretation of the regulations.

¶ 19 The finding of the ALJ that the CHA properly interpreted the regulations and that, under the terms of the EID program plaintiff's 24-month period began on July 1, 2011, and ended on July 1, 2013, was not clearly erroneous. It was supported by testimony that, under EID guidelines, the 24-month period began on the first of the month following the start of employment, and ended 24 months after that. Plaintiff has given us no reason why the CHA's administrative error, in not timely requiring plaintiff to begin paying $262 monthly as of July

2012, should extend the length of the EID program beyond its administratively required termination date of July 1, 2013. In fact, the only result of the error was to give plaintiff the benefit of seven months from July 2012 to February 2013 during which she paid only $75 instead of the $262 she should have paid.

¶ 20 Accordingly, we conclude that the finding of the agency, that plaintiff's EID ended July 1, 2013, and that as of that date she was required to pay the flat rent of $435 per month, was not clearly erroneous, and we affirm the decision of the ALJ in favor of the CHA and the judgment of the circuit court of Cook County.

¶ 21 Affirmed.