2014 IL App (1st) 132706-U

FIRST DIVISION
OCTOBER 14, 2014

No. 1-13-2706

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TOWANDA MORROW,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 10351
	)	
CHICAGO HOUSING AUTHORITY,	)	Honorable
	)	Mary Lane Mikva,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justice Connors and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Agency's termination of plaintiff from rent subsidy program was not erroneous, as termination was mandatory under governing federal regulation and thus agency lacked discretion to consider mitigating circumstances. Plaintiff's move from former residence pursuant to order of possession against her for nonpayment of rent constituted "eviction" due to "serious violation of the lease" under regulation mandating termination, notwithstanding plaintiff's subsequent payment of outstanding rent and agency's delay in seeking termination.

¶ 2 Plaintiff-appellant Towanda Morrow appeals from an order of the circuit court of Cook County denying her petition for review of an administrative hearing decision by the defendant-appellee Chicago Housing Authority (CHA) that terminated her receipt of rental assistance under the Housing Choice Voucher Program.

¶ 3 BACKGROUND

¶ 4 In October 1998, plaintiff became a participant in the U.S. Department of Housing and Urban Development (HUD)'s Housing Choice Voucher Program, which provides assistance in the form of subsidized rent to qualifying families. Under that program, a participant selects rental housing and enters into a lease. If the participant's local public housing agency approves the rental residence, the agency enters into an arrangement with the property owner to pay a specified portion of the participant's rent. CHA, a municipal corporation created by Illinois state law, is the public housing agency that administers the operation of the voucher program in the city of Chicago.

¶ 5 In 2010, plaintiff resided at an apartment at 4429 South Indiana Street in Chicago pursuant to a lease with the property's landlord, Tria Adelfi LLC. Through the voucher program, the CHA subsidized a portion of plaintiff's monthly rent while plaintiff was responsible for paying the remaining portion to Tria Adelfi. However, during 2010 plaintiff encountered financial difficulties and fell behind in rental payments. On or about September 20, 2010, Tria Adelfi commenced an eviction proceeding in the circuit court of Cook County which sought possession of the South Indiana apartment because plaintiff owed the sum of $2,295 in past rent. Plaintiff was served with Tria Adelfi's complaint on September 20, 2010.

¶ 6 Due to her financial circumstances, plaintiff sought to move to a more affordable apartment while remaining a participant in the voucher program. In order to remain a participant

in the program, plaintiff was required to notify CHA and obtain "moving papers" containing the agency's approval of the new residence and a new subsidy arrangement with the property owner. CHA records show that on September 21, 2010, plaintiff called CHA to inform them "she will be moving out of the unit and staying with family members until moving papers are ready." Plaintiff was advised to submit a written request for "moving papers" at the CHA office.

¶ 7 On September 23, 2010, plaintiff met with her caseworker at the CHA office and expressed her desire to move to a less expensive residence. Plaintiff submitted a handwritten letter to CHA explaining she had "fallen behind in my bills" and "can't afford to stay in my unit" because she had experienced a decline in her business as a hairstylist. Plaintiff's letter stated she planned to move out of the South Indiana apartment as soon as possible and would live with her son until she could find another apartment. The September 23, 2010 letter additionally stated "[t]he landlord wants to take me to court" but did not indicate that legal proceedings had been initiated. The CHA worker advised plaintiff to pay Tria Adelfi any outstanding rent owed in order to be eligible to receive moving papers.

¶ 8 On the same date, plaintiff received and signed a number of CHA forms to process her request for approval of a new rental subsidy. One such document, entitled "Chicago Housing Choice Voucher Program Family Obligations," lists numerous requirements of program participants and states that "[f]amilies who fail to comply with Family Obligations will be terminated from the voucher program." The listed obligations include that "[t]he Family must comply with the term of the lease and not commit serious or repeated violations of the lease ***." The document further warns: "Families evicted for cause will be terminated from the program" and requires the family to "give the CHA a copy of any owner eviction notice."

Plaintiff signed and dated the document below the statement: "I understand any violation of my family obligations will result in my family's termination from the program."

¶ 9 On September 29, 2010 the court presiding over the eviction proceedings issued an "Order for Possession" finding that Tria Adelfi was entitled to possession of the South Indiana apartment as well as the sum of $1706.00 from plaintiff. The order specified that enforcement of the judgment would be stayed until October 6, 2010. CHA records reveal that the agency learned of the order of possession the following day, September 30, 2010. A CHA worker recorded: "Received email indicating judgment was entered against participant *** and owner gained possession of unit 09/29. Participant is not eligible for moving papers at this time." The referenced email is not contained in the record on appeal.

¶ 10 A separate CHA note dated September 30, 2010 reflects that the plaintiff returned to the CHA office on that date "to find out *** the procedure if [property owner] reports non-p[a]ym[e]nt of rent" and that a CHA employee "[e]xplained to her what happens when [a participant] violates family obligations." The following day, October 1, 2010, plaintiff again called the CHA office and informed the agency that she had "made arrangements" with Tria Adelfi regarding payment of the outstanding rent.

¶ 11 On October 4, 2010, plaintiff and Tria Adelfi entered into a "Move-out Rent Re-Payment Agreement" in which she agreed to pay all outstanding rent owed. The document states that Tria Adelfi would retain plaintiff's security deposit "due to the outstanding balance of [$]2,884.35 on her rent." Plaintiff also agreed to pay Tria Adelfi $500 upon her move out of the apartment and to thereafter "pay $250.00 every month until her remaining balance *** is paid in full." The agreement stated that "[i]f a payment is not made by the 15th of every month it will immediately be reported to CHA that [plaintiff] has failed to abide by this agreement."

¶ 12 Records reflect that plaintiff called the CHA office repeatedly in October 2010 to check on the status of approval of her moving papers but was informed a decision had not been made. On November 17, 2010, CHA received an email from Tria Adelfi "advising that [plaintiff] has not made a payment towards their agreement." In response, a CHA worker contacted plaintiff, who "explained that she is not making the money because business is slow at the [salon]." The CHA worker "advised [plaintiff] that she must abide by the agreement she made or risk losing her subsidy all together." Plaintiff responded that she would borrow the money that day to pay Tria Adelfi. The parties do not dispute that plaintiff eventually paid all amounts due to Tria Adelfi under the October 4, 2010 agreement.

¶ 13 CHA proceeded to approve a housing assistance subsidy for plaintiff to rent a new apartment at 6744 South Merrill Avenue. CHA records reflect that a "Rent offer" between CHA and the property owner was accepted on November 19, 2010. Plaintiff called CHA on December 7, 2010 to find out her new portion of rent but was told the amount was "not yet established." Plaintiff also called CHA on December 28, 2010 and again on January 31, 2011 and was told that her "estimated portion" of rent at the South Merrill apartment would be $119.00. CHA records also reflect communications in February 2011 with the property manager of the South Merrill apartment regarding CHA's approval of plaintiff's new lease. The exact date of plaintiff's move into the South Merrill residence is not clear from the record, yet there is no dispute that CHA did approve her lease and rent subsidy at the new apartment. Plaintiff has stated, and CHA does not dispute, that she complied with her lease agreement and consistently paid her portion of the rent for the South Merrill residence until at least November 2012.

¶ 14 Nevertheless, on November 28, 2012, over two years after the eviction proceeding regarding the South Indiana apartment, CHA notified plaintiff of its plan to terminate her from

the housing choice voucher program by sending plaintiff an "intent to terminate" (ITT) notice. CHA's internal records explained the decision to terminate. Entries by a CHA "enforcement coordinator" dated November 28, 2012 explain that an "ITT request" was made "due to past eviction from previous unit. Upon review of Circuit [court] records, the eviction proceedings resulted in an Order for Possession *** which warrants mandatory termination from the program." The same entry further acknowledges that "CHA received notification of this at the time and halted the participant's request for moving papers. However, after the order for possession was granted, the participant entered into a repayment agreement with the owner to pay back rent owed. Once CHA received documentation of the repayment agreement, the participant was issued moving papers, and the participant moved." CHA concluded that an ITT would be issued on the basis of plaintiff's eviction, explaining: "Though the participant entered into a repayment agreement and was allowed to move, this does not negate the participant's violation of the family obligations. Entering into a repayment agreement is actually more proof that the participant had not paid her rent."

¶ 15 On or about November 28, 2012, plaintiff received an ITT notice informing her that CHA "propos[ed] termination of your participation in the [CHA's] Housing Choice Voucher Program for violation of the following: A Joint Action lawsuit was filed against you on September 14, 2010, by Tria Adelfi LLC, property owner of the subsidized unit. The lawsuit was filed requesting possession of the unit due to your failure to pay rent ***. On September 29, 2010, the Circuit Court rendered a decision granting the property owner possession of the unit." The ITT notice stated that as a result, plaintiff's "family is in direct violation of the Voucher Family Obligations," citing the obligation that "[t]he family *** must not: [c]ommit any serious or repeated violation of the lease."

¶ 16 The IIT notice informed plaintiff of her right to request an informal hearing regarding the proposed decision and also noted her "right to representation by legal counsel and/or other representatives." Plaintiff made a timely request for a hearing on December 27, 2012. On February 15, 2013, CHA issued a notice to plaintiff scheduling her hearing date and stating that plaintiff had the right to "[b]e represented by counsel (at your expense) or by others," and that she could "[b]ring any witnesses."

¶ 17 The informal hearing took place on March 20, 2013 before an administrative hearing officer. CHA was represented by counsel, and plaintiff appeared on her own behalf. CHA argued that termination was mandatory under the federal regulations governing the voucher program, which state that a public housing authority "must terminate assistance whenever a family is evicted *** for a serious or repeated violation of the lease." 24 CFR § 982.55(b)(2) (2010). CHA stated that it considers a family "evicted" if the family moves after a legal eviction order has been issued, whether or not physical enforcement was necessary, and argued that a nonpayment of rent constitutes a "serious or repeated violation" of a lease.

¶ 18 CHA called one witness, Moses Bell, an employee of a CHA contractor that implements the voucher program. Bell testified regarding the ITT notice and explained that the basis for plaintiff's termination was the 2010 eviction. Bell also testified that a family participating in the voucher program must not commit any serious or repeated violation of the lease agreement, and that CHA considers nonpayment of rent a serious violation of the lease agreement. Through Bell, CHA introduced a number of documents, including forms signed by plaintiff on September 23, 2010 in which she had acknowledged participant obligations under the program. CHA emphasized the documents stated the obligation to "comply with the terms of the lease and not commit serious or repeated violation of the lease," and further warned that violation of such

family obligations would lead to termination from the program. Plaintiff declined when asked by the hearing officer if she wished to ask Bell any questions, and CHA rested its case.

¶ 19 Plaintiff, testifying on her own behalf, acknowledged that she "did fall behind in [her] rent" at the South Indiana apartment but emphasized that she had since paid Tria Adelfi all rent that was owed. She testified that in September 2010 she visited the CHA office and informed the agency in person that she was behind in rent due to decreased income. Plaintiff also noted that she occupied the South Indiana apartment with her adult daughter, Tyra, who "was causing problems" and who refused to contribute to the rent. Plaintiff submitted into evidence her letter to CHA dated September 23, 2010 which stated that Tria Adelfi wished to "take [her] to court" and expressed her desire to move into a more affordable apartment. She testified that when she explained her situation, CHA told her to "just make sure I pay [Tria Adelfi] the rent." Plaintiff stated that she had paid all outstanding rent and introduced a letter from Tria Adelfi confirming she no longer owed any balance. Plaintiff testified that she eventually received her moving papers from CHA and questioned why the agency now sought termination two years after the fact.

¶ 20 Tiffany Clark, another adult daughter of plaintiff, also testified at the hearing. Clark corroborated plaintiff's testimony that her mother had been behind in rent but eventually paid all amounts she owed to Tria Adelfi. Clark testified that plaintiff "wasn't evicted" but had voluntarily left the South Indiana apartment because she could not afford the rent. Clark also corroborated plaintiff's testimony that her sister Tyra, who had been living with plaintiff in 2010, "wasn't paying rent." Clark testified that plaintiff "was given moving papers to move into her new unit" and argued "if [there] was a problem, we shouldn't have been issued moving papers. This happened two years ago."

¶ 21 As further explanation for how plaintiff had fallen behind in rent, Clark also testified that on one occasion plaintiff had placed a $600 money order in Tria Adelfi's mailbox as a rental payment, but that the money order had been stolen. As a result, Clark testified, plaintiff was forced to pay that amount of rent twice. Plaintiff likewise testified that someone "went in the mailbox and cashed the money orders" and thus she was forced to pay an extra $600 to Tria Adelfi. Clark additionally testified that plaintiff had been paying artificially high electricity bills at the South Indiana apartment, which had contributed to her inability to pay rent on time. According to Clark, plaintiff had been erroneously billed for electricity used by a number of neighboring apartments in addition to her own unit.

¶ 22 On cross-examination, plaintiff admitted that in a "notice to vacate" form she provided to CHA on October 7, 2010, she had not provided any response to the form's request for "My reason for vacating my house/apartment," despite the fact that the order of possession had been entered by that date. Plaintiff also acknowledged she had appeared in court in the eviction proceeding, where she had an opportunity to explain her reasons for falling behind in rent. She additionally admitted that she had moved from the South Indiana apartment pursuant to the order of possession, even if the order had not been physically enforced by the sheriff. Plaintiff also admitted that her October 4, 2010 payment agreement with Tria Adelfi reflected that she had fallen behind in rent.

¶ 23 After plaintiff's testimony, the hearing officer directed several questions to CHA's counsel. First, the hearing officer asked why plaintiff was granted moving papers despite the September 2010 eviction. CHA's counsel responded that he lacked personal knowledge but argued that plaintiff had not informed CHA about her eviction, emphasizing her failure to mention the order of possession on the "notice to vacate" form. Counsel noted that plaintiff's

September 23, 2010 letter stated that the landlord wanted to "take [her] to court" but "doesn't say anything about eviction being entered against her," as the order of possession was not entered until September 29, 2010. The hearing officer also asked if CHA claimed it had lacked knowledge of either the order of possession or repayment agreement with Tria Adelfi. CHA's counsel repeated that the order of possession occurred without the agency's knowledge and also claimed the repayment agreement "was entered into without the knowledge of the CHA and CHA did not get a copy of this or knowledge of it until *** December 27, 2012."[1] The hearing officer also asked CHA counsel "why wasn't the eviction raised *** until apparently November 28, 2012?" Counsel again responded "that CHA didn't know that an eviction order had been entered" until 2012.

¶ 24 The hearing officer also directed questions to plaintiff, first asking her to elaborate on how difficulties with her daughter had contributed to her falling behind in rent in 2010. Plaintiff testified her daughter Tyra had a violent boyfriend at the time who threatened to damage the apartment. Plaintiff stated she could "barely to go work because I didn't want him in the unit" and that plaintiff "would stay home some days so that the unit wouldn't get demolished or anything." Plaintiff further testified that Tyra did not contribute to the rent for the apartment.

¶ 25 The hearing officer additionally asked plaintiff for clarification about the stolen rent payment. Plaintiff testified that she usually paid rent by placing money orders "inside the mailbox" at Tria Adelfi. After delivering money orders worth about $600, plaintiff was told by Tria Adelfi that the funds were missing. Plaintiff testified she "went back up to the currency

[1] Notably, the internal CHA notes which indicated that the agency learned of the order of possession on September 29, 2010, and also learned of the repayment agreement with Tria Adelfi shortly thereafter, were not discussed at the informal hearing.

exchange, and they said some man had forged his name and cashed the money orders." Plaintiff testified that as a result she was forced to pay another $600 to Tria Adelfi.

¶ 26 In closing argument, CHA argued that under its administrative plan and federal regulations governing the voucher program, it "must terminate assistance whenever a family is evicted *** for a serious or repeated violation of the lease." CHA argued eviction was established by plaintiff's move after the September 2010 order of possession, citing agency policy that a family is "evicted if the family moves after a legal eviction order has been issued whether or not physical enforcement of that order is necessary." CHA further argued its policy is that nonpayment of rent is a serious lease violation regardless of any "mitigating circumstances." The agency argued that plaintiff admitted that she owed past rent, and therefore her subsequent repayment agreement with Tria Adelfi could not "negate[] the violation." CHA further contended that its delay in seeking termination was irrelevant as there was no "timeframe for how long the CHA may take in going after a participant who was evicted from a subsidized unit." In conclusion, the agency asked the hearing officer to "abide by the CHA administrative plan and the Code of Federal Regulations and terminate [plaintiff] from the program as this is a mandatory termination."

¶ 27 Asked to present her closing statements, plaintiff emphasized she had "always been honest" with CHA. She acknowledged that she fell behind in rent but she emphasized that she had explained her situation to CHA, including that "the landlord wanted to take me to court." She reiterated she "didn't hide anything" from the agency. After plaintiff spoke, Clark repeated the argument that it was unfair for CHA to seek termination two years after the eviction, especially since CHA had approved plaintiff's move even after she disclosed to the agency that she had fallen behind in rent at the prior residence.

¶ 28 At the conclusion of the hearing, the hearing officer asked plaintiff why she had not stated any reason for moving in the "notice to vacate" form she submitted to CHA. Plaintiff responded: "I'm sorry, I was just ready to move. But I gave [CHA] all my information. I told them. I told them in the office." The hearing officer likewise asked plaintiff why she had not reported her eviction to CHA. Plaintiff answered that she had told CHA that "the landlord wanted to take me to court to get the unit back," and that CHA had simply told her to pay the outstanding rent.

¶ 29 The hearing officer issued a decision letter on April 15, 2013 upholding the agency's decision to terminate plaintiff's housing assistance. The decision first cited CHA policy that it "must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." The hearing decision also recited CHA Policy that: "A family will be considered evicted if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary" and that "[s]erious and repeated violations will include, but not be limited to, nonpayment of rent ***." The decision stated that plaintiff had acknowledged in writing "that her family was required to comply with the terms of the lease and not commit serious or repeated violations of the lease" and "that families evicted for cause would be terminated from the program." The decision also found plaintiff "admitted that she did not pay her rent" and that CHA's definition of eviction was met because plaintiff moved following the order of possession issued by the circuit court. Further, under CHA policy the decision agreed that "her non-payment of rent was a serious and repeated lease violation."

¶ 30 Following these findings, the hearing officer's decision reasoned that it could not consider mitigating circumstances because the order of possession placed plaintiff within the scope of mandatory, rather than discretionary, termination. The decision noted "all relevant

circumstances can be considered" in certain cases. Nonetheless, citing 24 C.F.R. 982.552(b) and corresponding CHA policy, the decision explained: "However, in this case, relevant circumstances were not considered because the Court's *Orders for Possession* coupled with [plaintiff's] subsequent move requires a *mandatory termination* from the [Housing Choice Voucher] Program." (Emphasis in original.) The decision concluded that plaintiff "violated her Family Obligations when she was evicted *** for serious violation of the lease (non-payment of rent)" and thus upheld the decision to terminate.

¶ 31 On April 18, 2013, plaintiff filed a petition for a writ of *certiorari* in the circuit court of Cook County seeking review of CHA's decision. Plaintiff subsequently obtained *pro bono* counsel. On June 21, 2013, plaintiff's counsel submitted her brief in support of her petition for judicial review. Plaintiff argued that the finding of an "eviction" was erroneous, contending that since she had fulfilled her payment agreement with Tria Adelfi "the landlord did not effectuate an eviction and [plaintiff] moved to a new location on her own." Plaintiff acknowledged the September 29, 2010 order of possession but noted the circuit court had agreed to stay its enforcement for two weeks. As plaintiff vacated the South Indiana apartment within two weeks, she argued the "order of possession was never enforced at all because [plaintiff] voluntarily left the premises" and thus did not constitute an eviction.

¶ 32 Plaintiff further claimed she had relied upon the CHA caseworker's instruction "to pay her landlord the back rent and that she would be fine." Plaintiff also argued that her termination was not mandatory but discretionary under the governing federal regulations and that CHA had already exercised its discretion in 2010 "when they instructed [plaintiff] to enter into the payment agreement with Tria Adelfi instead of terminating her voucher."

¶ 33 CHA's response argued that plaintiff's termination was mandatory under federal regulations and CHA policy since plaintiff was evicted "for a serious or repeated lease violation, specifically nonpayment of rent, and moved after a legal eviction order was entered." CHA cited its policy that "a family will be considered evicted if the family moves after a legal eviction order has been issued, whether or not physical enforce of the order was necessary." CHA further argued that CHA policy "clearly states that nonpayment of rent is a serious and repeated lease violation" and that under section 982.552(b) of the Code of Federal Regulations, "it is a HUD requirement that CHA terminate assistance whenever a family is evicted from a subsidized unit for a serious violation of the lease." CHA argued that plaintiff's repayment agreement with Tria Adelfi was "of no consequence" especially as it was entered only after the September 29, 2010 order for possession. CHA's brief also argued that, to the extent plaintiff asserted reliance on CHA's instructions in 2010, equitable estoppel could not be premised upon the "unauthorized acts of a ministerial officer" such as the CHA employee's alleged statements to plaintiff.

¶ 34 Plaintiff's reply argued that there had been no "serious" lease violation to support mandatory termination under section 982.552(b) because plaintiff "did not willfully or intentionally fall behind on her rent" but fell behind due to circumstances outside of her control. Plaintiff argued that her termination was discretionary under section 982.552(c)(ii) of the regulations, and "CHA already used their discretion and allowed [plaintiff] to remain in the program" since CHA had approved her subsequent move. Plaintiff also reiterated her position that since the order of possession was not enforced by Tria Adelfi, there was no actual eviction.

¶ 35 On August 5, 2013, the circuit court conducted a hearing on plaintiff's petition. At the outset, the court stated its initial impression that the hearing officer "didn't have discretion in light of the undisputed facts" that "[plaintiff] was evicted; there was an eviction order; and that

eviction order was based on nonpayment of rent." The court noted that "if [the hearing officer] could have considered all the mitigating circumstances, he might very well have come out the other way," but stated that "his reading of the regulations and the CHA policy was correct that he really did not have the discretion to consider those mitigating circumstances." The court noted that under section 982.552(b) of the governing federal regulations, the agency "must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease" such that "where the eviction is for a serious lease violation, it appears that the regulations take away that discretion."

¶ 36 Plaintiff's counsel argued plaintiff's termination was not mandatory but discretionary under section 982.552(c), as the grounds for discretionary termination under that section include violation of family obligations. Because the ITT notice issued to plaintiff had "cite[d] violation of the voucher family obligations," plaintiff argued the ITT notice placed plaintiff within the scope of discretionary termination under section 982.552(c) rather than mandatory termination under section 982.552(b).

¶ 37 Although the court pointed out that section 982.552(b) requires termination "for serious violation of the lease," plaintiff's counsel responded that a serious lease violation could also support a discretionary termination under section 982.552(c). Plaintiff's counsel argued that section 982.552(c) references violation of the family obligations listed in section 982.551 as grounds for discretionary termination, and one of the obligations listed is to "not commit any serious or repeated violation of the lease." Thus, counsel argued, violation of the lease agreement alone did not necessarily implicate mandatory termination. The court recognized that similar language regarding lease violations is relevant to both the mandatory and discretionary termination provisions, arguably creating "some ambiguity or inconsistency," and acknowledged

plaintiff's argument that since the ITT notice "talks about family obligations, it suggests that [CHA is] proceeding under [section 982.552](c) as opposed to under [section 982.552](b)."

¶ 38 In response, CHA's counsel argued that, notwithstanding any similar language in other provisions, section 982.552(b)(2) mandates termination where an eviction is due to a "serious and repeated lease violation." CHA argued that the failure to pay rent alleged in Tria Adelfi's complaint constituted a serious violation, noting that a separate provision of the federal regulations governing the voucher program also cited nonpayment of rent "as a serious violation for which an owner can terminate a lease." CHA acknowledged that the hearing decision did not take any mitigating circumstances into account but argued that the agency had no discretion to consider such circumstances because plaintiff's termination was mandatory.

¶ 39 In issuing its ruling, the court noted that plaintiff "clearly was a very good CHA tenant" and credited her honesty at the hearing. Nonetheless the court found the record supported the "unassailable" facts that "[plaintiff] was evicted, and she was evicted for nonpayment of rent." The court also "reject[ed] [plaintiff's] argument *** that this wasn't an eviction order because she did not have to be forcibly removed." In denying the petition, the court reiterated that "mitigation, if it could have been considered, could have changed the outcome here," but concluded termination was mandatory as "there was an eviction here for nonpayment of rent and both the CHA policy *** and, to me far more significantly, the CHA regulations *** define nonpayment of rent as a serious lease violation." The court concluded "the fact that there had been an eviction, an actual eviction order *** because of nonpayment of rent took this out of the discretionary and into the mandatory termination of [housing assistance]."

¶ 40 Although plaintiff's counsel had not explicitly made the argument, the court added: "I don't believe there is an estoppel here by the fact that the CHA encouraged [plaintiff] to pay back

the landlord." The court found no detrimental reliance by plaintiff, since "to the extent that kept her in housing for an extra couple of years, she probably came out ahead by doing that." Thus, the court concluded there was no "equitable estoppel that would keep the CHA from terminating her assistance based on encouraging her to fulfill the contract that she entered into with the prior landlord." Thus, although noting its "tremendous reluctance to do so," the trial court denied the plaintiff's petition.

¶ 41 On August 5, 2013, the trial court entered a written order affirming the decision of the CHA and denying plaintiff's petition. Plaintiff filed a timely notice of appeal on August 21, 2013, which specified that plaintiff sought reversal "because the [CHA] cited to the family obligations in their violation notice which is *** discretionary under the HUD regulation and not mandatory and there was a failure to consider mitigating circumstance[s]."

¶ 42 ANALYSIS

¶ 43 We have jurisdiction because plaintiff filed a timely notice of appeal following the trial court's denial of her petition. Plaintiff's appeal frames the issues as (1) whether the hearing officer erroneously applied the mandatory termination provisions of section 982.552(b) of the Code of Federal Regulations instead of the discretionary provisions in section 982.552(c) in deciding whether to uphold the termination; and (2) whether the hearing officer's failure to consider certain facts as mitigating circumstances violated plaintiff's right to due process.

¶ 44 After a trial court ruling on a writ of *certiorari* seeking review of an administrative decision, we "treat th[e] appeal as we would any other appeal for administrative review." *Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568, 571 (2010). "In administrative cases, we review the decision of the administrative agency, not the determination of the circuit court." (Internal quotation marks omitted). *Id.* at 571.

¶ 45 The parties dispute the applicable standard of review. Plaintiff argues that her appeal involves only questions of law and thus contends that a *de novo* standard of review is warranted. CHA acknowledges that questions of statutory interpretation are reviewed *de novo*, yet argues that "the question of whether the CHA correctly terminated [plaintiff] from the Housing Choice Voucher Program is subject to the clearly erroneous standard" and that any factual findings should be reviewed under the deferential "manifest weight of the evidence" standard.

¶ 46 "The applicable standard of review, which determines the degree of deference to the agency's decision, depends upon whether the question presented is one of fact, one of law, or a mixed question of law and fact." *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). Purely factual findings are reviewed under a "manifest weight of the evidence" standard, under which the agency's findings are considered "*prima facie* true and correct" unless "the opposite conclusion is clearly evident." [Internal quotation marks omitted.] *Gaston v. CHAC, Inc.*, 375 Ill. App. 3d 16, 22-23 (2007). On the other hand, if a purely legal question is at issue, then the standard of review is *de novo*; this standard is "independent and not deferential." [Internal quotation marks omitted.] *Goodman v. Ward*, 241 Ill. 2d 398, at 406 (2011).

¶ 47 Furthermore, where an agency's decision involves a mixed question of law and fact, we will not reverse the agency's decision unless it is "clearly erroneous," which occurs only "when the reviewing court is left with the definite and firm conviction that a mistake has been committed." [Internal quotation marks omitted]. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008). Our supreme court has explained: "Mixed questions of fact and law are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory

standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." [Internal quotation marks omitted]. *Id.* Thus, "an examination of the legal effect of a given state of facts involves a mixed question of fact and law" subject to the "clearly erroneous" standard of review. *Id.* (citing *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998)).

¶ 48 The present appeal likewise concerns the legal effect of a given set of facts and thus presents mixed questions of law and fact. The material underlying facts regarding plaintiff's tenancy at her prior apartment, the order of possession, and plaintiff's subsequent move are not disputed. Rather, the parties dispute whether the facts require mandatory termination under section 982.552(b) of the Code of Federal Regulations, which applies only if plaintiff was "evicted" as a result of a "serious violation" of her lease. 24 C.F.R. § 982.552(b) (2014). The determination by the hearing officer that plaintiff was "evicted" due to a "serious violation" presents mixed questions of law and fact. Thus, we agree with CHA that the "clearly erroneous" standard applies to the hearing officer's conclusion that the undisputed facts placed plaintiff within the scope of mandatory termination. In any event, we note that our conclusion would be the same even if we applied an independent *de novo* standard of review.

¶ 49 The United States Department of Housing and Urban Development (HUD) funds the Housing Choice Voucher Program in which "HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing." 24 CFR § 982.1(a) (2014). Although federally funded, the voucher program is "administered by State or local governmental entities called public housing agencies (PHAs)." *Id.* Families receiving assistance under the program "select and rent units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the

family." *Id.* § 982.1(a)(2). Each PHA contract with a property owner "only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued assistance so long as the family is complying with program requirements." *Id.* § 982.1(b).

¶ 50 Section 982.552 of the Code of Federal Regulations governs the grounds under which a PHA "must" or "may" terminate a family's participation in the voucher program. 24 C.F.R. § 982.552 (2014). We have recognized that subsection 982.552(b) describes "mandatory" grounds for termination by the agency, whereas subsection 982.552(c) lists "discretionary" grounds for termination. *Gaston v. CHAC, Inc.*, 375 Ill. App. 3d 16 (2007). First, subsection (b), entitled "Requirement to deny admission or terminate assistance," lists certain circumstances in which an agency "must" terminate assistance. *Id.* § 982.552(b). Subsection (b)(2), the specific provision relied upon by CHA, states: "The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." *Id.* § 982.552(b)(2).

¶ 51 In contrast to the required grounds for termination set forth in subsection (b), subsection (c) is entitled "Authority to deny admission or terminate assistance" and lists grounds under which the PHA "may" deny or terminate program assistance. *Id.* § 982.552(c)(1). Subsection (c)(1)(i), which plaintiff contends is applicable to her case, provides that termination is discretionary "[i]f the family violates any family obligation under the program," referring to section 982.551's listing of the various "obligations of a participant family under the program." *Id.* § 982.552(c)(1)(i). One such specified obligation is that "[t]he family may not commit any serious or repeated violation of the lease." *Id.* § 982.551(e).

¶ 52 Subsection 982.552(c) further provides that in determining whether to terminate assistance under the discretionary grounds, the "PHA may consider all relevant circumstances"

including "the seriousness of the case, the extent of participation or culpability of individual family members," and "mitigating circumstances related to the disability of a family member." *Id.* § 982.552(c)(2)(i). Accordingly, we have held that a discretionary termination under subsection (c) requires the agency to consider relevant circumstances before making its determination. See *Gaston*, 375 Ill. App. 3d at 24. *Gaston* concerned discretionary terminations premised on two families' alleged failure to report income to CHA in violation of their "family obligations." The hearing officer had upheld the terminations "without consideration of any 'circumstances' relevant to their particular cases" and "did not offer any reason for why she chose to exercise her discretion to terminate in these particular cases." *Id.* at 24. We held that "[w]hile [s]ubsection (c) does not limit the agency to consideration of the listed 'circumstances,' the agency must consider some circumstances particular to the individual case, otherwise section 982.552's distinction between mandatory and discretionary termination becomes meaningless." *Id*. As the agency had failed to consider any relevant circumstances in exercising its discretion, we agreed with the circuit court that the decisions to terminate assistance should be reversed.

¶ 53 In conjunction with and pursuant to the federal regulations, CHA's policies are also relevant to our analysis. The federal regulations require each public housing authority to "adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements" and to "state[] PHA policy on matters for which the PHA has discretion to establish local policies." 24 C.F.R. § 982.54(a) (2014). The administrative plan "must be in accordance with HUD regulations and requirements" and "[t]he PHA must administer the program in accordance with the PHA administrative plan." *Id.* § 982.54(b)-(c). Accordingly, CHA has issued its Administrative Plan for the Housing Choice Voucher Program

(CHA plan) "to define the PHA's local policies for operation of the housing programs in the context of federal laws and regulations." CHA plan at 1-9 (2012).[2]

¶ 54 Chapter 12 of the CHA plan sets forth policies with respect to termination of housing assistance. Consistent with section 982.552 of the Code of Federal Regulations, the CHA plan notes that "HUD requires the PHA to terminate assistance for certain offenses" and "HUD permits the PHA to terminate assistance for certain other actions family members take or fail to take." (Emphasis in original). CHA plan at 12-1. Citing section 982.552(b)(2), the CHA plan states it "must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease." CHA Plan at 12-2. An accompanying "CHA Policy" note states that "[a] family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary." (Emphasis in original.) *Id.* The same policy note further states that "[s]erious and repeated lease violations will include *** non-payment of rent ***." *Id.*

¶ 55 The CHA plan also recognizes that under subsection 982.552(c) of the federal regulations, "HUD permits the PHA to terminate assistance under a number of other circumstances" under which "[i]t is left to the discretion of the PHA" whether to seek termination. *Id.* at 12-6. The accompanying "CHA Policy" note states: "The CHA **will** terminate a family assistance if: The family has failed to comply with any family obligations." (Emphasis in original.) *Id*. One of the CHA plan's specified obligations is that a family must not "[c]ommit any serious or repeated violation of the lease." *Id.* at 12-18.

[2] CHA's Administrative Plan is accessible online at: http://www.thecha.org/filebin/hcv/11.19.12_HCV_Administrative_Plan_Final_Nov_2012_Board_Approved.pdf

¶ 56 We turn to plaintiff's primary contention that her termination fell within the discretionary rather than the mandatory termination provisions of section 982.552 of the Code of Federal Regulations. Plaintiff asserts that her termination was discretionary pursuant to subsection (c)(1)(i), under which CHA may terminate a voucher "[i]f the family violates any family obligations under the program." Plaintiff relies on the ITT notice's statements that she had violated family obligations and had "[c]ommitt[ed] [a] serious or repeated violation of the lease." Because a violation of such a family obligation may support discretionary termination, plaintiff argues that the ITT notice framed her termination as discretionary, which in turn required the hearing officer to consider relevant mitigating circumstances.

¶ 57 CHA contends that plaintiff's termination is mandatory because section 982.552(b)(2) states: "The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." CHA argues that the term "must" precludes the agency from exercising discretion. Further, although the phrase "serious violation of the lease" is not specifically defined in section 982.552 to include nonpayment of rent, CHA notes that the voucher program regulations elsewhere permit an owner to terminate a participant's tenancy in the event of "[s]erious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease." 24 C.F.R. § 982.310(a)(1) (2014). The agency also relies upon the CHA plan's statement that a "serious and repeated lease violation will include, but not be limited to, nonpayment of rent." CHA plan at 12-2.[3]

[3] Alternatively, CHA argues that even if plaintiff's termination was discretionary and governed by subsection 982.552(c), that provision's language that the agency "may consider" relevant circumstances would merely permit, but not require, CHA to consider circumstances particular to the plaintiff before making its determination. As we agree with CHA that plaintiff's

¶ 58 We agree with CHA that plaintiff's termination is governed by the mandatory provisions in subsection (b) of section 982.552 and not the discretionary provisions of subsection (c). The undisputed facts established that plaintiff was evicted for a serious violation of her lease, which requires termination pursuant to the mandatory language of subsection (b)(2). We acknowledge the regulations' use of similar language to describe the bases for both mandatory and discretionary termination under section 982.552. Specifically, an eviction based upon "serious violation of the lease" leads to mandatory termination under subsection (b), yet a "serious or repeated violation of the lease" also constitutes a violation of "family obligations" which can serve as the basis for discretionary termination under subsection (c). Nevertheless, considering the provisions of section 982.552 as a whole, the key term "eviction" resolves any ambiguity as to whether plaintiff's admitted lease violation places her case within the mandatory or discretionary termination provisions. That is, although a serious lease violation alone may support termination on a discretionary basis under subsection (c) after consideration of relevant circumstances, subsection (b)(2) mandates termination where such a serious violation has resulted in an eviction. Although plaintiff's termination could otherwise be pursued on a discretionary basis, the presence of an eviction in this case removed the agency's discretion and mandated termination.

¶ 59 Plaintiff's argument for application of the discretionary provision of subsection 982.552(c) cannot be reconciled with the explicit language of subsection (b). We are guided by the principle of statutory interpretation under which we must "avoid rendering any part

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termination was mandatory under subsection 982.552(b), we need not address this argument but note that it appears to conflict with our holding in *Gaston* that the agency "must consider some circumstances particular to the individual case" when subsection 982.552(c) applies. 375 Ill. App. 3d at 25.

meaningless or superfluous, and consider words and phrases in light of other relevant provisions of the statute." *People v. Koen*, 2014 IL App (1st) 113082, ¶ 30. To consider plaintiff's termination discretionary rather than mandatory would undermine the binding regulatory language in subsection (b) that "[t]he PHA *must* terminate program assistance for a family evicted from housing *** for serious violation of the lease." Just as we held in *Gaston* that "the agency must consider some circumstances particular to the individual case" in a termination under subsection (c) because "otherwise section 982.552's distinction between mandatory and discretionary terminations becomes meaningless," *Gaston*, 375 Ill. App. 3d at 45, to preserve that same distinction we must also give effect to the mandatory language of subsection (b).

¶ 60 Further, we do not accept the plaintiff's argument that CHA was required to treat her termination as discretionary because the ITT notice referenced the violation of family obligations. The ITT notice did not cite any specific regulatory provision or indicate whether CHA pursued termination under the mandatory or discretionary provisions of 982.552. Although the ITT notice referred to breach of "family obligations" and "serious or repeated violation of the lease" —which, without more, could result in a discretionary termination under subsection (c) — the ITT notice also explicitly referenced the eviction proceeding against plaintiff, implicating termination under subsection (b). Indeed, prior to referencing "family obligations" or "violation of the lease," the ITT notice states that a "lawsuit was filed requesting possession of the unit due to your failure to pay rent" and that "[o]n September 29, 2010, the Circuit Court rendered a decision granting the property owner possession of the unit." Thus, the ITT notice relied upon the circuit court's order of eviction of plaintiff due to her failure to pay rent. Section 982.552(b) clearly requires termination in such circumstances.

¶ 61 Similarly, we reject the plaintiff's suggestion that she does not fall within the scope of section 982.552(b) because she "was not actually evicted, but moved out after entering into an agreement with Tria Adelfi." Although the federal regulations do not explicitly define "eviction," they do specify that "[t]he PHA must administer the [voucher] program in accordance with the PHA administrative plan." 24 C.F.R. § 982.54 (c). In turn, the CHA plan clearly states that "[a] family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary." (Emphasis in original). CHA plan at 12-2. Plaintiff's argument on appeal does not cite any legal authorities to undermine CHA's definition of "eviction," which was clearly met by plaintiff's admission that she moved pursuant to the order of possession issued by the circuit court. Moreover, we agree with CHA that the plaintiff's repayment arrangement with Tria Adelfi does not undermine the finding of an eviction, especially as the agreement was not made until after the entry of the order of possession.

¶ 62 We also do not find merit in plaintiff's separate argument that mandatory termination under section 982.552(b) is inapplicable because she did not commit a "serious violation of the lease." Plaintiff does not dispute that she failed to make timely rental payments but argues such violation was not "serious" as plaintiff "only fell behind in rent due to unforeseen circumstances outside of her control and paid Tria Adelfi the full amount owed as soon as she was able to do so." We agree with the hearing officer's conclusion that plaintiff's failure to pay rent was a "serious violation" of the lease. The administrative plan expressly states CHA policy that "[s]erious and repeated lease violations" include "nonpayment of rent." CHA plan at 12-2. Moreover, although "serious violation" is not explicitly defined in the HUD regulations governing termination by a housing agency, a voucher program participant's failure to pay rent is

described as a "serious violation" of a lease for which a property owner may terminate the participant's tenancy. Under section 982.310, these grounds include: "Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease." 24 C.F.R. § 982.310(a)(1) (2014). We recognize that "under basic rules of statutory construction, where the same words appear in different parts of the same statute, they should be given the same meaning unless something in the context indicates that the legislature intended otherwise." [Internal quotation marks omitted.] *Guillen ex rel. Guillen v. Potomac Insurance Co. of Illinois*, 203 Ill. 2d 141, 153 (2003). Here, there is nothing in the regulations to suggest that the meaning of "serious violation" in section 982.310 is intended to differ from its meaning in section 982.552(b). Thus, we agree with CHA that section 982.310 lends support to the conclusion that failure to pay rent is a "serious violation" for purposes of section 982.552(b).

¶ 63 Plaintiff's argument relies upon the circumstances surrounding her failure to pay timely rent in 2010, including the alleged theft of a $600 rental payment and erroneously high electrical charges, as well as the fact that she eventually paid Tria Adelfi the outstanding rent. Plaintiff does not cite any cases where a participant admitted a failure to pay rent but, due to extenuating circumstances, was not found to have committed a "serious" lease violation. The only decision cited by plaintiff in support of her argument on this point is a Pennsylvania state court decision, *Gray v. Allegheny County Housing Authority*, 8 A. 3d 925 (Commonwealth Court of Pennsylvania, 2010). However, *Gray* is inapposite. In that case, "the hearing officer wrongly applied [s]ection 982.55(b)(2) in holding that an eviction, *ipso facto*, established a serious lease violation." *Id.* at 930. Because the hearing officer mistakenly believed that no other evidence was required to prove a serious violation, "the record was too limited" and "incomplete on the

dispositive issue of whether Gray committed a serious violation of the lease," and so the court remanded for further proceedings on that issue. *Id.* at 930. In contrast, CHA here did not find that plaintiff committed a serious lease violation based on the eviction *ipso facto*. Rather, the hearing decision noted that "plaintiff admitted that she did not pay her rent" and concluded that "her non-payment of rent was a serious and repeated lease violation." Thus, the decision found a serious lease violation based on plaintiff's failure to pay rent, not her eviction. This finding is supported by the hearing evidence and explicit language of the CHA plan.

¶ 64 Plaintiff's argument on appeal separately asserts CHA's decision to terminate was "against the manifest weight of the evidence" and unsupported by the record. She asserts "[t]he entire informal hearing was based on the premise that [plaintiff] failed to notify CHA about an eviction *** despite CHA's own evidence illustrating that [plaintiff] kept CHA informed" and argues that "CHA had already made a determination that [plaintiff] would not be terminated in November of 2010." Plaintiff emphasizes that, pursuant to instructions from a CHA employee, she completed the payments under her agreement with Tria Adelfi and was subsequently issued her moving papers. According to plaintiff, we should find error because the hearing officer "admitted in his decision letter that he did not consider any of the mitigating circumstances of [plaintiff]'s occupancy with her former property management company."

¶ 65 Although characterized as a "manifest weight of the evidence" challenge, this portion of plaintiff's argument does not dispute her failure to pay rent and resulting eviction, but essentially repeats her contention that the hearing officer should have considered additional facts as mitigating circumstances. Plaintiff's argument is unavailing in light of our conclusion that the undisputed facts established application of mandatory termination under section 982.552(b).

That is, once it was established that plaintiff had been evicted due to a serious lease violation, the hearing officer no longer had discretion to consider additional circumstances.

¶ 66 Application of the mandatory termination provision does not mean, as plaintiff's argument suggests, that the hearing officer could not make factual findings. To the contrary, for section 982.552(b) to apply the hearing officer had to find that there was a serious violation of the lease and an eviction due to the lease violation. Upon those findings, the hearing officer recognized that he was constrained by subsection (b) to apply mandatory termination regardless of circumstances that might otherwise be considered in a discretionary termination under subsection (c).

¶ 67 We next address plaintiff's contentions that the ITT notice and the conduct of the hearing resulted in violations of her due process rights. We recognize that plaintiff's receipt of public housing assistance benefits is a property interest "which may not be terminated without regard to her due process rights." *Housing Authority of the City of Bloomington, Illinois v. Ray*, 258 Ill. App. 3d 384, 386 (1994). "[N]otice and an opportunity to be heard are essential in order to accord due process to an individual faced with a significant loss." *Id.* at 177 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

¶ 68 Plaintiff's contentions that she was deprived of notice or an opportunity to be heard are without merit. First, plaintiff claims the ITT notice did not provide sufficient notice of the allegations for which CHA sought termination. She claims that "if [she] had been on notice that her termination from the housing choice program was mandatory despite anything she said in the informal hearing, she would have understood that her predicament was much more serious than she thought and she would have been more diligent in find a pro bono attorney" and would have "defended herself differently at the hearing." Notwithstanding these assertions, we find that the

ITT notice advised plaintiff of CHA's grounds for seeking termination. The ITT notice clearly states that a lawsuit had been filed by plaintiff's landlord "due to [plaintiff's] failure to pay rent," that the circuit court had "rendered a decision granting the property owner possession of the unit" and that as a result "the family is in direct violation of the Voucher Family Obligations," specifically the obligation not to "commit any serious or repeated violation of the lease." The ITT notice thus advised plaintiff of the precise grounds for termination – eviction due to nonpayment of rent. Moreover, as the notice repeatedly states that CHA sought her termination from the voucher program, plaintiff cannot validly claim she lacked notice of the severity of the situation.

¶ 69 Plaintiff also asserts that the conduct of the informal hearing violated her right to due process. Plaintiff contends the "hearing was one[-]sided" as she was an "unrepresented voucher holder [who] was intimidated and not allowed to defend herself or explain what happened." She emphasizes that as a non-attorney, she did not know how to object to CHA's arguments, and claims she was not given the opportunity to explain extenuating circumstances such as the stolen $600 rental payment and her erroneously high electricity bills.

¶ 70 Although we recognize plaintiff's lack of representation at the hearing, this was the result of her own decision rather than a due process violation. Plaintiff was clearly notified of her right to representation well in advance of the March 2013 hearing. The ITT notice, after explaining how to request an informal hearing, stated: "You also have the right to representation by legal counsel and/or other representatives." Likewise, the notice of informal hearing issued to plaintiff over a month before the hearing date stated: "You have the right to *** [b]e represented by counsel (at your expense) or by others." Plaintiff on appeal does not contend she was unaware of

her right to obtain counsel prior to the hearing, or that she was hindered in any way from doing so.

¶ 71 Further, plaintiff's suggestion that the hearing officer did not provide her an opportunity to explain her side of the story is belied by the transcript of the hearing. Indeed, plaintiff testified in detail regarding how she fell behind in rent, the eviction proceedings and repayment agreement with Tria Adelfi, and her related communications with CHA in late 2010. The hearing officer also permitted Clark, plaintiff's daughter, to testify and argue on plaintiff's behalf. The transcript reveals that the hearing officer made efforts to ensure the plaintiff had a full opportunity to present her defense, repeatedly asking both plaintiff and Clark if they had stated all the facts and argument that they wished to present. Moreover, the hearing officer admitted into evidence each of the six documents that the plaintiff brought to the hearing, including admitting five exhibits over CHA's objections. Thus we find no merit in plaintiff's contention that she was deprived of the opportunity to be heard.

¶ 72 Finally, although not explicitly argued by plaintiff, CHA's handling of plaintiff's case prompts us to examine whether the principle of equitable estoppel could apply to bar CHA from terminating plaintiff's assistance. Specifically, we are mindful of the concerns expressed by plaintiff questioning the fairness of permitting CHA to seek termination notwithstanding the passage of more than two years since the eviction, during which time the agency approved the plaintiff's move into another subsidized apartment.

¶ 73 In assessing whether estoppel could be applied against CHA, we are guided by Illinois case law recognizing a "strong public policy disfavoring the imposition of equitable estoppel against the State." *Deford-Goff v. Department of Public Aid*, 281 Ill. App. 3d 888, 893 (1996). "Generally, the doctrine of equitable estoppel may be invoked when a party reasonably and

detrimentally relies on the words or conduct of another. [Citation.] However, against the State, estoppel is applied only to prevent fraud and injustice ***." *Brown's Furniture, Inc. v. Wagner*, 171 Ill. 2d 410, 431 (1996). There must be "compelling circumstances" to justify application of estoppel against the state when acting in its governmental capacity. *Hickey v. Illinois Central Railroad Co.*, 35 Ill. 2d 427, 447-48 (1966). Likewise, application of equitable estoppel against municipalities requires "extraordinary and compelling circumstances." *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 35.

¶ 74 Moreover, "mere nonaction of governmental officers is not sufficient to work an estoppel and *** before the doctrine can be invoked against the State or a municipality there must have been some positive acts by the officials which may have induced the action of the adverse party under circumstances where it would be inequitable to permit the corporation to *** retract[] what its officers had previously done." [internal quotation marks omitted.] *Hickey*, 35 Ill. 2d at 448. "The affirmative acts of the State inducing detrimental reliance in another generally must be the acts of the State itself *** rather than the unauthorized acts of a ministerial officer." *Deford-Goff*, 281 Ill. App. 3d at 893 (agency was not equitably estopped from recovering erroneous overpayment of public assistance benefits); see also *McDonald v. Illinois Department of Human Services*, 406 Ill. App. 3d 792 (2010) (plaintiff could not rely on letter from "ministerial officer whose erroneous acts should not bind the state through equitable estoppel").

¶ 75 We follow the above precedent in concluding that estoppel does not apply to preclude CHA's termination of plaintiff from the voucher program. First, we note that detrimental reliance is required for estoppel, which is not present here. Although plaintiff relied on CHA's actions by moving into a new subsidized apartment after her eviction, the result of CHA's delay in seeking termination was that she continued to receive subsidized rent. Thus, we agree with

the trial court's observation that the plaintiff benefited from, rather than detrimentally relied upon, the agency's delay. Moreover, it is apparent that CHA's issuance of moving papers to plaintiff after her eviction and the delay in seeking termination resulted from the inadvertence or oversight of CHA employees in monitoring plaintiff's case. Such conduct clearly falls within the category of ministerial acts by government employees that are insufficient to support equitable estoppel against the state or municipal agencies such as CHA.

¶ 76 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 77 Affirmed.