2014 IL App (1st) 132866

SIXTH DIVISION
August 15, 2014

No. 1-13-2866

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANNITA JENKINS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 9075
	)	
CHICAGO HOUSING AUTHORITY,	)	Honorable
	)	Thomas R. Allen,
Respondent-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: We confirmed Chicago Housing Authority's decision terminating petitioner's participation in a rent subsidy program based on her misrepresentations as to her income, and affirmed the circuit court's denial of petitioner's writ of *certiorari*.

¶ 2 Petitioner-appellant, Annita Jenkins, by a petition for writ of *certiorari*, sought administrative review of the decision of respondent-appellee, Chicago Housing Authority (CHA), to terminate her participation in a rent subsidy program. The circuit court denied her a writ of *certiorari.* We confirm the decision of CHA and affirm the circuit court's denial of a writ of *certiorari*.

CHA administers the Housing Choice Voucher Program (voucher program) of the United States Department of Housing and Urban Development (HUD) in Chicago. 24 CFR § 982.1(a)(1)

(2006). As part of the voucher program, CHA pays housing rental subsidies for eligible families through funds provided by HUD. 24 CFR § 982.1(a)(1), (2) (2006). Participation in the voucher program and the amount of any rental subsidy depends on the amount of a participating family's income. 24 CFR § 982.201 (2006). Petitioner entered the voucher program in 1999 and was assigned voucher number 0953814. Petitioner, as a participant, was required to comply with the mandatory rules of the voucher program known as the family obligations.

¶ 3 CHA regularly requires that participating families be recertified as to their eligibility for continued participation in the voucher program. 24 CFR § 982.551(b)(2) (2006). As part of the recertification process, a participant completes an application which sets forth certain personal information, including information about the participating family's income which allows CHA to determine the participating family's continued eligibility. *Id*.

¶ 4 Petitioner attended a recertification meeting on November 10, 2010. In her recertification application, petitioner stated that she did not receive income from self-employment, and listed Social Security payments as the sole source of income for herself and her family members: five children. Petitioner signed the application under a provision which stated: (1) "false statements or information are punishable under federal law and are grounds for termination of housing assistance;" and (2) the information provided "was accurate and complete" to the best of her knowledge and belief. During the November 10, 2010, recertification meeting, petitioner signed a copy of the family obligations under similar warnings that any information supplied to CHA must be truthful and that a violation of the family obligations will result in a termination from the voucher program.

¶ 5 CHA later discovered petitioner had failed to disclose self-employment income and requested that she supply relevant tax records for 2009, 2010, and 2011; petitioner complied.

Based on this tax information, CHA determined it had over-subsidized petitioner's rent due to her failure to disclose self-employment income.

¶ 6 CHA sent petitioner an "Intent to Terminate" letter dated January 4, 2013. The letter notified petitioner of CHA's proposal to terminate petitioner's voucher based on her failure to disclose self-employment income at recertification meetings held on October 14, 2008, and November 10, 2010. In the letter, CHA stated it had over-subsidized petitioner's rent by $10,404. Petitioner was notified that she had violated those provisions of the family obligations which require a participant to provide CHA with true and complete information, and report all income, and which prohibit fraud in connection with the voucher program. The letter further informed petitioner that she had the right to request a hearing to challenge CHA's proposal to terminate her voucher. CHA later amended the intent to terminate letter by omitting reference to petitioner's recertification meeting in 2008 and, thereby, decreased the claimed over-subsidy amount to $5,632. Petitioner submitted a form to CHA wherein she requested a hearing and stated she wished "to [submit] household income, that was said that I [failed] to disclose self-employment from 2009-2012."

¶ 7 A hearing was held on March 6, 2013. Petitioner appeared *pro se*.

¶ 8 During the hearing, CHA submitted multiple documents which were admitted into evidence, including the following: the amended intent to terminate letter; the copy of the family obligations signed by petitioner on November 10, 2010; petitioner's request for an informal hearing to protest CHA's intent to terminate her voucher; petitioner's tax records for the years 2010 and 2011 showing income from a source other than Social Security; petitioner's signed applications for continued eligibility dated November 10, 2010, and October 25, 2012, stating she had no income from self-employment; and CHA corrective action worksheets for the years

2010 and 2011 demonstrating that CHA had determined it had overpaid petitioner's subsidy by $3,432 for the year 2010, and by $2,200 for the year 2011.

¶ 9 Carrie Leverett, an enforcement coordinator for CVR Associates, a company which assists CHA in the administration of the voucher program, testified at the hearing on behalf of CHA. Ms. Leverett was familiar with the maintenance of records pertaining to the voucher program and had knowledge of petitioner's records. As part of her responsibilities, Ms. Leverett issues letters of intent to terminate participation in the voucher program to those participants who violate the family obligations. Ms. Leverett explained that participants are required to read and sign the family obligations upon first admission to the program and at their recertification appointments. A participant's recertification occurs approximately every two years.

¶ 10 According to Ms. Leverett, the intent to terminate letter sent to petitioner was based on her violations of paragraphs 1, 26, and 34 of the family obligations. Paragraph 1 provides, as to certification and recertification, that a participant report "increases in income." Participants, under the provisions of paragraph 26, are prohibited from committing "fraud, bribery or any other corrupt criminal act in connection with CHA Housing Choice Voucher Program." Paragraph 34 requires that all information provided to CHA for the voucher program "be true and correct."

¶ 11 Ms. Leverett confirmed that, in her November 2010 recertification application, petitioner said "no" to any receipt of income from self-employment and, when asked for sources of income for all household members, she listed only Social Security income for herself and her children. However, the tax records which petitioner provided upon the request of CHA, showed petitioner had self-employment income for both 2010 and 2011.

¶ 12 CHA determined that the subsidy overpayments made to petitioner for 2010 and 2011 totaled $5,632. Ms. Leverett explained how that amount was calculated by CHA. For the years 2010 and 2011, CHA calculated petitioner's true gross income by adding her reported Social Security income, and the self-employment income shown on her tax forms. CHA then subtracted any relevant allowances to determine the amount of income which should have been used in calculating petitioner's subsidy if petitioner had been completely forthcoming in her application for recertification. After calculating the amount of subsidy which would have been owed petitioner based on her true total income, CHA then determined the amount of subsidy overpayment.

¶ 13 Petitioner testified she "made all efforts to submit all documents that [were] needed." On cross examination, petitioner admitted she had a hair styling business for "a couple of years." Petitioner admitted that she continued to have this business in 2012, but that she again did not report this income on her 2012 recertification application.

¶ 14 On March 28, 2012, the hearing officer issued a decision upholding CHA's proposed termination of petitioner's participation in the voucher program. The hearing officer made this decision after considering the evidence and applying the relevant applicable provisions of the Federal Code of Regulations and CHA's Administrative Plan which govern the voucher program. The hearing officer found CHA had shown, by a preponderance of the evidence, that when completing recertification applications in 2010 and 2012, petitioner had omitted income from her self-employment and made false statements that she had no self-employment income, thereby violating the family obligations. The hearing officer concluded that by making false statements and omitting substantial facts relating to her income, petitioner had committed fraud. The hearing officer found that as a result of petitioner's conduct, a subsidy overpayment of $5,632 for

the years 2010 and 2011 had been made. Finally, the hearing officer upheld CHA's proposal to terminate.

¶ 15 Specifically, as to petitioner's false statements and failure to report income, the hearing officer, in her decision, noted that on petitioner's 2010 application of continued eligibility she had marked a box which indicated she did not receive any income from self-employment. However, at the hearing, petitioner admitted that she had a hair styling business at that time, and she did not report income from this business to CHA. The hearing officer further found CHA proved that petitioner had, in fact, received $11,430 from her self-employment during 2010. Based on this evidence, the hearing officer determined that petitioner failed to report income to CHA and made false statements as to the sources of her income in violation of her family obligations.

¶ 16 In examining the fraud charge, the hearing officer relied on CHA Administrative Plan 14-I.A, which defines fraud as "a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead." The hearing officer determined that petitioner's applications for recertification in 2010 and 2012 specifically stated that she was not receiving self-employment income and omitted that income on her application. Petitioner failed to correct her false statements and omissions as to her income. The hearing officer found that her misstatements and omissions as to her income was a substantial matter and resulted in CHA allotting monies for "her rent subsidy that she was not entitled to receive." The hearing officer found petitioner's certifications as to the veracity of the recertification applications also constituted false statements of material facts. The hearing officer found that CHA had proved petitioner committed fraud, as defined in CHA's Administrative Plan, by a preponderance of the evidence.

¶ 17 In determining whether to uphold the proposal to terminate petitioner's voucher, the hearing officer considered the following relevant factors: the seriousness of the case; the extent of participation or culpability of individual family members; the length of time since the violation occurred; and the family's recent history and likelihood of favorable conduct in the future. See 24 CFR § 982.552(c)(2)(i) (2006). The hearing officer concluded:

> "The actions of [petitioner] appear deliberate and fraudulent. [Petitioner] did not disclose her income in 2010 and at no time since then did she disclose her income. Although it is not included on the [intent to terminate letter], it is telling that [petitioner] did not disclose her income in 2012 and again fraudulently withheld this information. This ongoing misrepresentation of material facts and willingness to take advantage of CHA subsidies that she knew or should have known she was not entitled to, indicates that success in the future of the Housing Choice Voucher Program is unlikely."

¶ 18 Petitioner *pro se* filed a petition for writ of *certiorari* seeking review of the decision to terminate her participation in the voucher program. The circuit court set a briefing schedule and hearing for August 8, 2013, on the matter. There are no briefs in the record. At the hearing, the circuit court and the parties referred to a letter which petitioner had delivered to the circuit court and CHA. This letter was described as containing petitioner's arguments on behalf of reversal of CHA's decision to terminate petitioner's voucher. At the hearing, CHA orally responded to points raised in the letter, including an argument made by petitioner that she should have been allowed to repay the amount of the subsidy overpayment. The letter is not included in the record. After hearing arguments, the circuit court acknowledged the hardship to petitioner and

her family as a result of the termination of her voucher, but upheld CHA's decision. Petitioner has appealed with assistance of counsel.

¶ 19 On appeal, petitioner argues that CHA failed to prove the subsidy overpayment was $5,632, when it was, in fact, only $4,785. Because the overpayment was actually less than $5,000, petitioner argues she was entitled to enter into a repayment agreement with CHA pursuant to CHA's practices. Petitioner further argues that the decision to terminate was clearly erroneous in light of the error in calculating the overpayment.

¶ 20 In response, CHA maintains the hearing officer did properly determine the overpayment amount, but, in any event, the hearing officer's decision to terminate was not based on the *amount* of the subsidy overpayment. Rather, the decision to uphold the proposal to terminate petitioner's voucher was based on the hearing officer's findings that petitioner had made false statements in her recertification applications and failed to disclose her self-employment income, and that her conduct was intentional and fraudulent. CHA also argues petitioner forfeited new arguments as to the calculation of the overpayment, and that CHA was required to enter into a repayment agreement. CHA maintains that under CHA's Administrative Plan, a repayment agreement would have been discretionary if the subsidy overpayment had been less than $5,000. Finally, CHA maintains the hearing officer properly considered the relevant factors before upholding the proposal to terminate petitioner's participation in the voucher program.

¶ 21 We review decisions of CHA pursuant to a common law writ of *certiorari*. *Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568, 571 (2010). The same rules regarding administrative review apply here. *Id*. "In administrative cases, our role is to review the decision of the administrative agency, not the determination of the circuit court." *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). "The applicable standard of review

depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board, State Panel*, 216 Ill. 2d 569, 577 (2005).

¶ 22 Specifically, it is well established that an agency's findings and conclusions of fact are deemed to be *prima facie* true and correct and overturned only if they are against the manifest weight of the evidence. *City of Sandwich v. Illinois Labor Relations Board*, 406 Ill. App. 3d 1006, 1008 (2011) (citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)). A determination is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *City of Sandwich*, 406 Ill. App. 3d at 1008.

¶ 23 Moreover, it is clear that a question of law–such as the proper interpretation of a statute–is to be reviewed *de novo*. *Id*. Our supreme court has described this type of review as " 'independent and not deferential.' " *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418, 423 (2010) (quoting *Cinkus*, 228 Ill. 2d at 210).

¶ 24 Finally, it has been established that a "clearly erroneous" standard of review is to be applied to mixed questions of law and fact. *City of Sandwich*, 406 Ill. App. 3d at 1008. 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.' " *American Federation of State, County & Municipal Employees, Council 31*, 216 Ill. 2d at 577 (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982)). "An agency's decision is 'clearly erroneous' when the reviewing court is left with a firm and definite conviction that the agency has committed a mistake." *City of Sandwich*, 406 Ill. App. 3d at 1008. However, "where the historical facts are admitted or established, but there is a dispute as to whether the

governing legal provisions were interpreted correctly by the administrative body, the case presents a purely legal question for which our review is *de novo*." *Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011).

¶ 25 Based on these principles, we will review those decisions of the hearing officer which involve a mixed question of law and fact, including the decision to uphold the proposal to terminate petitioner's voucher, under a clearly erroneous standard. However, the hearing officer's findings of fact will be subjected to a manifest-weight-of-the-evidence standard of review.

¶ 26 Petitioner appears to concede that she violated the family obligations by failing to report her self-employment income and by making false statements as to the nature and extent of her income. We conclude that the hearing officer's findings, that petitioner had self-employment income and failed to report that income in her recertification applications for 2010 and 2012, were supported by the manifest weight of the evidence. Further, the hearing officer's conclusion, that petitioner's misconduct violated the family obligations, was not clearly erroneous.

¶ 27 Petitioner also does not argue that the hearing officer's finding, that she committed fraud, was in error. The hearing officer's decision that fraud was committed was not clearly erroneous and was based on findings of fact which were not against the manifest weight of the evidence. The evidence showed that petitioner provided false statements that she did not have self-employment income and omitted information as to that income in her 2010 and 2012 recertification applications. Petitioner signed those forms under certifications that the information which had been provided was true and correct. In that the voucher program is designed to assist participants in paying rent based on their income levels, it is clear petitioner's omissions and misrepresentations related to material and substantive matters. She never

corrected the misinformation as to her income provided in the 2010 recertification application and committed the same misconduct as to her 2012 recertification application. Again, she never sought to correct the income information in that later application. Her deceptive conduct resulted in an overpayment of rent subsidies. The evidence presented at the hearing meets the controlling definition of fraud as set forth in CHA Administrative Plan 14-1.A. There was no error in the hearing officer's conclusion that petitioner committed fraud.

¶ 28 Petitioner's arguments on appeal are based solely on a purported miscalculation of the amount of over-subsidy by the hearing officer. The hearing officer found that the subsidy overpayment was in the amount of $5,632; petitioner contends the actual overpayment was $4,785. Petitioner also contends that since the amount of the overpayment was less than $5,000, she was not subject to automatic termination from the rent subsidy program. See Chapter 16 of CHA Administrative Plan, which provides that CHA "will enter into repayment agreements for amounts not to exceed $5,000. The CHA will not enter into repayment agreements *for amounts greater than $5,000* and will terminate the participant from the program." (Emphasis added.) CHA Administrative Plan 16-22. Petitioner contends the termination of her voucher was improper as the overpayment was less than $5,000, and that she should have been allowed to enter into a repayment plan.

¶ 29 Petitioner overlooks that she never presented an argument or evidence to the hearing officer as to any error in the calculation of the rent over-subsidy. Before the hearing officer, petitioner also did not argue that she should have been allowed to enter into a repayment plan as to the overpayments, or that termination was improper because of the subsidy miscalculation. When " 'an argument, issue, or defense is not presented in an administrative hearing, it is procedurally defaulted and may not be raised for the first time before the circuit court on

administrative review.' " *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 88 (quoting *Cinkus*, 228 Ill. 2d at 212). Although our review here is of the decision of the administrative agency, we also note that petitioner presented a repayment plan argument of some type in her letter to the circuit court which is not contained in the record. Petitioner, as appellant, was required to provide a complete record on appeal, and any doubts arising from the incompleteness of the record are resolved against her. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Accordingly, we will not presume that the letter provided a basis for overturning the administrative hearing officer's decision.

¶ 30 Putting aside petitioner's procedural defaults, we would not reverse the hearing officer's decision to uphold the termination of petitioner's voucher on a miscalculation argument. Even assuming the over-subsidy calculation was incorrect only as to the amount, the hearing officer's decision to terminate petitioner's participation in the voucher program was not based on the amount of the over-subsidy, but on the findings that petitioner had violated the family obligations by her misrepresentations and omissions, and those violations amounted to fraud. These findings of the hearing officer have not been challenged on appeal, and we have found no reason to overturn them.

¶ 31 We also disagree that the decision to terminate petitioner's voucher, rather than reach a repayment agreement, was improper based on a possible miscalculation of the overpayment of the subsidy amount. Termination from the voucher program is proper where there have been violations of the family obligations. 24 CFR § 982.552(c)(1)(i) (2006). The hearing officer considered the factors which are to be considered when terminating participation in the voucher program. 24 CFR § 982.522(c)(2)(i) (2006). Petitioner had been found to have acted deliberately when she hid her self-employment income from CHA, misrepresented that she had

no self-employment income and that Social Security payments were her family's sole source of income. Petitioner falsely certified she was providing true and full information and she never corrected the false information contained in her recertification applications. By signing the family obligations, petitioner acknowledged she was notified that any violations of the family obligations would result in her termination from the voucher program, and that the family obligations required she provide true and correct information to CHA and prohibited her from committing fraud as to her participation in the voucher program. The hearing officer concluded petitioner was unlikely to successfully participate in the voucher program in the future. We cannot say the decision to uphold petitioner's termination was clearly erroneous.

¶ 32 We acknowledge petitioner and her family are harmed by the decision to terminate her voucher. The record does not include a showing as to the extent of the harm. Petitioner, in fact, did not present a hardship argument at the administrative hearing, nor on appeal. Therefore, we have no basis to overturn the termination of her participation on this ground in light of the hearing officer's findings that petitioner violated the family obligations and that her violations amounted to fraud.

¶ 33 We note that CHA makes an argument on appeal that its termination of petitioner's participation in the voucher program was proper under section 14-6 of CHA Administrative Plan, which CHA attached in an appendix to its brief. Petitioner argues we should not consider section 14-6, as it was not testified to below nor, otherwise, made part of the record or supplemental record on appeal. See *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000) ("Attachments to briefs that are not included in the record are not properly before this court and cannot be used to supplement the record."). Petitioner acknowledges that courts generally may take judicial notice of an agency's rules and regulations as matters of public record

(see *Busch v. Bates*, 323 Ill. App. 3d 823, 832 (2001)), but argues that such judicial notice should only be taken where the rules and regulations can be found in the Illinois Administrative Code and Illinois Register. Petitioner argues we may not take judicial notice of section 14-6 of CHA Administrative Plan as it is not found in the Illinois Administrative Code and Illinois Register.

¶ 34 We need not address these arguments regarding section 14-6 of CHA Administrative Plan, as we have already determined that CHA's decision to terminate petitioner's participation in the voucher program may be upheld on other grounds.

¶ 35 For all the foregoing reasons, we confirm the decision of CHA to terminate petitioner's participation in the voucher program and affirm the circuit court's decision denying petitioner a writ of *certiorari*.

¶ 36 Decision of CHA confirmed; judgment of the circuit court affirmed.