

**Matter of Wilson v City of N.Y. Dept. of Hous.
Preserv. & Dev.**

2007 NY Slip Op 30022(U)

February 6, 2007

Supreme Court, New York County

Docket Number: 0404634

Judge: Donna Marie Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21 *N*

WILSON, BENJAMIN

INDEX No. 404634/06

Petitioner,

MOTION DATE _____

-v-

MOTION SEQ. No. 001

DEPT. OF H.P.D.

Respondent.

MOTION CAL No. _____

The following papers, numbered 1 to 3 were read on this motion for Article 78 relief.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1

Answering Affidavits- Exhibits _____

2, 2A

Replying Affidavits _____

3

CROSS-MOTION: _____ YES NO

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION WHICH

SUPERCEDES THE DECISION IN THIS ACTION DATED FEBRUARY 1, 2007

INCORRECTLY MISPELLED PETITIONER'S FIRST NAME.

FILED
FEB 23 2007
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 2-6-07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21**

**IN THE MATTER OF THE APPLICATION OF
BENJAMIN WILSON,**
Petitioner,
**FOR A JUDGMENT PURSUANT TO ARTICLE
78 OF THE CIVIL PRACTICE LAW AND RULES**

Index #: 404634/06

- against -

DECISION/ORDER

**THE CITY OF NEW YORK DEPARTMENT OF
HOUSING PRESERVATION AND
DEVELOPMENT.**

Respondent.

DONNA M. MILLS, J.:

Petitioner Benjamin Wilson (“hereinafter Petitioner”) brings this Article 78 proceeding seeking a judgment from this Court reversing and annulling respondent New York City Department of Housing Preservation and Development’s (“hereinafter HPD”) determination to terminate petitioner’s Section 8 subsidy. Respondent HPD opposes the motion and seeks dismissal of the petition.

BACKGROUND

The following relevant facts are undisputed. HPD sent an annual Section 8 recertification declaration form (“recertification package”) for 2006 to petitioner at the subject premises in New York County. The recertification package directed petitioner to return all required documents to process his recertification for his section 8 subsidy by March 23, 2006. On or about February 21, 2006 HPD received a completed Verification of Wages form from petitioner’s employer, the State Insurance Fund. By letter dated May 22, 2006, HPD advised petitioner that it needed additional information to complete petitioner’s annual recertification. By letter dated June 19, 2006, HPD notified petitioner

that his Section 8 subsidy may be terminated because petitioner failed to provide the documents pertaining to his income.

After petitioner did not respond to HPD's pre-termination notice within the prescribed time set forth in the notice, HPD sent petitioner a notice dated August 15, 2006, that his Section 8 subsidy was terminated effective September 30, 2006. On or about October 16, 2006, HPD received petitioner's appeal letter in which he explains his lack of response to the recertification process to his being in jail. By letter dated October 17, 2006, HPD advised petitioner that because his request for an informal hearing was not received in a timely manner, his appeal was denied and his Section 8 rent subsidy remained terminated. Petitioner commenced this Article 78 proceeding seeking an order directing HPD to reopen his Section 8 rent subsidy and reversing the decision of HPD.

APPLICABLE LAW & DISCUSSION

Respondent administers a federal assistance program which provides rent subsidies for lower income families known as Section 8 Existing Housing Program (Section 8). Under this program, the Housing Authority serves simply as the program administrator and pays rent subsidies to participating landlords on behalf of participating tenants. In order to maintain eligibility for the program, participants must re-certify their household composition and total household income on an annual basis. See 24 C.F.R. § 982.516; 24 C.F.R. § 982.551(b). If a Section 8 participant fails to meet her obligations under the Section 8 program, the subsidy may be terminated by the Housing Authority. 24 § C.F.R. 982.552.

This court is mindful that the court's role in reviewing an administrative determination is not to substitute its judgment for that of the agency, but simply to ensure that the agency determination has a rational basis and is not arbitrary and

capricious (see Matter of Warder v Board of Regents of Univ. Of State of N.Y., 53 NY2d 186, 194 [1981]; Akpan v Koch, 75 NY2d 561, 571 [1990]). "The arbitrary or capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact" (Matter of Pell v Board of Educ. Of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]). Phrased differently, "an [a]rbitrary action is [that which is] without sound bases in reason and is generally taken without regard to the facts" (id.).

Petitioner's failure to timely provide HPD with information it requested to process his annual Section 8 recertification for 2006, was a clear violation of HPD's regulations, and provided sufficient grounds for HPD to terminate petitioner's Section 8 subsidy. Petitioner's excuse that he was in jail when the recertification papers were requested of him is not a legally sufficient basis to reverse HPD's determination to terminate his Section 8 subsidy. It is well established that the prescribed recertification and termination procedures were intended to be mandatory and not merely advisory.

Accordingly, it is

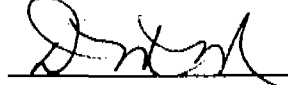
ORDERED that petitioner's motion to reverse and annul the New York City HPD determination terminating his Section 8 subsidy is denied; and it is further

ORDERED that petition be dismissed.

Dated:

2/6/07

ENTER:



J.S.C.

FILED
FEB 2 2007
COUNTY CLERK'S OFFICE
NEW YORK