

**Matter of Wright v Department of Hous.
Preserv. & Dev.**

2008 NY Slip Op 30673(U)

March 3, 2008

Supreme Court, New York County

Docket Number: 0113052/2007

Judge: Kibbie F. Payne

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

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

RITA ROGERS WRIGHT,
Petitioner,

INDEX NO. 113052/07

MOTION DATE 11/28/07

v.

MOTION SEQ. NO. 001

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT and KNW MANAGEMENT,

MOTION CAL. NO. _____

Respondents.

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Order granted as indicated.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: March 3, 2008


J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 4

In the Matter of the Application of
RITA ROGERS WRIGHT,

Index No. 113052/07

Motion Seq. 001

Petitioner,

Judgement

For a Judgment Pursuant to CPLR
Article 78

-against-

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT and KNW MANAGEMENT

Respondents.

KIBBIE F. PAYNE, J.:

In this CPLR article 78 proceeding, petitioner moves for judgment annulling and reversing the determination of respondent Department of Housing Preservation and Development of New York City (HPD) which terminated petitioner's Section 8 subsidy.¹

Petitioner applied for the Section 8 Housing subsidy in October 2004. In her application, petitioner stated that her household consisted of herself, and her two sons, Nathaniel Deigh (Deigh) and Canraba Cyrus Rogers-Wright, who were 21 and 16 years of age at the time. Petitioner attached an unemployment statement signed by Deigh stating he was unemployed and not receiving unemployment benefits. She also attached Board of

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¹ The Section 8 program provides subsidies to low income families in order that they may obtain adequate housing in the private sector (see 42 USC § 1437f).

Education letters to the application indicating that her sons were attending school. Respondent HPD approved petitioner's application and on June 1, 2005, issued the Section 8 subsidy directly to petitioner's landlord.

Subsequently, respondent HPD sent petitioner a Section 8 re-certification declaration form, which petitioner was required to complete by March 15, 2006. Petitioner completed the form in which she indicated that her household consisted of herself and her two sons. She listed herself as the sole income earner for the household. Respondent agency conducted an examination of family income which determined that Nathaniel Deigh was employed in 2004 and 2005. On August 17, 2006 at a pre-termination and mandatory conference petitioner advised HPD in December 2005 Deigh had enlisted in the military and she signed a statement of understanding in which she agreed to submit, by August 24, 2006, proof of her son's military enrollment, his W-2 forms and income tax returns. On August 23, 2006, petitioner submitted her son's military records, indicating his December 29, 2005 report date with a four year active duty commitment and copy of her son's Texas residential lease. Petitioner also submitted copies of her son's 2005 W-2 forms. However, petitioner did not submit any income documentation of her son's 2004 earnings. Respondent HPD reviewed the submitted documents and then terminated petitioner's Section 8 subsidy citing petitioner's failure to report Deigh's

income. Thereafter, petitioner filed an administrative appeal and on March 28, 2007, had an informal review hearing before a hearing officer. Following the hearing, the hearing officer sustained the termination of the Section 8 and on June 4, 2007 respondent agency upheld the hearing officer's determination. Petitioner commenced this CPLR article 78 proceeding challenging the agency's determination as arbitrary and capricious and/or against the weight of the evidence and constituted an abuse of discretion.

In this petition, petitioner maintains, consistent with her testimony at the informal review hearing, that she had no knowledge of her son's income and that he was attending evening classes to graduate from high school. According to petitioner her son was "...leaving the house in the morning. To me he was going to school." [trans. p33, line 24, p34, lines 1-2] However, petitioner annexed to her original 2004 Section 8 application a Board of Education letter indicating that her son was attending evening school.

CPLR 7803 (3) authorizes a challenge of an agency determination only where it was "made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." It is well-settled that judicial review in an article

78 proceeding is thus limited to whether the determination was rationally based (see generally Matter of Hughes v Doherty, 5 NY3d 100, 105 [2005]; see also Matter Pell v Bd. of Education, 34 NY2d 222, 231 [1974]). Here, the agency's determination was based upon petitioner's failure to report Deigh's income. It is undisputed that petitioner failed to report the \$4111.38 income earned by her son Deigh in 2004. Therefore, I am unpersuaded that the agency's determination was irrational, arbitrary or capricious. Moreover, there is no basis for petitioner's contention that the determination was against the weight of the evidence or an abuse of discretion. It is settled that "in a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious" (Flacke v Onondaga Landfill Sys., 69 NY2d 355, 363 [1987]; see also Matter of Heintz v Brown, 80 NY2d 998, 1001 [1992]). Although on the initial application, this court may have decided this issue differently, in absence of an arbitrary and capricious determination by the agency, the court will not substitute its opinion for that of the agency.

Accordingly, it is
ORDERED that the petition is denied and the proceeding is

dismissed. The foregoing constitutes the decision and judgment of the court.

Dated March 3, 2008



Kibbie F. Payne
J.S.C.

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