

Matter of Evans v New York City Hous. Auth.

2010 NY Slip Op 33106(U)

October 25, 2010

Supreme Court, New York County

Docket Number: 402058/10

Judge: Cynthia S. Kern

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

CYNTHIA S. KERN
J.S.C.

PRESENT

PART 52

Index Number : 402058/2010

EVANS, DAWN

INDEX NO. 402058/10

vs

NEW YORK CITY HOUSING

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. 01

ARTICLE 78

MOTION CAL. NO. _____

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

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision.

FILED
OCT 28 2010
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 10/25/10

CK
CYNTHIA S. KERN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----x

In the Matter of the Application of
DAWN EVANS,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----x

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

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NEW YORK

Index No. 402058/10

DECISION/ORDER

| Papers | Numbered |
|--|---------------|
| Notice of Motion and Affidavits Annexed..... | <u>1</u> |
| Answering Affidavits and Cross Motion..... | <u>2</u> |
| Replying Affidavits..... | <u> </u> |
| Exhibits..... | <u>3</u> |

In this Article 78 proceeding, petitioner Dawn Evans ("petitioner") seeks to annul the determination by the New York City Housing Authority finding her ineligible for public housing for two years. This court grants petitioner's request for the reasons set forth below.

The Housing Authority, although an agency of the City of New York, is a public housing authority regulated and funded by the United States Department of Housing and Urban

Development (“HUD”). The Housing Authority, among other agencies in New York City, administers the Section 8 housing program. Section 8 is a federally funded program that provides rent subsidies to low-income families so they may rent privately owned housing. *See generally* 42 U.S.C. § 1437f; 24 C.F.R. § 982 *et seq.* The Housing Authority administers the Section 8 program in accordance with HUD regulations and directives. HUD mandates the Housing Authority to establish and adopt written policies for administration of the Section 8 housing program. *See generally* 42 U.S.C. § 1437f. In doing so, HUD sets forth guidelines that must be followed by the Housing Authority. *Id.*

In compliance with HUD’s federally regulated guidelines, the Housing Authority has drafted internal manuals of written policies for determining eligibility for the Section 8 program. One such policy addresses verification of the applicant’s income. When an applicant reports net income that is significantly below the Human Resource Administration’s (HRA) definition of the minimum amount needed by a family of that size, this raises the possibility that the applicant is concealing income. In such cases, the Housing Authority follows the policy and procedures outlined in its Application Manual on Section 8 eligibility addressing “unrealistic income”. Housing Authority policy dictates that when the applicant’s reported income appears to be disproportionately small in relation to the family’s living expenses, the applicant is then asked to submit documents verifying the family’s annual income. The Housing Authority calculates the income for a twelve-month period and then deducts the applicant’s recurring expenses such as rent and utilities. If the applicant’s income is less than eighty percent of the Human Resources Administration (HRA)’s Basic Allowance for his/her family size and the applicant cannot provide a reasonable explanation, the applicant is found ineligible on the ground of unrealistic

income.

In or around 2005, petitioner became disabled as a result of a car accident. According to petitioner, this accident left her unable to work. In February 2007, petitioner applied for the Section 8 program on behalf of herself and her daughter Malaka Morrison. On September 14, 2007, the Housing Authority interviewed petitioner to assess her eligibility. Petitioner submitted rent receipts and a letter from her landlord, Simeon Brown ("Brown"), verifying the monthly rent and family composition for petitioner's household. Based on the information provided at this interview, the Housing Authority determined that petitioner's income was unrealistic as it was less than eighty percent of HRA's basic allowance for a family of two.

After the initial determination of ineligibility, petitioner completed a Monthly Statement of Income and Expenses. She identified \$969 in monthly income from Social Security Disability, \$1,150 per month in expenses from rent and utilities and food stamps as both income and expenses. She also submitted a Contributor's Affidavit form verifying that she was the only person who contributed toward her rent. However, she also submitted an Applicant's Statement of Income Contribution from her father Charles Evans ("Evans") in which he contradicted petitioner's Contributor's Affidavit and claimed he contributed a varied amount toward petitioner's rent, usually around \$500 per month. Because the information provided by petitioner conflicted with the information provided by Evans, the Housing Authority could not take into account the monies provided to petitioner by Evans. Thus, the Housing Authority affirmed its initial determination finding petitioner ineligible for the Section 8 program.

After finding petitioner ineligible for the Section 8 program based on its own policies, the Housing Authority forwarded petitioner's application to the Department of Equal Opportunity

("DEO") to assess whether petitioner's disability impacted its determination. DEO found that petitioner's ineligibility determination was directly related to petitioner's disability because prior to becoming disabled petitioner was employed. DEO determined that had petitioner not become disabled and instead continued to work, she would have earned at least \$15,000 per year from her employment making her income realistic. DEO recommended that the Housing Authority revoke its determination finding petitioner ineligible. As a result of DEO's recommendation, the Housing Authority reactivated petitioner's application on March 30, 2009.

On March 30, 2009, the Housing Authority again interviewed petitioner to assess her eligibility. At this interview, petitioner stated that she was not working. Petitioner further stated that she received \$828 per month in Social Security benefits and that her daughter received \$233 per month in Social Security benefits totaling \$12,732 per year. Petitioner stated that her rent was \$1,100 per month and she paid approximately \$86 per month in utilities, totaling \$14,232 per year. Petitioner further stated that her father was not helping her with the rent. On August 4, 2009, the Housing Authority again determined that petitioner's income was unrealistic as petitioner's reported expenses exceeded the income reported.

On September 14, 2009, petitioner requested an informal hearing appealing the Housing Authority's determination. Petitioner's request was granted and an informal hearing was held on November 13, 2009 before Hearing Officer Kenneth Cox. Hearing Officer Cox found that the Housing Authority "made a proper determination based on Federal guidelines" and that petitioner "did not present sufficient documentary evidence indicating that her family income is realistic." In reaching his determination, Hearing Officer Cox calculated petitioner and her daughter's current SSA payments of \$828 and \$233 per month, which totaled \$12,732 for a twelve-month

period. Hearing Officer found this income to be unrealistic because petitioner's annual rent was \$13,200 thereby exceeding her annual income. Although not specifically cited in his findings, Hearing Officer Cox acknowledged in his written findings the receipt of several pieces of documentary evidence presented by petitioner in support of her appeal.

At the hearing, petitioner presented 1) a Social Security Award Letter dated October 28, 2009 indicating that petitioner receives monthly Social Security benefits in the amount of \$828, 2) a Social Security Award Letter dated October 28, 2009 indicating that petitioner's daughter Malaka [Morrison] receives monthly Social Security benefits in the amount of \$233, 3) a notarized letter written by Evans dated November 12, 2009 stating that when petitioner became disabled in 2005, he helped pay her rent for as long as he could until it became a financial burden on him and 4) a November 11, 2009 letter from petitioner's landlord Brown stating that when petitioner was employed, her rent was paid in a timely manner but that now he receives her monthly payments late. The Hearing Officer left the record open at the conclusion of the hearing in order to give petitioner an opportunity to submit additional evidence. On November 23, 2009, petitioner additionally submitted into the record a food stamps allotment printout, an undated/not notarized letter by Brown stating that he is petitioner's landlord at 4329 Grace Ave. Bronx, N.Y. and that petitioner is one month behind in her rent, receipts of four City of New York Department of Social Services Emergency Public Assistance Account checks (Public Assistance checks) from July 30, 2008 for \$825 per check, a Social Security Administration printout indicating that petitioner received \$16,397 in benefits in 2008, a Social Security Administration printout indicating that petitioner's daughter Malaka Morrison received \$ 2,640 in benefits in 2008 and a notarized letter dated November 20, 2009 by Vanessa Palmer stating that effective

December 7, 2009, Palmer would pay petitioner \$50/week to babysit her child. On July 22, 2010, petitioner brought this article 78 proceeding requesting that this court overturn the decision of the Housing Authority.

“The law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious.” *Goldstein v. Lewis*, 90 A.D.2d 748, 749 (1st Dep’t 1982). “In applying the ‘arbitrary and capricious’ standard, a court inquires whether the determination under review had a rational basis.” *Halperin v. City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); see *Pell v. Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “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.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that the Hearing Officer’s finding sustaining the Housing Authority’s determination that petitioner is ineligible for public housing is arbitrary and capricious. The Hearing Officer’s determination is not supported by rational basis because it was taken without regard to pertinent facts in the record. The Hearing Officer found that petitioner’s income was unrealistic to meet the financial needs of her family because “the [petitioner’s] projected annual expenses \$13,200 exceeds her annual projected income of \$12,732” and that “[petitioner] did not present sufficient documentary evidence indicating that her family income is realistic.” In coming to this conclusion, the Hearing Officer considered only the projected annual

Social Security benefits of petitioner and her daughter to the exclusion of other evidence of income in the record. Specifically, the Hearing Officer did not take into account the four Public Assistance checks for \$825 from July 2008 and the printouts from the Social Security Administration demonstrating that for the year 2008 petitioner and her daughter's Social Security Administration benefits put the family income in excess of \$12,732. Despite the fact that the Hearing Officer left the record open so that petitioner could submit additional documentary evidence, the Hearing Officer did not take into account the evidence of additional income in his calculation of income and did not provide any explanation for his omission. Considering the record as a whole, the court finds that the Hearing Officer's decision – finding petitioner's income to be unrealistic to manage the financial needs of her family – is not grounded in rational basis because the Hearing Officer disregarded evidence in the record of additional income without any explanation.

The Housing Authority notes in its papers that Public Assistance checks were not disclosed to the Housing Authority at the reactivation interview in March 2009 and that these checks were received more than one year before her hearing. These arguments are not persuasive. First, the Hearing Officer left the hearing record open to give petitioner time to submit additional documentary evidence. In fact, the Hearing Officer noted the Public Assistance checks as a part of the record in his written decision. Second, the Housing Authority has failed to provide any authority to support the position that only evidence of income received within twelve months of the *hearing* is admissible at the hearing. Further, the Public Assistance checks were received by petitioner within the twelve months prior to the reactivation of her case in March 2009 which would have been within the initial twelve-month period considered by the

Housing Authority.

Accordingly, this court grants petitioner's request for relief under Article 78 of the CPLR and hereby remands this action to the Housing Authority to reopen petitioner's application so that her family income may be reassessed. The court denies the Housing Authority's request that this court order petitioner to pay costs, including attorney's fees, as its has failed to provide any basis for this request. This constitutes the decision and order of the court.

Dated: 10/25/10

Enter: OK

J.S.C.
CYNTHIA S. KERN
J.S.C.

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