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HAND DELIVERY

Administrative Determination Review Committee (ECD)
Ms. Shanin Brown, Coordinator
Committee on Economic and Community Development
Courthouse, Rm. 105
901 North Ninth Street
Milwaukee, WI 53233

Re: *Lynette Moore v. Milwaukee County Housing Choice Voucher Program*
Ordinance 110 Appeal – Milwaukee County HCVP Position Statement

Dear Ms. Brown:

The Milwaukee County Office of Corporation Counsel, on behalf of the Milwaukee County Department of Health and Human Services, Housing Division, submits this position statement in support of the Milwaukee County Housing Choice Voucher Program hearing officers' decision to terminate Ms. Lynette Moore from the Housing Choice Voucher Program.

INTRODUCTION

On October 29, 2014, Ms. Lynette Moore ("Moore") was terminated from the Milwaukee County Housing Choice Voucher Program ("HCVP") after the hearing officers concluded that HCVP met its burden of proving by substantial evidence that Moore's failure to pay rent and failure to vacate her HCVP assisted housing at the expiration of her lease constituted serious lease violations under 24 C.F.R. Section 982.552(b)(2), mandating the termination of her Section 8 rental assistance. (Findings of Fact, Conclusions of Law and Order ("FOF") at 2-3, October 29, 2014.) As a result of those serious lease violations, Moore was evicted from her HCVP assisted housing. (FOF at 2, ¶ 4; Exhibit H5.) Pursuant to 24 C.F.R. Section 982.552(b)(2), a housing agency "must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." (emphasis added.) (FOF at 3.) Such termination is mandatory upon a finding that an individual was evicted for a serious violation of the lease. *See Cole v. Metro. Council, HRA*, 686 N.W.2d 334, 338 (Minn. Ct. App. 2004) (commenting that hearing officers are not allowed to consider the hardship that would result from the termination of a participant's Section 8 benefits). Moore now seeks administrative review of the hearing officers' October 29, 2014 decision. (*See* Dec. 18, 2014 Pet'r's Notice of Appeal and Appeal.)

This committee should affirm the hearing officers' decision and quash Moore's appeal as the hearing officers kept with their jurisdiction, and their findings were not contrary to law, arbitrary or oppressive, and were supported by substantial evidence.

BACKGROUND

Moore, as a Section 8 rental assistance recipient, resided at 4882 West Dean Road, Brown Deer, Wisconsin. (Exhibit H2.) On March 1, 2014, according to Moore's landlord, Moore failed to pay rent at the Dean Road Address. (FOF at 2, ¶ 5; Exhibit P6.) Moore was served with a Five-Day Notice to Quit or Pay Rent on March 28, 2014. (*Id.*)

By letter dated March 31, 2014, her landlord notified Moore that her lease was being terminated and that Moore would be required to vacate the Dean Road premises on April 30, 2014. (FOF at 2, ¶ 1; Exhibits H1 & P1.) Moore received the letter sometime in April 2014. (*Id.*; Hr'g Tr. 72-73:20-14; 87:8-18.) Moore's landlord also sent a copy of the notice to HCVP, which was received by Moore's case manager, Andy Collura ("Collura"), on April 2, 2014. (FOF at 2, ¶ 1, Exhibit H1; Hr'g Tr. 16:6-8.)

Collura telephoned Moore on April 2, 2014, and left a voicemail advising her to pick up a moving voucher that would allow her 60 days to locate another residence to continue receipt of her Section 8 benefits. (Hr'g Tr. 16:6-14.) Then, on April 10, 2014, Collura spoke with Moore and advised her that she was required to vacate the Dean Road premises by April 30, 2014. (Hr'g Tr. 16-17:15-8.) Collura also advised Moore to come in to HCVP to pick up her moving voucher and packet to present to other prospective landlords, and to allow continuation of her Section 8 benefits. (*Id.*)

On April 18, 2014, Collura issued Moore a moving voucher with an expiration date of June 17, 2014, to locate another approvable unit. (Exhibit H3, Hr'g Tr. 17-18:14-14.) Collura left it at the front desk for pickup by Moore. On April 30, 2014, Collura again spoke with Moore and again informed her that she should pick up her moving voucher and packet. (Hr'g Tr. 18:17-24.) Moore did not vacate the Dean Road premises by April 30 as requested by the landlord's March 31 letter and as required by Moore's lease. (FOF at 2, ¶ 2; Hr'g Tr. 19:3-5; 120-121:21-1; Exhibit H2, ¶ 17.)

On May 12, 2014, Moore's landlord filed an eviction action against Moore for her failure to pay rent and failure to vacate her HCVP assisted housing. (Exhibit H5.) A judgment of eviction was entered on May 28, 2014 after a contested hearing, and Moore was ordered to deliver the premises on or before June 5, 2014. (*Id.* at 1.) HCVP learned of Moore's eviction and collected the eviction order for Moore's file. (Hr'g Tr. 19-20:20-10.)

On June 17, 2014, the date Moore's moving voucher expired, Moore appeared at the HCVP offices for a meeting with Assistant Program Coordinator Jackie Martinez. (Exhibit H4.) Moore did not bring with her any Requests for Tenancy Approvals. (Hr'g Tr. 115-116:21-7.) Moore was advised that because she had been subject to an eviction, her Section 8 benefits were under review for termination. (Hr'g Tr. 36:8-11.) Moore argued that she had not been evicted, and was invited to go to the courthouse and return to HCVP with evidence that she had not been evicted. (Hr'g Tr. 35:4-12.) Moore returned without such evidence, became belligerent, and left only when staff was forced to threaten to call security. (Hr'g Tr. 35:18-19; 110-111:23-9.)

After a series of correspondence between HCVP and Moore's counsel, Attorney Christine Donahoe with Legal Action, HCVP issued a Participant Termination Letter dated August 18, 2014, notifying Moore that her benefits would be terminated effective June 30, 2014 because of her eviction. (Exhibit H9.) Moore was notified that she could request an informal hearing on this determination. (*Id.*) Moore did so (Exhibit H10) and an informal hearing on the validity of the eviction as a ground for termination of Moore's participation in the Section 8 program was held on October 2, 2014. (*See* FOF; Hr'g Tr. Oct. 2, 2014.)

After the informal hearing, the hearing officers concluded that HCVP met its burden of proving by substantial evidence that Moore's failure to pay rent and failure to vacate her HCVP assisted housing at the expiration of her lease constituted serious lease violations under 24 C.F.R. § 982.552(b)(2), mandating the termination of her Section 8 rental assistance. (FOF at 3.) Thus, the hearing officers upheld the decision of the HCVP to terminate Moore's participation in the Milwaukee County Housing Choice Voucher Program. (*Id.*)

On November 14, 2014, Moore requested her case be reheard. (*See* Letter from Atty. Donahoe requesting a re-hearing.) HCVP responded to Moore's request and asked the hearing officers to deny the request. (*See* Nov. 24, 2014 Written Response from Corporation Counsel.) The hearing officers denied Moore's request for a rehearing. (*See* Hearing Panel Dec. 12, 2014 decision.) Shortly thereafter, on December 18, 2014, Moore appealed the hearing officers' decision to this committee. (*See* Pet'r's' Notice of Appeal and Appeal.)

ARGUMENT

This committee's review of this matter is restricted to the hearing officers' record, including the Findings of Fact and Conclusions of Law, and is limited to (1) whether the hearing officers kept within their jurisdiction; (2) whether they acted according to law; (3) whether their actions were arbitrary, oppressive, or unreasonable, representing their will and not their judgment; and (4) whether evidence was such that they might reasonably make the determination in question. *See* Milwaukee County Ordinance ("MCO") § 110.09. There is a "presumption that the [hearing officers] acted according to law and that the official decision is correct and the weight and credibility of the evidence cannot be assessed." *State ex re. Ruthenberg v. Annuity and Pension Bd. of City of Milwaukee*, 89 Wis. 2d 463, 473, 278 N.W.2d 835, 840 (1979) (citations omitted).

In her appeal filed with the committee on December 18, 2014, Moore references her November 14, 2014 letter requesting a rehearing as the basis for her appeal. (*See* Pet'r's' Notice of Appeal and Appeal.) In addition to addressing Moore's concerns contained therein, the County will analyze each factor to show that the hearing officers kept within their jurisdiction, and that their findings were not contrary to law, arbitrary or oppressive, and were supported by substantial evidence.

I. THE HEARING OFFICERS KEPT WITHIN THEIR JURISDICTION.

Jurisdiction is defined as the authority to hear and decide a matter brought before an adjudicative body. *See Mack v. State*, 93 Wis. 2d 287, 294, 286 N.W.2d 563, 566 (1980). Jurisdiction of administrative agencies is conferred and specified by statutes of this state and statutes of the United States. *See State (Dep't of Admin) v. Dep't of Indus., Labor & Human*

Relations, 77 Wis. 2d 126, 136, 252 N.W.2d 353, 357 (1977); *see also*, Wis. Stat. § 801.04(1). Thus, the nature of the matters an administrative agency is authorized to hear is established by law. *Id.*

The hearing officers had jurisdiction to hear and decide Moore's case. The hearing officers are the persons empowered to hear and decide cases where HCVP makes a decision that negatively impacts a program participant. *See* 24 C.F.R. § 982.555(e)(4). Moore was a participant of HCVP's Section 8 rental assistance program. (Exhibit H13.) Moore was issued a Participant Termination Letter on August 18, 2014 for serious lease violations resulting in her eviction. (Exhibit H9.) Pursuant to 24 C.F.R. 982.555(a)(1)(v), HCVP gave Moore an opportunity for an informal hearing to consider whether HCVP's decision was in accordance with the law. (Exhibit H9.) Moore requested an informal hearing. (Exhibit H10.) The hearing officers conducted Moore's hearing in conformity with 24 C.F.R. Section 982.555(e) and the HCVP's Administrative Plan. Thus, the hearing officers had jurisdiction over Moore's case.

II. THE HEARING OFFICERS ACTED ACCORDING TO LAW.

In the context of terminating Section 8 rental assistance participation and affording a participant an opportunity for an informal hearing, the requirement that an administrative agency act according to law includes an obligation on the agency's part to provide the following:

- (1) timely and adequate notice detailing the reasons for termination;
- (2) an opportunity to appear personally at the hearing, present evidence and oral arguments, and confront and cross-examine witnesses;
- (3) the right to be represented by counsel;
- (4) the right to a decision rendered by an impartial decision maker;
- (5) the right to have that decision based solely on rules of law and the evidence presented at the hearing; and
- (6) the right to a statement by the decision maker setting forth the reasons for the decision and the evidence upon which it was based.

Goldberg v. Kelly, 397 U.S. 254, 267-71 (1970).

The hearing officers extended to Moore the full panoply of due process rights. On August 18, 2014, HCVP issued a Participant Termination Letter to Moore explaining to her that she was being terminated from the program pursuant to 24 C.F.R. § 982.552(b)(2) for having committed serious lease violations resulting in her eviction from her HCVP assisted housing.¹ (Exhibit H9.) Moore was also informed of her right to request an informal hearing. (*Id.*) Further, HCVP communicated to Moore that she would have an opportunity at the hearing to present written or oral objections to the HCVP determination, that she would be able to review her program file and any other relevant documents prior to the hearing, and that she could be represented by counsel at the hearing. (*Id.*)

The hearing officers heard Moore's case on October 2, 2014. (*See* FOF at 1.) The hearing officers were Ms. Jean Wolfgang and Ms. Candace Coates. (*See id.*) Both officers were appointed

¹ Federal regulations require the notice of termination to "(i) Contain a brief statement of reasons for the decision, (ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and (iii) State the deadline for the family to request an informal hearing." *See* 24 C.F.R. § 982.555(c)(2).

by the Housing Division in accordance with 24 C.F.R. Section 982.555(e)(4). Neither officer played any role in HCVP's decision to terminate Moore from the program and neither officer is a subordinate to the HCVP staff who made the decision. HCVP was represented by Attorney Paul Kuglitsch, and Moore was represented by Attorney Christine Donahoe. (See FOF at 1.) HCVP presented its witnesses at the hearing and introduced its evidence. (Hr'g Tr. 11-68:2-22; Exhibits H1-H13.) Moore had an opportunity to cross-examine those witnesses and object to any of the evidence. Further, Moore presented her witnesses and introduced her evidence. (Hr'g Tr. 69-126:13-14; Exhibits P1-P8.) After the hearing, the hearing officers concluded that HCVP met its burden of proving by substantial evidence that Moore's failure to pay rent and failure to vacate her HCVP assisted housing at the expiration of her lease constituted serious lease violations under 24 C.F.R. Section 982.552(b)(2), mandating the termination of her Section 8 rental assistance. (FOF at 3.)

On October 29, 2014, the hearing officers issued their written decision upholding HCVP's determination to terminate Moore from the program. (See FOF.) With respect to that decision, 24 C.F.R. Section 982.555(e)(6) requires the hearing officers to issue a "written decision, stating briefly the reasons for the decision." This requirement has been interpreted to require a housing agency to "explain on what evidence it is relying and how that evidence connects rationally with its choice of action." *Driver v. Hous. Auth. of Racine Cnty.*, 2006 WI App 42, ¶ 17, 289 Wis. 2d 727, 741, 713 N.W.2d 670, 677 (quoting *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 338 (Minn. Ct. App. 2004)). The decision does not need to amount to a full opinion or even formal findings of fact and conclusions of law. *Id.* It must only contain enough facts or law to be instructive as to how the hearing officers reached their decision. *Id.*

Here, the hearing officers' decision far exceeds the established legal requirements. The decision incorporates five findings of fact related to Moore's eviction that gave rise to the hearing officers' termination decision and references specific evidence upon which they relied. (FOF at 2.) First, the hearing officers found that Moore received a 30-day notice of termination from her landlord that required Moore to vacate the premises by April 30, 2014. (FOF at 2, ¶ 1; Exhibits H1 & P1; Hr'g Tr. 72:24-25.) Second, the hearing officers found that Moore did not vacate by April 30. (FOF at 2, ¶ 2; Hr'g Tr. 114:6-8.) Third, the hearing officers found that the lease required Moore to vacate upon receiving a 30-day notice; and that her failure to vacate was her own fault. (FOF at 2, ¶ 3; Exhibit H2 ¶ 17.) Fourth, the hearing officers found that Moore was evicted from the leased premises for the "non-payment of rent and/or failure to vacate the premise." (FOF at 2, ¶ 4; Exhibit H5.) Fifth, the hearing officers found that both the federal regulations and the Administrative Plan require HCVP to terminate Moore's rental assistance for serious lease violations. (FOF at 2, No. 5; Exhibit H12.) Because both a failure to pay rent and a failure to vacate leased premises upon expiration of lease constitute serious lease violations, the hearing officers correctly terminated Moore from the Section 8 rental assistance program. (FOF at 3; Exhibit H12); *Perkins v. Metro. Council, Metro. HRA*, No. CIV. 14-1355 DSD/JJG; 2014 WL 2139253, at *3 (D. Minn. May 23, 2014); *Wilhite v. Scott Cnty. Hous. & Redevelopment Auth.*, 759 N.W.2d 252, 256-57 (Minn. Ct. App. 2009). Thus, the hearing officers clearly stated their reasons for terminating Moore from the program and referenced specific and substantial evidence supporting their decision. At each stage in the termination process, HCVP and the hearing officers acted according to law by strictly adhering to the concepts of due process as articulated in *Goldberg*, 397 U.S. at 267-71.

III. THE HEARING OFFICERS' DECISION WAS NOT ARBITRARY, OPPRESSIVE OR UNREASONABLE, AND THE EVIDENCE SUPPORTS THE HEARING OFFICERS' DECISION.

The third factor, whether the hearing officers' decision was arbitrary, oppressive, or unreasonable and represented their will and not their judgment, is controlled by the fourth factor: whether the evidence was such that it might reasonably make the order or determination in question. *See State ex rel. Harris v. Annuity and Pension Bd., Emp. Ret. Sys. of City of Milwaukee*, 87 Wis. 2d 646, 652, 275 N.W.2d 668 (1979). "The question is one of the sufficiency of the evidence." *Id.* The test is whether the evidence reasonably supports the decision. *Id.* To reach this determination, the committee is to examine whether the evidence on which the hearing officers relied was sufficiently reasonable to support the decision that was made. *Id.* In this review, the committee is limited to the record on appeal, and the allegations in the appeal cannot add facts to the record. *State ex rel. Irby v. Israel*, 95 Wis. 2d 697, 703, 291 N.W.2d 643, 646 (Ct. App. 1980).

The evidence in the record clearly supports the hearing officers' conclusion that Moore was evicted for serious lease violations, i.e. a failure to pay rent and a failure to vacate the leased premises; and that these violations were her own fault. (FOF at 3.) The small claims eviction action initiated by Moore's landlord claimed \$413.00 in unpaid rent plus damages. (Exhibit H5.) Moore never paid this rent. (Exhibits H5 & P6.) So at the time Moore's landlord filed his complaint—May 12, 2014—Moore was holding over and not paying rent. During the eviction process, the landlord waived the \$413.00 owed him, but still demanded Moore vacate the premises because he wanted to sell the property. (Exhibit P5; *see also* Hr'g Tr. 95:11-14.) The landlord's waiver of his right to collect the past due rent owed to him does not mean Moore was not evicted for non-payment. It simply means the landlord waived his right to collect the rent as part of the judgment. The underlying reasons for the eviction—non-payment of rent and holding over tenancy—remained the same. After the eviction hearing, the court rendered a judgment of eviction in favor of the landlord, finding the landlord had a lawful right to restitution of the premises, and ordered Moore to deliver the premises by June 5, 2014. (Exhibit H5.)

Moore alleges the record lacked substantial evidence to support a finding that Moore was evicted for a serious lease violation. (*See* Nov. 14, 2014 Letter from Atty. Donahoe requesting a re-hearing.) Her basis for making this claim is that the "court records do not reference anything about the reason judgment was entered" and that Moore did not understand why or whether she was evicted.² (*Id.* at 2.) The evidence in the record wholly contradicts Moore's assertions. The small claims summons and complaint served on Moore unambiguously states the action is for eviction. (Exhibit H5.) The reason for the eviction is "unpaid rent." (*Id.*) Moore went to court

² In her letter requesting a rehearing, Moore mischaracterizes the Wisconsin Court of Appeals holding in *Williams v. Hous. Auth. of City of Milwaukee*, 2010 WI App 14, 323 Wis. 2d 179, 779 N.W.2d 185. In *Williams*, the Housing Authority of the City of Milwaukee relied on two pieces of evidence in the record to support its decision to deny Williams housing application: (1) municipal citations, and (2) the hearsay statement on the back of the disorderly conduct citation (not a police record). *Id.* ¶ 16. Further, the only witness who testified at the informal hearing about Williams' actions was Williams. *Id.* Because the officer who drafted the citation did not testify at the hearing, the court determined that the statement on the back of the citation constituted uncorroborated hearsay and was not substantial evidence of Williams' actions. *Id.* at ¶ 19. During her informal hearing, Williams denied the allegations in the citation and there was no witness testimony opposing Williams' recollection of the events. *Id.* In the instant case, the court records clearly show that Moore was evicted from her HCVF assisted housing (Exhibit H5), and Moore admitted to not paying rent and not vacating the premises upon termination of her lease. (Hr'g Tr. 77:8-13, 120-121: 21-1.)

not once, but twice to contest the eviction. (*Id.*) The judge issued a writ of restitution evicting Moore from the premises. (*Id.*) And while Moore may have made the improbable, self-serving statement that she did not think she was evicted, her own testimony proves that she understood she was facing eviction, that she lost her eviction case, and that she had to move. (Hr'g Tr. 92:10-13; 106-107:23-3; 119:20-21; 120:8-12.). The hearing officers heard Moore's testimony that she did not think she was evicted and weighed it against her statements referenced above. (*Id.*) This committee does not address credibility, nor does it re-weigh the evidence. *State ex rel. Harris* at 652. The only question before this committee is whether the evidence reasonably supports the decision. *Id.*

A tenant's failure to pay rent is a serious lease violation. *See* 24 C.F.R. § 982.310(a)(1). In addition, the case law is well-settled that holding over tenancy and not vacating the premises upon the expiration of a lease is also a serious lease violation and mandates the termination of Section 8 rental assistance. *Perkins*, 2014 WL 2139253 (ruling that tenancy holdover following the expiration of the lease, even if the tenant paid rent for the holdover month, constitutes a serious violation of the lease); *see also Wilhite*, 759 N.W.2d at 256. Moore claims her holding over is not a serious lease violation because the landlord was not harmed. (*See* Nov. 14, 2014 Letter from Atty. Donahoe requesting a re-hearing, p. 2.) This assertion is refuted by the fact that Moore's landlord had to expend time and money to evict Moore after her lease expired. The landlord paid a filing fee to file the eviction action, paid a process server to serve Moore the summons and complaint, and paid an attorney to represent him. These expenses deprived Moore's landlord of "real, significant, economic benefits," which is proof of a serious lease violation. *Perkins*, 2014 WL 2139253 n.1 (citing *Wilhite*, 759 N.W.2d at 256.) Further, Moore's holding over prevented the landlord from being able to sell his property unencumbered, depriving the landlord of his property interest.³ *Wilhite*, 759 N.W.2d at 256. Thus, Moore's holding over constituted a serious lease violation because it significantly affected her landlord's property and economic interests. The hearing officers, therefore, correctly concluded that the evidence was sufficient to uphold HCVP's determination that Moore's failure to pay rent and failure to vacate her HCVP assisted housing at the expiration of her lease constituted serious lease violations under 24 C.F.R. Section 982.552(b)(2), mandating the termination of her Section 8 rental assistance. (FOF at 3.)

CONCLUSION

Based on the forgoing, the County respectfully requests that the hearing officers' October 29, 2014 decision be affirmed.

Sincerely,



Paul Kuglitsch
Assistant Corporation Counsel

cc: Christine Donahoe, Esq., Counsel for Lynette Moore (via email)

³ In her November 14, 2014 letter, Moore claims that the landlord did not have imminent plans to sell the property. However, during her October 2, 2014 informal hearing, that landlord's imminent plans to sell his property is exactly what Moore stated was the reason her landlord wanted her to vacate the premises. (Exhibit P5; Hr'g Tr. 75-76:19-13; 95:11-14; 120:4-10.)