



3-30-2010

TENNESSEE HOUSING DEVELOPMENT AGENCY, Petitioner, vs. TRINITY NELSON, Respondent

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**BEFORE THE TENNESSEE
HOUSING DEVELOPMENT AGENCY**

IN THE MATTER OF:

**TENNESSEE HOUSING
DEVELOPMENT AGENCY,
Petitioner,**

Docket No. 32.00-105238J

v.

**TRINITY NELSON,
Respondent.**

INITIAL ORDER

This contested case was heard on March 30, 2010 in Milan, Tennessee, before Bettye Springfield, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Housing Development Agency. Bruce Balcom, Assistant General Counsel, represented the Tennessee Housing Development Agency (“THDA”). The Respondent, Trinity Nelson, was present for the hearing and represented herself.

The subject of the proceeding was the proposed termination of Respondent’s rental assistance through the Section 8 Housing Choice Voucher Program (Program) for Respondent’s failure to report all sources of income. After consideration of the record, argument of the parties, and all the evidence in this matter, it is determined that the Respondent’s Section 8 rental assistance **should not** be terminated.

This decision is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Respondent, Trinity Nelson, was interviewed for participated in the Section 8 Program on June 27, 2008. She completed a Personal Declaration Form for the purpose of verifying family income.

2. Linda Simmons, Rental Assistance Manager, conducted the initial interview of the Respondent and her mother to determine eligibility for Section 8 assistance. The Respondent was the only member of the family whose income was reported, as the mother, Margaret Nelson, was not working at the time of the interview.

3. Margaret Nelson is a substitute teacher who is not employed during the summer months. She explained her employment situation to Ms. Simmons at the time of the June 2008 interview and testified that she was told to provide the income information later. However, Ms Simmons did not recall that conversation.

4. The Respondent signed a Certification of Declarations on June 27, 2008, and Grounds for Denial or Termination, both of which provided that any changes in income must be reported within 14 days. The Annual Recertification interview was conducted in April 2009.

5. Margaret Nelson was as a substitute teacher with the Jackson-Madison County School System between February 25, 2009 and August 19, 2009. Her current income was not reported at the time of recertification. She insists that she called Annette Walker, Rental Assistance Specialist, and reported her income after she started back to work.

6. The Respondent and her mother had also, since being notified of termination of rental assistance, begun paying the full amount of rent for their apartment, although such full payment was not required during the pending appeal.

7. THDA determined that the Respondent's rental assistance should be terminated because she did not report the earned income of her mother. THDA had the option to allow Respondent to repay the overpayment.

CONCLUSIONS OF LAW

1. The United States Housing Act of 1937, as amended, provides for a rental assistance program called the Housing Choice Voucher Program. Under this Program an individual who meets the program requirements can receive a voucher to pay for all or a portion of the individual's rent. 42 U.S.C. §1437 et.seq.

2. THDA administers the Program in Tennessee, which must comply with a number of federal and state statutes and regulations. The regulations require THDA to administer vouchers in line with a written Administrative Plan. 24 C.F.R. § 982.54(c); Tenn. Comp. R. & Regs. 0770-1-5-.04(2). The Program provides that "[f]amilies select and rent units" and THDA "contracts with the owner to make rent subsidy payments on behalf of the family." 24 C.F.R. § 982.1(a)(2).

3. THDA has the burden of proving, by a preponderance of the evidence, that the Respondent violated the terms of her voucher and that assistance should be terminated. *See Winford v. Hawissee Apartment Complex*, 812 S.W.2d 293, 295 (Tenn. Ct. App. 1991); Tenn. Comp. R. & Regs. 1360-4-1-.02(3), (7).

4. Code of Federal Regulations, 24 CFR 982.551(b) states that participants in Section 8, Tenant Based Assistance, Housing Choice Voucher Program "must supply any information that the PHA (Public Housing Authority) determines is necessary in the administration of the program."

5. CFR 982.552(b) II, Termination of Assistance, states, in pertinent part, the following:

Rental assistance may be terminated for any program violation to include any of the following reasons (note: family in this context means any member of the household):

- 1) The family is guilty of program fraud or abuse in any federal housing assistance program. The fraud must be verified.

6. The evidence established that the Respondent did not report income for her mother at the time of her June 2008 interview. However, Margaret Nelson, a substitute teacher, was not employed during the summer months so there was no income to report. While the mother's income was also not reported during annual recertification, her testimony was very credible that she provided information about her substitute teaching during the initial interview, and she also called the Section 8 office and reported that she had resumed substitute teaching.

7. Thus, even if the Respondent may have been negligent in not including her mother's income during recertification, since this information had been provided by telephone, this was more a harmless mistake. It is concluded that the Respondent's action here does not rise to the level of program fraud or abuse.

8. Furthermore, the fact that the Respondent and her mother are now making the full payment for rent, although they are not required to do so pending the appeal, buttress their claim against deliberately withholding income information.

9. Therefore, it is concluded that THDA failed to carry its burden of proof by a preponderance of the evidence that the Respondent's rental assistance through the Section 8 Housing Voucher Program should be terminated.

10. It is ORDERED that the Respondent's Section 8 rental assistance shall continue, and that Respondent be allowed to reimburse THDA for any overpayment.

Entered and effective this 12th day of May, 2010.

Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 12th day of May, 2010.

Thomas H. Stovall, Director
Administrative Procedures Division