August 2015

Kendra Frierson vs. THDA

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August 25, 2015

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Kendra Frierson  
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RE: In the Matter of: Kendra Frierson  
Docket No. 32.00-131449J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure
BEFORE THE TENNESSEE HOUSING DEVELOPMENT AGENCY

IN THE MATTER OF:

KENDRA FRIERSON                 DOCKET NO. 32.00-131449J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN September 9, 2015.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615/741-7008 OR 741-5042, FAX 615/741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.
BEFORE THE TENNESSEE
HOUSING DEVELOPMENT AGENCY

IN THE MATTER OF:

TENNESSEE HOUSING
DEVELOPMENT AGENCY,
Petitioner

v.
KENDRA FRIERSON,
Respondent

DOCKET NO: 32.00-131449J

INITIAL ORDER

This contested administrative case was heard in Lewisburg, Tennessee on August 24, 2015, before J. Randall LaFevor, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Housing Development Agency ("THDA" or "the Agency"). Mr. Bruce Balcom, General Counsel for THDA, represented the Petitioner. The Respondent appeared pro se.

The subject of the proceeding was the proposed termination of the Respondent’s rental assistance for her alleged failure to provide THDA with “true and complete information” concerning her family’s income. Upon full consideration of the record, it is determined that the Respondent’s participation in the THDA Rental Assistance Program should be terminated. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Respondent received rental assistance from THDA’s Housing Choice Voucher Program; the amount is dependent upon several factors, including the amount of the recipient’s family income. As a condition for receiving THDA rental assistance, the Respondent was required by law to disclose all sources and amounts of her household income, and to report any changes in the amount of that income within fourteen (14) days of the effective date of those changes.
2. While collecting information for its recertification process, the Agency discovered that the Respondent was had been gainfully employed during 2014 and 2015, and that her income from that employment was not reported to the Agency, as required.

3. Based on the amount of unreported family income, THDA’s computations determined that the Respondent’s household had received an overpayment of THDA rental assistance in the amount of $4,502.00. Since THDA concluded that the overpayment resulted from the Respondent’s failure to provide “true and complete information” concerning her household income, and her failure to provide timely notification of changes in her household income, THDA notified her that it intended to terminate her participation in the program.

4. The Respondent appealed the Agency’s decision, resulting in the instant hearing. During the hearing, the Respondent challenged none of the evidence offered by the Agency, but testified that she had appealed the Agency’s decision because she did not understand the computations used to arrive at the amount of overpayment. During the hearing, she acknowledged that she understood the process and the Agency’s computations. She said that she no longer needed the Agency’s assistance, but wanted to be sure that she understood how much she owed.

CONCLUSIONS OF LAW & ANALYSIS

1. The Code of Federal Regulations [24 CFR 982.551(b)] states, in relevant part, that participants in the Section 8, Tenant Based Assistance, Housing Choice Voucher Program1 “must supply any information that the PHA [Public Housing Authority] determines is necessary in the administration of the program.”

2. “Any information supplied by the family must be true and complete.” 24 CFR 982.551(b)(4).

3. 24 CFR 982.552(b) II, Termination of Assistance, states, in relevant part:

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 THDA Rental Assistance Program qualifies as such a program.
3. The family refuses to reimburse the program in full for overpayment of subsidy for unreported income or change in family status.

4. The provisions of 24 CFR 982.551, et seq., are incorporated in the THDA Section 8 Rental Assistance Administrative Plan, as required by Rule 0770-1-5-.10, TENN. COMP. R. & REGS., and govern the THDA Rental Assistance Program. The Administrative Plan provides that overpayments of rental assistance resulting from failure to report income must be repaid by the program participant. Failure to repay such a debt is grounds for termination from the program. [See, THDA Section 8 Rental Assistance Administrative Plan] It also provides that, when the overpayment is more than $3,000.00, termination of participation in the rental assistance program is mandatory; in such cases, the Agency is not required to offer the participant a repayment plan.

5. The Agency proved that the Respondent failed to report her self-employment and income within 14 days after she began working. The Agency also proved that the Respondent’s underreporting of her household income resulted in an overpayment of her assistance in the amount of $4,502.00, which she failed to repay. As provided in the THDA Rental Assistance Administrative Plan (supra), incurring an overpayment of more than $3,000.00 does not require the Agency to offer a repayment plan, and requires that participation in the rental assistance program be terminated.

6. Under its current regulations, any participant accumulating a debt to THDA of more than $3,000.00 is deemed serious enough to result in automatic termination of the participant’s voucher. The Respondent was responsible for accurately reporting her household income in a timely manner. She failed to report a substantial amount of earned household income while participating in the voucher program. The Respondent’s failure to comply with the conditions of her participation in the program, and her receipt of an overpayment of assistance in an amount greater than $3,000.00 excludes her from continuing eligibility for participation in the Housing Choice Voucher Program.
POLICY REASON SUPPORTING THIS DECISION

THDA receives limited government funding for its Rental Assistance Program. As a result of that limited funding, when a program participant, such as the Respondent, receives more assistance than she is entitled to receive, others in the community must be denied assistance to which they might otherwise be eligible. THDA policies, as reflected in the Administrative Plan, dictate that sanctions must be imposed on program participants who fail to live up to their obligations, and prevent others from receiving its benefits. By underreporting her household income, the Respondent has demonstrated her unwillingness to abide by THDA regulations and its Rental Assistance Program requirements. After accumulating a substantial debt to the Agency as a result of overpayment of her benefits, the Respondent failed to repay that debt in full, and the Agency is not permitted to offer her a repayment plan. In light of all the facts of this case, termination of the Respondent’s participation in the program is an appropriate sanction.

Accordingly, it is hereby ordered that the Respondent’s participation in the THDA Rental Assistance program is TERMINATED, due to her demonstrated failure to comply with the requirements of that program; and, that she is required to repay the overpayment in the amount of $4,502.00.

This Initial Order is entered and effective this 25th day of Aug., 2015.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25th day of August, 2015.

J. Richard Collier
Director
Administrative Procedures Division
APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.