IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANISAH TURNER-IRVING, Appellant,	: No. 19-0386 : :
vs.	: CIVIL ACTION: : Admin. Agency Appeal
LYCOMING COUNTY HOUSING AUTHORITY, Appellee.	: : *Appellate Review:* : *Submitted on the Briefs*

OPINION & ORDER

Before the Court is Anisah Turner-Irving ("Appellant") who has appealed the Lycoming County Housing Authority's ("Appellee") decision that Appellant was ineligible for admittance into the public housing program because she had defaulted on her student loan debt.[1] On August 1, 2018, Appellant applied for public housing. On January 11, 2019, Jerri Rupert ("Ms. Rupert"), Appellee's Leasing Manager for Public Housing, denied her request pursuant to Appellee's Admissions & Occupancy Policy 2.1.5, as Appellant's credit report showed a past due balance of $25,940.00 related to governmental student loans.[2] On January 16, 2019, Appellant requested review of Appellee's initial decision. On January 29, 2019, an informal hearing was held. Offering testimony were Appellant; Stacy Bower, a caseworker for Lycoming-Clinton Counties Commission for Community Action, Inc. (also known as STEP); Ms. Rupert; and Lindsay Stamm ("Ms. Stamm"), the hearing officer.[3]

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[1] 2 Pa.C.S. § 751.

[2] LHA Admissions & Occupancy Policy 2.1.5 ("Family must have paid, is not in default or arrears on any outstanding monies owed to any government agency (i.e. student loans, tax liens etc.)." Factual statements in this decision are taken from the record submitted to this Court pursuant to 2 Pa.C.S.A. § 754; however, the supportive documents are not marked as exhibits. Hence, footnotes related to the documents themselves are not possible and will be omitted.

[3] Transcript at 1 (Jan. 29, 2019) [hereinafter "Tr."].

Ms. Rupert reiterated that Appellant's application was denied because of her $25,940.00 default balance.[4] She noted that the loan's status was "in collections."[5] Appellant indicated that she thought her student loans were in forbearance based on communications she had had with "someone, I'm not sure exactly who, regarding my loans" after she was hit by a motor vehicle approximately two years ago and was prevented from working.[6] Appellant stated that when she received her credit report and discovered her student loans were in collections, she promptly contacted the collection agency to set up a repayment plan.[7] Appellant represented that the repayment plan was $5.00 per month.[8] At the hearing, in support of her assertion regarding the repayment plan, Appellant submitted a "Loan Rehabilitation: Income And Expense Information" packet from Action Financial Services, LLC ("AFS Agreement"), which she had signed on January 28, 2019. The AFS Agreement included a "Rehabilitation Agreement Letter," which states:

> This letter confirms my acceptance into the loan rehabilitation program and my agreement to repay my defaulted [loans] held by the U.S. Department of Education (ED). I understand that compliance with this agreement is a prerequisite to rehabilitation of my loan(s).
>
> I understand that I must make at least nine (9) monthly payments of $5-, beginning 02.08.19, with each payment due on the 18th of each month thereafter.
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> I also understand and agree to repay under the following terms and conditions [. . .]

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[4] Tr. at 2.
[5] *Id.*
[6] Tr. at 2, 10. At the time of this hearing, Appellant and her daughter resided at Saving Grace Shelter because the accident rendered Appellant unable to work and her family in the area was relocated to Georgia because of military commitments. Tr. at 7, 8. Appellant noted that she tried staying with a friend, but feared for the safety of her daughter and herself. *Id.*
[7] Tr. at 2.
[8] *Id.*

During the hearing, Appellant indicated that it was her understanding she had been confirmed into the rehabilitation program and her first payment would come due in February.[9] Based on Ms. Stamm's uncertainty related to whether the AFS Agreement rehabilitated the loan out of default after the nine consecutive payments or before, Ms. Stamm indicated that she would postpone her decision in order to contact Action Financial Services, LLC regarding the AFS Agreement.[10]

On February 1, 2019, Ms. Stamm rendered her final decision by letter. Ms. Stamm upheld Appellee's denial of Appellant's application based on § 2.1.5. The decision notes that on January 30, 2019 Ms. Stamm spoke with Action Financial Services, LLC and was informed that it was still waiting on additional paperwork from Appellant and her loans would not be rehabilitated out of default until at least nine months time. Appellant was invited to re-apply for public housing once she had successfully rehabilitated her loans out of default. The decision also indicated that Appellant could appeal Ms. Stamm's decision to this Court.

On March 1, 2019, Appellant appealed Ms. Stamm's decision to this Court.[11] Appellant contends that Appellee violated 24 C.F.R. § 960.203(d) and its own Admissions & Occupancy Policy 5.2 in failing to consider mitigating factors that "indicated a strong likelihood of favorable future conduct with respect to the disqualifying defaulted loans."[12] Conversely, Appellee disagrees with Appellant's interpretation of the C.F.R. and Policy 5.2 as applied to this case.[13]

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[9] Tr. at 3.
[10] Tr. at 4, 5.
[11] Both parties have submitted timely briefs for the Court's consideration.
[12] Brief in Support of Appellant's Local Agency Appeal 6 (Apr. 16, 2019).
[13] Brief in Opposition to Local Agency Appeal Submitted by Lycoming County Housing Authority 5-7 (Apr. 30, 2019).

Appellee is a housing authority organized and operating pursuant to the Pennsylvania Housing Authority Law ("PHAL").[14] Title twenty-four (24) of the Code of Federal Regulations ("C.F.R.") also governs Appellee's actions as a public housing authority.[15] Pursuant to C.F.R. § 960.202,

> (1) The PHA shall establish and adopt written policies for admission of tenants.
>
> (2) These policies shall provide for and include the following:
>
> > [. . .]
> >
> > (iv) *Objective and reasonable policies for selection by the PHA among otherwise eligible applicants*, including requirements for applications and waiting lists (see 24 CFR 1.4), *and for verification and documentation of information relevant to acceptance or rejection of an applicant*, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 5 [. . .][16]

Governing the standards for tenant selection criteria, C.F.R. § 960.203(d) states:

> **(d)** In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).
>
> > **(1)** In a manner consistent with the PHA's policies, procedures and practices referenced in paragraph (b) of this section, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct. For example:
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> > > **(i)** Evidence of rehabilitation; and
> > >
> > > **(ii)** Evidence of the applicant family's participation in or willingness to participate in

[14] 35 P.S. § 1541 *et seq.*
[15] 35 P.S. § 1550(x) ("An Authority shall constitute a public body, corporate and politic, exercising public powers of the Commonwealth as an agency thereof, which powers shall include all powers necessary or appropriate to carry out and effectuate the purpose and provisions of this act, including the following powers, in addition to others herein granted: [. . .] (x) To make and from time to time to amend and repeal resolutions, rules, and regulations , not inconsistent with this act, in order better to carry into effect the powers of the Authority.").
[16] 24 C.F.R. § 960.202(a) (emphasis added).

social service or other appropriate counseling service programs and the availability of such programs;

(2)*Consideration of rehabilitation.*

(i) In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(ii) If rehabilitation is not an element of the eligibility determination (see § 960.204(a)(1)), the PHA may choose not to consider whether the person has been rehabilitated.[17]

Accordingly, Appellee's Admissions & Occupancy Policy 2.1.5 states, "Family must have paid, is not in default or arrears on any outstanding monies owed to any government agency (i.e. student loans, tax liens etc.)."[18] In addition, Policy 5.2 states:

> If negative information is received about an applicant, LHA shall consider the time, nature, and extent of the applicant's conduct and to factors that might indicate a reasonable probability of favorable future conduct. To be considered, mitigation circumstances must be verifiable.
>
> Mitigating circumstances are facts relating to the applicant's negative rental history behavior that threatens the health, safety, or right to peaceful enjoyment of other residents.[19]

[17] 24 C.F.R. § 960.203(d).
[18] LHA Admissions & Occupancy Policy 2.1.5 ("Other Criteria for Admission").
[19] LHA Admissions & Occupancy Policy 5.2 ("Screening Applicants Who Claim Mitigating Circumstances").

The Court agrees with Appellee's interpretation of C.F.R. § 960.203 and Policy 5.2. First, a plain reading of § 203 makes it clear that the regulation's concerns revolve around criminal activity and not monetary defaults. Second, § 203(d)(1) specifically refers to paragraph (b), which concerns procedures that "successfully screen out and deny admission to certain applicants with unfavorable criminal histories."[20] Importantly, while this Court has previously relied on *Bray v. McKeesport Housing Authority* for the proposition that § 960.203(d) applies generally,[21] *Bray*'s interpretation in this regard is *dicta*.[22] In *Bray*, the Pennsylvania Commonwealth Court was only addressing whether a housing agency's decision in an informal hearing is a final decision.[23] Additionally, Policy 5.2 is inapplicable because it interprets "mitigating circumstances" as only concerning an applicant's "negative rental history," which is not at issue here.[24]

While this Court is not unsympathetic to Appellant's circumstances, and Appellee could have exercised its discretion in reaching a different result,[25] this Court will not substitute its decision for Appellee's determination when a complete record has been certified.[26]

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[20] 24 C.F.R. § 960.203(d)(1).
[21] *Ward v. Lycoming Hous. Auth.*, 2017 WL 2945506, at *3 (Lyco. Com. Pl. June 05, 2017) (citing 24 C.F.R. § 960.203(d); *Bray v. McKeesport Hous. Auth.*, 114 A.3d 442, 448 (Pa. Commw. Ct. 2015) ("In addition, where unfavorable information is received about an applicant, the federal regulations require a housing authority to consider mitigating factors, including 'the time, nature, and extent of the applicant's conduct' when determining whether to approve an application.").
[22] *Bray v. McKeesport Hous. Auth., 114 A.3d 442, 448 (Pa. Commw. Ct. 2015).*
[23] *Id.* at 454-55.
[24] LHA Admissions & Occupancy Policy 5.2.
[25] 35 P.S. § 1542(d) (stating one of the PHAL's purposes is in "the providing of safe and sanitary dwelling accommodations for persons of low income [. . .], so as to prevent recurrence of the economically and socially disastrous conditions [. . . .]"). The law affords Appellee discretion in the interpretation of its policies. *See MaCool v. Berks Cnty. Hous. Auth.*, 2018 WL 3614368, at *5 (Pa. Commw. Ct. July 30, 2018); *accord Allegheny Cty. Hous. Auth. v. Hibbler*, 748 A.2d 786, 788 (Pa. Commw. Ct. 2000) (the housing authority admitting that it has discretion in tenant decisions even when criminal activity is at issue).
[26] 2 Pa.C.S.A. § 754(b); *see also In re Thompson*, 896 A.2d 659, 668 (Pa. Commw. Ct. 2006) ("The reviewing court is not to substitute its judgment on the merits for that of the municipal body.").

Therefore, Appellant's Appeal is **DENIED** and the Lycoming County Housing Authority's February 1st decision is **AFFIRMED**.

IT IS SO ORDERED this **20th day** of **May 2019.**

BY THE COURT:

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Eric R. Linhardt, Judge

cc: Kathleen Raker, Esq., *of North Penn Legal Services*
Norman Lubin, Esq., *of Casale & Bonner, P.C.*