

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANISAH TURNER-IRVING,
Appellant,

vs.

LYCOMING COUNTY HOUSING
AUTHORITY,
Appellee.

: No. 19-0386

:
:

: CIVIL ACTION:
: Admin. Agency Appeal

:

: *Motion for*
: *Reconsideration*

OPINION & ORDER

Before the Court is Anisah Turner-Irving’s (“Appellant”) *Motion for Reconsideration* (the “Motion”) of this Court’s May 20, 2019 Opinion & Order (the “Opinion”).¹ In the Court’s Opinion, it affirmed 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.² Appellant argues that the Court “misinterpreted” 24 C.F.R. § 960.203(d) and Appellee’s Admissions and Occupancy Policy 5.2, which mirrors § 960.203(d).³ During argument, Appellant admitted that she was also unable to find precedent which supports her interpretation that §960.203(d) is not limited to criminal activity.⁴ Appellant again relies on *Bray v. McKeesport Housing Authority* for its following statement: “In addition, where unfavorable information is received about an applicant, the federal regulations require a

¹ On June 12, 2019, this Court granted reconsideration and stayed the appellate timeframe until briefing could be performed and the Court was able to hear argument. See Pa.R.C.P. No. 1701(b)(3).

² *Anisah Turner-Irving v. Lycoming County Housing Authority*, Opinion & Order: Appellate Review-Submitted on the Briefs 7 (May 20, 2019).

³ Appellant’s Motion for Reconsideration 1, ¶1 (June 11, 2019).

⁴ *Id.* at 2, ¶4.

housing authority to consider mitigating factors, including ‘the time, nature, and extent of the applicant's conduct’ when determining whether to approve an application.”⁵

The Court remains steadfast in its opinion that *Bray*'s recitation of a rule statement is not binding where the Pennsylvania Commonwealth Court ultimately does not apply said rule statement. While *Bray* involved an applicant whose prior rental history was at issue, the Court's holding concerned only whether the appellant could seek appellate review of the housing authority's denial of her application for public housing.⁶ Indeed, *Bray* has been cited accordingly for the proposition that “It is well-established that ‘[u]nder Pennsylvania law, [w]hen an agency's decision or refusal to act leaves a complainant with no other forum in which to assert his or her rights, privileges or immunities, the agency's act is an adjudication.’ ”⁷ In this regard, Appellant's argument that *Cox v. Johnstown Housing Authority*'s reliance on *Bray* supports *Bray*'s belief that § 960.203(d) applies generally is unpersuasive.⁸ *Cox* relies on *Bray* for the sole proposition that the law binds a public housing authority's discretion.⁹

Although the Court disagrees with Appellant regarding *Bray*'s import, upon further reflection, the Court believes Appellant is correct that paragraph (d) is not limited

⁵ *Bray v. McKeesport Hous. Auth.*, 114 A.3d 442, 448 (Pa. Commw. Ct. 2015) (en banc) (quoting 24 C.F.R. § 960.203(d)).

⁶ *Id.* at 454-55.

⁷ *Giant Food Stores, LLC v. Penn Twp.*, 167 A.3d 252, 260 (Pa. Commw. Ct. 2017), *appeal denied*, 181 A.3d 287 (Pa. 2018) (quoting *Bray v. McKeesport Hous. Auth.*, 114 A.3d 442, 448 (Pa. Commw. Ct. 2015)) (internal citations omitted); *DeLuca v. Hazleton Police Dep't*, 144 A.3d 266, 277 (Pa. Commw. Ct. 2016) (“Our conclusion is supported by our recent decision in *Bray v. McKeesport Housing Authority*. In *Bray* we determined that a housing authority decision not to accept an application for public housing is an “adjudication” subject to appeal under the Local Agency Law. We held that even if an applicant does not have a property interest in the housing itself, an applicant has a right to have her eligibility determined in accordance with the law.” (internal citations omitted)).

⁸ Appellant's Motion 2-3, ¶6.

⁹ See *Cox v. Johnstown Hous. Auth.*, 2019 WL 2360301, at *5 (Pa. Commw. Ct. June 5, 2019) (quoting *Bray*, 114 A.3d at 453).

to criminality.¹⁰ While § 906.203 could have been drafted more precisely, paragraph (c) indicates that admission criteria for “families” involves review of “relevant information,” which includes an “applicant’s past performance in meeting financial obligations, especially rent.”¹¹ Absurdity would result if “unfavorable information” in paragraph (d) only pertained to criminal offenses of an individual—despite the focus of paragraph (d)(1)-(2) concerning an individual’s criminal past.¹² Therefore, the Court reverses its prior holding. This Court agrees with *Ward v. Lycoming Housing Authority’s* interpretation of paragraph (d).¹³

The Court now turns to the issue of whether the hearing officer, Lindsay Stamm (“Ms. Stamm”), considered the “time, nature, and extent of the applicant’s conduct” pursuant to 24 C.F.R. §960.203(d). Preliminarily, the Court notes that it is presumed the hearing officer will express *on the record* findings of fact necessary to the adjudication, as the reviewing Court must determine whether substantial evidence supports such findings when a complete record has been certified.¹⁴ Ms. Stamm did not state such findings on the record.

¹⁰ Importantly, Appellant has not asserted a claim that LHA Admissions & Occupancy Policy 2.1.5 conflicts with Pennsylvania law or the federal regulations. *See, e.g., Brauer v. Philadelphia Hous. Auth.*, 495 A.2d 987, 989 (Pa. Commw. Ct. 1985) (“Furthermore, the regulations contemplate that local housing authorities may determine that a family is not eligible to participate in the Section 8 program based on criteria other than income and family status qualifications as long as the criteria are reasonably related to the objectives of the program and are approved by HUD.”).

¹¹ 24 C.F.R. § 960.202(c)(1).

¹² *See Si Min Cen v. Attorney Gen.*, 825 F.3d 177, 194 (3d Cir. 2016) (“Finally, we avoid interpreting statutes in a way that would render them absurd.”).

¹³ *See 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)). However, the Court does not agree with *Ward v. Lycoming Housing Authority’s* reliance on *Bray* for this interpretation. *Id.*

¹⁴ 2 Pa.C.S.A. § 754(b) (“After hearing the court shall affirm the adjudication unless it shall find that [. . .] any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.”); *accord Monaghan v. Bd. of Sch. Directors of Reading Sch. Dist.*, 618 A.2d 1239, 1243 (Pa. Commw. Ct. 1992). “Rather, the pertinent inquiry is whether there is any evidence which supports the factual finding actually made.” *Borough of Emmaus v. Pennsylvania Labor Relations Bd.*, 156 A.3d 384, 393 (Pa. Commw. Ct. 2017), *appeal denied*, 171 A.3d 1284 (Pa. 2017).

The Court finds Appellant's argument on reconsideration persuasive that Ms. Stamm's testimony was hyper-focused on determining whether Appellant was in default, not whether Appellant's circumstances demanded further consideration of her application.¹⁵ When the record is reviewed in this light, it becomes apparent that such a characterization is accurate. Related to Appellant's history, Ms. Stamm's inquiries only concern Appellant's ability to seek aid from other programs,¹⁶ and whether Appellant previously resided in Georgia in 2017.¹⁷ Indeed, Ms. Stamm's only express concerns revolve around contacting Action Financial Services, LLC, the loan agency, to determine Appellant's default status.¹⁸ The Court finds such statements insufficient to establish that Ms. Stamm followed the mandates of §960.203.

Finally, Appellee has expressed concern that the Court's decision today will institute the Court as a "Super Housing Authority" moving forward. The Court disagrees. The Court's holding merely stands for the proposition that a complete record requires necessary findings to be expressed on the record. This holding does not strike the Court as unreasonable. This is particularly true where, as here, the Court decides, in its discretion, not to hold a *de novo* hearing.¹⁹ Neither Ms. Stamm's decision nor the transcript indicate that Appellant's circumstances were considered.

¹⁵ Ms. Stamm's February 1, 2019 written decision reflects this focus as well.

¹⁶ Transcript at 2 (help for a disability), 8 (Family Promise), & 9 (Liberty House) [hereinafter "Tr."].

¹⁷ Tr. at 7.

¹⁸ Tr. at 4, 5, & 10.

¹⁹ See 2 Pa.C.S.A. § 754(a); see also 42 Pa.C.S.A. § 706.

Therefore, Appellant's *Motion for Reconsideration* is **GRANTED** and the Court's *May 20th Opinion & Order* is **VACATED**. This matter is hereby **REMANDED** consistent with this opinion.

IT IS SO ORDERED this **19th day of July 2019**.

BY THE COURT:

Eric R. Linhardt, Judge

cc:

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