SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-002871-23T4

L.B., *Petitioner-Appellant,* *vs.* **DEPARTMENT OF COMMUNITY AFFAIRS,** *Respondent-Respondent.*	*ON APPEAL FROM:* Final Agency Decision of Department of Community Affairs OAL Docket Nos. CAF 08806-19 & 08812-19 (Consolidated) *CIVIL ACTION* *SAT BELOW:* Jacquelyn A. Suarez, Acting Commissioner, Department of Community Affairs

BRIEF OF PETITIONER-APPELLANT L.B.

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PROCEDURAL HISTORY

Respondent-Respondent Department of Community Affairs ("DCA") served Petitioner-Appellant L.B an Initial Decision, dated October 6, 2017 proposing to terminate her continued participation in the Section 8 Housing Choice Voucher Program ("Section 8" or "Section 8 HCV Program"), claiming that she had failed to timely report an increase in her household income. (Pa81). L.B. timely requested an Informal Hearing of the Initial Decision to terminate her participation in the Housing Assistance Program. (Pa234). An internal Informal Hearing was conducted on March 16, 2018, by Linda J. Ditmars, a Hearing Officer for DCA. (Pa19). No verbatim recording or transcription of the hearing was made. On April 13, 2018, the Hearing Officer issued a written decision affirming DCA's initial decision to terminate L.B. from the Section 8 Program, effective May 31, 2018. (Pa73).

On April 23, 2018, L.B. timely requested an ALJ Hearing before the Office of Administrative Law ("OAL") to contest DCA's actions in terminating her voucher. (Pa238). On July 12, 2018, L.B. filed an emergent application for relief to Lt. Governor Sheila Oliver, then DCA's Commissioner, requesting that L.B.'s Section 8 subsidized rental payments be continued, pending a decision on her OAL administrative appeal of DCA's termination of Section 8 benefits for failure to timely report income information. (Pa19). On July 20, 2018, Commissioner Oliver granted a stay of the termination of LB's subsidized rental payments and for DCA

to continue to make rental monthly subsidy payments to L.B,'s landlord until issuance of a final agency decision. (Pa19).

On March 7, 2019, DCA issued a new, separate Initial Decision to Terminate Housing Assistance advising L.B. that she would be terminated from the Section 8 Program for failing to promptly notify and request permission from DCA before moving to a new apartment in December 2018. (Pa200). On March 19, 2019, L.B. timely requested an administrative appeal of this second, subsequent termination notice. (Pa20). On June 20, 2019 DCA transmitted both of L.B.'s appeal requests to OAL, and on June 29, 2019 both appeal requests were filed at OAL to be heard as contested cases. (Pa20). The OAL docket number for the first appeal request is F08806-2019 and the second appeal request is CAF08812-2019. (Pa20). L.B. filed an application with Commissioner Oliver requesting DCA to continue Section 8 subsidy payments to her new landlord pending DCA's final agency decision, which Commissioner Oliver denied on July 11, 2019. (Pa21). On November 21, 2019, both OAL dockets were consolidated by consent of the parties. (Pa21).

After multiple prehearing conferences and joint requests by the parties to extend the discovery schedule, as well as delay caused by COVID-19, an in-person plenary hearing was held on April 3, 2023, and continued July 11, 2023, before Hon. Elaine Frick, ALJ. (Pa23). On January 16, 2024, ALJ Frick issued an Initial Decision affirming DCA's decision to terminate L.B. from the Section 8 Program

regarding both of DCA's termination notices. (Pa17). On January 29, 2024, counsel on behalf of L.B. filed Exceptions with DCA Acting Commissioner Jacquelyn A. Suarez, (Pa314), and on February 12, 2024, counsel for DCA submitted its reply to the L.B.'s Exceptions. (Pa388). DCA Acting Commissioner Jacquelyn A. Suarez issued DCA's Final Agency Decision adopting ALJ Frick's Initial Decision affirming DCA's termination of L.B. from the Section 8 Program. (Pa13). L.B. filed her Notice of Appeal with the Appellate Division on May 21, 2024. (Pa1).

STATEMENT OF FACTS

L.B. is a single mother of three (3) children, La Tianna, sixteen (16) years old, Lelani, thirteen (13) years old and London, nine (9) years old. (Pa152). L.B. had worked at temporary jobs for many years trying her best to support her children and herself. She was on a waiting list for a Section 8 HCV through DCA for approximately seven (7) years. (2T72-13 to 17)[1]. Finally, she was granted a Section 8 voucher and began on the Program on June 3, 2016.(Pa83). This housing subsidy was a great assistance to her as she felt that she would finally be able to afford decent housing and to better herself financially by going to school to be a nurse (2T94-15 to 22)

[1] "1T" herein refers to the ALJ hearing held on April 3, 2023. "2T" herein refers to the ALJ hearing held on July11, 2023.

Despite her best efforts to comply with all the Section 8 program requirements, fourteen (14) months after being admitted to the program she received a Notice of Intent to Terminate. The reason given for the proposed termination was that she failed to report household income. (Pa81)

1. <u>The November 15, 2016 Letter of Employment</u>

When L.B. initially received the Section 8 voucher she reported her household income as $30,747.00 annually. (Pa24-6). Her rent portion was set at $711.00. (Pa24-7). On or about September 8, 2016, L.B. reported to her caseworker that she was no longer employed and her rent portion was reduced to $0.00.(Pa24-8 to9). L.B. became employed by "Minacs a Concentrix Company" (hereinafter Concentrix) on or about November 14, 2016. This position was initially for a three (3) month period but there was a possibility of an extension to the employment. (2T76-11 to 15). L.B. submitted a letter from Concentrix dated November 15, 2016 to Deborah De La Cretaz, her caseworker. The letter gave the name of L.B.'s new employer, her position as Settlement Specialist in Pleasantville, New Jersey, the start date of November 14, 2016 and the rate of pay as $24.00 per hour. The letter went on to identify the Corporate Recruiter as Toni Cagle and give her email address as contact information.(Pa264). L.B.'s caseworker did not request any further information from her after receiving this letter, nor did she tell L.B. that it was insufficient to calculate her new rent share.

2. The February 23, 2017 Letter Extending Employment

L.B.'s employment at Concentrix was extended in February of 2017 by a letter dated February 23, 2017. (Pa163) L.B. maintains, as she has done throughout the course of this litigation, that she submitted this letter to the DCA office on February 24, 2017. DCA disputes this and claims the letter was not received until April 10, 2017. DCA has never been able to produce any evidence that this letter was not submitted as L.B. contends, and claims that the caseworker never received this letter.

Integral to this dispute are the sign in sheets kept by the DCA office to account for people who come into the office. The sign in sheet for February 24, 2017 is missing from DCA's possession and DCA has been unable to produce it despite L.B.'s requests. (2T93-9 to 22).

The sign in sheets that were produced reflect that L.B. was in the DCA office on April 4, 2016 (Pa 230), April 23, 2016, (Pa204), November 22, 2016 (Pa206), April 10, 2017 (Pa210), April 17, 2017 (Pa208) May 12, 2017 (Pa212), July 10, 2017 (Pa214), August 14, 2017 (Pa216), August 29, 2017 (Pa 218), September 14, 2017 (Pa220), September 25, 2017 (Pa222), September 26, 2017 (Pa224), October 4 (presumably 2017) (P226) and October 17, 2017 (Pa 228). The only missing sign in sheet is the one proving that L.B. did in fact go to the office on February 24 and deliver paperwork. (Pa63-15 to -16).

3. DCA First Initial Decision to Terminate L.B.'s Section 8 Rental Assistance, Dated October 6, 2017.

DCA sent L.B. written notice to terminate her Section 8 on or about October 6, 2017. (Pa81) The reason stated for this action was for a violation of 24 C.F.R. §982.552(b)(2), not reporting income. L.B. requested an informal hearing in a timely matter (Pa234) and that was held on March 16, 2018 in front of Hearing Officer, Linda J. Ditmar. There is no formal record or transcript of what occurred at the informal hearing. The witnesses for DCA were Field Representative Deborah De La Cretaz and Office Supervisor Tracy McGovern-Smith. L.B. testified and her friend, Melissa Andrews also testified on her behalf. During the hearing, DCA maintained that it had never received the November, 2016 letter and did not receive the February 23, 2017 letter until April 10, 2017, the date it was stamped "received" by the local DCA office. (Pa73)

Hearing Officer Ditmar upheld the termination and with that decision ended L.B.'s participation in the Section 8 program effective May 31, 2018. Thereafter, L.B. requested a hearing before the Office of Administrative Law (hereinafter OAL) (Pa238). On July 20, 2018, L.B. received a Stay of the termination pending the outcome of the OAL hearing. After numerous telephonic conferences and extensions, the OAL hearing was held over the course of two (2) days, April 3, 2023 and July 11, 2023.

4. DCA Second Initial Decision to Terminate L.B.'s Section 8 Rental Assistance, Dated March 7, 2018.

While the ALJ hearing was pending, DCA issued a second notice to terminate dated March 7, 2018, to be retroactively effective December 31, 2017, this time for moving from the subsidized unit without properly giving notice to DCA. (Pa200). According to L.B., between November 23, 2018 and December 4, 2018 she left several messages for Ms. Barker that she was moving. (2T104-17 to 18). Based upon the case file of L.B. maintained by the Atlantic City Field Office there are no notes reflecting telephonic communications or phone message received by the Office from L.B. between November 15, 2018 and December 31, 2018. Copies of voicemails are no longer in existence. (Pa68-53 to 54).

L.B. had the opportunity to move to a larger, more affordable home with a better school system. (2T99-11 to 20)(2T100-3 to 4)(2T100-15 to 22). She terminated her lease with her landlord and provided notice to DCA. After not receiving a call back from Karen Barker, her caseworker at that time, L.B. emailed Ms. Barker on December 4, 2018. Ms. Barker responded " I'm sorry for not getting back to you. Tracy has been out or in court for the past two weeks." (2T23-7 to 10). In addition, Karen Barker did not save the voice mails or keep notes of the messages. (2T23- 11 to 22). According to L.B., she moved after speaking with counsel. "My lawyer told me to go ahead with the process and he will reach out because the letter states that I need to take my voucher with me and he would clear it up." (2T138-22 to 25). She further testified "my lawyer and DCA's lawyer were going to figure it

out, and for me to go ahead with my process." (2T141- 8 to 10). Ms. Barker testified that she did not know why the voucher was not transferred and instead provided three alternatives: " she had not filled out the proper paperwork," (2T36- 12 to 15) (Pa311), followed by "she was not in good standing" (2T36-19 to 21) and " she just moved without notice." (2T36-24 to 25) However, she ultimately agreed that L.B. advised her in September 2018 of her intent to move to a larger home, almost three months before she moved. (2T37-13)(Pa311) She further acknowledged that when a Section 8 recipient does not follow the procedures for moving it results in a delay in the funding. (2T44-16)

5. <u>The ALJ Hearing</u>

On April 3, 2023, and July11, 2023, the OAL court heard the testimony of three (3) current employees and one (1) former employee of the DCA.

Based upon the testimony, the court concluded that the unbound folder of a collection of various paperwork, which may or may not have been purged, which was transferred from one caseworker to another on a yearly basis, and stored in an unlocked cabinet was sufficient to uphold the Hearing Officer's decision to terminate L.B. for the Section 8 program. (Pa17)

Field Office Supervisor Tracy McGovern Smith testified that she is "responsible for running the office, staffing, equipment, production, payments to landlords, tenants, making sure customers were seen, heard if there's an issue, things

like that."(1T22- 8 to 12). According to Ms. Smith, other than annual recertification, "…if something occurs during the course of the year they're required to report that to us in writing within 10 days of any changes in family composition or income. (1T31-15 to 18). She further acknowledged that "We need to verify the information that's been reported to us." (1T31- 24 to 25). She went on to state, "In most cases the customer will provide us with documentation and we can proceed." (1T32-1 to 2)

The sign in sheets at the front desk which were the subject of most of the testimony. L.B. requested these sign in sheets in October 2017 and again in April 2018 (Pa234)(Pa238), and was denied on both occasions. In fact, Ms. McGovern-Smith testified that she did not provide the time sheets to the hearing officer. (1T98-8 to 10). She testified that she did not believe the sign in sheets were an issue at that time." (1T64-2 to 3). The sign in sheets are the only evidence the DCA field office has to confirm whether or not a recipient was at the office. But, as was evident from the testimony of Tracy McGovern-Smith, the sign in sheets are not kept in any organized or methodical way. They are attached to a clipboard at the front window and each day they are "stacked" together. (Pa31). At the end of the month they are filed in the office supply closet. (Pa31). There was no discussion regarding how the sign in sheets were filed such as by date, etc., just that they are in the supply closet. Ms. Smith further testified that DCA is not obligated to maintain the sign-in sheets

by any state or federal regulation and acknowledged that there would be no other way to verify if someone had visited the office on a particular day. (Pa31).

It is the policy of the Atlantic City Field Office to retain the sign-in sheets for approximately two to three years. (Pa286) Given this lack of an organization system, it is not surprising that the February 24, 2017 sign in sheet is missing. Personnel, volunteers, technical assistants and other employees would rotate in and out of the office throughout the day for breaks and lunch. (1T50-1 to 5). The staff was not consistent, but it was agreed that their responsibility was to answer the phone, take in any paperwork that customers brought in and contact the case managers that their appointments are at the office." (1T50- 14 to 16). The person at the front desk was supposed to "date stamp them and put the initials of the case manager on the paperwork and put the paperwork in the mailbox." (1T51-1 to 2; 1T51-25).

Important documents containing sensitive information and which may determine whether an individual will retain their Section 8 voucher, are not always placed in the mailbox right away. Admittedly, if the phones are ringing and clients are at the front window, the paperwork is placed in a pile and at some point during the day when they had time they would put them in everybody's mailbox. (1T55-12 to 18). "On a regular basis during the day when there's no one at the front, the phone isn't ringing, they can take it to the mailbox, or perhaps the case manager walks by them and they can say ," I have something for you." or this came in…" (1T59- 3 to

7). On any given day, when there are anywhere between 15 and 20 clients coming in as evidenced by the sign in sheets produced. (Pa172) (Pa 204 to 232). Ms. Smith further stated " well there's a spot where the paperwork that can be dropped off is held or kept, I know when I was at the front desk I would get something, date stamp it, put the initials of the person who it goes to and set it aside, like put it in a drawer, or keep til I had the opportunity to either give it to the case manager or put it in the mailbox." (1T59-11to17). While the witness testified to the protocol, it was not followed when L.B. produced her employment termination letter (Pa119). This handwritten notarized letter was contained in her case file, but was not date stamped, or initialed. (1T109-15 to 17). What was clear from the testimony of Ms. McGovern-Smith was that this was a very busy office with 10 caseworkers and hundreds of clients and there was no clear set of guidelines for maintaining files and documents which as this matter proves, can have a devastating impact on a Section 8 recipient.

When asked about missing paperwork Ms. McGovern-Smith said: "But usually if something is lost we do try to say, "hey look, we don't know how long we've had it, or when did it come in…" (1T73-23 to 25). so if it was lost within the office we would've had it in a timely manner, but we somethings you know, things do happen and we do …some things are chalked up to administrative error" (1T76-3 to 6).

Ms. Debra De La Cretaz was L.B.'s first caseworker and when she testified at the hearing on April 3, 2023, she had not been employed by DCA since December 2019. (1T114-1). When asked if she knew L.B. , she replied, "…she apparently at one time was my client on my caseload and she had come into me and told me that she had gotten a job and she was reporting having gotten that job, and she had given me a piece of paper that was coming from her employer which I reviewed at the time…." (1T-116-7-13). According to this witness, this was in 2017 or 2018 (1T17-6 to7).

The caseworker's knowledge of the client was wholly dependent on what was placed in this unclipped folder, and not purged or lost. Based upon the file maintained by DCA there are no notes reflecting in person meetings between L.B. and her caseworkers. (Pa67-52) There are no notes reflecting telephonic communications or messages between L.B. and the Atlantic City Field Office.(Pa67-50 to 51).

On cross examination, Ms. De La Cretaz remarked as to her lack of memory, saying "its six years ago." (1T134-5). When asked if there were any notes that would help with remembering this time she said that she did not keep any notes. In fact, it was stipulated that the office maintained no records of notes reflecting phone messages, phone calls or in person meetings. (Pa67) (Pa68). She said "it wouldn't be necessarily notes, I would go—I would read this to her together and I would fill

it out as we went through this, not side notes…." (1T134-22 to 24) . She further testified, "there was no reason for me to make side notes for her." (1T135- 3 to 4). Her caseload was "On the average I would say 22-23," (1T135- 19 to 20). In spite of this she kept no notes and the client she recalled, "…was not what we might call a problem client."(1T137-10 to 11).

When asked about the November 2016 letter, which DCA alleged they never received, Ms. De La Cretaz admitted that she had seen this letter before and in fact returned it to her (L.B). She testified, "I got the Concentrix letter in November." (1T143- 10 to 11). Remarkably, there is no documented follow-up with L.B. to this letter. There is no communication with L.B. that the letter was insufficient to calculate her income, nor any documented attempt to contact Concentrix despite the name and email address being written into the letter. There was also no request for paystubs. The lack of any further communication with L.B. about the letter is what led her to believe that she was in compliance and there was no issue with her submission.

When asked about the February 23, 2017 letter (Pa163), which extended L.B.'s employment, "It wasn't the one she brought it into November." Ms. De La Cretaz then testified that she returned it to L.B.. (1T139- 18 to 20). She further testified that she had no recollection of seeing L.B. on November 22, 2106, and according to the sign in sheet from that date L.B. was there and the purpose of the

visit was "paperwork." (Pa206). A review of L.B.'s file maintained by DCA had no documents date stamped on November 22, 2016. Presumably, whatever paperwork the client dropped off that day is missing.

Ms. De La Cretaz later testified that she did not recognize (Pa265), the November 15, 2016 letter of employment, but added, "It's quite possible but I you know I don't remember every single piece of paper that comes into the office." (1T 151- 1 to 3). She later confirmed that if a client brought in paperwork it would be stamped and placed in her basket. (1T147-18 to 19). She would file that paperwork in the files in her office "which I would clean out at the end of the day, or the next day before I go to work," (1T147-21 to 22).

She further stated that when she received the February 23, 2017 Concentrix letter, stamped April 10, 2017, it was the second time she saw it. (1T138- 14). However, she could not explain the handwritten notes at the bottom with the date and initials, which is not protocol. (1T67- 12 to 25; 1T6-1 to 9). In addition, the letter that Ms. De La Cretaz authored does not request pay stubs, it merely asks for proof of income since February 23, 2017. L.B. testified she did not receive this letter. (2T81-14 to15).

According to the sign in sheets, L.B. was there on April 10 (Pa210) and May 12 (Pa212) and both indicate the purpose was paperwork for" Ms. Debbie". The testimony of Ms. De La Cretaz supported L.B.'s position that she did produce

documentation, but according to the Ms. De La Cretaz, it was either returned to L.B. or it was not sufficient. Whichever is true, there was again no follow-up by Ms. De La Cretaz to inform L.B. that the letter of employment was insufficient, and that more information was needed, nor was there any documented attempt to verify the information in the letter with the person who wrote the letter.

According to the Ms. De La Cretaz, the procedure was to follow up with a letter requesting further documentation. This procedure was not followed, as the first indication that L.B. needed to provide more information was the April 10, 2017 letter written by Ms. De La Cretaz. This is the first and only letter written by Ms. De La Cretaz in the file. The sign in sheet indicates L.B. was there on November 22, 2016. As stated above, the file maintained by the DCA contained nothing dated November 22, 2016. Although it is now obvious that Ms. De La Cretaz had in fact seen the November letter, the conclusion is that, whatever paperwork L.B. gave to the clerk who supposedly followed office procedure and date stamped it, never made it to the client's file. No efforts were made to look in any other files with the name "Brown," or clients from November 22nd, who also dropped off paperwork (1T73-10 to20)

Ms. Quenda Whitecloud testified that while doing L.B.'s recertification she sent a letter dated June 28, 2017 requesting paystubs (Pa167). In response L.B. produced those paystubs (1T181-7to10). L.B. testified this was the first time anyone had requested paystubs from her. (2T86-17-to 18.) This was corroborated by Ms.

McGovern-Smith who testified that between November 2016 and April 28, 2017, "there were no written requests."(1T88-1 to 3). In fact, Ms. McGovern-Smith corroborated that the first time pay stubs were requested from LB was on June 27, 2017. (1T85-1 to 5). When asked "It's not that she has to produce it, if it's requested she produces it." She replied "That's right, exactly." (1T181-11 to 13) Like Ms. De La Cretaz, Ms. Whitecloud did not keep notes of her interactions with L.B., but relied upon whatever documents made it into the file and were not otherwise lost or purged. (1T183-5 to 7; 2T16- 8 to 10).

The fact that a Section 8 recipient could be terminated based upon misfiled or lost paperwork was further exemplified by the testimony of Karen Barker who was L.B.'s third caseworker in 2018. When asked about how the process for new clients was handled she replied: "Here's your new client. Everything you need to know about her is in this file, is that right?" she replied: Give or Take. (2T16-2 to 5). Ms. Barker elaborated and said: "because the files sometimes get purged, so it whatever…we only allow….we can keep up to three years of records in that file." (2T16-8 to 10). L.B. had only been in the program just over two years, she further stated "it could've been purged." (2T16-15).

When asked again "In 2018 it would've been purged? She replied "yes people have a lot of income adjustments they have family composition changes the files can get pretty big. (2T16-17 to 19). When asked the third time, "In that period of time

they may have purged her file, she replied "they may have I don't know." (2T16-20 to 22) She was then asked: "This is a voucher that my client waited 7 years for and you're now telling me that the file that you got in 2018 may not have been her entire file." (2T17-9 to 11). Ms. Barker responded: "l don't know that. I don't know, it possibly could have." (2T17- 12 to 13). It was clear from this witness' testimony that there is no clear policy or procedure for purging files, as if a client's file is either too thick, is over three years or less than three years, it can be purged. (2T38-18 to 21).

6. <u>The Initial OAL Decision</u>

An Initial OAL Decision was issued on January 16, 2024 wherein the Administrative Law Judge, (hereinafter ALJ) Elaine Frick concluded that L.B. did in fact provide the November, 2016 letter to DCA on or about November 22, 2016. ALJ Frick concluded that the letter was insufficient to prove L.B.'s work status or earnings (Pa52), even though the letter contained the exact same information that was initially used to calculate L.B's earnings and calculate her rent portion. Additionally, ALJ Frick concluded that "the evidence preponderates" that L.B. did provide the February 23, 2017 letter to DCA prior to April 10, 2017. (Pa52). ALJ Frick also concluded that L.B. provided the letter again on April 10, 2017. ALJ Frick concluded that the letter was insufficient to demonstrate the necessary income

information for L.B., whether to complete an adjustment to her subsidy due to employment or for the purpose of renewal of her case. (Pa53).

7. <u>The Final Agency Decision</u>

The Final Agency Decision was issued by Acting DCA Commissioner Jacquelyn A. Suarez on April 15, 2024 and adopted the Initial Agency Decision. (Pa14-16). Acting Commissioner Suarez added that L.B. never provided accurate initial information that could be verified by her caseworkers. She determined that the regulations governing the Section 8 program require a ... "participant must submit any information that a Public Housing Agency (PHA) (in this case DCA) deems necessary for administration of the Section 8 voucher program." (Pa14). Acting Commissioner Suarez found that L.B. was "required to supply a letter of employment, contact information for her, employer, pay stubs, and other pertinent information necessary to verify her employment and change in income." (Pa15). She found that L.B. instead supplied only an of employment letter "...was missing most of the required information. (Pa15).

Acting Commissioner Suarez also adopted ALJ Frick's decision to terminate L.B. because she moved while her program status was uncertain. Acting Commissioner Suarez states that "[h]er program status was uncertain and under appeal due to her aforementioned failure to provide adequate substantive information regarding her income..."(Pa16) Acting Commissioner Suarez found

that L.B. failed to notify DCA and moved while not in good standing so her voucher termination was justified. (Pa15-16).

LEGAL ARGUMENT

I. STANDARD OF REVIEW FOR FINAL AGENCY DECISIONS.

Pursuant to R. 2:2-3(a)(2), a party may appeal a final decision of an administrative agency. A final agency's decision may be overturned if it is "arbitrary, capricious or unreasonable." Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). As to agency factual findings and conclusions, although an appellate function is "a limited one," an agency's decisions are not binding if they are not supported by "adequate, substantial, and credible evidence." Rova Farms Resort, Inc. v. Investors Ins. Co. of America, 65 N.J. 474, 484 (1974).

Although reviewing courts "must give deference to the agency's findings of facts, and some deference to its interpretation of statutes and regulations within its implementing and enforcing responsibility" appellate courts are "'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.'" Utley v. Bd. of Review, 194 N.J. 534, 551 (2008)(internal quotation omitted) (quoting Mayflower Sec. C. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). It has been explicitly recognized that agencies "have no superior ability to resolve purely legal questions…and that a court is not bound by an agency's determination of a legal issue is well established." Greenwood v. State Police Training Center, 127 N.J. 500,

513 (1992). As such, purely legal questions are subject to a *de novo* standard of review. See generally, Manalapan Realty, L.P. v. Township Committee of Tp. of Manalapan, 140 N.J. 366, 378 (1995).

II. THE APPELLATE DIVISION SHOULD REVERSE DCA'S FINAL AGENCY DECISION TERMINATING PETITIONER-APPELLANT L.B. FROM THE SECTION 8 PROGRAM BECAUSE DCA ARBITRARILY FAILED TO FOLLOW ITS OWN ADOPTED POLICIES REGARDING RECERTIFYING SECTION 8 PARTICIPANTS' HOUSEHOLD INCOME. (Pa14-6; Pa48-58)

The federal Section 8 Housing Choice Voucher Program plays an important role in addressing the pressing need for affordable housing for the poor throughout the nation and within New Jersey. Since the 1980's, Congress has shifted primary funding away from "supply-side" construction of public and privately-owned, government-assisted multifamily housing, to that of "demand-side" Section 8 "tenant-based" portable rental subsidies that allow low-income tenants to enter the existing private housing market. Laura Bacon, Godinez V. Sullivan-Lackey: Creating A Meaningful Choice For Housing Choice Voucher Holders, 55 DePaul L. Rev. 1273, 1275-76 (2006). As such, the Section 8 Program has become one of the principle means that the federal government utilizes to assist low-income families, seniors and the disabled in the country to obtain decent rental housing that they can afford. Id.

Congress established the Section 8 Housing Assistance Program in 1974 under the Housing and Community Development Act of 1974, codified at 42 U.S.C. 1437f, amending the United States Housing Act of 1937. See Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 608 (1999); Bouie v. N.J. Dep't of Community Affairs, 407 N.J. Super 518, 521 (App. Div. 2009). The Section 8 Program was created "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. 1437f(a); Franklin, at 608.

Under the Section 8 Program, the U.S. Department of Housing and Urban Development ("HUD") provides funding to state and local governmental public housing agencies entities to administer the Section 8 Program and pay rental subsidies on behalf of eligible low-income families to landlords in the private rental market. 42 U.S.C. 1437f(b); 24 C.F.R. § 982.1(a). It is the participating families' responsibility to search for a landlord willing to rent a suitable apartment and accept the Section 8 voucher. 24 C.F.R. § 982.302. The Section 8 household generally pays as rent up to a maximum of 40% of its adjusted gross monthly income, with the local entity administering the program subsidizing the balance of the monthly rent by entering into a Housing Assistance Payment contract with the landlord. 24 C.F.R. § 982.508. Typically, Section 8 holders have only an initial term of between 60 days, plus any extension granted at the administrating agency's discretion, to find a willing

landlord and enter into a lease, or else they forfeit their Section 8 vouchers and must go back onto the PHA's waiting list. 24 C.F.R. § 982.303.

HUD's regulations at 24 C.F.R. § 982.551 lists and describes various "family obligations" with which Section 8 recipients must comply to remain eligible to receive Section 8 rental assistance. 24 C.F.R. § 982.551(b)(1) requires Section 8 participants to supply information to the local public housing agency necessary for the administration of the Program; 24 C.F.R. § 982.551(b)(2) requires Section 8 participants to supply information requested for use in a regularly scheduled reexamination or interim reexamination of family income; and 24 C.F.R. § 982.551(b)(4), requires that the information supplied must be true and complete.

As an agency delegated to be responsible for the day-to-day administration of the Program, DCA is subject to HUD regulations and other HUD requirements. 24 C.F.R. § 982.3. DCA must comply with HUD regulations and HUD requirements issued by HUD, Federal Register notices or other binding program directives. 24 C.F.R. § 982.52(a).

Importantly, pursuant to 24 C.F.R. §982.54(a) DCA "must adopt a written Administrative Plan that establishes local policies for administration of the program in accordance with HUD requirements." Id. See generally, Baldwin v. Housing Authority of City of Camden, 278 F.Supp.2d 365. 370-71(D.N.J. 2003)(discussing purpose and importance of public housing agency Section 8 administrative plans,

which "delineates PHA policies on matters for which the PHA has discretion to establish local policies."). Specifically, pursuant to 24 C.F.R. § 982.54(d)(18), DCA must adopt its own written "[p]olicies concerning interim redeterminations of family income and composition, the frequency of determinations of family income, and income-determination practices. . . ." Id. Further, pursuant to 24 C.F.R. § 982.552(d)(1) & (2), DCA must give Section 8 participants a separate written description of its adopted policies concerning "[f]amily obligations under the program" and the grounds which DCA "may deny or terminate assistance because of family action or failure to act." Id.

In accordance with these HUD requirements, DCA each fiscal year adopts a Section 8 Administrative Plan. In 2016—the relevant time frame for this appeal—DCA had adopted the *Housing Choice Voucher Program Administrative Plan, State of New Jersey, Department of Community Affairs Division of Housing and Community Resources, State Fiscal Year 2016.* (Pa418-452). Pursuant to 24 C.F.R. §982.54(d)(18), DCA had established its "INTERIM REEXAMINATION POLICY, " which stated in relevant part:

> All changes in income must be reported to the field office, in writing, within ten (10) days. Such changes must be reported within ten (10) days of the commencement of employment or training period, *not when the first paycheck is received*. [(Pa433)(emphasis added)].

Similarly, DCA's *Guide To Housing Choice Voucher Program* (July 2014) that DCA had provided to L.B. pursuant to 24 C.F.R. § 982.552(d)(1) stated with

respect to "Obligations of the Household" the "household must. . . . 11. Notify the program in writing within ten (10) days of any change in the household's total annual income." (Pa110). DCA's Guide further stated:

> You must inform the program in writing of any change in the household's total annual income within ten (10) days. This change must be reported immediately, *not when payment is received.* Any change in the tenant rent to owner will only take effect after all income sources of the household are verified by the program. [(Pa115)(emphasis added)].

Neither DCA's 2016 Section 8 Administrative Plan, nor its Guide To Housing Choice Voucher Program, imposed any other reporting obligation on Section 8 participants, such as the obligation to supply paystubs. On the contrary, DCA's 2016 Section 8 Administrative Plan stated that the "preferred method of verification is written documentation from a third party. A notarized certification from the household may be accepted when third party verification is not possible." (Pa428). DCA's 2016 Section 8 Administrative Plan further elaborated:

> Three (3) methods of verification are acceptable. They are, in the order of acceptability: 1. Third party written verification (*may not be hand-carried by a member of the household*), or third party oral verification (direct contact with a reliable source). 2. Review of original documents (EXHIBIT A-2), only when third party verification is not possible. 3. Household certification (notarized statement), when third party verification or review of documents is not possible. [(Pa434)(emphasis added).

See also, 24 C.F.R. §5.230 (requiring each member of assisted family to sign consent forms, *inter alia*, authorizing PHA to obtain income information from previous or current employers).

Further, in its 2016 Section 8 Administrative Plan, DCA explained that pursuant to "a cooperative agreement" with the New Jersey Department of Labor DCA "can electronically access information about an individual's wages and unemployment benefits directly from the Department of Labor's database" consistent with the "advent of HUD's Enterprise Income Verification (EIV) System." (Pa429). See also, 24 C.F.R. § 5.233 ("Mandated use of HUD's Enterprise Income Verification (EIV) System"); HUD Notices PIH 2010–19(HA), PIH 2017–12(HA), PIH 2018–18, "*Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System.*" (Pa321-387).

In present case, DCA had originally maintained as the basis for its first termination notice, dated October 6, 2017, that L.B. had begun working at Concentrix in November 2016 but completely failed to report her employment to DCA until April 2017. (Pa74-75). The ALJ, in her Initial Decision, found that L.B. had in fact reported her temporary employment with Concentrix within 10 days of when she started in November 2016, as well as when her employment was extended in February 2017.(Pa52-53). However, the ALJ also determined the letters of employment that L.B. provided DCA were "insufficient to confirm L.B.'s work

status or earnings" (Pa52) and "insufficient to demonstrate the necessary income information for L.B," (Pa53) and that she had the "obligation to provide necessary income information, including the production of pay stubs, regarding the household's income." (Pa53). DCA Acting Commissioner Suarez, in her Final Agency Decision, adopted the ALJ's Initial Decision, adding "DCA required L.B. to supply a letter of employment, contact information for her employer, *pay stubs*, and other pertinent information necessary to verify her employment and change in income. L.B. instead supplied only an offer of employment letter that was missing most of the required information." (Pa15)(emphasis added).

However, DCA's Initial and Final Agency Decisions—terminating L.B. from the Section 8 Program for failing to timely provide additional income information such as paystubs—directly conflicts with DCA's own adopted interim income recertification policies that participants must "immediately" report income changes "in writing" with 10 days and must not wait not until "the first paycheck is received." (Pa115; Pa433). Indeed, L.B. was caught in a proverbial Catch-22—DCA penalized her for complying with DCA's own adopted policies, but had she waited until she received her first paycheck she would have violated DCA's policies by failing to immediately report her change in income.

Thus, by timely submitting the November 15, 2016 and February 23, 2017 letters of employment from Concentrix to DCA, L.B. properly complied with her

obligation under DCA's Section 8 Administrative Plan that "[a]ll changes in income must be reported to the field office, in writing, within ten (10) days." (Pa433). Moreover, the information contained in the letters—the company name, employment position rate of pay, contact persons—together with L.B.'s own disclosures and consents with DCA authorizing use of her social security number and electronic access to her wage information—were sufficient for DCA to submit third party verification requests to her employer as well as to utilize the "mandated" EIV system.

As such, since HUD has mandated that a "PHA must administer the program in accordance with the PHA administrative plan," 24 C.F.R. § 982.54(c), DCA's termination of L.B. from the Section 8 Program contrary to its own Section 8 administrative plan is arbitrary, capricious, unreasonable and contrary to law. See Jackson v. Jacobs, 971 F. Supp. 560, 563-64 (N.D. Ga. 1997) (federal district court, in granting preliminary injunction, found that housing authority unlawfully terminated participant's Section 8 subsidy in part where housing authority failed to follow its administrative plan and "choose to enforce its own rules selectively"). Indeed, since DCA "inexplicably departed from established policies" its actions amount to an abuse of discretion. Flagg v. Essex County Prosecutor, 171 N.J. 561, 571 (2002) (citation omitted) (emphasis added). Accordingly, the Appellate Division

should reverse DCA's Final Agency Decision based on L.B.'s failure to timely report her change in income.

III. DCA'S FINAL AGENCY DECISION TERMINATING L.B. FROM THE SECTION 8 PROGRAM FOR FAILING TO TIMELY REPORT EMPLOYMENT INCOME IS NOT SUPPORTED BY THE WEIGHT OF THE SUBSTANTIAL CREDIBLE EVIDENCE PRESENTED AT THE ALJ HEARING. (Pa14-6; Pa48-58)

Before the ALJ hearing on April 3, 2023, DCA's position was that the DCA had no knowledge that L.B. was employed prior to April 10, 2017. (Pa74-75). L.B.'s caseworker, Ms. De La Cretaz, had testified at the DCA informal hearing that L.B. had not provided any proof of employment at Concentrix before April 2017, which is reflected in the Hearing Officer's decision that L.B. "failed to promptly notify DCA when her employment began in November 2016, and to provide the necessary and requested documentation of her actual wages until August 2017." (Pa75).

However, when it became clear during the cross examination of Ms. De La Cretaz at the ALJ hearing that she had in fact seen both the November 15, 2016 and the February 23, 2017 letters of employment prior to April 2017, (1T138-23 to 1T140-18), DCA's focus shifted that even though L.B. may have timely reported her employment, the letters were insufficient. Ms. De La Cretaz further testified that she remembered that L.B. had appeared at the office lobby window prior to April 2017—and possibly in November 2016 and February 2017—and had told L.B. to bring her further documentation. (1T138-23 to 1T140-18).

Ms. De La Cretaz's testimony at the ALJ hearing strains credulity since her original testimony before the DCA hearing officer was that L.B. had never appeared before April 2017, Ms. De La Cretaz could not have credibly instructed L.B. to produce this additional information. To the extent that the ALJ's Initial Decision and DCA's Final Agency Decision relies on her testimony, DCA's decision is not based upon the substantial credible evidence and should be reversed.

IV. DCA'S FINAL AGENCY DECISION TERMINATING L.B. FROM THE SECTION 8 PROGRAM FOR FAILING TO TIMELY NOTIFY DCA OF HER MOVE TO A NEW APARTMENT WHILE HER ADMINISTRATIVE APPEAL WAS PENDING, RATHER THAN ONLY DELAYING TRANSFER AND FUNDING OF HER RENTAL SUBSIDY, WAS ARBITRARY, UNREASONABLE AND CONTRARY TO LAW. (PA14-6; PA48-58)

DCA's second notice to terminate L.B. from the Section 8 Program, dated March 7, 2019, was based on L.B. moving to a new apartment in December 2018 while her OAL administrative was pending. (Pa200). In the ALJ's Initial Decision affirming DCA's termination, the ALJ erroneously, determined that "[i]t is undisputed that L.B. was not in good standing as of December 1, 2018, given that she was in appeal status regarding DCA's first determination terminating L.B. from the program for failure to provide timely income information." (Pa66). In adopting the ALJ's Initial Decision, DCA Acting Commissioner likewise improperly concluded that because L.B.'s program status at the time was "under appeal" she

was not "in good standing" and thus "termination of her voucher was justified." (Pa15-16).

However, DCA's determination that L.B.'s program was "not in good standing" is contrary to the Appellate Division decision in Bouie v. NJ Dept. of Community Affairs, 407 N.J. Super. 518 (App. Div. 2009). In Bouie, the Appellate Division stated that "[t]he primary issue presented by this appeal is whether the hearing that the Department of Community Affairs (DCA) must afford a recipient of federal Section 8 rental assistance benefits *before terminating those benefits* is a 'contested case' within the intent of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -25, which must be heard by an Administrative Law Judge (ALJ)." Bouie, at 521 (emphasis added). The Appellate Division ruled that "a dispute concerning the termination of Section 8 benefits is a 'contested case' subject to the procedural protections of the APA..." Bouie, at 535. As such, the Appellate Division rejected the contention that a DCA hearing officer's decision after an informal hearing constituted "final agency action," Bouie, at 529, and further ruled that "the dispute over the termination of appellant's Section 8 benefits involves contested adjudicative facts that require an evidentiary hearing to resolve." Bouie, at 536.

Thus, under Bouie, DCA could not lawfully terminate L.B.'s Section 8 rental assistance benefits until ALJ hearing process was completed and DCA's Final

Agency Decision was issued on April 15, 2024. As such, DCA claiming that L.B. was not "in good standing" prior the Final Agency Decision is contrary to the holding in Bouie and undercuts the process mandated under the APA. Moreover, there is nothing under the federal statutes nor HUD regulations governing the Section 8 program stating that Section 8 participants lose any of their rights simply because there is an administrative appeal pending contesting a PHA's proposed termination.

While L.B. did move out of her apartment without first formally notifying DCA in writing as required under 24 C.F.R. § 982.551(f), DCA's Section 8 Administrative Plan nonetheless permitted DCA to approve the transfer but with L.B. paying the full market rent until DCA inspected and approved the property for compliance. L.B., through counsel, made a written demand to DCA to do so in January 2019, which DCA denied, (Pa20) as well as in L.B.'s Exceptions submitted to DCA Acting Commissioner Suarez (Pa318-320), which was also denied. (Pa16.)

Since DCA's refusal to allow L.B. to transfer her Section 8 subsidy was ultimately based on an error of law, DCA's Final Agency Decision upholding the March 7, 2019 termination notice should be reversed.

CONCLUSION

For the foregoing reasons, Petitioner-Appellant L.B. respectfully requests that the Appellate Division reverse DCA's Final Agency Decision terminating her from

continued participation in the Section 8 Housing Choice Voucher Program and reinstating her rental subsidy as of May 2018.

Dated: September 3, 2024

Respectfully submitted,
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By: */s/ Janet Gravitz* .
JANET GRAVITZ, ESQ.

		SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-2871-23
L.B., Appellant, v. Department of Community Affairs, Respondent.	:	CIVIL ACTION ON APPEAL FROM THE FINAL AGENCY DECISION OF DEPARTMENT OF COMMUNITY AFFAIRS

BRIEF OF RESPONDENT NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

Date Submitted: December 24, 2024

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PRELIMINARY STATEMENT

This matter involves the termination of Appellant, L.B., from the Section 8 Housing Choice Voucher Program (Program). L.B.'s voucher was terminated on two bases: 1) she failed to provide timely and adequate information regarding her change in income; and 2) while her status in the Program was pending due to her first violation, she impermissibly changed her residence without providing notice to respondent, the Department of Community Affairs (DCA). After a two-day administrative hearing before the Office of Administrative Law (OAL), an Administrative Law Judge (ALJ) concluded that both terminations were appropriate and required. In a final agency decision, the DCA Commissioner adopted the ALJ's initial decision.

DCA's decision should be affirmed as it is reasonable, deserving of deference, and supported by substantial credible evidence. As found by the ALJ, who was in the best position to make factual findings and assess credibility, L.B. failed to comply with her obligations to provide adequate information reporting her change of income and change of address. As to the first termination, while L.B. provided letters of employment to DCA, the letters were insufficient because they did not provide the number of hours L.B. would be working, so they did not provide proof of her actual income. As to the second termination, despite being told she could not transfer her voucher to a new apartment while

her status with the Program was pending termination, L.B. changed residences and did not inform DCA until after she did so. It was entirely reasonable for DCA to terminate L.B.'s voucher on these grounds.

Contrary to L.B.'s newfound argument that DCA failed to follow its own policies by requiring her to provide adequate income information, there is no basis to disturb DCA's final decision. L.B. takes issue with the fact that both the ALJ and the Commissioner emphasized L.B.'s failure to provide pay stubs to report her change in income, arguing that the Program rules require participants to report such changes within ten days of employment, not ten days from the first pay check. But, regardless of whether L.B. could have provided pay stubs, the employment letters she provided were plainly inadequate to report income, as they stated only her hourly rate, but did not include the number of hours she would be working.

Similarly, as to the second termination, L.B.'s assertion that she could not have been "not in good standing" with the Program until a final agency decision on the first termination was issued misses the mark. L.B.'s status with the Program was merely an underlying fact supporting her second termination. And, even if L.B. was still in good standing with the Program at the time she moved, she admits that she still failed to comply with the notice requirements for her move. DCA's final agency decision should accordingly be affirmed.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

A. The Section 8 Housing Choice Voucher Program

The Program is a federally-funded program administered by the United States Department of Housing and Urban Development ("HUD") under which the federal agency provides rental subsidies so eligible families "can afford decent, safe, and sanitary housing." 24 C.F.R. § 982.1(a)(1). Generally administered by State or local government entities called public housing agencies ("PHAs"), HUD provides funds to the PHAs for housing assistance and administration of the Program. Ibid.

Participants in the Program "select and rent units that meet program housing quality standards," subject to approval by the PHA. Id. at § 982.1(a)(2). "If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments on behalf of the family." Ibid. Housing subsidies under the Program are "based on a local 'payment standard' that

[1] Because they are closely related, these sections are combined for efficiency and the court's convenience. The relevant facts are derived from the testimony and exhibits comprising the record before the OAL over the course of two days of hearings held on April 3, 2023 and July 11, 2023.
"Pa" refers to Appellant's Appendix.
"Ra" refers to Respondent's Appendix.
"Pb" refers to Appellant's Brief.
"1T" refers to the hearing transcript from April 3, 2023.
"2T" refers to the hearing transcript from July 11, 2023.

reflects the cost to lease a unit in the local housing market." Id. at § 982.1(a)(3). "If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent." Ibid. Thus, the higher the participant's income, the higher their portion of rent will be; in other words, "the tenant portion is based on income" and if a participant is working, "their portion would be higher." (1T23:21 to 24:2).

DCA is a PHA, and enters into an Administrative Plan with HUD annually to continue its administration of the Program in New Jersey. 24 C.F.R. § 982.54(a) ("The PHA must adopt a written administrative plan that establishes local policies for administration of the [P]rogram in accordance with HUD requirements."); see also (Ra1).[2] The Administrative Plan serves as the "handbook for the implementation of [the Program]," and "provide[s] program staff with the necessary guidelines to consistently apply the discretionary policies and procedures adopted by DCA in its administration of [the Program]."

[2] The Administrative Plan for Fiscal Year 2023-2024 is the most recent Plan DCA is operating under. See State of New Jersey, Department of Community Affairs, Division of Housing and Community Resources, "HOUSING CHOICE VOUCHER PROGRAM ADMINISTRATIVE PLAN: STATE FISCAL YEAR 2024" (available at https://www.nj.gov/dca/dhcr/offices/pdf/Administrative%20Plan%202023-2024%20v1.pdf) (last visited December 23, 2024). For ease of reference, this Administrative Plan is included in Respondent's Appendix. (Ra1). A substantially similar Plan was in operation at the time of L.B.'s participation in the program. See (Pa418).

(Ra7); see also 24 C.F.R. § 982.54(c) ("The PHA must administer the [P]rogram in accordance with the PHA administrative plan.").

To participate in the Program, an applicant must be, among other things, income-eligible. 24 C.F.R. § 982.201(a), (b). Under the State's Administrative Plan, applicants submit their application to DCA online, which are only accepted during an open enrollment period. (Ra29). Successful applicants are then placed on a waiting list, where they will wait for an available voucher in their area. Ibid. DCA is "opened for applications occasionally, [but] not all the time," and has to exhaust the current list before it can open up for further applications. (1T25:13-16). The number of applications often exceeds the number of available placements on the waiting list. (1T25:17-20). For example, in February 2023, statewide over a fifteen-day application period, over 70,000 people applied for a total of 20,000 placements on the waiting list. Ibid. In these instances, where the number of applicants exceeds the number of available spots on the waiting list, the PHA conducts a blind lottery to choose the successful applicants who will be placed on the list. (Ra29;1T25:21-26:3).

When someone is selected from the waiting list, the PHA notifies the participant and requests information, including "income, Social Security cards, [and] birth certificates." (1T27:3-4). The PHA also must confirm that the applicant is a citizen, ask for permission and a signed authorization for the

release of their personal information, and obtain information about the family makeup and family income. (1T27:4-8). After receiving the necessary information and conducting all the necessary background checks and other verifications, "the family is briefed, they're issued a voucher, given a request for tenancy, and then they can go out and they look for housing." (1T27:15-28:3). When the family finds a suitable place, the participant must produce a signed request for tenancy, executed by both the landlord and the participant, and submit that form to the participant's PHA caseworker. (1T28:4-6). The PHA will then determine the affordability of the unit; where "the rent [and] the utilities are equal to or less than the payment standard, then [the participant is] in without issue." (1T28:14-16). Next, an inspection is conducted to ensure that the unit meets certain Housing Quality Standards. (1T28:16; Ra62-66). If the unit is considered of sufficient quality, then a housing assistance payment contract ("HAP contract") will be entered into with the landlord, and at that point, the participant may move into the unit. (1T29:9 to 30:16).

A Program participant undertakes and agrees to certain obligations. Participants must, among other things, complete a tenant information form annually, which consists of "a breakdown . . . of their income" to confirm that it remains the same, as well as confirmation that the family composition and other information such as contact information remains unchanged from year to

year. (1T31:1-14). The tenant information form also expressly requires a participant to provide income documents, including "two current and consecutive original pay stubs," if applicable. (Pa147).

If any of the information changes in between the annual submission of this paperwork, the participant is "required to report [the change] to [the PHA] in writing within ten days." (1T31:15-20). Participants must also supply true and correct information to the PHA, supply any and all information requested in connection with annual or interim budget examinations, promptly inform the PHA of all changes in income, and refrain from incurring debts to the PHA. (Pa62). These obligations are outlined in the Guide to the Housing Choice Voucher Program, which is provided to all Program participants, including Appellant, L.B. (Pa46-47, Pa62-63, Pa96, Pa100).

B. L.B.'s Participation in the Program

L.B. was a participant in the Program, and received her voucher on September 1, 2016. (Pa23, Pa62, Pa83). L.B. was the head of her household with three additional household members in an apartment at an address in Pleasantville, New Jersey. (Pa23, Pa62). When L.B. received her voucher, she reported that her annual income was $30,747. (Pa24, Pa63). At that time, L.B.'s rent was $1,130 per month – L.B. paid $711 towards her rent each month, while

the Program paid for the remainder at a rate of $419 per month. (Pa24, Pa63, Pa86, Pa135).

One week after obtaining her voucher, on September 8, 2016, L.B. reported that she had lost her job and her sole source of income. (Pa24, Pa63, Pa119, Pa121; 2T117:10-18). L.B. filled out a Zero Income Checklist in preparation for an interim budget reexamination to reassess the amount the Program would pay towards her monthly rent. (Pa24, Pa63, Pa121). L.B. also filled out a tenant information form on October 4, 2016, representing that she had no income. (Pa47-48, Pa145, Pa154). Following the interim reexamination, the Program began paying $1,130 per month, which amounted to 100% of L.B.'s rent. (Pa24, Pa63, Pa137).

While L.B. was a participant in the Program, she coordinated and worked with DCA's Atlantic City Field Office. (1T38:10-18). During her time in the Program, she worked with three case managers. When L.B. first entered the Program in 2016, she worked with Debbie De la Cretaz as her case manager. (1T117). Ms. De la Cretaz was a Technical Assistant with the Atlantic City Field Office for twenty-five years before her retirement at the end of 2019. (1T114:1-17). As a Technical Assistant, Ms. De la Cretaz "did everything field representatives did except for inspections," which entailed managing a caseload of clients, briefing those clients about the Program and debriefing them when

they exited the Program, informing the participants of their duties and responsibilities under the Program, as well as the rules that set forth those duties and responsibilities. (1T114:20-115:13).

On or about November 15, 2016, L.B. became employed by Concentrix. (Pa24, Pa63). Pursuant to HUD rules and the Administrative Plan, L.B. was supposed to report this change in income within ten days. (1T31:15-20; Pa47, Pa110, Pa433; Ra9). According to L.B., she provided proof of her employment in the form of an offer letter to her case manager, Ms. De la Cretaz, within ten days of the change, "around the 20th" of November. (2T74:9-13; 2T75:19-22; 2T121:12-14). The sign-in sheet from the Atlantic City Field Office, dated November 22, 2016 has L.B.'s name written on it with the "purpose of visit" listed as "paperwork" and that she was visiting Ms. De la Cretaz. (Pa24, Pa63, Pa206).

The letter from Concentrix states that its offer of employment to L.B. was temporary and was set to expire on February 14, 2017, and that L.B. would be paid at a rate of twenty-four dollars per hour. (Pa264). The letter, however, does not provide the number of hours that L.B. was expected to work and does not provide an address or location. Ibid. Ms. De la Cretaz had no recollection of ever receiving the letter, nor was the letter date-stamped by the Atlantic City Field Office. (Pa264; 1T150:21-23).

In the ensuing months, L.B. saw no change in the amount of her monthly rent. (2T122:16-20). In other words, the Program continued to pay the entirety of L.B.'s rent, even though L.B.'s income increased after she became employed. Ibid. What is more, by her own admission, L.B. was earning a higher hourly rate at her Concentrix job than she did at her former place of employment when she first entered the Program in 2016. (2T121:25 to 122:7). Specifically, where L.B. was making only sixteen dollars per hour at her prior job, she was making twenty-four dollars per hour at her job with Concentrix. Ibid. Yet, she never saw a decrease in the portion of her rent attributable to the Program; rather, the Program continued to pay her rent in full each month. (2T133:2-14). At no point did L.B. inquire or otherwise question the fact that her rent portion remained unchanged, despite the fact that she was employed and was making more money at her new job than she did at her prior job when she first entered the Program. (2T145:8-13).

On February 23, 2017, L.B. received a letter from Concentrix indicating that her temporary employment was being extended. (Pa24, Pa63, Pa163). The letter is signed by L.B. and the signature is dated February 24, 2017. (Pa163). L.B. asserted that she brought this letter into the Atlantic City Field Office to Ms. De la Cretaz, on February 24, 2017. (2T79:9-80:14). According to L.B., De la Cretaz did not, at that time, ask her for any further information, and instead

told her that if or when she gets another extension letter to bring that into the office. (2T79:13-21). The letter was date-stamped by the Atlantic City Field Office as being received on April 10, 2017. (Pa24, Pa163).

De la Cretaz testified that while she could not recall the specific date on which she received the letter, upon seeing it she noticed that the letter contained "nothing . . . specifying what we needed in order to do the [income] redetermination for her." (1T118:8-16). De la Cretaz stated that she recalled L.B. coming "into the office when [De la Cretaz] was not there, [stating] I was either at lunch, I was on the phone, or I wasn't in that day, and she brought me this back, this letter again, and it still wasn't what I needed." (1T121:1-8). After receiving the letter, De la Cretaz sent L.B. a letter on April 10, 2017, the same date as the date-stamp on the second Concentrix letter itself, and advised L.B. that she had received the letter from Concentrix, and that she needed L.B. to provide proof of any income she received since February 23, 2017, because she could not revise L.B.'s rent portion without that information. (Pa165). But L.B. failed to provide the requested information, and the Program continued to pay L.B.'s rent in full in the succeeding months.

By letter dated April 28, 2017, L.B.'s new case manager, Quenda Whitecloud, contacted L.B. to advise that her housing assistance was set to terminate on September 1, 2017. (Pa25, Pa64, Pa246). In order to continue

receiving housing assistance, Whitecloud requested that L.B. provide an authorization for release of information form and for her to complete a tenant information form, where L.B. would need to report her income, among other requirements. (Pa246). L.B. signed and submitted the tenant information form, dated May 11, 2017, where she listed that she was employed by Concentrix, but did not provide any further information, including information about income, hourly rate, or hours worked. (Pa248-49, Pa252). L.B. also provided a letter from Concentrix, dated May 11, 2017, extending her employment through June 30, 2017. (Pa247). The letter similarly does not provide any information about hourly rate or hours worked, only stating that her "compensation and all other terms of employment will be remained unchanged." (Pa247).

By letter dated June 28, 2017, Whitecloud again asked L.B. to provide an employment letter and her bank statements. (Pa25, Pa64; Pa166). This information was needed in order to complete L.B.'s Program renewal for that year. (1T157:1-4). On August 14, 2017, L.B. provided her paystubs for the periods of June 24, 2017 to July 7, 2017 and July 8, 2017 to July 21, 2017 to the Atlantic City Field Office. (Pa25, Pa169-70). According to Whitecloud, L.B. did not submit any other documentation between June 28, 2017 and August 14, 2017. (1T157:24 to 158:25; Pa53-54). Once she finally submitted the paystubs, they showed that L.B. made approximately $1,417 during each pay period.

(Pa168-70). Moreover, the paystub for the pay period of July 8, 2017 to July 21, 2017 showed that year to date, LB received $31,708.00 in gross pay and $23,677.99 in net pay. (Pa170).

On August 18, 2017, Whitecloud sent L.B. a rental portion letter. (Pa25, Pa65). The letter stated that L.B. was now going to be responsible for paying $1,130 per month towards her rent, which was the full amount. Ibid. This, however, did not last long, as L.B. informed the Atlantic City Field Office on September 14, 2017 that she had once again lost her employment – less than one month after her rental portion was increased. (Pa25, Pa65, Pa174, Pa176). As a result, a budget re-examination was conducted, and effective on October 1, 2017, L.B.'s rental portion was reduced to $13 per month. (Pa25-26, Pa65, Pa181).

C. First Termination from the Program

On October 6, 2017, L.B. received an Initial Decision to Deny/Terminate Housing Assistance.[3] (Pa26, Pa65, Pa81). L.B. requested an informal hearing regarding her termination, which was held on March 16, 2018. (Pa26, Pa66). By written decision dated April 13, 2018, the hearing officer determined that DCA proved, by a preponderance of the evidence, that there were grounds to

[3] To be clear, this was a preliminary decision issued by DCA, not the initial decision issued by the OAL.

terminate L.B.'s participation in the Program because the evidence showed that L.B. failed to provide complete and timely information about her income from January 2017 through July 14, 2017. (Pa26, Pa66, Pa73-76). This resulted in a total of $29,878 in gross unreported income. (Pa76). And because the Program was paying 100 percent of L.B.'s rent during this time period when she had income, her failure to report led to a debt to the Program of $8,963.00. (Pa26, Pa66, Pa76). This amount owed to the Program was above the $3,000 threshold under which DCA would have discretion to permit a repayment agreement. Ibid. The hearing officer found that L.B.'s "history of promptly reporting any decrease in income to DCA indicates that she was aware that any changes in income – whether increases or decreases – were to be promptly reported and documented, as income is the basis for computing [L.B.'s] rental portion." (Pa76). The hearing officer terminated L.B.'s housing assistance as of May 31, 2018. Ibid.

L.B. contested the hearing officer's decision by letter dated April 23, 2018, and on July 20, 2018, received a stay of the termination of her housing assistance pending the outcome of her hearing before the OAL. (Pa26, Pa66).

D. The Second Termination

While L.B. was a participant in the Program, she resided in an apartment in Pleasantville, New Jersey. (Pa23, Pa62). On December 4, 2018, L.B.

contacted her case manager at the time, Karen Barker, via email and stated that she attempted to contact Barker by phone on November 21, 2018. (Pa183). L.B. also informed Barker that she moved out of the Pleasantville apartment on December 1, 2018, that she was waiting for her new apartment to become available, and that she wanted to know if her voucher would transfer to her new apartment. Ibid. Barker replied that she would discuss the matter with Tracy McGovern-Smith[4] as to whether her voucher would transfer because they had not yet "received a decision on [her] rent adjustment." Ibid. At no point did Barker inform L.B. that she was clear to move or that her voucher would transfer to her new apartment. (2T141:11-16). Instead, on December 11, 2018, Barker informed L.B. that she would need to wait until her previous challenge to her termination from the Program was decided after a hearing before she could transfer her voucher. (Pa67; 2T12:10-20; 2T101:9-15).

According to Barker, L.B. previously visited the office to ask Barker about possibly moving. (2T11:25 to 12:10). During that interaction, L.B. asked for a moving packet, but Barker advised L.B. she could not provide her with the packet because "you can't move anybody when they have discrepancies going

[4] Tracy McGovern Smith was the Field Office Supervisor and Principle Field Representative of the Atlantic City Field Office. (1T21:22 to 22:11; 37:9 to 38:9).

on" with their status in the Program. (2T12:3-7). L.B.'s status in the Program remained in flux due to her prior termination. (2T12:5-7).

On March 7, 2019, DCA issued L.B. a second Initial Decision to Terminate Housing Assistance. (Pa200). It stated that L.B.'s assistance was being terminated for violations of 24 C.F.R. § 982.551(i) ("Absence from unit"), 24 C.F.R. § 982.551(f) ("Family notice of move or lease termination"); and 24 C.F.R § 982.551(b)(h) ("Use and occupancy of unit"). Ibid. L.B.'s termination of rental assistance was effective on March 27, 2019. Ibid.

L.B. requested a hearing of the second termination, and both terminations were consolidated and transmitted to the OAL as a contested case.

Hearings were held on April 3, 2023 and July 11, 2023. L.B. testified on her own behalf. (2T53; 2T72). L.B. testified that she produced proof of her change of income to the Atlantic City Field office, and suggested that staff mishandled or misplaced the documents. (2T75:13-25; 2T78:16-24). She also testified that she was not asked for pay stubs from any of her case managers until July 2017. (2T85:14-17).

E. The ALJ's Initial Decision

On January 16, 2024, the ALJ issued an initial decision, affirming both terminations of L.B.'s voucher. (Pa17-61). Regarding the first termination, the ALJ determined that while a preponderance of evidence showed that L.B.

brought the employment letters from Concentrix to the Atlantic City field office in November 2016, February 2017, and again in April 2017, none of the letters sufficiently reported L.B.'s change in income. (Pa52-53).

As to the November 2016 letter offering temporary employment, the ALJ concluded that the letter was insufficient because it did not confirm L.B.'s employment, it did not provide the number of hours she would be working, and it did not provide any additional information about L.B.'s compensation beyond her hourly rate. (Pa52). Regarding the February 2017 letter, which is the same letter L.B. also brought to the field office on April 10, 2017, the ALJ determined the letter was similarly "insufficient to demonstrate the necessary income information for L.B." (Pa53).

Based on the testimony of De la Cretaz and Whitecloud, the ALJ further concluded that L.B. understood that she was required to report adequate income information, not just the employment information she provided. (Pa53). The ALJ noted that L.B. received program documentation -- specifically the tenant information form -- making clear her obligation to provide adequate income information, such as pay stubs. Ibid. Yet, despite receiving such documentation that expressly requires participants to report income via pay stubs -- dating all the way back to September and October 2016 -- L.B. failed to provide pay stubs from her job with Concentrix until August 14, 2017. (Pa54). The ALJ

accordingly found that L.B.'s assertion that she was never asked to provide pay stubs until Ms. Whitecloud asked for them in July of 2017, did "not square with the program documentation obligating families to provide income information," including the tenant information form, signed by L.B., which specifically requires pay stubs. (Pa54). The ALJ concluded L.B.'s production of adequate income information, in the form of pay stubs on August 14, 2017, came well after ten days from the date of the change in income and was thus in violation of L.B.'s obligations under the program pursuant to 24 C.F.R. §§ 982.551(b)(1), 982.551(b)(2), 982.551(b)(4), and 982.552(c)(1)(vi). (Pa54-55).

The ALJ further held that even if she were to accept L.B.'s argument that she was never asked to provide pay stubs, termination from the Program remained the only viable result. (Pa55). To the extent an error occurred in the funding provided to L.B., "whether through the fault of the participant or DCA's actions," the ALJ concluded that the appropriate adjustments nonetheless had to be made. (Pa55). The ALJ explained, given the overpayment and debt owed to the federally funded program, "DCA must account for the program funding and adjust or modify L.B.'s subsidy, even if it results in having to terminate L.B. despite her asserted substantial compliance with the production of employment information." Ibid. As such, because L.B.'s debt was beyond the threshold for

a repayment plan, the ALJ concluded that DCA's decision to terminate was appropriate. Ibid.

Regarding the second termination, the ALJ again concluded that DCA acted appropriately, finding that L.B. failed to promptly advise that she was terminating her lease and vacating her apartment. (Pa55-57). The ALJ emphasized that it was undisputed that L.B. was not in good standing with the program in December of 2018, given that she was in appeal status for her first termination. (Pa56). The ALJ rejected L.B.'s contention that because her first termination was stayed by DCA's Commissioner pending the appeal, she could transfer her voucher. Ibid. Instead, the ALJ found that L.B. was explicitly told she could not move because she was not in good standing, but still decided to go through with terminating her lease. Ibid. Additionally, L.B. failed to provide timely written notice to DCA of her move. (Pa56-57).

Accordingly, the ALJ found that L.B. was in violation of the Program's rules because she failed to provide timely notice that she intended to vacate her unit and that she was terminating her lease. Ibid. The ALJ also concluded that L.B. knew she could not vacate her unit and expect to have her voucher carry over because she was not in good standing. Ibid.

F. DCA's Final Agency Decision

On April 15, 2024, the DCA Commissioner issued a final agency decision, adopting the ALJ's initial decision. (Pa14-16). Regarding the first termination, the Commissioner emphasized that, although L.B. failed to provide adequate income information, "she was not immediately terminated and attempts were made to contact her to obtain the outstanding information." (Pa15). And, during that time, L.B.'s rent was paid in full, leading to nearly "$9,000 in rent payments paid on her behalf that she was not entitled to." Ibid. Yet, "[d]espite knowing she had a stream of income and that her rent was being paid in full by DCA, [L.B.] did not take the action necessary under the program to properly recertify." Ibid.

The Commissioner also rejected L.B.'s novel argument, raised for the first time in her exceptions to the initial decision, that "despite her delay in providing pay stubs, her hours of work, and certification of the location of her employment, DCA could have used [HUD's] Enterprise Income Verification (EIV) system to calculate her income." Ibid. The Commissioner explained that EIV is a tool for "'validating tenant-reported income during interim and annual reexaminations of family income,'" not a replacement for a participant's responsibility to report income. Ibid. (quoting HUD, Notice PIH 2018-18 (October 26, 2018)).[5] By

[5] HUD, Notice PIH 2018-18 (October 26, 2018), https://www.hud.gov/

L.B.'s logic, the Commissioner noted, "the information requirements that DCA sets as a PHA need not be complied with so long as EIV remains an option." Ibid. Such a result would not only place a significant burden on field offices and case managers, but also ignores the fact that EIV is primarily used for verification of reported income, not as a substitute for reporting income. Ibid. As such, the Commissioner found that the first termination was warranted. Ibid.

The Commissioner also found that the second termination was warranted, emphasizing that "despite her case worker telling [L.B.] to await a decision on her appeal and [L.B.] not receiving approval to relocate, [L.B.] relocated without proper notice or clearance from DCA." (Pa16). The Commissioner also rejected L.B.'s newfound argument that "the appropriate remedy for her unauthorized relocation [was] not program termination but a delay in funding for her new residence," under the Administrative Plan. (Pa16). The Commissioner explained that the relevant provision of the Administrative Plan that allows for a delay in funding applies to properly conducted address changes, not in this case where "[L.B.] moved while her program status was uncertain." Ibid.

On May 21, 2024, L.B. filed a notice of appeal with this court.

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sites/dfiles/PIH/documents/PIH-2018-18_EIV_Admin_Notice_PIH_2012-10_FINAL.pdf (last visited December 23, 2024).

ARGUMENT

AS DCA'S DECISION IS REASONABLE AND BASED ON SUBSTANTIAL CREDIBLE EVIDENCE, IT SHOULD BE AFFIRMED.

DCA's final agency decision, adopting the ALJ's initial decision is readily supported by substantial credible evidence in the record, and should be affirmed. On appeal, L.B. fails to show that DCA's decision is incorrect, let alone arbitrary capricious or unreasonable.

"The scope of appellate review of a final agency decision is limited." In re Carter, 191 N.J. 474, 482 (2007). A reviewing court must give deference to an agency's decision unless it is arbitrary, capricious, unsupported by substantial credible evidence contained in the record, or in violation of express or implicit legislative policies. In re Juvenile Detention Officer Union Cnty., 364 N.J. Super. 608, 614 (App. Div. 2003); accord In re Taylor, 158 N.J. 644, 656-57 (1999). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting Carter, 191 N.J. at 483). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)); see also Campbell v. N.J. Racing

Comm'n, 169 N.J. 579, 587 (2001) ("[C]ourts grant deference to agency expertise on technical matters, 'where such expertise is a pertinent factor.'" (quoting Close v. Kordulak, 44 N.J. 589, 599 (1965))). Moreover, "an agency's interpretation of both a statute and implementing regulation, within the sphere of the agency's authority," is entitled to deference "unless the interpretation is plainly unreasonable." Ardan v. Bd. of Review, 231 N.J. 589, 604 (2018) (quoting In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)).

L.B. raises three arguments. Regarding the first termination, L.B. asserts, for the first time, that the termination should be reversed because DCA allegedly failed to follow its own policies by requiring L.B. to provide adequate proof of income. (Pb20-27). She also specifically takes issue with the testimony of Ms. De la Cretaz, arguing that to the extent that the final agency decision relied on her testimony in affirming the first termination, it is not based on substantial credible evidence. (Pb28-29). Regarding the second termination, L.B. argues, for the first time, that she could not have been "not in good standing" with the Program without a separate final agency decision on that specific finding. (Pb29-31). Thus, she was apparently permitted to transfer her voucher without giving proper notice. Ibid. For the following reasons, these arguments should be rejected.

A. DCA's First Termination of L.B.'s Housing Voucher Was Reasonable Because L.B. Failed To Provide Timely And Adequate Information Regarding Her Change Of Income (Response To Points I And II).

Pursuant to 24 C.F.R. § 982.551(b)(2), all participants in the Program "must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements." "All changes in income, whether related to wages or other source, must be reported to the field office, in writing, within ten (10) days of the date participant knows there will be a change in income for any reason." (Ra9). See also (Pa110); 24 C.F.R. § 982.551(b)(1) ("The family must supply any information that the PHA or HUD determines is necessary in the administration of the program."); 24 C.F.R. § 982.551 (b)(2) ("The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim examination of family income and composition in accordance with HUD requirements.").

Here, the Commissioner and the ALJ both determined that L.B. violated these rules as she was derelict in her obligation to provide sufficient documentation of her change in income from November 2016 through August 2017. (Pa14-15, Pa51-55). Both the November 2016 and February 2017 letters that L.B. provided to the field office, (Pa52-53), were insufficient to report

income because they did not include the number of hours L.B. would be working. (1T38:1-4, 118:10-14, 121:1-8). DCA's adoption of the ALJ's finding in this regard is directly supported by the testimony of McGovern-Smith and De la Cretaz, who testified that the letters of employment produced by L.B. were insufficient for reporting a change in income. (1T38:1-9; 39:9-16; 118:8-14; 152:1-6). The finding is further supported by language on the tenant information form that L.B. signed, which explicitly requires production of "two current and consecutive original pay stubs" from Program participants that are employed. (Pa154).

Also, as noted in the Commissioner's decision, two case managers made repeated requests to L.B. to provide adequate information over the course of several months. (Pa14-15). These requests came in the form of a letter dated April 10, 2017 from De la Cretaz, (Pa164), an April 28, 2017, letter from Whitecloud, (Pa246), and a June 28, 2017, letter from Whitecloud, (Pa166). L.B. stipulated to receiving each of these letters, (Pa64), yet, in response to them, she failed to provide the documentation requested. Namely, on May 11, 2017, L.B. submitted an updated tenant information form that still entirely failed to provide her income, hourly rate, or hours worked. (Pa248-49, Pa252; 1T157:8-13).

It was not until August 14, 2017 that L.B. provided adequate income information in the form of pay stubs. (1T159 to 160). And as noted by the ALJ, once the adequate proof of income was provided, "necessary adjustments had to be made to L.B.'s voucher due to the reported income." (Pa55). But by that point, L.B. had received months of unjustified rental payments resulting in a debt of $8,963.40 to the Program. (Pa73). This amount of debt is nearly three times over the $3,000 threshold limit for a repayment agreement; thus, DCA's final agency decision terminating L.B.'s voucher was not only reasonable, but required. (Ra58-59; Pa73).

On appeal, L.B. takes issue with the emphasis placed on her failure to provide pay stubs, in both the ALJ's initial decision and DCA's final agency decision. (Pb23). Namely, L.B. notes that under the Administrative Plan and reexamination policy, the obligation to report income within ten days starts at the date of employment, "not when the first paycheck is received." (Pb23; Pa433). Accordingly, L.B. argues that she could not possibly have provided the pay stubs in a timely manner, following the change in income caused by her employment with Concentrix. (Pb23). L.B. thus asserts that her termination for her failure to timely report income information, such as pay stubs, conflicts with DCA's policies and should be a basis for reversing her termination. (Pb26). This argument is flawed for two reasons.

First, L.B.'s argument fails to remedy the fact that the November 2016 and February 2017 letters were still inadequate to report income. Even accepting L.B.'s argument that she was not required to produce pay stubs per se, she still failed to produce adequate information, as neither letter provided the number of hours to be worked. (Pa163, Pa264). As testified by two case managers, and found by the ALJ and Commissioner, these letters were not sufficient to calculate a change in income. (1T38:1-9; 39:9-16; 118:8-14; 152:1-6; Pa14-15; Pa54-55). Thus, even if L.B. could not have provided paystubs as early as November 2016, what she provided was still inadequate.

To the extent L.B. asserts that the letters provided were adequate because of the availability of the EIV to verify her income, she is incorrect. (Pb26-27). As noted in the Commissioner's final agency decision, the mere fact that DCA must use the EIV to verify reported income does not change the fact that L.B. still failed to comply with her responsibility to adequately report income. (Pa14-15). The EIV is "a web-based application, which provides PHAs with employment, wage, unemployment compensation and social security benefit information for tenants who participate in . . . various Section 8 programs." HUD, Notice PIH 2018-18. PHAs must use the EIV "[a]s a third-party source to verify tenant employment and income information during annual and streamlined reexaminations of family composition and income." 24 C.F.R. §

5.233(a)(2)(i) (emphasis added). As stated in the HUD guidance document cited by L.B., EIV is to be used as a tool for "validating tenant-reported income during interim and annual reexaminations of family income." HUD, Notice PIH 2018-18 (emphasis added). In other words, it is a system for identifying potential fraudulent self-reporting by program participants. It is not, as L.B. suggests, a replacement for adequate reporting. Ibid. Under L.B.'s reasoning, she would be free to provide incomplete and inadequate information, thus ignoring her duties to adequately report income, so long as DCA could verify her income with the EIV. As explained by the DCA Commissioner, such a reading misinterprets the use of the EIV and would place significant strain on field offices. (Pa14-15). At base, the provided letters were inadequate. The inquiry can end there.

Second, L.B.'s new argument also fails to account for the fact that by February 2017, when her employment was extended, she could have provided pay stubs, as she had been working for Concentrix for months at that point. And, as found by the ALJ, L.B. understood her duty to provide such pay stubs based on her prior signing of the tenant information form, which requires them. (Pa54). In that regard, the ALJ flatly rejected L.B.'s testimony that she did not know she needed to provide paystubs until July 2017. Ibid. In sum, the information provided by L.B. was not adequate, and she was given many

chances to provide adequate information. The termination, as a result, was warranted.

Finally, L.B.'s attack on De la Cretaz's credibility entirely misses the mark. In attacking De la Cretaz's testimony that she told L.B. the information provided was inadequate, L.B. continues to argue that she did not know she was required to provide adequate information, such as pay stubs. (Pb28-29). Yet, this argument is belied by the letters requesting additional information, which she stipulated to receiving, (Pa64), the testimony of Whitecloud, whose credibility L.B. does not appear to challenge, and the ALJ's resounding rejection of L.B.'s testimony that she did not understand her reporting requirements. (Pa54-55). Again, as noted by the ALJ, L.B.'s testimony did "not square with the program documentation obligating families to provide confirming income information, including the TIF packets completed by L.B." herself. (Pa54). And, of course, this court should defer to those factual and credibility determinations. See H.K. v. State, 184 N.J. 367, 384 (2005) (noting it is generally not for a reviewing court or agency head "to disturb" an ALJ's credibility determination).

For these reasons, DCA's final agency decision terminating L.B.'s housing voucher for failure to provide timely and adequate income information should be affirmed.

B. The Second Termination From The Program Was Also Reasonable Due To L.B.'s Improper Change In Residence Without Notice And While Her Program Status Was Pending Review (Response To Point III).

Pursuant to HUD regulations, a Program participant must "notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner." 24 C.F.R. § 982.551(f). Under the Administrative Plan, the participant must "notify the [P]rogram and the owner [of the current assisted unit], in writing 45 days before the household intends to move out of the assisted unit." (Ra54). DCA does not permit participants to transfer their voucher to a new unit if the participant is not in good standing with the Program. (2T12:17-20; 2T27:2-11); see (Ra55 ("Before a Voucher can be reissued to a program participant to begin their housing search, the DCA must confirm that proper notice was given to their current landlord and that the household is in good standing and otherwise eligible to relocate.") (emphasis added)). Under the Administrative Plan, "[i]n good standing," means "that a participant is in full compliance with all program regulations and policies as determined by DCA staff." (Ra15).

Here, in late 2018, L.B. verbally asked her case worker, Ms. Barker, if she could move. (2T11:25 to 12:10). Barker, however, explained to L.B. that she could not move while her status in the Program was still in flux due to her prior

termination, which was stayed pending appeal at the time. (2T12:3-7). Indeed, as found by the ALJ, it was "undisputed that L.B. was not in good standing" with the Program. (Pa56). Yet, apparently undeterred, L.B. sent Barker an email on December 4, 2018, stating that she moved on December 1, 2018. (Pa183). At no point did Barker ever tell L.B. that she was clear to move or that her voucher could be transferred to a new apartment. (2T141:11-16). In direct contradiction of her caseworker's advice, and without providing the required 45 days written notice, L.B. impermissibly moved without any clearance from DCA. Her second termination from the Program was plainly warranted.

On appeal, L.B. now takes issue with the underlying finding that she was "not in good standing" with the program. (Pb29-30). Citing this court's decision in Bouie v. NJ Department of Community Affairs, 407 N.J. Super. 518 (App. Div. 2009), L.B. asserts that the finding that she was not "in good standing" could not be used against her until after a full hearing and decision on her first termination. (Pb30). In other words, L.B. appears to be arguing that her first termination needed to be finalized through a final agency decision, before she could be found to be "not in good standing" with the Program. (Pb31 ("DCA claiming that L.B. was not "in good standing" prior [to] the Final Agency Decision is contrary to the holding in Bouie and undercuts the process mandated

under the APA.")). L.B. misconstrues Bouie and the Administrative Procedure Act (APA).

The relevant holding of Bouie stands for the proposition that a dispute over the termination of an individual's housing voucher constitutes a "contested case," within the meaning of the APA, and thus DCA is required to transmit such matters "to the OAL for a hearing before an ALJ." Bouie, 407 N.J. Super. at 536. This is, of course, what DCA did for both of L.B.'s housing voucher terminations. The finding that L.B. was not in good standing at the time she moved is merely an underlying fact supporting the second termination and not a legal prerequisite. To the extent L.B. believed that her prior pending-termination should not affect her standing with the Program, she could have challenged the underlying finding that she was not in good standing at the hearing before the ALJ. However, while she strongly disputed the merits of her first termination, she did not appear to challenge that her pending first termination placed her out of good standing with the Program, which is precisely why the ALJ found it to be undisputed. (Pa56).

Moreover, pursuant to the Administrative Plan, to be out of good standing, means that a "participant" is not in "full compliance" with the Program's rules; it does not mean the participant has been fully terminated from the Program. (Ra15). Yet, L.B.'s argument that the first termination needed to be finalized

before she could be found to be not "in good standing," suggests that the status of not "in good standing," is the equivalent of being fully terminated. Clearly, if L.B. had already been fully terminated from the Program through a final agency decision, the second termination would not even be necessary, because she would no longer be a participant at all. At base, DCA staff found L.B. to be out of full compliance as a result of her pending first termination. (Pa200). This was merely a factual finding supporting the second termination, which the ALJ found to be undisputed. (Pa56). It was not impermissible for this fact to be considered in support of the second termination.

In any event, even setting aside whether or not she was in good standing with the program when she moved, L.B. concedes that she violated 24 C.F.R. § 982.551(f) when she moved out of her apartment without properly informing DCA. (Pb31). Her termination was thus reasonable regardless of her status with the Program.

Finally, L.B.'s continued assertion that the appropriate remedy for this admitted violation was a delay in funding misreads the Administrative Plan. (Pb31). In her exceptions submitted to the Commissioner, L.B. asserted that a provision of the Administrative Plan contemplates a delay in funding when a participant moves. (Pa319; Ra55 ("[A] participant may have to assume full responsibility for all their housing costs until the new unit that they have selected

complies with all program requirements."). However, as found by the Commissioner, that provision of the Administrative Plan applies when the participant properly secures a change of residence; in other words, had L.B. been in good standing and properly notified DCA of her intention to move, she would still have likely experienced a delay in funding for her new unit. (Pa16). That provision has no applicability here, where L.B. violated HUD regulations and DCA's procedures. The second termination was thus warranted and reasonable.

CONCLUSION

For these reasons, DCA's final agency decision should be affirmed.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-002871-23T4

L.B., *Petitioner-Appellant,* *vs.* **DEPARTMENT OF COMMUNITY AFFAIRS,** *Respondent-Respondent.*	*ON APPEAL FROM:* Final Agency Decision of Department of Community Affairs OAL Docket Nos. CAF 08806-19 & 08812-19 (Consolidated) *CIVIL ACTION* *SAT BELOW:* Jacquelyn A. Suarez, Acting Commissioner, Department of Community Affairs

REPLY BRIEF OF PETITIONER-APPELLANT L.B.

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I. DCA INCORRECTLY ASSERTS THAT L.B. DID NOT ARGUE DURING HER OAL APPEAL PROCESS THAT DCA HAD ARBITRARILY FAILED TO FOLLOW ITS OWN SECTION 8 ADMINISTRATIVE PLAN AND HUD REGULATIONS REGARDING INCOME VERIFICATION IN TERMINATING L.B. FROM THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM.

DCA incorrectly argues in its Respondent's Brief that L.B. has for the first time argued on appeal that DCA's decision to terminate her from the Section 8 Housing Choice Voucher Program was based on DCA's arbitrary failure to comply with its own Housing Choice Voucher Program Administrative Plan ("Administrative Plan") and required HUD regulations and procedures concerning verification of income. (Db21-23) L.B. had made this argument during the entire duration of her administrative appeal, starting with her handwritten letter requesting an informal hearing (Pa233-Pa236) through the ALJ hearing, continuing through L. B.'s Exceptions to the ALJ's decision submitted to the DCA agency head (Pa314 – Pa387).

At the ALJ hearing, L.B.'s attorney asked DCA's witness Tracy McGovern Smith, if anyone at DCA ever made any efforts to perform an Enterprise Income Verification (EIV) check to verify L.B.'s income. The response was that "she hadn't been working there long enough for us to determine that at that point because she had just started," (1T67-3 to -5), despite L.B. having provided DCA with an

extension of employment letter dated February 23, 2017—three months after L.B. first reported her new job in November 2016.

Thus, DCA had not attempted to perform the EIV check as mandated by 24 C.F.R. § 5.233(a)(1)(ii). This regulation became effective on January 31, 2010 and required all PHA's to use the EIV system in its entirety. As previously argued in her Appellant's brief (Pb20-27), a key part of L.B.'s position throughout her administrative appeal has always been that DCA had an obligation to utilize the EIV system to verify her income but they neglected to do so and then shifted their burden to L.B. to make up for DCA's failure to properly administer the program. L.B.'s Exceptions to the ALJ's Initial Decision submitted to the DCA agency head, dated January 29, 2024, shows that L.B. had clearly and unequivocally raised the issue of DCA's failure to utilize with the EIV system. (Pa314 – Pa387).

In addition, L.B.'s Exceptions to the ALJ's Initial Decision also raised the issue of DCA's failure to comply with DCA's own Section 8 Administrative Plan concerning DCA's insistence on paystubs. As stated L.B. stated in the Exceptions:

> Chapter 11 of the Plan sets forth the methods for verifying household income. The Plan states that "[a]ll changes in income must be reported to the field office, in writing within ten (10) days. Such changes must be reported within ten (10) days of the commencement of employment or training period not when the first paycheck is received." Neither the Plan nor the Appendix to the Plan state with specificity what information the documents must contain. [(Pa314)][1]

[1] This was the practice followed by the local DCA office testified by Tracy McGovern Smith that "first it must be reported to us and then we need to verify the

Thus, as argued in L.B.'s Appellant's brief (Pb23-27), DCA improperly imposed upon L.B. a higher standard than that required by both the DCA's Administrative Plan and the HUD regulations—and in fact penalized her for complying with DCA's Administrative Plan. L.B. provided DCA with notice of her change in income within ten (10) days of the employment offer as required by the Administrative Plan. She received a confirmation of employment from Concentrix on November 15, 2016 and brought that letter to the Atlantic City field office on November 22, 2016, within the required ten (10) days. The April 2023 position of the DCA is that the information contained in the letter was not enough to verify L.B.'s income. This position ignores the fact that the Administrative Plan only requires the household to report a "change in income" and not a paystub or any other documentation. The burden then falls on the DCA caseworker to obtain income information through the EIV system, requesting paystubs or other information. The issue in this case is that the caseworker did nothing to obtain the income information other than to take the letter from L.B. It would have been very easy for the caseworker to request paystubs from L.B. as soon as she received them, to send a letter to L.B. requesting more information or to contact the person who signed the

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information." (1T31-23 to 25), unless of course "things do get lost, some things are chalked up to administrative error things do happen. . . . (1T76-4 to 8)

employment letter as their email address was on the letter. However, DCA did none of those things and let L.B. believe that she was in compliance with the program requirements.

Again in February of 2017, L.B.'s employment was extended and she was issued a new letter from Concentrix dated February 23, 2017. L.B. brought the letter to her caseworker at DCA, Deborah de la Cretaz, on February 24, 2017. L.B. has consistently and repeatedly argued that she supplied all documentation requested by DCA but DCA failed to comply with its own internal policies and that caused L.B. to underpay her rent, as an interim re-examination was not processed until almost ten (10) months after she began her employment. Once it became obvious during the testimony of de la Cretez on April 3, 2023 that L.B. had in fact supplied the employment letters, the position of DCA became that L.B. failed to provide paystubs, the number of hours she was to work and contact information. L.B. was never asked to provide paystubs until a phone call in July 2017, after L.B. sent the employment letter and bank statements as requested in the June 28, 2017, (2T124-15 to 18) More importantly, it appears that no one from DCA ever tried to get this information from the contact person who wrote the employment letters despite having an email address by which they could easily do so.

Finally, as L.B. has argued for the entirety of this case, DCA had the ability to independently verify her income, in fact, the HUD regulations mandate the use of

the EIV system to verify income but DCA simply did not make use of the system DCA's failure to use the system in L.B.'s case is a dereliction of their responsibility to properly administer the Section 8 program which they are now attempting to shift to L.B. at the grave risk of losing her voucher.

Appellate courts defer to an agency's interpretation of both a statute and implementing regulation within the sphere of the agency's authority unless it is plainly unreasonable. Ardan v. Board of Review, 231 N.J. 589 (2018). The reason given for the October 6, 2017 Initial Decision to Deny/Terminate Housing Assistance was failure to provide complete and timely information about her income from January 2017 through July 14, 2017. The Hearing Officer's April 13, 2018 finding was that L.B. failed to report her income in writing within ten (10) days. This is a plainly unreasonable interpretation of the Administrative Plan, as both the 2017 Plan in effect at the time these issues arose, and the 2024 Administrative Plan, erroneously used by the DAG, state only that "[a]ll changes in income must be reported to the field office, in writing, within ten (10) days. Such changes must be reported within ten (10) days of the commencement of employment or training period, *not when the first paycheck is received.*" (Emphasis added).

The only requirement that L.B. had to fulfill was to report a change in income, in writing within ten (10) days of the beginning of employment. The Administrative Plan says nothing about "complete and timely information" or a requirement that a

recipient has to provide the number of hours they're expected to work, or an address or location. Failure to provide this information is the reason given for L.B.'s first termination. DCA is attempting to enforce a requirement on L.B. that is not set forth either in its Administrative Plan or the regulations but is in fact the responsibility of the DCA. The DCA field office inserted requirements into its Administrative Plan that did not exist and then accused L.B. of failing to meet these non-existent requirements. The Plan and the Guidebook are specific in their wording of the obligations of the applicant. ALJ Fricke concluded after the hearing that L.B. did provide documentation about her employment on November 22, 2016. ALJ Fricke concluded that L.B. did bring the February 23, 2017 employment letter to DCA prior to April 10, 2017 but erroneously concluded that the letter was insufficient. Once DCA and ALJ Frick were faced with the conclusion that L.B. was compliant, they created a new obligation just for L.B. This conclusion reflects an incorrect reading of the requirements for recipients set forth in the Administrative Plan.

II. THE COMPETENT AND CREDIBLE EVIDENCE DEMONSTRATES THAT L.B. DID IN FACT PROVIDE DOCUMENTATION TO DCA STARTING IN NOVEMBER OF 2016 AND CONTINUOUSLY THROUGH MARCH OF 2018 WHEN DCA SOUGHT TO TERMINATE FROM THE SECTION 8 PROGRAM.

The ALJ's findings and Initial Decision do not comport with the evidence presented at the ALJ hearing via testimony of the DCA employees and documents

presented. The initial reason given for L.B.'s termination from the program was due to "not reporting income to the Program and failure to disclose all required information requested by our office..." (Pa8) The ALJ's decision then upholds the termination based upon the notion that L.B. disclosed information but that information was not sufficient. The ALJ glosses over the fact that L.B. was never asked for any further information about her income until April of 2017, approximately six (6) months after she first provided her employment information. The ALJ concluded that L.B. provided written documentation of her employment in November of 2016 and again before April 10, 2017.

This is the crucial point as it illuminates the fact that DCA first stated that L.B.'s termination was due to failure to notify the agency of *any* change in household income until April 10, 2017. (J-25 Termination Notice, Pa81). Then, at the ALJ hearing Ms. de la Cretaz testified that she had seen the November 16, 2016 (J-47, Pa263) letter and the February 23, 2017 (J-14, Pa162) letter prior to April 10, 2017 but she did nothing to verify the change in income. (1T121-9 to -21; 1T138-10 to -19). She testified that if she had received the November 16, 2016 letter she would have sent a letter much like the one she did in April. (1T152-22 to -25, 1T153-1 to -2). However, once Ms. de la Cretaz realized that she had failed in her duties as outlined in the Administrative Plan and the handbook, she attempted to place the blame on L.B. by alleging the letters were not sufficient and her requests

for more information were ignored. (1T139-11 to -24).

The DCA could not produce one piece of evidence to prove that there had been any effort to follow up with L.B. and request further information about her new employment, paystubs or bank statements. There was not one letter, telephone message or email showing that there was any effort to verify the information that L.B. provided on in November of 2016 and February of 2017. Additionally, Ms. de la Cretaz testified that there was no contact information for the employer but in fact the letter was signed by the employer's representative and that person's email address was in the letter.

At that point, the DCA employees stated that L.B. was terminated due to failure to provide "sufficient information of her change in income between November 2016 through August of 2017." Firstly, L.B. did supply information to DCA regarding her employment and ALJ Fricke concluded that in her decision. Secondly, there is no recipient obligation to provide anything other than a written notice of change in income within ten (10) days of the change. Neither the Administrative Plan, the regulations or the Guidebook state that a recipient has to do anything other than notify the DCA in writing within ten (10) days of the change. According to the handbook and the Administrative Plan, the change in income had to be verified by the agency. Thus, the burden is on the agency to then follow up to get accurate income information. This never happened and the failure of the DCA

to get accurate income information is not grounds for termination of L.B.'s voucher. There is no evidence, credible or otherwise that showed that any effort was made to get this information before April 10, 2017. DCA's argument is misleading as L.B. has always maintained that she did not receive the April 10, 2017 letter and was made aware of its existence during a phone call with the field office in September 2017). The DCA exaggerates the "repeated requests" which amounted to two letters.

ALJ Frick's holding that the letters were insufficient is not viable as there is nothing in the Handbook or the Plan that defines "sufficient," or even requires a weighing of the information. The requirement is notification which ALJ Fricke concluded in her decision that L.B. did in fact provide these letters to the DCA. For this reason, the ALJ's decision must be reversed as it is based upon an alleged violation of a policy that does not exist.

Additionally, the ALJ's conclusion that L.B. failed to supply information to DCA necessary for the administration of the program, failure to supply information requested and that the information supplied must be true and accurate ignores the weight of the evidence presented. ALJ Fricke found that L.B. presented the employment letters to DCA but then concluded she did not supply information requested and that the information was not true and complete. L.B. presented her employment letters to DCA on November 22, 2016 and February 24, 2017, and her caseworker failed to request any further information from her until April 10, 2017

in a letter that L.B. did not receive. The regulations cited by the ALJ as having been violated by L.B. do not dictate that the recipient supply anything other than information requested by the PHA or HUD. 24 C.F.R.§ 982.551(b)(2), [t]he family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income...in accordance with HUD requirements." No additional information was requested of L.B. until April of 2017, she could not be in violation of the regulations by failing to provide information that was not requested of her.

The family must supply any information that the PHA or HUD determines is necessary in the administration that the PHA or HUD determines is necessary in the administration of the program...." 24 C.F.R. §982.551(b)(1). Again, no further information was requested of L.B. so she could not have been in violation of a regulation when she did supply all requested information to her caseworker. The issue is that the caseworker, Ms. de la Cretaz failed to act on the information that she was provided and simply did nothing.

The regulations and HUD Notices do however mandate that the agency use the EIV system to verify the household's income. According to Ms. McGovern-Smith, to her knowledge no one at the agency used the EIV system to verify L.B.'s income which is in direct violation of the HUD regulations and Notices. If the PHA fails to comply with the mandated EIV system use, it may be subject to sanctions

and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculation or both. PIH 2010-19, PIH 2012-10, PIH 2017-12, PIH 2018-18. In the present matter, the DCA should not be allowed to pass the consequences onto L.B. for their failure to meet their obligations as set forth by HUD regulations, in administering the program.

III. DCA'S ARGUMENT THAT L.B. WAS NOT IN "GOOD STANDING" WHILE HER ADMINISTRATIVE APPEAL WAS PENDING AND THEREFORE SHE WAS NOT ENTITLED TO USE HER VOUCHER TO MOVE IS LEGALLY INCORRECT.

Despite DCA's and the ALJ's characterization that it was "undisputed" that L.B. was not in good standing as of December 1, 2018, this issue is very much in dispute and always has been. As previously argued in L.B.'s Appellant brief (Pb29-31), DCA's position is contrary to the decision in Bouie v. New Jersey Dep't. of Community Affairs, 407 N.J. Super. 589 (2009)—since there had not been any ALJ hearing and final agency decision by DCA as of December of 2018, when the move occurred, L.B. had not yet finally terminated from the Section 8 Housing Choice Voucher Program. As the Appellate Division held in Bouie,, "[b]oth HUD and the DCA recognize that Section 8 benefits are public assistance benefits which, under Goldberg v. Kelly, may not be terminated without first providing the recipient an opportunity for a hearing." Bouie, 407 N.J. Super. at 535 (citing Goldberg v. Kelly, 397 U.S. 254 (1970)).

Thus, under Bouie, before L.B. could be deemed "not in good standing," an initial decision by an ALJ and a final adoption of that decision by the DCA agency head terminating benefits would have had to have occurred. N.J.S.A. §52:14B-10(c). The head of the agency, upon review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendation. N.J.S.A. §52:14B-10(c). The final decision and adoption thereof by the agency head is what determines a recipient's status in the Section 8 program. Thus, in this matter, there could not have been a final agency decision in December of 2018 because the first of the two (2) ALJ hearings did not take place until April of 2023, nearly five (5) years after the date DCA is arguing that a final decision was made.

Further, the HUD regulations governing recipient moves states the family's obligation when moving is that [t]he family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner." 24 C.F.R. § 982.551(f). The unrefuted testimony of both DCA witness Karen Barker and L.B., (2T23-7 to -13, 2T104-9 to -22), shows that L.B. made numerous telephone calls, in-person visits and email notices in an attempt to get her move approved. L.B. notified the Program in writing via email on December 4, 2018 that she intended to move. Prior to that she notified Ms. Barker via telephone calls and personally visited the DCA field office to advise them of her move and obtain a

packet to move but was denied due to her status as "awaiting hearing." She was verbally denied because she was "not in good standing" according to DCA and for no other reason than she was awaiting a hearing on this issue.

L.B. was thus in compliance with the requirements of DCA's Administrative Plan when she moved in December of 2018. DCA terminating her from the Program simply because she moved to another unit while her administrative appeal was pending was arbitrary and unreasonable. Moreover, as previously argued (Pb31), even if there would have been any delay in processing the move, DCA's Section 8 Administrative Plan nonetheless permitted DCA to approve the transfer but with L.B. paying the full market rent until DCA inspected and approved the property.

CONCLUSION

For the foregoing reasons, Petitioner-Appellant L.B. respectfully requests that the Appellate Division reverse DCA's Final Agency Decision terminating her from continued participation in the Section 8 Housing Choice Voucher Program and reinstating her rental subsidy as of May 2018.

Dated: January 20, 2025

Respectfully submitted,
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