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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0419-16T1

ROZALIA RAAB,

Petitioner-Appellant,

v.

DEPARTMENT OF COMMUNITY AFFAIRS,
SANDY RECOVERY DIVISION,

Respondent-Respondent.

DEPARTMENT OF COMMUNITY AFFAIRS,
SANDY RECOVERY DIVISION,

Petitioner-Respondent,

v.

ROZALIA RAAB,

Respondent-Appellant.

Argued May 3, 2018 — Decided May 14, 2018

Before Judges Haas and Gooden Brown.

On appeal from the Department of Community
Affairs, Docket Nos. RRE0032319 and
RSP0032337.

Alexander F. Hersonski argued the cause for
appellant (South Jersey Legal Services, Inc.,

attorneys; Alexander F. Hersonski, of counsel and on the briefs).

Valentina M. DiPippo, Deputy Attorney General, argued the cause for appellant (Gubir S. Grewal, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Valentina M. DiPippo, on the brief).

PER CURIAM

Rozalia Raab appeals from a final agency decision of the Department of Community Affairs (DCA), which adopted the initial decision of an Administrative Law Judge (ALJ) pursuant to N.J.S.A. 52:14B-10(c). The ALJ determined Raab was ineligible to receive grant money from the DCA's Resettlement Program (RSP) and its Reconstruction, Rehabilitation, Elevation, and Mitigation Program (RREM) to repair a house she owned that was damaged by Superstorm Sandy because the house was not Raab's primary residence. We affirm.

On October 29, 2012, Superstorm Sandy struck New Jersey. In response to the devastating damage caused by the storm, the United States Department of Housing and Urban Development (HUD), through the Community Development Block Grant-Disaster Recovery Program, provided funds to the DCA for a variety of programs designed to assist affected New Jersey residents who met the specified eligibility requirements for these programs.

In turn, the DCA developed the RSP and the RREM. The RSP provided \$10,000 grants for non-construction purposes to encourage eligible homeowners to remain in the county in which they lived at the time of the storm. The RREM provided grants up to \$150,000 to assist those eligible with reconstruction, rehabilitation, elevation, and other mitigation activities to restore their residences.

HUD through the DCA approved the eligibility criteria for both the RSP¹ and the RREM.² Both programs required that the damaged residence must have been owned and occupied by the applicant at the time of the storm, October 29, 2012, as the applicant's primary residence.

Pursuant to the RSP, an applicant's claim that a house is their "primary residence" is verified

through evaluation of multiple data sources and documents. The preferred verification requires all three of the following:

¹ N.J. Dep't of Cmty. Affairs, Resettlement Program (RSP) Policies and Procedures, <http://www.renewjerseystronger.org/wp-content/uploads/2014/09/Resettlement-Program-Policies-and-Procedures.pdf> (last updated 2015) ("RSP Policies & Procedures").

² N.J. Dep't of Cmty. Affairs, Reconstruction, Rehabilitation, Elevation, and Mitigation (RREM) Program Policies and Procedures, <http://www.renewjerseystronger.org/wp-content/uploads/2017/04/Reconstruction-Rehabilitation-Elevation-and-Mitigation-RREM-Program-Policies-Procedures.pdf> (last updated 2017) ("RREM Policies & Procedures").

- [(1)] Ownership of the property must be verified [through a public title search].
- [(2)] [Federal Emergency Management Agency (FEMA)] records must show the applicant reported to FEMA that the property was the applicant's primary residence at the time of the storm.
- [(3)] The applicant must present a New Jersey driver's license or New Jersey non-driver identification card that shows the damaged residence as the address.

[RSP Policies & Procedures 4.2.]

If the applicant is unable to establish that the property is his or her primary residence through these preferred criteria, the applicant must provide two of the following documents: (1) a "[g]overnment issued document sent to the damaged residence"; (2) a voter registration card; or (3) "[i]nsurance documentation indicating that the damaged address is the applicant's primary residence." RSP Policies & Procedures 4.3. "Other documentation offered by the applicant may be considered on a case-by-case basis." Ibid.

The DCA's criteria for verifying primary residency for eligibility under the RREM are virtually identical to the criteria established for the RSP. Under the RREM, the applicant "must have occupied the property as their primary residence on the date of

the storm (October 29, 2012). Second homes, vacation homes, and rental properties are not eligible for a RREM grant award." RREM Policies & Procedures 3.4. If a RREM applicant is unable to provide "a New Jersey's driver's license or non-driver identification card dated prior to the date of the storm which shows the damaged residence as the applicant's address[,]" the applicant must present a "[f]ederal tax return document indicating [the] damaged residence is [the] primary residence, and [a] voter registration card showing the damaged residence." Ibid.

In July 2013, Raab submitted a RSP application and a RREM application. Each application stated that her primary residence was a home in Pleasantville that was damaged in the storm. On September 20, 2013, Raab executed a grant agreement and promissory note for a RSP grant. The DCA then issued Raab a RSP grant check in the amount of \$10,000.³

By letter dated April 27, 2015, the DCA advised Raab that it had reviewed her RSP application and determined that her house in Pleasantville was not her "primary residence" on the date of the

³ During this period, the DCA was issuing grant checks to applicants before verifying the information contained in their applications. The DCA did so in order to avoid delaying necessary funds to deserving applicants, knowing it could subsequently recover any grant funds that a later investigation revealed should not have been awarded. See Department of Community Affairs, Recapture – Write off Policy, No. 2.10.43, at 1 (September 13, 2013).

storm. Therefore, the DCA denied her application and directed Raab to return the \$10,000 she had already received from the RSP program. On April 27, 2015, the DCA also sent Raab a letter denying her application for RREM grant funds, again because the Pleasantville house was not her primary residence. Raab filed an administrative appeal from both determinations and the DCA transmitted the matters to the Office of Administrative Law (OAL), where they were consolidated and heard by ALJ W. Todd Miller as a contested case.

At the April 29, 2016 hearing, the DCA's representative, Lauren Kirk, testified that Raab did not establish that the Pleasantville house was her primary residence on the date of the storm.⁴ Raab was unable to produce a New Jersey driver's license or a New Jersey non-driver identification card showing the address of the Pleasantville house. Instead, the DCA's investigation revealed that Raab only possessed a Maryland driver's license. This license listed the address for a house Raab owned in Baltimore as her address. Raab did not apply for a New Jersey non-driver identification card until August 31, 2013, a month after she applied for the RSP and RREM grants.

⁴ It was undisputed that Raab owned the Pleasantville house, having purchased it in 2004. The issue at the hearing was whether that house was her primary residence on October 29, 2012.

The DCA's investigation further showed that the property tax bills for the Pleasantville property were sent to Raab at a post office box she owned in New York City. The tax bills for the Baltimore property were also sent to Raab at the same New York City address. The DCA tried to obtain Raab's voting record but, as "a permanent resident," she was not permitted to vote.

Raab testified on her own behalf and claimed that the Pleasantville house was her primary residence. Raab stated that she and her late husband lived in New York City. Her husband died about thirty years ago. Raab testified she inherited the Baltimore house from her husband, and she also began using his post office box at that time. Raab claimed she never lived in the Baltimore house but, instead, rented it to a tenant. However, she also conceded that she obtained the Maryland driver's license showing the Baltimore address shortly after her husband passed away.

Raab produced some lease documents showing that she had a tenant for the Baltimore house. The tenant sent her lease payments to Raab at her New York City address.

Raab testified she purchased the Pleasantville home in 2004, and asserted she had lived in that home as her primary residence since that time. However, Raab then admitted that she spent four or five days and nights each week living and working in New York City. Raab stated she served as a "household companion" for an

elderly woman, who lived on Fifth Avenue in New York City.⁵ According to a written work schedule, Raab worked thirteen-hour days (8:00 a.m. to 9:00 p.m.) on Monday, Tuesday, Wednesday, and Thursday each week. Thus, she lived at her employer's home at least four days a week, and sometimes stayed an extra day.

Raab alleged that she would return to the Pleasantville house each weekend, sometimes leaving very late on Thursday night and arriving in Atlantic City after midnight on Friday. Other times, she would not leave New York City until Friday. Raab stated that when she got to Atlantic City, her boyfriend would pick her up at the bus station and drive them to the Pleasantville house, where he allegedly lived with her. Because Raab had to begin work at 8:00 a.m. on Mondays, she testified she would either return to New York City by bus on Sunday night or very early on Monday morning.

Thus, there is no dispute that Raab lived at the Fifth Avenue address a majority of the time. In addition, Raab testified that she continued to use the New York City post office box as her mailing address because it was more convenient for her than having her mail sent to Pleasantville.

⁵ Raab and other nurses, aides, and companions who cared for the woman were paid from the proceeds of a trust established for the benefit of that individual.

Although she claimed the Pleasantville house was her primary residence, Raab next admitted that she rented at least part of that property to a tenant. Raab testified that the renter "got a very large [bed]room with [her] own kitchenette and private bathroom[.]" In response to a question from ALJ Miller, Raab stated the tenant paid \$1200 a month in rent. When the ALJ questioned her further why the tenant would be paying \$1200 a month for such a small "unit," and advised Raab that her tax returns did not show she received that amount in rent, Raab changed her testimony to claim the tenant actually paid her \$1200 "every two months because she had no money[.]"

Although Raab was able to produce lease documents concerning her Baltimore house, including the amount of rent and the scope of the leasehold, Raab was unable to present similar documentation concerning the rental of the Pleasantville property. Raab asserted she evicted the tenant shortly before Superstorm Sandy hit New Jersey on October 29, 2012. However, she failed to produce any documentation relating to the eviction proceeding, and alleged she contacted the court to obtain these documents but the records had been "purged."

Raab's boyfriend testified he lived in the Pleasantville house with Raab. However, he did not submit any personal documentation, such as a driver's license, to support this claim.

Raab presented some additional exhibits, including bus tickets to and from Atlantic City and New York City; records of payments for prescriptions she filled at a pharmacy near the Pleasantville house; bills for health insurance and medical treatments; and utility bills. After the hearing, she provided copies of her tax returns for 2012 through 2015, all of which were filed after Superstorm Sandy.

On June 29, 2016, ALJ Miller rendered a comprehensive written decision, finding that Raab was ineligible for assistance under the RSP and RREM programs because "she did not reliably and credibly establish that the [Pleasantville property] was her primary residence on the date of the storm." In finding that Raab's claim was not credible, the ALJ noted that Raab admitted that she lived in New York City at the home of her employer for four or five days and nights a week. She did not have a New Jersey driver's license or non-driver identification card and, instead, maintained a Maryland driver's license and a New York City mailing address.

ALJ Miller found that Raab's claim that she rented only a portion of her Pleasantville property was also not credible. In this regard, the ALJ observed:

There is no record depicting only a portion of the home was rented and that [Raab] and her boyfriend also remained there with the tenant.

There is no lease, certificate of occupancy, or other reliable government record verifying the amount of space the tenant leased. The rent was \$600 per month which seems to be an amount that could be reasonable for the full unit. [Raab] stayed in [New York City] for five days and nights working as a caregiver (Sunday night to Friday). So the full area of the [Pleasantville house] was available to the tenant for at least five days and nights.

Thus, ALJ Miller concluded that "[a]ll signs indicate that [Raab] is ["]primarily["] residing somewhere other than the [Pleasantville house]. There were insufficient reliable or credible proofs to sustain a finding that [Raab] resided at the [Pleasantville house] as her primary residence." ALJ Miller's initial decision became final after forty-five days and was deemed adopted by the DCA under N.J.S.A. 52:14B-10(c). This appeal followed.

On appeal, Raab argues that the DCA's decision was "not supported by substantial credible evidence in the record, as the [agency] failed to adequately and completely evaluate the evidentiary record, and either overlooked or undervalued crucial material evidence." We disagree.

Established precedents guide our task on appeal. Our scope of review of an administrative agency's final determination is limited. In re Herrmann, 192 N.J. 19, 27 (2007). "[A] strong presumption of reasonableness attaches" to the agency's decision.

In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994)). The burden is upon the appellant to demonstrate grounds for reversal. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002); see also Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993) (holding that "[t]he burden of showing the agency's action was arbitrary, unreasonable[,], or capricious rests upon the appellant"). To that end, we will "not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008).

It is not our place to second-guess or substitute our judgment for that of the agency and, therefore, we do not "engage in an independent assessment of the evidence as if [we] were the court of first instance." In re Taylor, 158 N.J. 644, 656 (1999) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). Additionally, we give "due regard to the opportunity of the one who heard the witnesses to judge . . . their credibility[,]" and therefore accept their findings of fact "when supported by adequate, substantial and credible evidence[.]" Id. at 656. We

are not, however, in any way "bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973).

Applying these principles, we discern no basis for disturbing ALJ Miller's well-reasoned determination that Raab failed to demonstrate that the Pleasantville house was her primary residence on the date Superstorm Sandy struck New Jersey. We therefore affirm, substantially for the reasons stated in the ALJ's thorough written opinion. We add the following comments.

All of the credible evidence in the record pointed to the conclusion that Raab's primary residence was at the Fifth Avenue home of her employer. Raab admitted that she lived at this residence four or five days and nights a week, so she obviously spent the majority of her time there. Raab also maintained a New York City mailing address at the time of the storm, and only possessed a Maryland driver's license. The property tax bills for both the Pleasantville and Baltimore properties were sent to Raab in New York City.

The record also fully supports ALJ Miller's finding that Raab was renting the Pleasantville property to a tenant, rather than living there as her primary residence. Although Raab and her boyfriend claimed that the tenant only rented a portion of the property, the tenant had access to the entire house for at least

four or five days and nights a week. Raab was completely unable to provide any documentation proving otherwise. In addition, Raab's testimony concerning the rent paid by the tenant also changed after the ALJ questioned it. We therefore defer to ALJ Miller's credibility findings on this point.

We also reject Raab's contention that because she testified it was her intent to have the Pleasantville property treated as her primary residence, the DCA was bound to do the same. Unlike domicile, which requires presence, an intention to remain at the premises, and an abandonment of the previous domicile, see In re Settlement of Accounts of Unanue, 255 N.J. Super. 362, 376 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div. 1998), the RSP and RREM establish an objective test for determining the applicant's primary residence. Documentary proof, preferably from government agencies, is required to prove primary residence. As ALJ Miller properly found, Raab was simply unable to provide the necessary evidence in support of her applications.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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