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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4228-15T3

DEPARTMENT OF COMMUNITY
AFFAIRS, SANDY RECOVERY
DIVISION,

Petitioner-Respondent,

v.

ERIK CARNEY,

Respondent-Appellant,

and

ERIK CARNEY,

Petitioner-Appellant,

v.

DEPARTMENT OF COMMUNITY
AFFAIRS, SANDY RECOVERY DIVISION,

Respondent-Respondent.

Submitted January 17, 2018 – Decided February 1, 2018

Before Judges Leone and Mawla.

On appeal from the Department of Community
Affairs, Docket Nos. RSP0016854 and
RRE0016844.

Erik Carney, appellant pro se.

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

PER CURIAM

Petitioner Erik Carney appeals from an April 8, 2016 final decision by the State Department of Community Affairs (DCA), which adopted an initial decision by an Administrative Law Judge (ALJ) following a hearing. Petitioner was determined to be ineligible to receive funds from the Resettlement Program (RSP) and the Reconstruction, Rehabilitation, Elevation, and Mitigation Program (RREM) to rebuild his home following Superstorm Sandy. Petitioner was ordered to return \$10,000 he had received from the RSP. On appeal, petitioner contends he proved the home was his primary residence, and should have been permitted to keep the grant money. We disagree and affirm.

The following facts are taken from the record. After Superstorm Sandy, the United States Department of Housing and Urban Development (HUD), through the Community Development Block Grant, provided funds to the DCA, which allocated the funds to programs, including the RSP and RREM, to assist New Jersey residents affected by the storm. Specifically, the RSP provided \$10,000 grants to encourage eligible homeowners to remain in the

county in which they resided at the time of the storm. The RREM program provided grants up to \$150,000 to assist those eligible with reconstruction, rehabilitation, elevation, and mitigation of their affected homes.

HUD through DCA approves the eligibility criteria for both the RSP and the RREM program. Both programs require 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.¹

Pursuant to the RSP, primary residency is established through a public title search confirming ownership of the affected property; "FEMA records must show the application reported to FEMA that the property was the applicant's primary residence at the time of the storm"; and the applicant must provide "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.

¹ N.J. Dep't of Cmty. Affairs, Resettlement Program (RSP) Policies and Procedures 2.1 & 4.1 (2015), <http://www.renewjerseystronger.org/wp-content/uploads/2014/09/Resettlement-Program-Policies-and-Procedures.pdf> ; N.J. Dep't of Cmty. Affairs, Reconstruction, Rehabilitation, Elevation, and Mitigation (RREM) Program Policies and Procedures 1.3 (2017), <http://www.renewjerseystronger.org/wp-content/uploads/2017/04/Reconstruction-Rehabilitation-Elevation-and-Mitigation-RREM-Program-Policies-Procedures.pdf>.

If the applicant is unable to provide a New Jersey driver's license or non-driver identification card or if FEMA records do not confirm primary residency, the applicant must still provide proof of ownership using any two of the following alternative documentation: "Government issued document sent to the damaged residence[;] Voter Registration Card[; and] Insurance documentation indicating that the damaged address is the applicant's primary residence." RSP Policies & Procedures 4.3.

In October 2013, the DCA published identical criteria to verify primary residency for eligibility under the RREM program. Under the RREM, if the applicant is unable to provide a New Jersey driver's license or non-driver identification card or if FEMA records do not confirm primary residence the following alternative documentation may be provided: "Federal tax return document indicating [the] damaged residence is primary residence[;] and Voter registration card showing the damaged residence. The applicant may complete the Certification of Primary Residence as evidence of primary residence under exceptional circumstances. Other documentation by the applicant may be considered on a case-by-case basis." RREM Program Policies & Procedures 3.4.

Petitioner submitted RSP and RREM program applications to the DCA listing his Point Pleasant residence as his primary residence. Petitioner executed an RSP grant agreement and certified the

impacted residence was his primary residence at the time of the storm. The DCA issued an RSP check to petitioner for \$10,000.

The DCA rejected petitioner's RREM program application concluding the damaged property was not his primary residence. Petitioner appealed the determination and the DCA sent correspondence stating he was ineligible for both the RSP and RREM program. Petitioner appealed this determination and the matter was referred to the ALJ for a hearing. The DCA presented testimony from Hearing Officer Nicole Colon, and petitioner testified on his own behalf.

Colon explained that at the time petitioner applied for and was approved for the RSP grant, he had a driver's license issued April 19, 2013, which listed his address as the Point Pleasant address. She stated the DCA did not have access to petitioner's motor vehicle records until April 2014. Colon testified the DCA obtained petitioner's motor vehicle records when it was processing his RREM program application. Those records revealed petitioner's residence was in Nutley at the time of the storm, and that his address had not been changed to Point Pleasant until after the storm, on November 13, 2012.

Colon testified the DCA then searched voter registration records and found petitioner had registered to vote with the Point Pleasant address on May 10, 2013. The DCA also adduced

petitioner's 2012 and 2013 tax returns and his 2013 W-2, all of which listed his Nutley address.

Colon testified that after petitioner appealed, the DCA conducted a public records search. The DCA adduced an Accurant report, which revealed petitioner had several motor vehicles registered to the Nutley address at the time of the storm. The DCA searched petitioner's motor vehicle registration history and confirmed several vehicles and a boat were registered to the Nutley property. The Accurant report also showed petitioner's FAA certification was not associated with his Point Pleasant address until September 2013.

Petitioner provided the DCA with documents to prove his residence in Point Pleasant. Specifically, he furnished his FAA identification card, Medical Certificate Second Class, and Flight Instructor card. However, the FAA identification did not list the Point Pleasant address or indicate a date of issuance. The medical certificate and Flight Instructor card bore the Point Pleasant address, but were issued after Superstorm Sandy. Also, petitioner's U.S. Department of Transportation employee information did not state when his address was changed to the Point Pleasant address.

Petitioner also offered testimony explaining that he resided at the Nutley residence with his girlfriend until he purchased the

Point Pleasant property in 2010. He testified he spends two nights per week in the Nutley residence. He conceded several of his vehicles and his primary vehicle were registered to the Nutley property, but the address for insurance purposes was the Point Pleasant residence.

Petitioner testified he lost his driver's license in August 2012, due to a driving while intoxicated conviction, and when his license was reinstated in November 2012, his address was changed to the Point Pleasant residence. Petitioner admitted his pay check and credit card bills were mailed to the Nutley address. He also conceded he continued to use the Nutley property for his taxes and other important correspondence.

The ALJ issued a written decision affirming the DCA's determination petitioner was ineligible for grants under the RSP and RREM program because petitioner had not proven the Point Pleasant residence was his primary residence at the time of the storm. Specifically, the ALJ found although petitioner had purchased the Point Pleasant home on October 25, 2010, he did not change his mailing address until November 13, 2012. The ALJ found petitioner resided with his girlfriend in Nutley because it was close to his work in Newark-Liberty International Airport. The ALJ concluded "[i]t is more logical that he stayed with his girlfriend in the nearby town of Nutley on those days when he was

working at Newark Airport rather than making the long commute back to the Point [Pleasant] property."

The ALJ found petitioner's driver's license and voter registration did not demonstrate he resided at the Point Pleasant residence on October 29, 2012. The ALJ found petitioner's 2012, 2013, and 2014 tax returns were all filed using the Nutley address and did not support petitioner's testimony that he resided in Point Pleasant. The ALJ reviewed each vehicle and boat registration and found them either registered to the Nutley property or registered to the Point Pleasant residence after the storm. As noted, the ALJ found although the FAA certification was addressed to the Point Pleasant residence, it was dated after the storm, and petitioner's FAA medical certificate had no date of issuance. The ALJ noted petitioner's 2013 W-2 was addressed to Nutley.

The ALJ found some of the evidence provided by petitioner supported his claim the Point Pleasant property was his primary residence and that the Nutley property belonged to his girlfriend. Specifically, petitioner provided the property tax bills for the Point Pleasant residence for 2011 through 2013, which were sent to the residence. The property tax bills for the Nutley property were addressed to petitioner's girlfriend at the Nutley residence.

Also, the ALJ found a June 2012 memorandum of judgment issued by the Ocean County Board of Taxation for the Point Pleasant property supported petitioner's claims of residence there. The ALJ found petitioner's testimony that he obtained medical treatment in Wall Township from May 2012 through November 2012 supported his claim of residence in Point Pleasant. The ALJ also credited the evidence petitioner adduced of treating with a provider in Point Pleasant Beach from July 2012 to November 2012, and a therapist in Brick from December 2011 to March 2012.

The ALJ accepted evidence of a loan application form dated September 1, 2010, which referred to the Point Pleasant home as petitioner's primary residence. The ALJ also accepted a Fannie Mae letter dated January 27, 2011, addressed to petitioner at the Point Pleasant property regarding a loan for the residence.

Petitioner provided the closing documents for the Nutley residence to prove his girlfriend had purchased the residence as an unmarried person, which the ALJ considered. The ALJ also considered bills petitioner had provided for sewer and utility and condominium maintenance fees, all associated with the Point Pleasant residence.

The ALJ found petitioner had not produced the proofs required by the RSP and RREM programs and that the evidence provided was

"outweighed by the proofs working against petitioner." The ALJ concluded:

Although petitioner may have treated with physicians nearby the Point [Pleasant] property, and while he has produced utility bills from the . . . property, those proofs do not rise to the required level to qualify for these grants. Loan documentation from the closing of the Point [Pleasant] property is helpful, but the date of the documents from September 2010, renders them insufficient and untimely.

Petitioner had also provided evidence in the form of certifications of neighbors attesting to his primary residence in Point Pleasant. However, the ALJ ruled the certifications were hearsay, "and there is no evidence set forth therein as to how the individuals making the certifications in March 2015, had specific knowledge and recollection of the whereabouts of petitioner in the fall of 2012."

The ALJ entered a judgment affirming the DCA's determination. Plaintiff appealed and the DCA Commissioner entered a final judgment adopting the ALJ's initial decision. This appeal followed.

Our scope of review of an administrative agency's final decision is limited. In re Hermann, 192 N.J. 19, 27 (2007). The "final determination of an administrative agency . . . is entitled

to substantial deference." In re Eastwick Coll. LPN-to RN Bridge Program, 225 N.J. 533, 541 (2016).

An appellate court will not reverse an agency's final decision unless the decision is "arbitrary, capricious, or unreasonable," the determination "violate[s] express or implied legislative policies," the agency's action offends the United States Constitution or the State Constitution, or "the findings on which [the decision] was based were not supported by substantial, credible evidence in the record."

[Ibid. (quoting Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dep't of Env'tl. Prot., 191 N.J. 38, 48 (2007)).]

On appeal, petitioner argues he met his burden to prove the Point Pleasant home was his primary residence. Petitioner also claims he was deprived of due process because the proof of residence requirements changed in the middle of the application process. We find these arguments unpersuasive.

As we noted above, the policies and procedures of the RSP and RREM program identify specific documents that are required to meet the primary residency requirements to receive grant funding. Both RSP and the RREM program permit the DCA to consider other documentation, however as the DCA notes in its brief "'other documentation' on a case-by-case basis [may be considered] where the . . . required documentation is not available."

Here, petitioner had the required documentation sought by the RSP and RREM programs relating to his residency, namely, proof of ownership, FEMA records, and a New Jersey driver's license. However, those proofs did not support the finding the Point Pleasant home was his primary residence.

Moreover, the record supports the ALJ's finding that the evidence of primary residence did not weigh in petitioner's favor. Petitioner's motor vehicle records, voter history, tax return, and income information all objectively demonstrated the Nutley address was his home at the time of the storm. The ALJ did not act in an arbitrary, capricious, or unreasonable manner by according less weight to the evidence that supported petitioner's argument. The ALJ did not err by finding the certifications furnished by petitioner to be hearsay. Even when the ALJ overlooked the hearsay and considered the certifications, his decision to give them little weight on account of their failure to demonstrate knowledge of petitioner's residency on the date of the storm was not erroneous.

The ALJ's fact-finding is supported by substantial and credible evidence in the record. Given the substantial deference we accord to the DCA, there is no basis to second guess its decision to accept the ALJ's determination.

We also reject petitioner's argument he was deprived of due process because the DCA issued modifications to the RREM program

residency requirements. "[T]he Due Process Clause provides that certain substantive rights – life, liberty, and property – cannot be deprived except pursuant to constitutionally adequate procedures." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985). The New Jersey Supreme Court recently stated "[a]lthough the State Constitution 'does not enumerate the right to due process,' Article 1, Paragraph 1 'protects values like those encompassed by the principle[] of due process.'" State v. Robinson, 229 N.J. 44, 75 (2017) (alteration in original) (quoting Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985)). Therefore, inherent in the due process claim is that one must possess a property right.

We agree with the DCA this case can be likened to Blanchard v. Newton, 865 F. Supp. 2d 709, 718 (M.D. La. 2012). In Blanchard, a United States District Court granted a state agency's motion to dismiss the plaintiff's complaint. The plaintiff, a homeowner, had argued they had a right to receive Hurricane Katrina disaster relief funds appropriated to HUD, and in turn provided to the state agency to administer.

The Blanchard court rejected the homeowner's claim and stated:

The [c]ourt finds that plaintiff has failed to state a due process claim under the facts of this case. The Road Home Program is clearly

not an entitlement program As defendants correctly contend, the Federal Disaster Relief Funds under the Federal Appropriations Act were not appropriated directly to property owners; rather, the funds were appropriated by Congress to HUD, then allocated as CDBG funds to the State of Louisiana. Pursuant to [Louisiana statute], the OCD is the state agency authorized by law to develop the Action Plan Amendments and establish the policies regarding the CDBG funds and administration of the Road Home Program. A property owner simply has no individual, vested property interest to these funds.

[Id. at 718.]

There is no dispute the funds provided by HUD to New Jersey after Superstorm Sandy were allocated in the same manner as the Hurricane Katrina funds in Blanchard. Indeed, RSP's "Program Overview" states:

The State of New Jersey Department of Community Affairs (DCA) has allocated Community Block Grant Disaster Recovery (CDBG-DR) funds to support the Homeowner Resettlement Program currently available to homeowners in the nine counties most impacted by the storm. . . .


The funds available for this program are provided by the Department of Housing and Urban Development (HUD). The program is one of three programs that make up the Superstorm Sandy Housing Intake Program (SSHIP). The other three programs are the Homeowner Reconstruction, Rehabilitation, Elevation and Mitigation Program (RREM)

[RSP Policies & Procedures 1.]

For these reasons, petitioner was not deprived of due process because he possessed no fundamental property right to the grant funds. Even if petitioner could claim a property right to the funds, the amendment made to the RREM program policies and procedures was to require that proof of residence documents be dated prior to the date of the storm. This modification did not alter the nature of the proofs required, and that petitioner did not possess them.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION