Circuit Court for Harford County
Case No.: 12-C-16-000263-AA

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 794

September Term, 2016

KAREN MCDONELL

v.

HARFORD COUNTY HOUSING AGENCY

Arthur,
Shaw Geter,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw Geter, J.

Filed: February 12, 2018

INTRODUCTION

This case arises from Karen McDonell's (appellant) termination from the Housing Choice Voucher Program (HCVP), after an informal hearing conducted by the Harford County Housing Agency (Housing Agency) on December 21, 2015. Appellant filed for judicial review in the Circuit Court for Harford County and the matter was heard before the court on June 24, 2016. The court affirmed the judgment of the Housing Agency and appellant, thereafter, brought this timely appeal. She presents us with the following questions, which we have renumbered and rephrased[1]:

> I. Did the Housing Agency violate appellant's due process rights in terminating her assistance?
>
> II. Was the Housing Agency's decision supported by sufficient evidence in the record?
>
> III. Would remand to the Housing Agency for a rehearing be futile?[2]

For reasons stated below, we shall affirm the judgment of the circuit court.

[1] Appellant originally asked us, in verbatim: 1. Did the HCHA commit legal error requiring reversal when it terminated [appellant's] HCVP voucher without affording her the procedural protections guaranteed under federal and Maryland administrative common law by failing to maintain an adequate record of her informal hearing, failing to issue a final decision containing formal findings of fact and conclusions of law, and failing to apprise [appellant] of her appeal rights?; 2. Did the HCHA commit legal error, act arbitrarily and capriciously, or abuse its discretion when it terminated [appellant's] HCVP participation on legally insufficient grounds and without properly weighing the evidence presented?; 3. Whether remand to the HCHA for a rehearing would be futile?

[2] As explained below, we affirm the judgment of the circuit court and, therefore, need not address appellant's third question presented.

BACKGROUND

On November 4, 2011, appellant became a participant in the Housing Choice Voucher Program (Voucher Program), a federally funded rental assistance program administered by state or local agencies.[3] As a result, she began to receive monthly rental assistance, to support her in paying rent for her apartment in the Lee Court Apartments complex in Edgewood, MD, where she resided with her two children. Appellant's program was managed by the Harford County Housing Agency[4] (Housing Agency). As a condition of enrollment, appellant was required to consent to a series of obligations and responsibilities. Failure to adhere could result in termination from the program.

Appellant entered into a "Restitution Agreement" with the Housing Agency on February 5, 2015. She agreed to make monthly payments of $42.22 for a debt owed to the Agency in the amount of $760.00. As stated in the agreement, the penalty for default was termination from the Voucher Program and referral to the U.S. Department of Housing and Urban Development's Criminal Investigation Division. On June 9, 2015, appellant contacted the Housing Agency to inform them of "her difficulty paying the restitution."

[3] Congress enacted the Housing Choice Voucher Program (Voucher Program) for the "purpose of aiding low-income families in obtaining a decent place to live and…promoting economically mixed housing." 42 U.S.C. § 1437f(a) (2012). Through the Voucher Program, the U.S. Department of Housing and Urban Development (HUD) provides monthly assistance payments through vouchers for rental and utility payments when those expenses exceed a certain percentage of a tenant's income. 42 U.S.C. § 1437f(o)(2) (2012). While HUD provides the funds to support the Voucher Program, the vouchers are "generally administered by State or local governmental entities called public housing agencies (PHA's)." 24 C.F.R. § 982.1(a)(1). In addition to providing the funds for the vouchers, "HUD also provides funds for the PHA administration of the program." *Id.*

[4] The agency is now known as the Harford County Department of Housing & Community Development. For simplicity's sake, we will refer to it by its former name.

Soon after, she entered into a revised restitution agreement that lowered her monthly payments to $39.00. Appellant then missed her August 2015 payment and, on September 4, 2015, the Agency sent her a letter of noncompliance with the new restitution agreement stating she failed to make the August 2015 payment and informing her of termination if a payment of $30.00 was not made by September 14, 2015. The Agency sent a second letter on September 22, stating she was in arears of $60.00 for failure to pay the August 2015 and September 2015 payments and she faced termination if a payment of $60.00 was not made by September 30, 2015.

In June of 2015, criminal charges were filed against appellant, as a result of a physical altercation. She was found guilty of two counts of second-degree assault, on September 8, 2015, and incarcerated. The Housing Agency was notified of appellant's detention through a telephone call from her mother, Yvonne McDonell. Appellant was released on October 15, 2015, pending sentencing. Thereafter, she was sentenced to 10 years suspended all but time served of 37 days and placed on probation for 36 months.

On October 27, 2015, appellant's home failed the required annual inspection, due to a mouse infestation. On the same day, a letter was sent to the manager of Lee Court Apartments, with appellant "c.c'ed" on the letter. It addressed the failed inspection, reason for failure, and ordered repairs be completed by November 10th, 2015, to avoid abatement of voucher payments. It stated failure to make repairs within 10 days after abatement will result in termination of participation in the Voucher Program. Furthermore, the letter announced that a re-inspection was scheduled for November 10, 2015, which appellant subsequently failed because she was not present.

On November 30, 2015, the Housing Agency sent a termination letter for "Violation of Program Regulations and Family Obligations" to the appellant. The stated reasons for termination were:

1) "Failure to provide access to your unit for the required Housing Quality Standard (HQS) Inspection scheduled on November 10, 2015.

2) Failure to notify the Housing Agency that the family was not residing in the assisted unit. (According to Maryland Case Judiciary Search, you were incarcerated from September 8, 2015, through October 14, 2015).

3) On June 9, 2015, you were charged with two counts of Second degree Assault in the District Court of Harford County. On September 8, 2015, the District Court of Harford County listed the disposition for both charges as guilty.

4) Failure to pay restitution to the Housing Agency in accordance with the restitution agreement you signed on February 5th, 2015. The last payment made was on October 19, 2015."

The letter further noted that her assistance would terminate effective December 31, 2015, and that the appellant had the right to request an informal hearing. Appellant timely requested an informal hearing, which was held on December 21, 2015. On January 6, 2016, the Director of the Housing Agency issued his decision, upholding the termination. In his decision, Director Parrish stated the following:

> Access was given to the unit for the Housing Agency to perform the HQS inspection. The inspection was completed, but the unit failed to pass the inspection. Restitution is currently paid up to date, although letters were presented from the Housing Agency Accounting Agency showing numerous late pays during the term of the Restitution Agreement. Evidence was presented that notification did occur regarding the family not residing in the unit during the term of incarceration, however, this notification was not within the time requirements given by the Housing Agency. Evidence was presented that you were a victim of the assault and not the aggressor,

> however, it was not refuted that the incarceration did occur per court order. You testified that you are working to have the charges overturned through the court system, but, at this time, your record shows that you have been found guilty.
>
> A determination must be made based on the evidence presented at the Hearing. In this case, it is found that you have violated the rules and regulations of the program, and the termination is upheld[.]"

Appellant filed a timely petition for judicial review to the Circuit Court for Harford County on February 2, 2016. Thereafter, the Housing Agency filed their record of appellant's case with the circuit court and, on March 15, 2016, the court sent notice to appellant regarding the filing.

On March 21, 2016, appellant filed a *pro se* "Memorandum" with the court, stating she received "an unfair hearing" and provided "sufficient documentation" at the informal hearing. Appellant maintained that she did not receive the notice for re-inspection of her residence on November 10, 2015. She also argued that the Housing Agency "was promptly notified" of her absence from her residence due to incarceration from September 8, 2015 to October 14, 2015, by her mother, but "was not certain if it was passed on in a timely manner." Appellant further maintained that she was current regarding restitution payments prior to the Informal Hearing. Lastly, appellant noted her contention that she was not guilty of the assault charges that led to her conviction and she was currently appealing the conviction.

The Housing Agency responded on April 13, 2016, filing a "Memorandum of Law" with the circuit court, arguing their decision to terminate appellant's benefits was supported by the evidence and not arbitrary, capricious, or an abuse of discretion. They asserted

appellant's conviction for second-degree assault, failure to provide prompt notice of her absence of more than two weeks from the residence, failure to be present for the re-inspection, and earlier delinquency of payments provided ample evidence of her violation of the agreed upon terms and conditions of the Voucher Program.

On June 24, 2016, the Circuit Court for Harford County held a hearing on appellant's petition for judicial review. Both the Housing Agency and appellant, now represented by counsel, presented evidence and made arguments before the court. Ruling from the bench, the court upheld the decision of the Agency:

> I do find that the agency appropriately terminated [appellant's] Section 8 housing voucher. Under the federal regulations, the agency can terminate for any one of these reasons. They don't have to terminate for all four of them collectively, but in this case, I do see in the record, October 22, 2015, the letter to Casper Management informing them that an inspection was scheduled for October 27th, 2015, for [appellant's] unit and was rescheduled for November 10, 2015, between the hours of nine a.m. and 12 p.m., and that [appellant] was given a copy of that letter indicating when the rescheduled inspection was, and the inspector appeared on that date and no one answered the door. So for that reason, that particular ground by the agency is sustained. They met their burden of proving they were there to inspect, and [appellant] did not answer the door.
>
> With respect to whether she has violated the program rules because of violent criminal activity, again, the agency has also met their burden there. There doesn't have to be a conviction. There doesn't even have to be an arrest. So even if none of those two things had occurred, the agency met its burden of proof. But in this case, we know that there is a PBJ in place. Not a conviction, but the underlying activity is violent criminal activity. Second degree assault is a crime, and it's defined under Maryland law as a crime of violence, and that certainly is sufficient.
>
> With respect to whether [appellant] occupied the residence, was not occupying the residence for two weeks, [appellant] herself as the holder of the voucher had to occupy the apartment. Even though she was incarcerated and her two children were in the home, and certainly the older child, the 16-year old, was of suitable age to be able to be in the home supervising the 10-

> year old, [appellant] as the holder of the voucher had to be in the home, and as required under the program rules, had to notify the [Housing Agency] that she was going to be out of the home for more than two weeks.
>
> No one is faulting her for being poor and being unable to make bail, or to otherwise gain her release, but in this case, she didn't comply with what the [Housing Agency] required: Give notice that she was not going to be there for two weeks.
>
> And last, with respect to the issue of the restitution, although [appellant] paid up the restitution, or was current on the restitution by the date of the agency hearing, November 4th, 2015, the Notice of Termination had already been served on her for failing to make restitution payments in accordance with the agreement, which is a clear breach of the agreement to do so. She failed to make the payments for August and September 2015.
>
> So any one of these four grounds would have been sufficient for the agency to terminate her voucher, so the Court does find that the agency has met its burden of proof, and, therefore, the Court will uphold the termination in this case and deny the relief requested by the appellant.

The court's ruling was memorialized in a written order, filed the same day. On June 28, 2016, appellant filed a timely notice of this appeal.

ANALYSIS

I. Did the Housing Agency violate appellant's due process rights in terminating her assistance?

Appellant argues the Housing Agency violated her statutory and constitutional due process rights in terminating her participation in the Voucher Program. She asserts the administrative hearing should be considered a "contested case" under the Maryland Administrative Procedure Act[5] (MD APA) and, thus, subject to guaranteed procedural due

[5] The "contested cases" subtitle of the Administrative Procedure Act is codified in §§ 10-201 through 10-227 of the State Government Article of the Maryland Code. The purpose of the subtitle is to "ensure the right of all persons to be treated in a fair and unbiased manner in their efforts to resolve disputes in administrative proceedings governed by [the subtitle]" and to "promote prompt, effective, and efficient government."

process protections, specifically requirements to "maintain an adequate record of the informal hearing," to "issue an adequate decision containing formal findings and conclusions of law," and to "apprise [appellant] of her right to seek judicial review." In support, she points to the Court of Appeals' holding in *Walker v. Dept. of Housing and Community Development*, 422 Md. 80 (2011), and urges us to extend the ruling to local PHAs, such as the Housing Agency. In addition, she broadly alleges that her due process rights, under the 14th Amendment of the U.S. Constitution and Article 24 of the Maryland Declaration of Rights, were infringed upon.

Appellee, initially, argues that "by failing to raise any procedural due process claim" in the circuit court hearing, appellant has waived all such appellate rights. Even if properly preserved, they aver that, because the Harford County Housing Agency is administered by a local jurisdiction, rather than the State, the MD APA should not apply. Thus, the Agency's decision complied with the U.S. and Maryland Constitutions, federal regulations, the Maryland Rules, and all other applicable law.

We agree with appellee that appellant failed to properly preserve all issues regarding due process. The record shows that appellant did not seek judicial review of the Agency's decision on due process grounds in the circuit court and, as a result, has waived her appellate rights on the matter, pursuant to Maryland Rule 8-131(a), which states "the appellate court will not decide any other issue unless it plainly appears by the record to have been raised[.]"

Assuming *arguendo* that the issue was properly before us, we do not believe appellant's statutory or constitutional due process rights were violated. We also do not

find *Walker* instructive, which involved the termination of an HCVP participant's (Walker) assistance, under a program administered by the Department of Housing and Community Development. 422 Md. at 82. Walker claimed her case should be considered a "contested case," thus ensuring certain due process protections delineated in the MD APA. *Id.* The Court of Appeals agreed, holding that "[p]ursuant to *Goldberg*, the Due Process Clause requires that HCVP participants be given an opportunity for an informal hearing prior to termination of benefits" and that Walker's termination case should have been considered a "contested case," and subject to the requirements of the MD APA. *Id.* at 104 (*citing Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970) (holding that federal welfare recipients, under the 14th Amendment, are guaranteed "that, prior to termination of public assistance benefits, the welfare recipient must be given 'timely and adequate notice detailing the reasons for a proposed termination,' and, at the hearing, the recipient must be given 'an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally")).

However, there is a critical difference between *Walker* and the case at bar. The PHA involved in *Walker* was a *state* agency; whereas, it is undisputed that, the Harford County Housing Agency is a *local* agency. The plain language of the MD APA demonstrates that its provisions regarding "contested cases" are only applicable to state, not local, entities. Section 10-203 of the State Government Article of the Maryland Code[6] states:

(1) This subtitle does not apply to:

[6] The "contested cases" provisions of the MD APA are codified in §§ 10-201 through 10-227 of the State Government Article of the Maryland Code.

> (4) an officer or unit not part of a principal department of State government that:
>
> (i) is created by or pursuant to the Maryland Constitution or general or local law;
>
> (ii) operates in only 1 county; and
>
> (iii) is subject to the control of a local government or is funded wholly or partly from local funds.

Further, under Section 10-202, an "agency" is defined as:

> (1) an officer or unit of the State government authorized by law to adjudicate contested cases; or
>
> (2) a unit that:
>
> (i) is created by general law;
> (ii) operates in at least 2 counties; and
> (iii) is authorized by law to adjudicate contested cases.

Maryland courts, further, have repeatedly confirmed that the MD APA only applies to *state* agencies. *See Madison Park North Apartments, L.P. v. Commissioner of Hous. & Cmty. Dev.*, 211 Md. App. 676, 692 (2013) ("The Commissioner and the [Baltimore City Department of Housing and Community Development] are not 'agencies' as contemplated by [Section 10-222 of the State Government Article]. The Department is a local agency of Baltimore City, a corporate municipality and as a result, the APA imparts no right to judicial review."); *Ross Contracting, Inc. v. Frederick Cty.*, 221 Md. App. 564, 576, n. 5 (2015) (stating that the Administrative Procedure Act "applies only to *State* government entities); *Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722, 732–33 (2009) (finding that the Board of Port Warden of Annapolis was not an "agency," as contemplated by the APA); *Urbana Civic Assoc. v. Urbana Mobile Village, Inc.*, 260 Md. 458, 462 (1971) ("Nor are

these actions reviewable under the Administrative Procedure Act since county agencies are not included within its provisions.") (*superseded by statute on other grounds in Gisriel v. Ocean City Bd. Of Sup'rs of Elections,* 345 Md. 477, 488 (1997). In light of the abundance of Maryland precedent, we do not find the out-of-state case law and secondary source cited by appellant persuasive.

As such, we hold the "contested cases" provisions of the MD APA do not extend to the Harford County Housing Agency's adjudication of HCVP termination hearings. Moreover, appellant's contention that the Agency violated her constitutional due process rights is without merit.

As discussed above, the Court of Appeals held in *Walker* that "the Due Process Clause – and not the relevant federal regulations alone – requires, upon request, a hearing prior to [termination.]" 422 Md. 80, 95 (2011). Title 24 of the Code of Federal Regulations, Section 982.555 sets forth the requirements for any informal hearing conducted by state and local PHAs regarding housing vouchers. Section 982.555(a)(1) provides that, prior to deciding to terminate assistance "because of a family's action or failure to act," "a PHA must give a participant family an opportunity for an informal hearing[.]" The PHA must provide "prompt written notice that the family may request a hearing," which must contain "a brief statement of reasons for the decisions," state that the family may request an informal hearing to dispute their decision, and provide a deadline for requesting the hearing. 24 C.F.R. § 982.555(c)(2). When a hearing is requested, it must proceed "in a reasonably expeditious manner." 24 C.F.R. § 982.555(d). Further, the informal hearing must comport with the following procedures:

(e) Hearing procedures-

(1) Administrative plan. The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) Discovery-

(i) By family. The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) By PHA. The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) Documents. The term "documents" includes records and regulations.

(4) Hearing officer: Appointment and authority

(i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) Evidence. The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) Issuance of decision. The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

24 C.F.R. 982.555(e).

The Court of Appeals determined, in *Walker*, that the informal hearing framework in § 982.555 "meets *Goldberg's* due process requirements." *Walker*, 422 Md. at 94.

In the case before us, appellant makes no argument that the Housing Agency failed to follow the procedures set forth in § 982.555 and a review of the record, reveals the Agency did, in fact, follow these procedures. Appellant argues the Agency neglected to issue an "adequate decision," however, the record reflects otherwise. A decision was sent to appellant on January 6, 2016, stating she "violated the rules and regulations of the Program" and delineated the reasons. While she claims the Agency is required to maintain a record of the informal hearing, issue a decision with formal findings of fact and conclusions of law, and apprise her of her appellate rights,[7] as discussed above, *Walker* only applies to state, and not local, PHAs.

We do not agree with appellant that the similar standards of review in MD APA and non-MD APA means local PHAs must follow the MD APA's requirements. "[I]t is appropriate for [an appellate court] to examine and rely upon cases decided under the APA for guidance regarding the appropriate standard of review of [an agency's] decision,

[7] In support of this contention, appellant cites *Uhler v. Sec'y of Health & Mental Hygiene*, 45 Md. App. 282 (1980). *Uhler* involved an administrative order issued by the Department of Health and Mental Hygiene, barring Uhler from operating a landfill on his farm. The order failed to apprise Uhler of his right to judicial review and he filed an untimely appeal. The *Uhler* court reversed the circuit court's finding that Uhler waived his appellate rights, reasoning that '[f]ailure to provide adequate notice is a jurisdictional defect that invalidates administrative action until the defect is cured." *Id.* at 288. In the present case, appellant filed her appeal on time and the court did not find she waived her right. *Uhler* is, therefore, inapplicable to the facts of this case.

because of the likeness between the "inherent power of judicial review of discretionary administrative action" and the "arbitrary or capricious standard" dictated by the statute. *Harvey v. Marshall,* 389 Md. 243, 296 (2005) (internal citations omitted). However, this does not impose additional due process requirements on entities not subject to the MD APA. Appellant points to no other applicable law or constitutional principles supporting her contention.

For these reasons, even if properly preserved, we hold the Housing Agency did not violate appellant's due process rights.

II. Was the Housing Agency's decision supported by substantial evidence in the record?

Appellant next argues that the Housing Agency erred by terminating her benefits on "illegal, arbitrary, and capricious" grounds that were "not supported by substantial evidence." Specifically, she contends that there was insufficient evidence to establish that she: 1. was involved in violent criminal activity; 2. did not timely notify the Agency she would not be in the home; 3. was provided reasonable notice of re-inspection; 4. failed to make timely restitution payments and 5. that the Agency failed to consider "all relevant circumstances." Appellee disagrees, maintaining that the decision of the Housing Agency was supported by a preponderance of the evidence. We shall examine each of appellant's contentions individually.

This Court, when considering the decision of an administrative agency, "reviews the agency's decision, not the circuit court's decision." *Matthews v. Hous. Authority of Baltimore City,* 216 Md. App. 572, 582 (2014) (internal citations omitted). We are "limited

to determining if there is substantial evidence in the record as a whole to support the agency's finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Id.* In applying the substantial evidence test, we ask "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 14 (2010).

For reasons explained below, we hold that the Housing Agency's decision to terminate appellant's Housing Vouchers was supported by substantial evidence in the record and not premised upon an erroneous legal conclusion.

1. Violent Criminal Activity

In appellant's view, the Housing Agency failed to meet its burden that she engaged in "violent criminal activity," thus breaching federal regulations governing housing vouchers, because: the Agency made this claim for the first time in circuit court; the Agency failed to consider the fact that her conviction was on appeal; the only evidence admitted by the Agency supporting that finding was "a two-page printout from the MJCS website"; "second-degree assault is not a crime of violence under Maryland law"; and they "failed to consider relevant existing HUD guidance involving a participant's alleged criminal activity." Appellee, conversely, argues that the Housing Agency presented sufficient evidence to prove by a preponderance of the evidence that appellant was engaged in violent criminal activity.

We agree with appellee. C.F.R. Title 24, Part 982.551(l) states:

> The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens

> the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises[.]

Part 982.553(c) provides that a PHA may terminate assistance based on criminal activity "based on a preponderance of the evidence, that the household member has engaged in the activity, *regardless of whether the household member has been arrested or convicted for such activity*."[8] (emphasis added).

Appellant's contention that the Agency brought up the criminal activity for the first time in the circuit court is, further, without merit. The November 30, 2015 letter notifying appellant of termination mentioned that their decision was partially based on her violent criminal activity.

Further, the January 6, 2016 letter, which was sent to appellant prior to the circuit court hearing, states in part, that the Agency's decision in the informal hearing was based on the convictions. Similarly, her contention that the Agency failed to consider the fact that her conviction was being appealed is without merit. The January 6 letter demonstrates the Agency considered this fact in their decision; it states "You testified that you are

[8] Appellant points to *United States v. Donnell*, for the proposition that "federal courts must employ 'a modified categorical approach to determine whether a…conviction for Maryland second-degree assault is a crime of violence' to warrant a sentencing enhancement for engaging." 661 F.3d 890, 893 (4th Cir. 2011). That case is distinguishable for two reasons. First, *Donnell* binds federal courts seeking elevated sentencing in criminal matters, not local agencies resolving civil matters in Maryland. Second, the statement of charges in *Donnell* "contained no details establishing the second-degree assault conviction involved violence"; rather, violence was only established by an unincorporated statement of probable cause, first introduced at sentencing. *Id.* at 891. Conversely, the statement of charges in the present case contains allegations of violence.

working to have the charges overturned through the court system, but, at this time, your record shows that you have been found guilty by the courts."

Moreover, the record contains a criminal summons and charging documents from the District Court for Harford County, evidencing that appellant was charged with two counts of second-degree assault. It also contains an "Application for Statement of Charges," in which the complainant alleged appellant "[yelled] obscene language and made racial slurs" at her, punched and scratched the complainant's face multiple times, punched the complainant's daughter "in the back of the head, causing her cap to come off her teeth," and pulling out the daughter's braids. The record also contains printouts from the Maryland Judiciary Case Search website showing appellant had been convicted on two counts of second-degree assault.

We disagree with appellant's assertion that second-degree assault cannot be considered a "violent criminal activity." 24 C.F.R. § 5.100 defines "violent criminal activity" as "any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonable likely to cause, serious bodily injury or property damage." Appellant argues, because Maryland law defines first-degree assault as "intentionally [causing] or [attempting] to cause serious physical injury to another," *See* Maryland Code, Criminal Law Article § 3-202, that second-degree assault "encompasses all lesser assault and does not involve an intent or attempt to cause serious physical injury."

While second-degree assault does, indeed, encompass all lesser assault, we disagree with appellant's contention that second-degree assault cannot involve an intent or attempt

to cause serious physical injury. There may be factual situations where a defendant causes, attempts to cause, or threatens to cause serious physical injury and, nonetheless, is convicted of second-degree assault. For example, a defendant may assert and prove an affirmative defense to mitigate first-degree assault to second-degree. *See Christian v. State*, 405 Md. 306, 346–47 (2008) (holding that a defendant who attacked and stabbed a man could assert the affirmative defense of "hot-blooded response to adequate provocation" in order to mitigate first-degree assault to second-degree).

Appellant, further, points to C.L. § 14-101(a), arguing that second-degree assault is not codified as a "crime of violence." We do not find this persuasive. Section 14-101 defines certain crimes as "crimes of violence" for purposes of elevated, mandatory sentencing for repeat offenders. It does not demarcate which crimes in Maryland must involve "serious bodily injury." In fact, some of the crimes listed do not require intent to cause serious bodily injury. For example, abduction[9] is listed as a 'crime of violence" under § 14-101(a), but only requires one to "forcibly abduct" a child under 12 without the parent's consent and with intent to deprive the parent. *See Stancil v. State*, 78 Md. App. 376, 385 (1989) ("Kidnapping a child may be accomplished by a minimal amount of force and each case will depend upon the particular facts of the taking.").

Similarly, carjacking is listed under § 14-101(a) and defined, under C.L. § 3-405, as "[taking] unauthorized possession or control of a motor vehicle from another individual who actually possesses the motor vehicle, by force or violence, or by putting that individual

[9] Codified as "Child kidnapping" in the Maryland Code, Criminal Law Article § 3-501.

in fear through intimidation or threat of force of violence." Once again, mere force or threat of force is sufficient to establish a "crime of violence" and does not necessitate "serious bodily injury." *See Price v. State*, 111 Md. App. 487, 492-94 (1996) (holding that, even though no evidence was presented showing appellant used "actual force" to carjack, the State's evidence that defendant walked up behind the victim, stated "Shut up, b***h," and placed his hand near his waistband was sufficient to establish intimidation"). These crimes, while considered "crimes of violence" for sentencing purposes, do not actually require the use, attempted use, or threatened use of physical force substantial enough to cause serious bodily injury.

In our view, appellant's reliance on the HUD guidelines is also misguided. The guidelines were issued to "[ensure] that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct," particularly arrest records. The Housing Agency, in the case *sub judice*, did not base its decision on appellant's prior arrest record, but rather, criminal activity engaged by appellant while receiving assistance. We do not find the Housing Agency went against HUD's general recommendation against "One Strike" Policies. The Agency did not terminate appellant from the Voucher Program solely because of her criminal activity. Instead, it was in conjunction with other violations of the agreement she entered into, as discussed below.

In sum, we hold the decision was based on sufficient evidence in the record that established, by a preponderance of evidence, appellant engaged in violent criminal activity.

2. Notice of Absence

Appellant also argues that the Housing Agency's conclusion that she failed to provide adequate notice of her prolonged absence from the home constitutes error, because: "nowhere does the record establish a specific 'time requirement'" for providing notice of absence; she did not possess the "requisite knowledge" needed to comport with the Agency's notice requirements; the Agency failed to resolve a factual dispute involving a note, recounting two conversations between an Agency employee and appellant's mother, that appellant claims supports her version of events; and emphasizes that appellant was in a diabetic coma, rendering her medically unable to provide notice to the Agency.

Appellee points out that it is undisputed appellant "signed and agreed" that she "must report any absence of more than two weeks from the unit to the Housing Agency in writing." They claim sufficient evidence was presented at the hearing to prove the Housing Agency only received notification, by telephone, "over three weeks after [appellant's] initial incarceration." Given that, "the Administrative Plan requires notice within ten days of the change, it was reasonable for the Director to find that notification of [her absence from the unit] was not made in accordance with [their] requirements."

C.F.R. § 982.552(c)(1)(i) states that a PHA may terminate assistance if the participant "violates any family obligations under the program." Pursuant to § 982.551(i), participants are required to "promptly notify the PHA of absence from the unit." The record contains a written agreement, dated November 4, 2011, wherein appellant agreed to "[p]romptly notify the PHA in writing when the family is away from the unit for an extended period of time in accordance with PHA policies." Further, she signed and

completed a "Program Regulation Sheet," dated November 9, 2015, wherein she acknowledged that "any absence of a household member from the unit, for more than two (2) weeks, must be reported to the Agency" and that "I understand that I must report, **in writing**, when I am going to leave my unit, when I will be returning to my unit, and where I will be staying during my absence to the Housing Agency." (emphasis in original).

It is undisputed that appellant never provided written notice of her prolonged absence from the unit due to incarceration. We, therefore, hold the Housing Agency presented sufficient evidence of her failure to do so.

3. Re-inspection of the House

Appellant next contends the Agency erred in concluding she did not allow them to inspect the unit at a reasonable time and after reasonable notice. She claims their ruling in the administrative hearing was inconsistent, ambiguous, and insufficient to sustain termination; that the Agency failed to provide her with reasonable notice of the re-inspection, claiming the letter of notice was addressed to the landlord (appellant was only cc'ed) and did not indicate that she was responsible for the vermin infestation in the building, rather than the landlord.

Appellee responds that federal regulations, as well the participation agreement signed by appellant, obligated her to allow the Agency to inspect the unit at "reasonable times and after reasonable notice." They aver the address used by the Agency was correct, pointing out that after a previous letter sent to appellant was retuned with a new address, the Agency continued to use that same address and, further, that appellant responded to correspondence sent to the new address. Therefore, because appellant received notice of

the re-inspection and failed to provide access to the unit, "it was reasonable for the Director to find that the failure to be present, or to have an adult present to permit access, was a violation of program requirements."

We agree with appellant. Under C.F.R. § 982.551(d), Voucher Program participants are required to "allow the PHA to inspect the unit at reasonable times and after reasonable notice." For notice to be reasonable, it must be "calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (internal citations omitted). The record shows that appellant used two different addresses during the time she received assistance. Notice of the re-inspection, however, was sent to neither of these addresses. Instead, the notice was sent to the building's management company in a different county, with appellant merely cc'ed. We find there is not sufficient evidence in the record to show that the Agency properly apprised appellant of the pendency of the re-inspection.

However, we do not find this error dispositive. 24 C.F.R. § 982.552(a) provides a "PHA may…terminate assistance for a participant" because of *any* "action or failure to act" under § 982.552 or § 982.553. The Agency's decision could have rested alone on the evidence that appellant engaged in violent criminal activity, failed to provide notice of prolonged absence, or, as discussed below, failed to make timely restitution payments.

4. Restitution Payments

Appellant also avers the Agency "acted beyond its authority and in derogation of basic contract law by terminating [her] voucher for past missed restitution payments. In

support of her argument, she claims the Agency's position that "a missed termination payment, at any time and for any reason, can be grounds for termination, even when those payments have been subsequently made and are current, is both unconscionable and without merit."

Appellee disagrees, arguing that sufficient evidence was presented at the informal hearing to establish appellant owed the Housing Agency a total of $760; she agreed in February of 2015 to pay each month until the total debt was paid off; the Restitution Agreements signed by appellant "clearly stated that failure to pay as agreed would result in the loss of housing assistance; and appellant failed to abide by the terms of the agreement.

24 C.F.R. § 982.552(c)(1)(vii) states that a PHA may terminate assistance if "the family breaches an agreement with the PHA to pay amounts owed[.]" The record shows that on February 5, 2015, appellant acknowledged that she owed the Housing Agency $760 and signed a "Restitution Agreement", assenting to make monthly payments of $42.22 until the debt was paid in full; appellant communicated to the Agency that she was having trouble making payments; the Agency offered to lower the monthly payments to $30, which appellant agreed to in a second "Restitution Agreement"; and that both written agreements specified that "[f]ailure to pay restitution in full as agreed will result in referral to the Criminal Investigation Division of the Department of Housing and Urban Development and *loss of housing assistance*." (emphasis added). It is irrelevant that appellant was current with her payment at the time of the informal hearing. She concedes

that, at the time of the Agency's decision to terminate, she was in violation of the Restitution Agreement.

We disagree with appellant's contention that termination based on past missed payments, even though she eventually became current, is "unconscionable" and "in derogation of basic contract law." An "unconscionable" contract is characterized by '"extreme unfairness', which is made evident by '(1) one party's lack of meaningful choice, and (2) contractual terms that unreasonably favor the other party."' *Walther v. Sovereign Bank*, 386 Md. 412, 426 (2005) (*quoting* BLACK'S LAW DICTIONARY 1560 (8TH ED. 2004)). In other words, a contract is unconscionable if "no man in his senses and not under delusion would make [it] on the one hand, and as no honest and fair man would accept [it] on the other[.]" *Id.* The terms of the agreement in the case *sub judice* do not suggest appellant lacked any meaningful choice or unreasonably favored the Agency. The record shows the agency treated appellant fairly, even agreeing to lower payments after she had difficulty maintaining them. We, thus, hold the Agency presented sufficient evidence of appellant's failure to make timely restitution payments and fairly considered it as a part of their decision to terminate her assistance.

5. All Relevant Circumstances

Finally, appellant contends the Agency's decision failed to consider "all relevant circumstances," as dictated by 24 C.F.R. Section 982.552(c)(2)(i), page 219 of the Agency's Administrative Plan, and this Court's opinion in *Housing Authority for Prince George's County v. Williams*, 141 Md. App. 89 (2001). Specifically, she alleges the Agency did not produce any evidence to refute her claim that she was the victim of the

altercation in which she was arrested, that she never received notice, that her children remained at home while she was detained, and that two of her minor children were disabled and receiving Social Security income.

Appellee, conversely, maintains that "a review of the actual language of the [sections cited by appellant] reveals that consideration of other circumstances is permissive, not mandatory." They also argue that, even though it was not required, "it is clear that the Director did take into account such circumstances."

24 C.F.R. § 982.552(c)(2)(i) provides:

> The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

Page 219 of the Housing Agency's Administrative Plan, in part, states:

> In cases where HUD does not specifically require denial or termination, HUD authorizes PHAs to consider all relevant circumstances when determining whether to deny or terminate assistance.

We agree with appellee that the language of these sections indicate they are discretionary, not mandatory, considerations. Furthermore, *Williams* is not applicable to the case at hand. In that case, we reviewed the Housing Authority for Prince George's County's decision to terminate Williams from a federal public housing program, because her minor son violated the lease by engaging in "drug-related criminal activity." 141 Md. App. at 92–94 (2001). We held that "all of the relevant circumstances should be presented in an evidentiary hearing before a tenant may be evicted based on the drug possession *of the tenant's son*." *Id.* at 99 (emphasis added). Those circumstances, "particularly in a case where the

offenders are juveniles," should include "whether the tenant could have foreseen and prevented the criminal activity[.]" *Id.* The reasoning applied in *Williams* is not applicable to the case *sub judice* because appellant herself, the voucher holder, was the one who engaged in criminal activity. Moreover, the record contains extensive documentation of appellant's children's Social Security records. We have no reason to believe the Agency failed to consider this evidence in their determination.

For the reasons stated above, we affirm the Housing Agency's decision to terminate appellant's participation in the HCVP.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.