Circuit Court for Prince George's County
Case No. CAL18-03990

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2390

September Term, 2018

JIMMY HALL

v.

HOUSING AUTHORITY OF PRINCE GEORGE'S COUNTY

Graeff,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: December 9, 2019

Jimmy Hall, appellant, is a participant in the United States Department of Housing and Urban Development's Housing Choice Voucher Program ("HCV"), administered locally by the Housing Authority for Prince George's County ("HAPGC"), appellee. Due to a disability, Mr. Hall's sole source of income is a Social Security Disability Insurance ("SSDI") payment of $1,040 per month, which most months he receives on the third day of the month.

On August 19, 2017, Mr. Hall notified the HAPGC that he wanted to move to a different apartment complex. Although this request initially was approved for a move date of October 1, 2017, Mr. Hall informed the HAPGC that he was unable to move on the first day of the month because he would not receive his SSDI payment until the third day of the month, and therefore, he could not afford the associated moving costs. On November 2, 2017, he notified the HAPGC that he was requesting a moving date of November 5 as a reasonable accommodation of his disabilities.

The HAPGC denied his request, citing a lack of nexus between the request and his disability. Mr. Hall requested a hearing, and on December 24, 2017, the Hearing Officer upheld the denial of the request to modify the move date. Mr. Hall then filed a Petition for Judicial Review in the Circuit Court for Prince George's County, which upheld the decision denying Mr. Hall's accommodation request.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did HAPGC commit an error of law by substituting its own analytical standard rather than following clearly established case law in analyzing Mr. Hall's reasonable accommodation request?

2. Were HAPGC's findings of fact based on impermissible or unreasonable inferences and conclusions from undisputed evidence, and therefore, due no deference?

3. Was HAPGC's decision arbitrary and capricious in that it failed to articulate a reasoned analysis for a deviation from HAPGC policy?

4. Did HAPGC err in denying Mr. Hall's reasonable accommodation request?

HAPGC presents the following additional question for the Court's review:

Is this appeal moot such that the appeal should be dismissed?

For the reasons set forth below, we conclude that the issues presented are moot, and therefore, we shall dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Jimmy Hall, appellant, has been a participant in the HCV program in Maryland since 2007. The parties agree that he is a person with a disability, and due to his disability, his sole income is his SSDI payments of $1,040, which he receives most months on the third day of the month. Mr. Hall testified that this allotment is barely enough to cover normal living expenses and rarely lasts more than two weeks of the month. When the third of the month falls on a weekend, he receives the check on the previous Friday.[1]

[1] The parties stipulated that Mr. Hall received his check earlier than the third of the month on December 1, 2017, February 2, 2018, March 2, 2018, June 1, 2018, and November 2, 2018.

Mr. Hall began living at the Shadyside Garden Apartments in January 2015, utilizing the HCV program. Under the program, the HAPGC subsidizes a substantial portion of his rent, i.e., $936 of the $1,049 rent, and Mr. Hall pays the remaining $113 per month.

The parties' joint statement of facts states that the standard procedure involved in the HCV program is for the HAPGC to enter into Housing Assistance Payment ("HAP") contracts with landlords, which provide that the housing authority will pay a subsidized portion of the tenant's rent. When a tenant moves, the HAPGC must enter into a new contract with the new landlord. The HAPGC must pay the old landlord the full amount for the month in which the tenant moves out, and the new landlord is paid on a pro-rated basis for the portion of the month during which the tenant lives in the new place.

In August 2017, Mr. Hall became dissatisfied with the Shady Side Garden Apartments and made a request to the HAPGC to move to an identified open unit in a new apartment complex called Andrew Ridge. This request was approved on September 27, 2017, and Mr. Hall was notified that same day that he could move apartments on October 1, 2017. Mr. Hall responded that he was unable to move on October 1 because he would not receive his SSDI check until October 3, and therefore, he was unable to afford the cost of a moving van. As a result, he requested a moving date of the fifth of the month.[2] The HAPGC offered to allow Mr. Hall to move on November 1, but Mr. Hall cited to the same

[2] Mr. Hall testified that he had moved four previous times on the fifth day of the month by working it out with the landlord, and it had not been a problem.

problem. Although the new landlord at Andrew Ridge had been informed that Mr. Hall would take possession on the fifth, the HAPGC would not approve the move on the fifth of the month.

On November 2, 2017, Mr. Hall, with the assistance of Maryland Legal Aid, notified the HAPGC via e-mail that his request to move on the fifth of the month was made to provide a reasonable accommodation of his disabilities under the Fair Housing Act. After a series of e-mails between Legal Aid, on behalf of Mr. Hall, and the HAPGC that same day, his request was denied. The denial from the HAPGC included the following explanation:

> It is not HAPGC's intent to deny Mr. Hall's accommodation request, however at this point we do not understand the nexus between his request and his disability. Based upon your prior statements, his request is due entirely to financial reasons and not related to his actual disability. To the extent you believe there is a connection to his medical condition, we request an explanation of the connection from his medical provider. Please note the fact his disability check is paid on the third is not a reason for an accommodation. He is entitled to be treated like all other tenants, and we do not move the payment date of any lease for any tenant based upon the date they receive SSI, wages, or other payments.

The e-mail cited to the HAPGC's administrative policy that "[a]ll moves will be effective on the first of the month whenever possible." It noted that, allowing a move on the fifth, would force HAPGC to pay a "double subsidy", i.e., one full month's rent to the old landlord and one month's pro-rated rent to the new landlord, which was permitted but not preferred.

The HAPGC requested that Mr. Hall delay his move to the beginning of December "to avoid the double subsidy."[3] It was willing to pay the pro-rated rent for the end of November if Mr. Hall chose to move the weekend before December 1.[4]

Mr. Hall requested a hearing on the denial of his reasonable accommodation request. On November 29, 2017, a Hearing Officer held an Informal Hearing. Ava Good, Mr. Hall's rental specialist, testified regarding HAPGC policies and Mr. Hall's requests to move after the first of the month. Mr. Hall testified regarding his need for the reasonable accommodations due to financial constraints. He acknowledged that his brother had offered to lend him money to move on November 1, 2017.[5]

After this testimony, the Hearing Officer questioned the connection between Mr. Hall's disability and the request. Mr. Hall's counsel explained that Mr. Hall's SSDI benefits were paid only once a month, generally on the third of the month, and he was unable to rent a moving van and move until after that date, and therefore, he

[3] December 2017 was one of the months when Mr. Hall would get his SSDI check earlier, i.e., December 1, 2017.

[4] Ms. Ava Good, Mr. Hall's rental specialist, testified that, if a tenant moves at the end of the month, the costs would be lower because the pro-rated cost at the end of the month on the new apartment would be much less than if he pro-rated the majority of the month. For this reason, HAPGC prefers that, if tenants cannot move on the first, they move toward the end of the month.

[5] Mr. Hall asserts on appeal, however, that his brother may not always be in a position to help him.

was asking for an accommodation to move after the third day of the month**.** The Hearing Officer asked why Mr. Hall could not set aside the money he receives at the beginning of the month for use on the first day of the following month. Counsel for Mr. Hall stated that his limited income did not last the entire month.

In a written decision issued December 24, 2017, the Hearing Officer upheld the denial of Mr. Hall's accommodation request. Although noting that receipt of SSDI was sufficient verification that Mr. Hall qualified as a person with a disability, the Hearing Officer stated that the question before him was whether there was "a reasonable nexus between [Mr. Hall's] disability and the requested accommodation." In that regard, the Hearing Officer noted that the moving costs were a "one-time expense," which would be incurred whether Mr. Hall moved on the first or the fifth of the month. The Hearing Officer then stated:

> Therefore, this matter comes down to a factual determination as to whether it is more feasible for the Participant to set aside or borrow (from his brother or someone else) the $200.00 for moving expenses so he can move on the first of the month, or for the HAPGC to make an additional HAP payment of $936.00 to Participant's landlord for 5 days, and also make the regular HAP payment to the new landlord of $1,165.00 for the same month? It should be noted that, in either scenario Participant would still have to come up with the $200.00 for moving expenses; it would be a one-time expense, Participant expected an additional $425.00 refund for his security deposit, and the moving expenses would not constitute all or most of Participant's monthly SSDI Benefit payment.
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> The HAPGC cannot impose a strict policy requiring all moves to occur on the first of the month, and that they must evaluate requests for accommodations on a case-by-case basis. However, based on the facts presented in the instant matter, I do not believe that the HAPGC's decision to deny Participant's Request for Accommodation was inappropriate, based on the feasibility of the requested financial accommodation.

After setting forth findings of fact, the Hearing Officer set forth conclusions of law, as follows:

> 1. A SSDI Benefit payment can be sufficient grounds for the grant of a Reasonable Accommodation under appropriate circumstances.
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> 2. The date of the receipt of a SSDI Benefit payment can establish sufficient nexus between a disability and an accommodation under appropriate circumstances.
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> 3. Requests for Reasonable Accommodation based upon the receipt of a SSDI Benefit payment should be considered on a case-by-case basis.
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> 4. A Reasonable Accommodation may be based on financial circumstances.
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> 5. Under appropriate circumstances, the move and payment date for a participant can be changed to a date other than the first of the month, and the regulations and HAPGC Administrative Plan do allow for the paying of a HAP payment to both the former and new landlord for the same month of the move.
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> 6. In deciding a Request for a Reasonable Accommodation for a financial accommodation based upon the date of the receipt of SSDI Benefits, the HAPGC can consider the feasibility of the applicable financial alternatives.
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> 7. The Denial of Participant's Request for a Reasonable Accommodation in this case does not deny Participant access to fair and equal housing opportunities.

The Hearing Officer issued his order upholding "the HAPGC's Denial of Participant's November 2, 2017 'Request for a Reasonable Accommodation' to the Housing Choice Voucher Program."

On February 8, 2018, Mr. Hall filed a Petition for Judicial Review and a Petition for Administrative Mandamus in the Circuit Court for Prince George's County. On August 13, 2018, after a hearing, the circuit court stated that there was

substantial evidence in the record to support the Hearing Officer's decision. It stated that, although the request for an accommodation was reasonable, when it considered whether the accommodation was necessary, it could not find that the decision was incorrect as a matter of law.[6] Accordingly, the circuit court affirmed the decision of the HAPGC denying Mr. Hall's request for an accommodation.

This appeal followed.

DISCUSSION

Before addressing Mr. Hall's contention that the HAPGC erred in denying his request for a reasonable accommodation, we will address the HAPGC's contention that the appeal is moot and should be dismissed. The basis for this argument is that Mr. Hall moved on March 1, 2019, and therefore, "[h]e does not have a pending request to move outstanding with [the] HAPGC." The HAPGC asserts that "[a] decision now on move dates would be in the hypothetical for a future and currently unknown and unrequested move[,]" and the "circumstance for a future move may be different." As explained below, we agree that the appeal is moot.

[6] The court stated:

> I do tend to agree with the Housing Authority that nothing will, nothing will change, this is not a situation where there will be a monthly, because of the short – because of the shortfall that would be experienced, there still would have to be the payments made which would cut into this one-time situation, or would cut into the monthly amount that is available to Mr. Hall.

"A case is deemed moot when 'there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.'" *State v. Crawford*, 239 Md. App. 84, 112 (2018) (quoting *Powell v. Maryland Dep't of Health*, 455 Md. 520, 539 (2017). "As a general rule, courts do not entertain moot controversies." *State v. Dixon*, 230 Md. App. 273, 277 (2016).

Here, there is no remedy that this Court could provide Mr. Hall because he has already moved. Any decision now on move dates would merely be an "academic undertaking." *Albert S. v. Dep't of Health and Mental Hygiene*, 166 Md. App. 726, 743–44 (2006).

There are exceptions to the rule that courts will not review a moot controversy. *Crawford*, 239 Md. App. at 113. It is well settled, however, that a court should exercise its discretion to apply these exceptions only "in rare instances which demonstrate the most compelling of circumstances." *Stevenson v. Lanham*, 127 Md. App. 597, 623–24 (1999) (quoting *Reyes v. Prince George's Cty.*, 281 Md. 279, 297 (1977)).

The first exception is if the controversy is "capable of repetition but evading review." *Crawford*, 239 Md. App. at 113 (quoting *Dixon*, 230 Md. App. at 277). "This exception applies when '(1) the challenged action was too short in its duration to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.'" *Id.* (quoting *Powell*, 455 Md. at 541). In *Crawford*, we held that the controversy involving a delay in admitting appellees to a psychiatric hospital was "capable of repetition but evading review"

because, "[g]iven the short time-frame involved with the delay in admitting appellees to a psychiatric hospital (ranging from 18-64 days), it is unlikely that court proceedings regarding delay could be initiated and resolved prior to appellees' admissions." *Id.* at 116.

Here, there is no evidence that Mr. Hall will be denied the requested accommodation if he desires it for a future move. And there is nothing about his claim that is evasive of review by the court. There is no inherent or statutory time constraint that will invariably prevent Mr. Hall's claim from being fully litigated if he makes a similar request and it is denied. The only reason that it is moot in this case is because Mr. Hall chose to move prior to the resolution of the appeal. Therefore, this exception in inapplicable in this case because it lacks an "expediency factor" that would repeatedly prevent relief from being granted. *See Stevenson*, 127 Md. App. at 626 (characterizing this exception as requiring an expediency factor).

The second exception to the mootness doctrine is the "public interest" exception. *Albert S.*, 166 Md. App. at 746. This exception applies "if the issue is of public importance and affects an identifiable group for whom the complaining party is an appropriate surrogate." *Powell*, 455 Md. at 541. As the Court of Appeals has explained:

> [I]f the matter's "recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then [the] Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors concur with sufficient weight."

LaValle v. LaValle, 432 Md. 343, 352 (2013) (quoting *Lloyd v. Supervisors of Elections*, 205 Md. 36, 43 (1954)). *Accord Crawford*, 239 Md. App. at 113.

Here, as indicated, this case does not present a situation where, upon any recurrence, there is likely to be a difficulty in rendering a decision on the merits. Moreover, any future situation would have to be decided on the facts of that particular case. *See Mercy Hosp., Inc. v. Jackson*, 306 Md. 556, 563–64 (1986) (Court will not consider moot questions when answers have no general application.).

Accordingly, this case does not present one of those "rare instances" where we will address a moot question.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.