

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARYAM E. MUHAMMAD,

Plaintiff,

v.

OPINION and ORDER

15-cv-41-wmc

BEVERLY LOUIS *et al.*,

Defendants.

Invoking 42 U.S.C. § 1983, *pro se* plaintiff Maryam E. Muhammad filed this proposed civil action against several employees of the City of Madison Community Development Authority, as well as the Department of Housing and Urban Development (“HUD”).¹ Because she is proceeding without prepayment of the filing fee, the court is required to screen her complaint under 28 U.S.C. § 1915. After reviewing the complaint, the court concludes that Muhammad may proceed on her claims that employees of the Community Development Authority violated her rights under the constitution and federal law by terminating her housing benefits without providing due process. Her claim against HUD will be dismissed, however, because her allegations do not state a viable legal basis for relief.

¹ Muhammad also filed a request for leave to proceed without prepayment of the filing fee. That request was denied on January 21, 2015, because Muhammad already owed the court a \$350 sanction, which was imposed in a previous case found to be legally frivolous and malicious. *See Briggs-Muhammad v. SSM Healthcare Corp.*, Case No. 13-cv-831-wmc. Muhammad has now paid the \$350 sanction and this case has been reopened. (Dkt. #9.)

ALLEGATIONS OF FACT²

Until March of 2014, Muhammad received public housing assistance through the Section 8 voucher program for lower-income tenants living in privately-owned rental units.³ Sometime in March 2014, the City of Madison's Community Development Authority ("CDA"), which manages the City's voucher program, notified Muhammad that her rental assistance was being terminated for failure to report unemployment compensation. Muhammad believed that this termination was improper, and she requested an informal hearing regarding the termination. At the hearing, Muhammad intended to present evidence showing that she had not received unemployment compensation during any relevant time period.

The hearing was scheduled for March 18, 2014, at the CDA office in Madison. Muhammad sent a letter to CDA prior to March 18, requesting that the hearing be postponed due to health reasons. The hearing was not rescheduled and Muhammad did not attend. Later, she sent a letter from her doctor explaining that she had been attending medical appointments at the time of the hearing. Nevertheless, CDA refused to schedule another hearing and upheld the termination of her benefits.

² In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the following facts based on a generous reading of the allegations in Muhammad's complaint.

³ Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., authorizes a rent assistance program that is run and regulated by the United States Department of Housing and Urban Development. HUD contracts with state and local public housing authorities to make money available for the payment of rent on behalf of low income individuals. 24 C.F.R. § 982.1(a). To participate in the program, one must apply to the public housing authority for admission. Those granted admission receive vouchers, which permit the holder to search for a suitable unit within the state, with the rental payment then negotiated under the rent assistance program. *Id.*

Plaintiff contends that CDA violated her rights to due process by failing to give her: (1) adequate notice of the reasons for terminating her benefits; (2) information about how to obtain review of the CDA's decision; (3) notice of the adverse evidence that would be used against her at the hearing; and (4) a proper hearing. In addition to HUD, Muhammad named four individual CDA employees as defendants -- Beverly Louis, Tom Conrad, Shelia Ashley and John Finger. She requests the following relief: (1) a declaration that her rights to due process were violated; (2) an injunction requiring CDA and HUD to grant her a new hearing; (3) an injunction prohibiting defendants from having hostility or bias against her; (4) costs; and (5) damages.

OPINION

The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving “any person of life, liberty, or property, without due process of law....” U.S. Const. amend. XIV, § 1. “A procedural due process claim requires the plaintiff to show (1) that she was deprived of a protected liberty or property interest, and (2) that she did not receive the process that was due to justify the deprivation of that interest.” *Armato v. Grounds*, 766 F.3d 713, 721–22 (7th Cir. 2014). *See also Khan v. Bland*, 630 F.3d 519, 527 (7th Cir. 2010) (“Accordingly, a plaintiff asserting a procedural due process claim must have a protected property interest in that which he claims to have been denied without due process.”)

Recipients of Section 8 housing benefits are widely acknowledged to have a property interest in continued receipt of these benefits. *See Khan*, 630 F.3d at 527 (“[P]articipants who have been issued a certification for rent assistance have a property interest in the assistance.”). Thus, participants in a public housing voucher program “must be heard before

being expelled from the program.” *Id.* (citing *Simmons v. Drew*, 716 F.2d 1160, 1162 (7th Cir. 1983)).

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the Supreme Court held that due process requires recipients of welfare benefits to be provided “timely and adequate notice detailing the reasons for a proposed termination,” as well as a pre-termination evidentiary hearing with certain procedural safeguards. *Id.* at 266-68. Additionally, federal regulations require that public housing authorities provide the following process before terminating a voucher recipient’s rent assistance: (1) notice of the reason(s) for the decision, 24 C.F.R. § 982.554(a); (2) an opportunity for informal review, § 982.554(b); (3) prompt written notice that the recipient may request an informal hearing, §§ 982.555(a), (c)(2); and (4) the opportunity to review relevant documents before the hearing and to present evidence at the hearing, §§ 982.555(e)(2), (5). Not only must public housing authorities comply with these regulations, 24 C.F.R. § 982.52(a), but if sufficiently specific and definite, the regulations may qualify as enforceable rights under § 1983. *See Wright v. City of Roanoke Redevelopment & Hous. Auth.*, 479 U.S. 418, 431 (1987) (allowing tenants to use § 1983 to recover past overcharges violating rent-ceiling provision of Public Housing Act).

Muhammad alleges that CDA employees Louis, Conrad, Ashley and Finger failed to provide her due process or comply with these regulations before terminating her public housing benefits, which is sufficient for her to proceed with her § 1983 claim against each of those individual defendants. Muhammad will not, however, be permitted to proceed against HUD itself, because none of her allegations suggest HUD’s policies or procedures were responsible for the alleged violation of due process and federal regulations. Rather, her allegations suggest that any errors were due to actions of employees of the local CDA only.

ORDER

IT IS ORDERED that:

1. Plaintiff Maryam E. Muhammad is GRANTED leave to proceed on her claims that Beverly Louis, Tom Conrad, Shelia Ashley and John Finger terminated her public housing benefits in violation of due process and federal housing regulations. The clerk's office will prepare summons and the U.S. Marshal Service shall affect service upon these defendants.

2. Plaintiff is DENIED leave to proceed on all other claims. Defendant Department of Housing and Urban Development is DISMISSED.

3. For the time being, plaintiff must send defendants a copy of every paper or document she files with the court. Once plaintiff has learned what lawyer will be representing defendants, she should serve the lawyer directly rather than defendants. The court will disregard any further documents submitted by plaintiff unless she attests on the court's copy that she has also sent a copy of those documents to defendants or to the defendants' attorney.

Entered this 12th day of July, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge