Massachusetts Department of Housing and Community Development

Division of Housing Stabilization

To: DHCD Field Staff

From: Robert Pulster, Associate Director

Date: September 17, 2012

RE: Housing Stabilization Notice 2012-12, Clarification of Procedures Involving Re-Application and Open Applications.

Introduction

This memo is intended to summarize longstanding policy regarding re-applications and handling open applications in the Department of Housing & Community Development (DHCD) Division of Housing Stabilization (DHS). The summary below of how to handle these issues is based on longstanding Emergency Assistance (EA) practice. In light of the demands of increasing volume, now is an appropriate time to re-emphasize these longstanding practices in an effort to ensure uniformity throughout the field. In summary:

- Anyone is entitled to submit an EA application, even if he or she has already been denied, unless the individual already has an open, pending application.
- Applicants with open applications should be able to provide additional relevant information so long as the application is open.
- If an application has been open for over 30 days and remains incomplete, the applicant should generally be denied for failure to provide verifications. The applicant can re-apply at any time.
- Applications for families who are not yet homeless should not be left open for additional information unless a family is likely to become homeless within the next two weeks. If the family is likely to become homeless within the next two weeks, the application process can be started for administrative convenience and the convenience of the family, but the applicant should be informed that the family is not considered eligible for the EA program until it is within 48 hours of actual homelessness.
- Families not likely to be facing homelessness until some time in the future more than two weeks in advance should be denied for feasible alternative housing.

Discussion

(1) *Open Applications: Starting the Application Process, Adding Information, Closing the Application*

(a) Starting the Application Process

Although anyone over the age of 18 *can* apply for EA, there is no reason to encourage a person to apply who is clearly ineligible for EA benefits. People in those situations should be referred to appropriate resources, if possible. For example, a list of individual adult shelters can be provided to an adult who has no children and is not pregnant; or a referral to legal services or financial counseling services can be given to an adult who is a primary tenant facing financial difficulties, but is not facing eviction. If such a person, who is clearly ineligible, wants to apply, that person's application should be taken quickly and efficiently and a prompt denial issued.

Because the EA application process is lengthy and time-consuming and may require repeated visits to complete verifications, EA applicants[1] often want to start the application process before they are actually eligible. This is reasonable and efficient for EA homeless coordinators and saves families from the anxiety of scrambling to complete the entire EA application when they have already become homeless. It is a delicate line deciding when to encourage an individual to begin the application process before actual homelessness, but as a rule of thumb, if a family anticipates becoming homeless within two weeks and there is a high likelihood that the family will, in fact, become homeless in that time period, it is appropriate to commence the application process.

i. Receipt of Notice of Levy on Execution. For example, if a family facing eviction has received notice that the court has issued an execution for possession, but the family has not yet been served with a 48-hour notice of levy on execution (when the family becomes actually homeless pursuant to the EA definition of homelessness), the family can appropriately start the application process.

ii. Agreement for Judgment with Date Certain to Vacate or for Issuance of Execution. Similarly, a family that has a court-approved Agreement for Judgment with a date certain either for issuance of execution or to vacate will become actually homeless 48 hours before the date certain for vacating the apartment or for the issuance of execution.[2] It would be appropriate for such a family to begin the application process two

---

[1] This includes EA applicants, sometimes called "HomeBASE applicants," whose primary goal in applying for EA is to qualify for HomeBASE assistance, which cannot be granted until an applicant family is first found eligible for EA.

[2] An Agreement for Judgment for possession by a date certain usually has a specific date mentioned as the date by which the tenant will vacate the unit, often called the "move-out date." Sometimes, an Agreement for Judgment will include a move-out date and a date for issuance of execution. In that case, the landlord anticipates using the execution only if the tenant does not move out on the specified move-out date, and actual homelessness pursuant to the EA definition can be considered to occur 48 hours before the execution date, which is the date by which the landlord would receive the execution from the court if the tenant does not otherwise move out timely. *See* HSN 2012-05. It should be noted that tenants are not required to move out 48 hours before the issuance of

weeks before the date certain set for vacating the apartment or for issuance of the execution.

iii. Doubled-up, asked-to-leave, Lease Limitation on Guest Stays. Similarly, in a doubled-up asked-to-leave situation where the applicant is a member of the household of a primary tenant, often the primary tenant will remove the applicant and his or her children from the family composition listed with the landlord (often called "removing the applicant and his or her children from the lease"). After this is done, the applicant's family can often stay on as a guest for a period of time. In public and subsidized housing, where overstaying a guest time limit can jeopardize the tenancy of the primary tenant, it would be appropriate for an applicant who is not on the lease of the primary tenant and who has two weeks left before the expiration of the guest limit to start the application process. In that case, the applicant would not become actually homeless under the EA definition until the date on which the guest limit has been exceeded and the subsidized tenancy of the primary tenant is in jeopardy.

iv. Family Reunification. Often a potential applicant does not have custody of his or her children. The children are in the custody of Department of Children & Families (DCF) or in the temporary custody of foster parents or a guardian. Sometimes a parent in these circumstances believes that reunification is likely to happen on a specific date and wants to start the application process. For example, the parent may then be homeless or unable to provide shelter for the children in the situation where he or she is then staying alone. Such potential applicants are not well advised as they are not applying on the basis of an existing household. Therefore, if a parent without custody of his or her children wants to apply, the application should be taken, but the application should be denied on the basis of categorical ineligibility, as the parent alone is not an EA eligible household. An application should not be kept pending while waiting for custody of the child or children to be returned to the parent(s). Homeless Coordinators should note that there are cases when DCF will retain legal custody of the children, but grant physical custody to the parents. In such cases, the family will be eligible because EA eligibility is based on legally approved physical custody.

v. Over-income Family. If a family is over-income and expects its income to be reduced, that family is not eligible until it can demonstrate the reduction in income through accepted verifications. If the head of household of an over-income family wants to submit an application, the application should be taken and then denied. The application should not be started and left open in these circumstances for potential future verification

---

execution date set in the Agreement, but they do become eligible for EA shelter benefits at that time. Sometimes, an Agreement for Judgment does not state a specific move-out date and only indicates that execution will issue on a date certain. In the case of such an Agreement for Judgment homelessness for purposes of EA eligibility starts 48-hours before the date set for issuance of execution. *See* Housing Stabilization Notice 2012-05, *Guidance on Eligibility Issues Relating to Housing before Homelessness.* When an Agreement for Judgment does not include a date certain to vacate or for issuance of execution, or when a summary process eviction action is brought to trial without an agreement, a landlord will often accept back rent and re-institute the tenancy up until the point of service of the notice of levy on execution.

of income changes, because often employers' plans for reductions in employee hours do not take effect in practice as originally anticipated. Once verification of the change in income has been received, the family can commence the application process. Verification in these cases can be in the form of a letter from an employer stating that the employee's hours will be reduced or that the employee will be laid off starting on a date certain in the future at the time of the letter. Such verification can be accepted when given and is effective on the date stated in the letter. The actual reduction in income should be verified at a later date based on pay stubs or other standard employment verifications.

(b) Adding Information

There are many reasons an application may be kept open for days or even weeks after being started. An applicant may be in the middle of the application process and not yet eligible in a number of circumstances. Some examples include: (1) If the applicant has begun the application process because the applicant anticipates circumstances occurring in the near future that would render his or her family eligible. (2) If the applicant needs time to complete verifications and has a place to stay temporarily until the application is completed, so that the family is not eligible for EA presumptive placement.

If, during the time that an application remains open, the family reports to the Homeless Coordinator that there is substantial new information, a change in circumstances, or additional verifications previously unavailable, the application should be updated with the new information and documentation and, if appropriate, completed. While the application is pending, the family has the right to provide any potentially relevant materials and information to the Homeless Coordinator. If one of the changed circumstances demonstrates that the family now has no alternative location to stay on a temporary basis, and based on all the other information provided the family appears to be eligible, the family is entitled to presumptive EA placement, even if all verifications (including DCF Health and Safety Assessment (HAS)) have not been completed.

The DCF HAS is a required verification for EA eligibility under 760 C.M.R. § 67.06 (1) (a) 4. relating to health and safety. The HAS is requested once a family that is applying on the basis of eligibility based on health and safety has presented sufficient third-party verifications and credible information based on self-reporting to have been determined (i) likely to qualify as eligible under the health and safety category and (ii) otherwise eligible for EA assistance after submission of adequate verifications on all other eligibility-related issues.[3] From 2009 through August 3, 2012, the HAS assessment answered three different questions, all of which had to be addressed for the Homeless Coordinator to render a complete determination. The issues were: (i) *other health and safety,* whether there is an immediate threat the applicant family's health and safety other than overcrowding or a violation of the State Sanitary Code, 106 CMR § 309.040 (A) (5) (d) (replaced by 760 CMR 67.06 (1) (e) 4.); (ii) *overcrowding,* whether the unit where the applicant family is currently residing is overcrowded pursuant to the State Sanitary Code, 105 CMR § 410.400; 106 CMR § 309.040 (A) (5) (c) (1) (replaced by 760 CMR 67.06

[3] The homeless coordinator, in consultation with the area supervisor, may refer an application made on any other eligibility category to the DCF HAS assessor for review of the availability of feasible alternative housing.

(1) (e) 3.); (iii) *asked to leave,* when the applicant family has been asked to leave the unit where it is staying with a primary tenant or owner. 760 CMR § 67.06 (1) (e) 7. & 8.

After August 3, 2012, a family is no longer eligible for EA simply on the basis that it meets EA income and asset criteria, has been asked to leave or is simply overcrowded, and is not disqualified for a reason stated in 760 CMR §§ 67.02, 67.06 (1) (d), (2). Families must qualify by having become homeless for one of four reasons stated in 760 C.M.R. § 67.06 (1) (a) 1.–4.—domestic violence; flood, fire, and natural disaster; no fault and excused fault eviction; and substantial health and safety risk.

Even when a family meets the requirements of one of these four categories, the DCF HAS assessment is intended to probe deeply with the applicant family and its current host family, relatives, friends, and neighbors to determine if there might be feasible alternative housing for the children in the family outside of the emergency shelter system. As discussed above, if an applicant family is not listed as part of the family composition of the primary tenant and the tenant's lease has a maximum guest visit period that the applicant family has exceeded, that would be evidence that the applicant family has legitimately been asked to leave by the primary tenants.

If a family has received a HAS that indicates that there is not a substantial risk to health and safety (a level (3) health and safety concern), the application should be completed and denied if the application was made on that basis. If the DCF HAS assessment indicated an intermediate level (2) health and safety concern, the application should remain open while the HAS assessor is working with the family to be able to stabilize the family in place. If outstanding verifications remain for a non-HAS reason for homelessness that qualifies a family for EA homeless shelter benefits (for example, eviction for foreclosure, nonpayment of rent from market rate housing due to loss of income or medical reasons, domestic violence, or fire or natural disaster), then the application may remain open for thirty days from the commencement of the application process for those verifications to be submitted. If, during that time, there is a material and substantial change in the circumstances of the applicant family, resulting in the family possibly becoming eligible because of a substantial risk to health and safety, the Homeless Coordinator should request that a new HAS assessment be done for the family.

If the DCF assessment of substantial health and safety risk results in a positive response, the applicant family should receive a HAS assessment of a level (1) health and safety concern. In that case, the family will have submitted sufficient verification of a reason for homelessness qualifying the family for EA. If the DCF HAS assessor has not addressed the availability of feasible alternative housing in regard to any referred application, the Homeless Coordinator should request the DCF assessor to complete the HAS by determining whether the family, in fact, has no feasible alternative housing available. If the family provides information outside the HAS process that it has been asked to leave and that it has no other place to stay that night, the family should be placed presumptively, provided that the family is determined otherwise eligible for EA homeless shelter benefits.

(c) Closing the Application

Pursuant to longstanding DHS administrative practice, families in the middle of the application process have 30 days from the time that they have started the application

process to complete their applications. If the applicant does not return to the office and the application process (including submission of required verifications) remains incomplete, the application will be denied for failure to provide verification, using the NFL-9-AD, at the end of the 30-day period.

If a family presents additional verifications while the application is open and, based on those verifications, the family appears ineligible, the family should be denied at that point. Such families should not receive a 30-day administrative closing of their case. If the applicant does return to the office shortly before the end of the 30-day period, but indicates that he or she is unable to provide required verifications, the applicant should receive a denial form, NFL-9-AD.

If a family is very close to completing its application as of the final day of the 30-day application period, the applicant can take the extra time necessary to complete the application, at the discretion of the area supervisor. Otherwise, if the application remains incomplete and the area supervisor is not willing to extend the time for presenting verifications, the application should be denied for failure to complete necessary verifications on a denial form, NFL-9-AD. Denial for this reason does not preclude the family from re-applying and the family should be encouraged to re-apply when it has obtained all necessary verifications, as discussed below.

(2) *Reapplication.*

EA applicants have a right to re-apply on any day on which they do not have a current application pending. Although repeat applicants are not well advised if there is no new information or change in circumstances, the applicant has the *right* to re-apply. The applicant may, for example, want to re-apply even without changed circumstances because she or he failed to appeal the initial decision timely and wants a second denial as a basis for an appeal. This is permissible under current program practices.

When the circumstances have not changed on a re-application that person's application should be taken quickly and efficiently and a prompt denial issued. In cases where, however, the applicant asserts that there is substantial new information, a change in circumstances, or additional verifications previously unavailable, a new application is warranted and appropriate and should be addressed in detail, with particular attention to the changed circumstances. Nevertheless, regardless of whether the re-application is based on new information or not, the applicant has a right to re-apply at any time.

Sometimes an applicant on re-application claims changed circumstances in the family's current living circumstances when the family's asserted reason for homelessness is a substantial health and safety risk. In that case, after all other verifications have been completed and the family is found otherwise eligible, a new DCF HAS should be requested. No one should be told that he or she cannot re-apply, unless he or she has a current application pending, in which case the pending application should be completed if an applicant wishes to receive a final disposition. The application should be denied, for failure to provide verifications, in those circumstances if the application is incomplete at the time the applicant requests a final disposition.

Conclusion

Anyone is entitled to submit an application, even if that individual has already

been denied, unless he or she already has an open, pending application. If an application is opened for a family that is not yet, but will soon become, homeless, it should be left open for 30 days to allow the family to submit further information or verifications regarding eligibility. Applications still open after 30 days should generally be terminated for failure to provide verifications.