Commonwealth of Massachusetts
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
Maura T. Healey, Governor ◆ Kimberley Driscoll, Lieutenant Governor ◆ Jennifer D. Maddox, Undersecretary

PHN 2023-01

TO: All Local Housing Authorities
FROM: Ben Stone, Director, Division of Public Housing
RE: Guidance Related to Animals in State-Aided Public Housing
DATE: February, 1 2023

This Public Housing Notice explains obligations of Local Housing Authorities (LHAs) with respect to animals in state-aided public housing.

Need to Know

PHN Goals

1. Understand the definition for Service Animal, Other Types of Assistance Animals, and Pets.
2. Discuss tenancy requirements for maintaining an animal in state-aided public housing.
3. Provide guidance on how LHA staff can assess a request from a person with disability for reasonable accommodation for an Assistance Animal.

Attachments

Attachment A: Terms Defined
Attachment B: Flow Chart
Attachment C: Animal Related Reasonable Accommodation Verification Process
Attachment D: Resources

1. Defining Pets, Service Animal, and Other Types of Assistance Animals

Animals in public housing can be categorized into three types: a pet, a Service Animal, and other types of Assistance Animals. The type of animal may involve different standards for verification, lease enforcement, or rent calculation. Therefore, it is important to know the differences between each category and how LHA policies and rules may or may not apply to them.
The definitions below are important as "Pets" are governed by LHA pet policies, while Assistance Animals, including Service Animals, are allowed through a reasonable accommodation process. Service Animals are a subset of Assistance Animals with a narrower definition.

Pet

DHCD regulation 760 CMR 6.03 defines a pet as "a domesticated animal of a species that is commonly kept as a household pet in the community."

The definition continues, "A cat, dog, gerbil, or hamster is an example of a domesticated animal which is commonly kept as a household pet. A monkey or snake is an example of an animal which is not

commonly kept as a household pet in the community… Caged birds, which are not unreasonably noisy, or fish in tanks are not considered pets for which permission to keep is required."

If the animal does not meet the criteria for a Service Animal or other type of Assistance Animal, the animal is considered a pet for public housing purposes.

Service Animal

Service Animal is a type of Assistance Animal, but has a narrower meaning defined by the Department of Justice under the ADA[1].

A **Service Animal** is a dog that is individually trained to do work or perform tasks, including a physical, sensory, psychiatric, intellectual, or other mental disability, for persons with a disability.

The service animal may be trained by the Owner. '*To work or perform tasks'* means the dog is trained to take a specific action to assist a person with a disability, when needed. The tasks performed must be directly related to the individual's disability. Only dogs can meet the DOJ definition of service animal[2].

Guidance referring to Assistance Animals is applicable to Service Animals unless otherwise specified.

How Service Animals Assist

Examples of work or tasks include, but are not limited to:

- assisting individuals who are blind or have low vision with navigation and other tasks,
- alerting individuals who are deaf or hard of hearing to the presence of people or sounds,
- pulling a wheelchair,
- assisting an individual during a seizure,
- alerting individuals to the presence of allergens,
- retrieving items such as medicine or the telephone,
- providing physical support and assistance with balance and stability to individuals with mobility disabilities, or
- helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.[3]

Assistance Animal

An **Assistance Animal** is a broader term than Service Animal. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person's disability.[4] An Assistance Animal is not a pet and is permitted as a reasonable accommodation in order for a person with a disability to have an equal opportunity to participate in and enjoy the LHA's housing and programs.

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[1] 28 Code of Federal Regulations. §§ 35.104; 36.104

[2] Miniature horses are also addressed under the ADA regulations at 28 C.F.R. §§ 35.136(i) & 36.302(c)(9). See also HUD FHEO Notice: FHEO-2020-01 (FN 18).

[3] 28 Code of Federal Regulations. §§ 35.104; 36.104

[4] HUD also refers to Assistance Animals that are not Service Animals in its FHEO Notice: FHEO-2020-01 as "Support Animals" (p. 1).

In contrast to a Service Animal defined above, other types of Assistance Animal do **not** have to be trained to provide support to a person with a disability, and an Assistance Animal that is not a Service Animal may be a dog or another type of animal.[5] They may do the following:

- Work,
- Provide assistance,
- Perform a task, or
- Provides therapeutic emotional support to alleviate a symptom or effect of the disability.

How Assistance Animals Assist

There are many examples of work, tasks or other type of assistance for disabling conditions, just a few of which are listed below[6]:

Persons with mental health disabilities (e.g., depression, anxiety, PTSDs)

- providing benefit from the routine of caring for animals, or interacting with others while caring for or being with animal. These and other benefits may reduce stress and loneliness, enhance social connection, provide a reason to live, or create purpose and meaning
- otherwise providing emotional support that alleviates a symptom or effect of a disability
- taking an action(s) to calm an individual during an anxiety attack
- interrupting impulsive or destructive behaviors

Persons with neurological or intellectual disabilities (e.g., autism, Down syndrome, dementia, epilepsy)

- providing benefit by calming, becoming more engaged and expressive (laugh, talk, smile), accepting touch, and stimulating social interaction
- alerting to hazards or interrupting wandering or distraction
- alerting to an upcoming seizure and assisting the individual during the seizure

Persons with physical disabilities (e.g., limited mobility, vision impairment, hearing impairment, diabetes, paralysis)

- providing benefit from animals that can retrieve items
- providing physical support to help with balance or pulling a wheelchair
- assisting individuals who are deaf or hard of hearing
- assisting individuals who are blind or low vision
- alerting a person with diabetes when blood sugar is too high or low

2. Public housing tenancy requirements and animals

The LHA should provide its Pet Policy, which may be a "No Pet" policy[7], accompanied by the LHA's Reasonable Accommodation Policy to the tenant or applicant when informed that the tenant or applicant intends to keep an animal in the unit. As discussed in this PHN, Assistance Animals are *not* pets, and therefore policies related to pets do not apply. For example, the pet fee and restrictions on size or type of animal do not apply to an Assistance Animal in the household. In addition, any language in the LHA's lease referring to pets is not applicable to Assistance Animals.

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[5] See HUD guidance on "unique" (not commonly kept in households) Assistance Animals at FHEO Notice: FHEO-2020-01, pp. 12-13 & 19).

[6] HUD FHEO Notice: FHEO 2020-01, p. 19.

[7] 760 CMR 6.07

Lease Enforcement and Pets

A tenant maintaining a pet in state-aided public housing is subject to the pet guidelines or policies adopted by the LHA as well as provisions in the State Form Lease related to Pets, *Section IX. TENANT'S OBLIGATIONS (O. Pets Policy*). This may include a pet fee, size restrictions, and limitation on the number of animals.

As household circumstances may change over time, a tenant may request a reasonable accommodation for an animal they initially considered a pet, and they may be able to document the need for an Assistance Animal. At that time, pet guidelines and policies would no longer apply to the animal.

Lease Enforcement and Assistance Animals

A tenant with an Assistance Animal is not subject to the pet guidelines or policies adopted by the LHA or provisions in the State Form Lease related to Pets, *Section IX. TENANT'S OBLIGATIONS (O. Pets Policy*). However, a reasonable accommodation for an Assistance Animal does not exempt tenants from other obligations in the lease. A tenant's or a household member's ownership of an Assistance Animal need not be accommodated if it would pose a **direct threat** to the health or safety of others, or would cause substantial damage to the physical property of others (including LHA property), that cannot be eliminated or reduced to an acceptable level by another reasonable accommodation. A "direct threat" must be determined through an individualized assessment that is based on reliable objective evidence.[8]

Behaviors that may violate the lease include, but are not limited to: chasing, biting, excessive barking, aggressive jumping at people, or not being housebroken. Animals must be under control and cannot pose a direct threat to staff, tenants or other people on housing authority property (see "direct threat" reference above). *Section IX. TENANT'S OBLIGATIONS* (excerpted in Attachment D) supports the LHA to enforce these standards with tenants. The LHA may hold the tenant responsible for the damages as specified in *Section IX. TENANT'S OBLIGATIONS (M) (*excerpted in Attachment D). Additionally, tenants are to maintain clean and sanitary condition of the leased premises and common areas, which includes disposal of animal waste. This may be enforceable through the lease and in partnership with a local animal control officer enforcing local ordinances.

Importantly, the LHA must determine whether some of the potential lease violations could be reduced through further reasonable accommodation. For example, if an Assistance Animal causes damage to the property, an LHA should consider if there is a reasonable accommodation that can limit future damage while allowing the tenant to maintain the Assistance Animal and their housing.

Rent Calculation and Assistance Animals

For the purposes of determining income for all applicants and tenants of state-aided public housing, LHAs must consider certain actual and verified non-reimbursable out of pocket expenses related to obtaining and maintaining Assistance Animals as a medical deduction under 760 CMR 6.05 (4)(e). This notice replaces guidance given in PHN 2008-11 (Policy for Service Animal Expense Deductions).

Deductible expenses include costs of obtaining an Assistance Animal, training expenses payable to a third-party provider of training services, and costs of maintaining a service or other type of Assistance Animal. Such expenses include food, grooming and veterinary care, service harness or vest and associated leash. Verifications may include receipts or a summary of payments received for services or goods from a third-party provider.

[8] HUD FHEO Notice: FHEO 2020-01 (p. 13); HUD-DOJ Joint Statement (Questions 4 & 5).

3. Processing an animal-related reasonable accommodation request

Reasonable Accommodation Background

LHAs are prohibited from discriminating against persons with disabilities. LHAs also have an *affirmative obligation* to provide equal opportunities for persons with disabilities in LHA housing and other programs, services, and activities.

This standard is governed by several state and federal statutes and regulations,[9] including:

- Chapter 151B of the Massachusetts General Laws,
- Federal Fair Housing Act, as amended,
- Americans with Disabilities Act ("ADA"), as amended,
- Section 504 of the Rehabilitation Act of 1973, as amended.

LHAs are required, regardless of whether they have federally-funded housing,[10] to make reasonable accommodations in rules, policies, practices, and services, or reasonable modifications to facilities when such accommodations or modifications may be necessary to afford a person with a disability an equal opportunity to use and enjoy the dwelling or to fully access and use the LHA's programs and services. LHAs should also refer to DHCD guidance, including PHN 2021-17 (Template Reasonable Accommodation Policy) and PHN 2011-13 (Additional Information & Resources Regarding Reasonable Accommodations/Modifications & access for persons with Disabilities) and applicable HUD guidance for further background on reasonable accommodations.

The following provides general guidance to assist LHAs in assessing requests from applicants or tenants regarding animals. As such guidance is general and is not intended to be exhaustive, to alter legal obligations, or to cover every aspect of laws that may apply in a particular situation, LHAs should review all applicable state and federal laws and regulations pertaining to non-discrimination and access for persons with disabilities, and consult with their legal counsel on particular matters.

Reasonable Accommodation and Service or Other Types of Assistance Animals

Persons with disabilities may request a reasonable accommodation from housing authority rules and policies to have an animal.[11] Types of accommodation might include exception from: LHA No Pet Policy; LHA Pet Policy and related requirements such as pet deposits or weight limits; limits on the number of allowable animals; fees; and/or restrictions on animals in common areas and LHA offices. A person with a disability may make a reasonable accommodation request at any time, and LHAs must consider the reasonable accommodation request even if the resident made the request after bringing the animal into the housing.[12] LHAs should allow an animal to stay in a unit while verification of Assistance Animal status is pending consistent with this guidance.

As noted above, while Service Animals are a type of Assistance Animal, they are defined differently from other Assistance Animals, although they may meet similar disability-related needs. Under the ADA, there are limits on the inquiries an LHA may make in responding to a request for

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[9] 804 CMR 2.00; 24 CFR Part 100 et seq; 28 CFR Part 35 et seq.; 24 CFR Part 8 et seq.
Section 504 of the Rehabilitation Act of 1973 applies to LHAs that receive federal financial assistance.

[11] Reasonable accommodation requests do not have to be made through specific words, forms, or in writing (see HUD-DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, Question 12).

[12] FHEO Notice: FHEO-2020-01, p.8.

accommodation to allow a Service Animal.[13] However, both Service and other types Assistance Animals qualify as a reasonable accommodation for a person with a disability and are not pets. Most importantly, Assistance Animals other than Service Animals may include a range of animals and assistance provided.

While the process laid out in Attachment B & C provides clear steps to assist LHAs in responding to a accommodation request for an animal, it is essential that LHAs understand the terms referenced (Attachment A). Most importantly, LHAs must approach each request for accommodation individually by considering the unique circumstances of the person making the request. If the person has a disability and a verifiable disability-related need for an Assistance Animal, LHAs must grant requests that are reasonable.

In addition to LHA polices, municipalities may have local ordinances about animals that LHA may feel limits their ability to grant a request. The LHA should bear in mind that it is not the enforcer of local ordinances. LHAs should consult with their legal counsel if they have a concern that local or state[14] animal requirements could limit their ability to grant a request.

[13] See https://www.ada.gov/resources/service-animals-2010-requirements; HUD Notice: FHEO-2020-01 and flow chart in Attachment B.

[14] See also Massachusetts law about animals | Mass.gov.