



**Massachusetts Department of Housing and Community Development  
Division of Housing Stabilization**

To: DHCD Field Staff

From: Robert Pulster, Associate Director

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Date: September 17, 2012

RE: Housing Stabilization Notice 2012-10, Guidance on the meaning of a "direct threat to the household's safety"

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This Housing Stabilization Notice is intended to give guidance on (1) the meaning of a "direct threat" to the household's safety in 760 C.M.R. § 67.06 (2) (c) as a "good cause" defense for abandoning public or subsidized housing and (2) the meaning of "significant physical harm" in the Administrative Plan for the Department of Children and Families (DCF)–Department of Housing and Community Development (DHCD) Health and Safety Assessment (HAS) Initiative.

**Introduction**

760 C.M.R. § 67.06 (2) discusses reasons a family may be ineligible for Emergency Assistance ("EA") temporary emergency shelter. 760 C.M.R. § 67.06 (2) (c) states, in relevant part, that a family is ineligible for benefits if it "abandoned in the preceding year, without good cause, public and/or subsidized housing." The provision lists several types of good cause, including a "direct threat to the household's safety." The DCF-DHCD HAS Initiative Administrative Plan also includes reference to the related concept of "significant physical harm," which is also addressed in this HSN.

The meaning of a "direct threat" has come up in the field several times recently, resulting in requests for clarification. This HSN is intended to provide guidance to the field on what constitutes a "direct threat." In sum:

- A direct threat exists if a reasonable person, in a factually similar situation, would reasonably determine that a serious and credible threat existed to a member of the applicant's EA household of a direct, specific, imminent, and substantial physical harm, as discussed below.
- Significant physical harm exists if an individual has incurred substantial physical harm, as discussed below.

**Discussion**

In determining what constitutes a "direct threat," an objective view should be used. That is to say, the issue is not whether the applicant felt threatened; the issue is whether a neutral outsider observing the situation could determine that a genuine direct threat existed. In other words, in order to decide that direct threat existed, the Homeless Coordinator needs to find that a reasonable person, in a factually similar situation, would

reasonably determine that a serious and credible threat existed to a member of the applicant's EA household of a specific, imminent, and substantial physical harm.

Within this definition, there are several key components:

- *Reasonable person* – “Reasonable person” does not mean an “average” person. A reasonable person is someone whose standards of behavior, responsibility, and belief line up with those of the typical, sensible people in our society at the present time.
- *Factually similar situation* – A situation similar to the one at hand, although not necessarily identical. Things such as location, number of persons, time, and dates may be somewhat different, but the relevant facts relating to the type of harm must be the same.
- *Serious and credible threat* – The threat must be one which is not made in joking or passing, but can be believed and counted on. For example, it would not be a serious and credible threat if someone said “I hope he gets what’s coming to him.” It would be a credible threat if someone said “I am going to punch that guy first chance I get,” and that person was known to be a violent person.
- *Member of their EA family* – The threat cannot concern family members who are not part of the EA applicant family. For example, it would not be good cause if a woman who was an EA applicant with a child left a subsidized or public housing unit because of a “direct threat” to the father of her child, if she was applying for EA without him. It would be sufficient if the threat of harm was against the applicant or her child.
- *Specific* – The threat must be restricted to a particular individual or individuals, situation, relation, or effect and must indicate that a specific type of harm is intended. For example, “I am so mad, I’m going to beat Jim up,” is specific because the targeted person is clearly indicated and the method of harm is indicated, in this case a bodily attack with bare fists. The following remarks are not specific: “I am so mad, I am going to hit something,” “I am so mad, I am going to hit the next person I see,” or “I’m so mad at Jim; next time I get a chance, I’m going to do something about it.” In those cases, either the target is not specific, or the method of harm is alluded to in too vague way, assuming there is no additional information or context.
- *Imminent* – The threat must be to take action immediately or in short order. The threat must be hanging over the applicant at all times, creating constant fear that the threat could be carried out at any moment, not at some unspecified time in the future. For example, “Someday, I’ll get that guy,” is not imminent. “I’m going to get him this afternoon,” or “I’m going get him sometime this week,” both have strong indications of being imminent. An applicant living in subsidized housing or in a large apartment complex should have attempted to obtain a transfer from the subsidizing agency or property manager if he or she felt that he or she was under an imminent threat. A threat is not imminent if the subsidizing agency or property manager is able to transfer the applicant to another location out of the geographical zone of the threatening behavior within a reasonable amount of time.

If the applicant did not attempt to obtain a transfer from the subsidizing agency or property manager, he or she must be able to show why the circumstance was such an imminent threat that he or she was required to leave without taking the time to request a transfer.

- *Substantial harm* – The harm must be of substance, a real and essential harm. For example, it is not substantial harm if someone threatens to shoot an applicant with a water pistol or to scratch him on the arm. It is substantial harm if someone threatens to cause a major injury to a specific and significant body part or organ or to hurt the applicant in a way that serious bodily injury is likely to occur, such as to hit an applicant with a car.
- *Physical harm* – The harm must be to the body of individual, not a harm to property, reputation, etc. For example, it is not a qualifying type of harm if someone badmouths or “disrespects” an applicant. It would be a qualifying type of harm if someone threatens to break an applicant’s leg.
- *Credible* – An alleged “direct threat” is credible if it is highly believable. It is useful to have evidence to support an allegation that a threat is credible. Evidence can come in many forms: word of mouth, written, communicated over the internet, or through a third party. Evidence may be of varying degrees of usefulness in determining whether a direct threat exists. Generally, the greater the amount of evidence, the closer the evidence is to the source, and the closer in time that it is reported to the time it is actually made, the more credible the assertion of a direct threat will be. The seriousness of the source should also be considered. For instance, if the person making the threat is a known jokester, then the threat is not credible, or if the threat is made by someone who is intoxicated and unable to carry out the threat because of his or her state of inebriation or to desire to commit the threatened conduct when he or she returns to sobriety, the threat is not credible.

All of these considerations need to be taken into account when assessing whether a direct threat exists. Only when the threat meets all the requirements can it become a good cause defense for abandoning public or subsidized housing. For instance, if an applicant says, “I had to leave that unit because I heard that my abuser was getting out of jail,” it may not be persuasive unless there is evidence that the abuser is actually going to get out of jail soon and that he has threatened to return to her when he gets out of jail, or if he has done so before.

The situations described in this memorandum are only hypothetical, but they are based on similar instances. The situations described are only examples and many types of evidence and statements may have different effects in different contexts. Each claim of direct threat must be analyzed individually to see whether all the necessary elements are present.

### **Conclusion**

To determine whether a “direct threat” to a family exists, use the objective standard listed above. In making the decision, make sure to consider any credible evidence submitted and use it to bolster the decision. If the homeless coordinator does not

believe evidence presented by the applicant, the homeless coordinator should explain why it was not credible in the explanation area of the NFL-9-AD. (This is the blank space where the form requests, "Please explain: State who, what, where, and when. . . .")