

Public Housing Notice 2005-05

Memorandum

To: All Local Housing Authorities
 From: Carole Collins, Director
 Bureau of Housing Management
 Subject: Domestic Violence Priority Status
 Date: August 1, 2005

The Governor's Commission on Domestic Violence was established by the Weld/Cellucci administration in April 1992, shortly after domestic violence was declared a public health emergency in the Commonwealth of Massachusetts. The Advisory Commission was formed in order to make recommendations to the Governor addressing this state of emergency. The Commission, through its multi-disciplinary membership, actively proposes innovative and coordinated policies to address domestic violence at the highest levels of state government. The Commission is currently chaired by Governor Mitt Romney.

Recently DHCD staff met with members of the Housing and Homelessness Subcommittee of the Governor's Commission on Sexual and Domestic Violence to discuss impediments that survivors of domestic and sexual violence encounter as they relate to applying for and residing in public housing. The Committee Members sought to have special preference or priority given to survivors of such crimes. After lengthy discussions, we determined that changes to our regulations were not necessary in that the Emergency Case Plan, when correctly interpreted and applied by LHAs, provides relief in appropriate circumstances.

Recognizing that there has been a high turnover of LHA staff in the last few years due to early retirement at many LHAs, the enclosed memorandum, that was first issued by this office on September 9, 1996, is being reissued to all LHAs. The major thrust of this memorandum explains the verification that LHAs may require of applicants requesting Emergency Case status because of an Abusive Situation, and makes clear that an LHA may not insist upon any one form of verification, such as a restraining order against the abuser. It should also be noted that the term "domestic violence" includes sexual assault in accordance with the definition contained in the Abuse Prevention Act (G.L. c. 209A, §1), and the same types of documentation should be considered in the case of sexual assault victims.

In addition to notifying LHAs of the reissuance of that important memorandum from 1996, the purpose of this memorandum is to inform LHAs of the position that DHCD has taken in response to the Committee's recommendations regarding tenants and applicants who are survivors of domestic or sexual violence, and our intent to ensure that LHAs act accordingly. The following are clarifications to the DHCD regulations and guidelines regarding applicants and tenants of state-aided housing. Note that where ever the words "applicant" or "tenant" appear, these terms are meant to include members of the applicant or tenant household as applicable.

Tenants

Current or former LHA tenants with documentation showing that they are victims of domestic violence at their housing authority unit shall be considered in an Abusive Situation under another LHA's Emergency Case Plan and be eligible for Emergency Case status at another housing authority. As in the grant of any Abusive Situation priority, the housing for which the application is made must place the applicant a reasonable distance away from the abuser(s). Since applicants determined by the LHA to be in an Abusive Situation will be offered housing ahead of other needy individuals or families on the LHA's waiting list, the abuser must not be part of the applicant household, and the applicant must sign a form (see attached) certifying that the applicant realizes that he/she will be evicted if he/she allows the abuser to reside with him/her.

If evidence is provided, and the housing authority feels confident that the abuser has been rehabilitated, the LHA may give written permission to add the former abuser to the lease in accordance with the provisions in the definition of Family (Household) at 760 CMR 5.03.

If an existing tenant is a documented victim of domestic violence and removes the abuser from the unit, the LHA shall not evict the remaining household members for damage or disturbance caused by the abuser.

Upon notification that an existing tenant is a documented victim of domestic violence and has removed the abuser from the unit, the LHA shall recalculate the household rent subtracting the abuser's income from the household's total income. In accordance with 760 CMR 6.04(3)(b), there may be good cause for a waiver of any late fees and interest that might otherwise have been charged if the tenant fails to pay the rent until the amount of rent has been recalculated after the removal of an abuser from the household.

The DHCD form lease for public housing includes a provision in Section VIII.(S) of the Landlord Obligations that an LHA provide reasonable and appropriate assistance to a tenant who is a victim of domestic violence. Such reasonable and appropriate assistance may include granting the tenant a transfer for administrative reasons in accordance with the definition at 760 CMR 5.03.

Where the abuser is not a member of a tenant household, in appropriate circumstances, the LHA may seek a court order to prohibit the abuser from entering or remaining upon LHA property in accordance with G.L. c.121B, § 32B-32F.

LHAs must comply with the definition of Family(Household) at 760 CMR 5.03, which allows a Massachusetts court with jurisdiction to determine who shall be entitled to the public housing tenancy in the event of the break up of the tenant family. When the issue arises, LHAs should inform tenants and the courts of the existence of this regulation.

Applicants

Applicants who have been displaced by an "Abusive Situation" are not required to be in a continuing situation of immediate risk of harm in order to be eligible for the priority under the Emergency Case Plan. Such applicants must only show that domestic violence was the cause of their homelessness.

While victims of sexual violence not constituting "domestic violence" as defined by the Abuse Prevention Act do not receive priority based on that fact alone, if the victim becomes homeless as a consequence of the sexual violence, he/she may be eligible for the Homeless priority under the Emergency Case Plan. As in cases of Domestic Violence, there should be a presumption that victims did not contribute to their circumstances. If actual or feared contact with the perpetrator in the present housing has caused severe medical or psychiatric illness, applicants should be granted a priority for a Severe Medical Emergency under the LHA's Emergency Case Plan.

When an LHA determines that an applicant may be disqualified for housing because of damage or disturbance at a prior tenancy, if the applicant shows that she/he was a victim of domestic abuse or sexual violence and that the damage or disturbance was caused by the perpetrator of domestic abuse or sexual violence, then these facts shall be considered by the LHA as mitigating circumstances pursuant to 760 CMR 5.08(2).

Because of the complex and sensitive nature of the determinations that must be made in state-aided housing regarding survivors of domestic abuse and sexual violence, and, in light of the significant staff turnover at LHAs, I am asking the Regional Attorneys to conduct regional workshops and trainings on these and other tenant selection issues. You should be receiving information from them shortly scheduling these important educational events.

(Sample certification for applicant granted Abusive Situation priority)

In recognition of the fact that I have been granted a priority that will require the _____ Housing Authority (__HA) to offer me housing ahead of other applicants on its waiting list, I, _____ (Applicant's name) hereby certify that _____ (name of former abuser) will not reside with my family and me in __HA housing unless I apply to the __HA to add him/her to my household and the __HA gives advance written approval.

I understand that if _____ (name of former abuser) returns to my household without prior approval then this will be grounds for the __HA to terminate my lease and to initiate eviction proceedings against me.

Signed this day of _____, 20__.
 Under the pains and penalties of perjury.

Tenant (date)

__HA Representative