

**Housing Advocacy 101:
Getting and Keeping Housing for Your Clients**

PART #5:

Fair Housing, Disabled Persons + Supportive Housing

In the world of public and private housing, the idea of being a person with a disability is important in a few different but important ways.

- ◆ Eligibility for certain state and federal housing programs is based on definitions of ‘disabled’ in specific program guidelines
- ◆ Fair Housing Act protections make it hard for housing authorities and providers to deny an applicant access to housing based on various protected disability categories, including HIV+, psychological disorders, alcoholism and prior drug addiction. These protections also include making administrative modifications to programs, practices and procedures to housing units as a ‘reasonable accommodation’ of a disability. In addition, an applicant can make a ‘reasonable modification’ request for a physical modification or alteration to their unit.
- ◆ The Americans with Disabilities Act offers similar access protections to ‘public accommodations’ (such as receiving services) for disabled persons. The ADA also requires that ‘reasonable accommodation’ be made to disabled persons.

NOTE: Each of the above uses different definitions of ‘disabled.’

Eligibility for Disabled Units: There are a number of state and federal subsidized resources specifically for disabled persons. For most of them, it is only required that your client meet a general definition of ‘disabled’, in order to be disabled. For these programs, your client should not be required to provide *specific* information about the nature of his or her disability as a requirement.

Federal programs requiring general proof of disability for eligibility:

- ◆ Federal elderly-disabled public housing
- ◆ Section 8 Mainstream Voucher program
- ◆ Section 811 program

State programs requiring general proof of disability for eligibility:

- ◆ State elderly-disabled public housing
- ◆ Alternative Housing Voucher Program (AHVP)

For disabled housing, receipt of Social Security disability benefits usually is enough to document eligibility. However, a Social Security Administration disability determination is not required per se. A physician can independently provide documentation of eligibility.

Federal programs for which HIV status can be a *specific* eligibility requirement:

- ◆ Shelter Plus Care (homeless)
- ◆ Supportive Housing Program (homeless)
- ◆ Housing Opportunities for Persons With AIDS (HOPWA)

For these programs, a physician can provide documentation that the eligible individual is HIV+.

Fair Housing Act & Americans with Disabilities Act: These federal laws offer protections to persons with a wide range of disabilities. The Acts apply to public and private housing and publicly funded services (they are not limited to these). Here’s how these laws are important for your clients:

- ◆ Since they prohibit discrimination based on a range of disabilities, including HIV status, mental illness, alcoholism and history of addiction, they limit the kinds of questions that housing gate-keepers can ask of applicants. Gate-keepers can ask about a disability only for

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- general eligibility purposes for 'disabled' housing but should not ask about the specific nature or extent of disabilities (this applies to supportive housing, as well).
- ◆ Similarly, if a client's disability (e.g. active alcoholism, un-medicated mental illness) can be connected *as a mitigating circumstance* to some prior event that is a barrier to housing (e.g. eviction or disorderly conduct), then the client can ask that the housing gate-keeper make a modification to their screening guidelines as a reasonable accommodation to a disability.
 - ◆ If your client's disability makes it difficult for them to comply with some part of an application process (such as showing up in person to pick up or fill out a form), your client can request an exception to the policy as a reasonable accommodation to their disability.
 - ◆ Once in a unit, physical modifications or alterations may be necessary in order to fully use the property, therefore reasonable modifications could be made to the property. Administrative modifications to program policies and procedures can also be made, as a reasonable accommodation to their disability.

Review Examples of Reasonable Modification and Accommodation

Special Issues Related to Supportive Housing: Housing programs that also offer supportive services in connection with the provision of housing are covered by the same laws and regulations that apply to regular, unsupported housing. As a rule, supportive housing providers should not impose requirements or conditions that look very different from those that any other property owner can impose.

Screening: Supportive housing programs usually target a specific population, such as homeless persons, people with HIV disease or mental illness. They will need to document that the applicant meets that eligibility criteria. However, they should avoid asking your client *any other information* related to a disability (such as history of mental illness, hospitalization, history of substance use) that is not required for specific eligibility. Such questions may violate the Fair Housing Act.

Participation in services: Some state and federal housing programs are specifically connected to participation in services. These include:

- ◆ HOPWA
- ◆ Shelter Plus Care
- ◆ MA Department of Mental Health residential programs & Bureau of Substance Abuse Services treatment programs

Most programs, however, are not directly connected to services, even though services can be offered to residents. Participation in services, as a rule, can not be required as a condition of tenancy for most subsidized housing.

Termination: Every state and federal housing program has regulations that describe required termination processes for residents. This applies to special needs and supportive housing programs, as well. If you have a client living in supportive housing, be aware that the provider must follow program guidelines in terminating your client from housing, even with good cause.

Evictions: In every state, there are state and local laws that govern tenant-property owner relations. It is generally accepted that Massachusetts tenant-landlord applies to most transitional and permanent supportive housing programs. This means that your client living in such a program probably has the right to go to civil or housing court, if they are being asked to leave a program.