



LEGAL AID SOCIETY OF MINNEAPOLIS  
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September 1, 2009

██████████  
Manager of Leasing and Occupancy  
Minneapolis Public Housing Authority  
1001 Washington Ave. N.  
Minneapolis, MN 55401

SENT VIA FAX  
ORIGINAL SENT US MAIL

Dear Ms. ██████████

The MPHA's July 8, 2009 eligibility denial finds Mr. ██████████ ineligible for MPHA public housing based on incidents of criminal history. The criminal incidents are the result of the untreated symptoms of disabilities Mr. ██████████ suffers from.

**I. Reasonable Accommodation**

Government housing providers are required to provide reasonable accommodations to tenants and applicants under the Fair Housing Act (FHA), Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. A reasonable accommodation includes a change in a rule or policy that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. *See, e.g.,* 42 U.S.C. §3604(f) (2008); Joint Statement of HUD and DOJ at 6 (May 17, 2004) [hereinafter Joint Statement]. The federal definition of disability for purposes of reasonable accommodation includes a person who: 1) has a physical or mental impairment that substantially limits one or more major life activities; 2) has a record of such impairment; or 3) is regarded as having such an impairment. *See, e.g.,* 29 U.S.C. §706(8); 42 U.S.C. §3602(h); 42 U.S.C. §12101; Joint Statement at 3.

The only way a housing provider can deny a reasonable accommodation is by establishing that the accommodation 1) creates an undue financial or administrative burden or 2) fundamentally alters the nature of the program. 24 C.F.R. §8.11 (2008); 24 C.F.R. §8.53 (2008).

**II. Reasonably Accommodate Mr. ██████████ by Waiving His Criminal History**

Mr. ██████████ has disabilities under federal law which can be reasonably accommodated by excluding his criminal record. There is a tight nexus between Mr. ██████████'s disability, his proposed accommodation and his ability to show reasonable probability of future favorable conduct.

Disability



September 1, 2009

Page 2

Alcoholism is a disability under the FHA and the ADA and thus for the purposes of determining a reasonable accommodation. *See, e.g., Dovenmuehler v. St. Cloud Hosp.*, 509 F.3d 435 (8<sup>th</sup> Cir. 2007); 42 U.S.C. § 12112(a); Joint Statement at 3. Depression is also a disability for the purposes of a reasonable accommodation. *See id.* Mr. [REDACTED] has suffered from many years of untreated major depression which has manifested itself in alcohol dependence. I have enclosed the Reasonable Accommodation Verification Form and accompanying cover letter completed by Dr. [REDACTED], Mr. [REDACTED]'s psychotherapist for your review. Dr. [REDACTED] goes into his professional diagnosis of Mr. [REDACTED]'s disability at length. As such, Mr. [REDACTED] both "has an impairment" and "a record of such impairment."

#### Accommodation

In order to accommodate Mr. [REDACTED]'s disabilities, the MPHA should disregard his criminal history. As Dr. [REDACTED] explains, Mr. [REDACTED]'s legal history is a "direct result of many years of untreated major depression, manifesting itself in substance dependence and related difficulties." Mr. [REDACTED] would not have engaged in the activities that lead to his negative criminal history if it were not for his past depression and alcoholism.

Now, Mr. [REDACTED] has undergone and continues to undergo successful and effective treatment for his disabilities. Please consult Dr. [REDACTED]'s analysis for further detail. In addition, Mr. [REDACTED] is participating in the Veterans' Upward Bound Program for vocational and educational training, is actively seeking employment and intends to enroll in school in the future.

Mr. [REDACTED] has been sober for nearly a year. He undergoes regular medical and counseling treatment at Specialized Treatment Services (STS) in addition to his sessions with Dr. [REDACTED]. At STS he is also subject to random UA testing. The STS program is based on phases: as Mr. [REDACTED] successfully completes phases of the program he moves up to a higher phase. He is about to successfully reach phase 4 of the program. Therefore, Mr. [REDACTED] clearly evinces reasonable probability of future favorable conduct.

Thus, in order for Mr. [REDACTED] to have an "equal opportunity to use and enjoy" public housing through the MPHA, it is necessary for the MPHA to modify its policy regarding criminal background checks. If the MPHA refuses to do so, it will subject Mr. [REDACTED] to discrimination based solely on the past manifestations of his disabilities. Moreover, granting Mr. [REDACTED] this accommodation will not place an undue financial or administrative burden on the MPHA nor will it fundamentally alter the nature of the MPHA's public housing program.

#### Nexus

Mr. [REDACTED] cannot enjoy the benefits of public housing because of MPHA's policy of rejecting applicants based on criminal history. But Mr. [REDACTED]'s criminal history is predicated on his disabilities and it does not even suggest that Mr. [REDACTED] presents a threat or danger to the public housing community. Moreover, Mr. [REDACTED] has demonstrated that he can overcome the negative manifestations of his disabilities with proper treatment. Further, Mr. [REDACTED] is successfully undergoing that treatment and will continue to do so in the future. As such, waiving Mr. [REDACTED]'s criminal history is clearly related to his disabilities, his likely future favorable conduct and his "equal opportunity to use and enjoy" public housing through the MPHA.

[REDACTED]

September 1, 2009

Page 3

If you have any questions or need more information after reviewing this letter and the enclosures please feel free to contact [REDACTED] or me. If you do not, please grant Mr. [REDACTED] reasonable accommodation request promptly and continue processing his application.

Sincerely,

[REDACTED]

BR:br

Enc.

cc: [REDACTED]

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