

# Seattle Housing Authority Agrees to Broad Reforms for Voucher Termination Hearings\*

The Seattle Housing Authority (SHA) recently signed a consent decree committing to substantially reform its termination hearings for Section 8 voucher holders.<sup>1</sup> The agreement came on the heels of a lawsuit initiated by a Section 8 participant who alleged due process deficiencies in SHA's practices and procedures in conducting termination hearings, first filed in state court as a writ petition but later removed to federal court by SHA.

In an earlier ruling on SHA's motion to dismiss the case for failure to state a claim,<sup>2</sup> the federal court had agreed with SHA that its hearing procedures met the minimal standards laid out in the governing HUD regulations.<sup>3</sup> However, the court went further, calling into question the constitutionality of the applicable regulations and stating that in the absence of a comprehensive post-termination review, a simple adherence to HUD's minimum standards for pre-termination review "may well prove" inadequate under *Goldberg v. Kelly*.<sup>4</sup>

The court's concern doubtless encouraged the housing authority to commence the settlement negotiations that produced the substantial reforms described below. Since most PHAs employ similar termination hearing procedures simply patterned after the HUD regulations, advocates everywhere should consider whether a due process challenge might bring needed reform to any defective procedures.

The lawsuit underlying the consent decree arose from an alleged pattern of deficiencies in the hearing policies and practices of SHA. Prior to the suit, according to the tenants, SHA had terminated nearly 300 families from the Section 8 program in three years, in hearings before a single hearing officer with no training and no legal background. SHA policy prohibited tenants from raising legal arguments and defenses, including those based on cases and statutes; tenants could only use HUD regulations and SHA policies, as well as facts, in their defense. With SHA's blessing, the hearing officer routinely disregarded valid defenses tenants raised under antidiscrimination laws, disability accommodation statutes, laws protecting survivors of domestic violence, state landlord-tenant law, judicial rulings, and other legal authorities. Termination

was upheld in well over 90% of the cases. Because most Section 8 voucher holders are elderly, disabled or single-parent households with children, as well as extremely low income, the loss of a voucher is devastating and often results in homelessness or the break-up of the family.

## The Court's Earlier Ruling

The plaintiff in the case, Tina Hendrix, had faced termination of her Section 8 voucher due to alleged misrepresentations of family size and income. When notified of SHA's intent to terminate her voucher, she requested an informal hearing, as provided by the rules.<sup>5</sup> After being granted the informal hearing, Ms. Hendrix then filed suit and, after the case was removed to federal court, obtained a preliminary injunction delaying the hearing until resolution of the lawsuit. In ruling on SHA's motion to dismiss, as the federal court construed her allegations, they contained two sets of claims: first, that SHA did not, in practice, conform its termination hearings to the requirements of the HUD regulations, and secondly, that regardless of compliance with the HUD regulations, the SHA "informal hearing" process did not measure up to the constitutional standards for procedural due process for public benefit terminations articulated decades ago in *Goldberg v. Kelly*.<sup>6</sup>

First, the court held that Hendrix's allegation of SHA's practice of using a lower evidentiary standard than required was sufficient to state a claim. The governing HUD regulations mandate that a "preponderance of the evidence" standard be used in termination hearings. If Hendrix could prove at trial her allegation that SHA hearing officers did not, in practice, conform to this standard but used a lower "sufficient evidence" standard instead, the court held that Hendrix could prevail on this claim.

Secondly, the court found that *Goldberg* required a housing authority to provide a full administrative review of any decision to terminate a recipient's benefits. According to the court, *Goldberg* contemplated that

- (1) as long as the broader, 'full administrative review' is offered post-termination, a pre-termination hearing need only contain the elements outlined in the opinion; and (2) it is permissible to roll all of these procedural requirements into a single hearing, as long as that hearing takes place before the termination of benefits.<sup>7</sup>

Although the court agreed with SHA that the minimum standards established in the HUD regulations "do not mandate any qualifications for the hearing officers beyond a status condition that they not be the person who made the termination decision or a person subordinate to

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<sup>1</sup>Consent Order, *Hendrix v. Seattle Housing Authority*, on file with NHLP.

<sup>2</sup>*Hendrix v. Seattle Housing Authority*, 2007 WL 3357715 (W.D. Wash. Nov. 9, 2007). See also NHLP, *Courts Embellish Procedural Protections for Voucher Terminations*, 38 Hous. L. Bull. 39 (Feb. 2008).

<sup>3</sup>24 C.F.R. § 982.555 (2007).

<sup>4</sup>*Hendrix* at \*6, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970).

<sup>5</sup>24 C.F.R. § 982.555 (2007).

<sup>6</sup>397 U.S. 254 (1970).

<sup>7</sup>*Hendrix* at \*5.

that decision-maker,”<sup>8</sup> this did not resolve either the constitutional issue or the lawsuit.

Although SHA procedures for the hearings—specifically, the lack of legal expertise of its hearing officers—might be in compliance with the HUD regulations, the court stated that it was

far from convinced that SHA is excused from meeting the constitutional requirements of *Goldberg* just because HUD regulations may prove underinclusive. Defendant cites no authority suggesting that a local agency charged with administering a federal program is excused from meeting the requirements of the Constitution because its parent agency has failed to do so.<sup>9</sup>

Thus, because *Goldberg* requires that the termination of voucher benefits necessitates a full administrative review, which necessarily includes the presentation of all legal arguments relevant to the recipient’s defense, the court held that Hendrix had properly stated a due process claim under the Fourteenth Amendment, as interpreted by *Goldberg*. It therefore denied SHA’s motion to dismiss the tenant’s claim for declaratory and injunctive relief.

### The Terms of the Consent Decree

Following the rejection of its motion to dismiss, SHA entered into a consent decree with Hendrix in which it agreed, “[w]hether or not required by law,” to afford a full panoply of procedural safeguards to any Section 8 participant facing termination. It agreed to allow participants to present, and require hearing officers to consider, “any relevant legal argument arising from any valid source of law...No legal theories or authorities shall be precluded from consideration at informal hearings or otherwise excluded on a categorical or near-categorical basis.”<sup>10</sup> In order to ensure that its hearing officers are both impartial and qualified to hear the legal arguments, SHA agreed to implement a new process for selecting and training its officers: only persons with “no other affiliation” with SHA can hold the position,<sup>11</sup> and officers are to be selected by a five-person committee, with one member appointed by each of the Seattle Tenant’s Union and the King County Bar Association Housing Justice Project’s Sponsor Group.<sup>12</sup>

To qualify for the position of hearing officer, the consent decree provides that an applicant must have a J.D. from an accredited law school and at least three years relevant experience as an attorney, law clerk, judge, arbitrator, administrative law judge, or other legal professional.<sup>13</sup> SHA agreed to maintain a minimum roster of three hearing officers to serve at the informal hearings,<sup>14</sup> to provide each officer with at least six hours of training, and to conduct an annual performance evaluation for each hearing officer.<sup>15</sup> In order to facilitate these reviews, SHA agreed to distribute evaluation forms to all persons present in attendance at every informal hearing, allowing them to provide anonymous feedback on their impression of the officer’s fairness, impartiality, and the opportunity provided for the participant to present his or her evidence and arguments.<sup>16</sup>

The consent order also articulates evidentiary standards for the hearings, providing that while the parties may present evidence without regard to admissibility under the evidentiary rules for judicial proceedings, the hearing officer retains the discretion to exclude evidence that is irrelevant, immaterial, or unduly repetitious.<sup>17</sup> In deciding to exclude evidence, the hearing officer is to rely on evidentiary principles, including, *inter alia*, that the information offered presents a danger of unfair prejudice or confusion of the issues, that the information lacks competence or is not based on personal knowledge, and/or that the information is offered in violation of some public policy.<sup>18</sup>

SHA further agreed to provide each participant who undergoes an informal termination hearing with a written decision containing, *inter alia*, a summary of any evidence and arguments presented by the parties, a statement of the facts upon which the decision is based, and a clear statement of the conclusions of law.<sup>19</sup> It also agreed to electronically record all informal hearings (unless the voucher participant objects to such recording), to keep and maintain the recording as a public record on file for at least thirty-seven months after the decision, and to provide, upon request and at cost, a copy of the recording to the participant or his or her representative.<sup>20</sup>

Congratulations to Northwest Justice Project and their community allies for achieving this tremendous result, which should embolden Section 8 tenants and advocates nationwide to pursue necessary reforms of local voucher termination hearing policies and practices. ■

<sup>8</sup>*Id.*

<sup>9</sup>*Id.* at \*7

<sup>10</sup>Consent Order at 4-5.

<sup>11</sup>*Id.* at 7. The consent decree qualifies this provision by stating that SHA may establish an in-house hearing officer position, provided that such a position would be subject to the same standards for qualifications and would be subject to the same selection process and performance reviews.

<sup>12</sup>*Id.* This stipulation is subject to the restriction that no person from any organization whose members regularly represent Section 8 participants in the termination hearings may serve on the selection panel.

<sup>13</sup>*Id.* at 8.

<sup>14</sup>*Id.* at 7.

<sup>15</sup>*Id.* at 9-10.

<sup>16</sup>*Id.* at 9.

<sup>17</sup>*Id.* at 5.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 6.

<sup>20</sup>*Id.* at 10-11.