

HOUSING JUSTICE

National Housing Law Project

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Court Reverses Section 8 Voucher Termination for Tenant Who Failed to Report Child Support

A court recently reversed termination of a Section 8 voucher tenant's assistance where the tenant failed to report child support payments to the housing authority. In *McClarty v. Greene Metro. Hous. Auth.*, 2011 WL 3890295 (Ohio Ct. App. Sept. 2, 2011), tenant Clarissa McClarty sought reinstatement of her Section 8 voucher after it was terminated by the housing authority. The case contains helpful arguments for cases where Section 8 voucher tenants neglect to report child support payments to housing authorities, such as where child support payments are received only occasionally, or where the tenant does not fully understand her duty to report such payments. These situations often arise in the context of domestic violence, where abusers withhold child support payments in an effort to retaliate against survivors or exert economic control. Survivors who fail to report these erratic child support payments to the housing authority may later face termination of their vouchers on the grounds that they intentionally concealed the payments. Fortunately, the court in *McClarty* found that unintentional misreporting of child support payments should not result in automatic termination of a tenant's Section 8 voucher.

Under HUD regulations (24 C.F.R. § 982.551(b)), Section 8 voucher holders must supply housing authorities with information regarding family income. In *McClarty*, the Greene Metropolitan Housing Authority (GMHA) terminated Ms.

McClarty's assistance because of her failure to report the resumption of child support payments. At an informal hearing with GMHA, Ms. McClarty testified that she believed she had submitted a form alerting GMHA that she was receiving child support payments and that the violation of her obligation to GMHA was unintentional. The hearing officer upheld the termination of assistance, and Ms. McClarty filed a notice of appeal to the Greene County Common Pleas Court, which found in favor of the GMHA.

The Court of Appeals of Ohio held that the trial court erred when it upheld the termination of assistance "absent a finding of intent to deceive or a pattern of conduct demonstrating serious disregard of her family obligation." The court declined to broadly interpret Ms. McClarty's obligations to require truth and completeness in every circumstance of information reporting. It cited *Ellis v. Ritchie*, 803 F. Supp. 1097 (E.D. Va. 1992) in finding that a requirement of truth and completeness would lead to the absurd result of terminations of rental assistance for minor errors or omissions.

The court also looked to the Department of Housing and Urban Development's Housing Choice Voucher Program Guidebook to support the proposition that unintentional misreporting that leads to overpayment of benefits should be cured by repayment, rather than summary termination of the voucher. Accordingly, the court reversed and remanded the case so the trial court could examine whether any failure by Ms. McClarty to disclose the child support payments was intentional. Ms. McClarty was represented by Legal Aid of Western Ohio. ■

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Court Finds Agency Has Standing to File Suit

Court Finds Agency Has Standing to File Lawsuit Challenging Sexual Harassment in Public Housing

A court recently held that a fair housing organization had standing to file a lawsuit on behalf of a tenant who alleged that she was sexually harassed at her public housing development. The case illustrates the important role that fair housing organizations can play in protecting the housing rights of victims of sexual harassment. As a result, agencies serving survivors of sexual violence should consider referring clients to fair housing organizations for assistance in seeking redress for sexual harassment committed by landlords or their employees.

Factual Allegations

In *Banks v. Housing Authority of the City of Bossier City*, the Greater New Orleans Fair Housing Action Center (GNOFHAC) filed litigation on behalf of public housing resident Shameka Banks. Ms. Banks reported that she submitted a request for repairs, and the housing authority responded by sending Danny Smith, the maintenance person, to her apartment. Ms. Banks alleged that Mr. Smith touched her inappropriately while he was in her apartment. She also alleged that a similar incident occurred several months later. Despite reporting both incidents in writing to the property manager, Ms. Banks alleged that Mr. Smith continued to harass her. As a result, Ms. Banks filed a police report against Mr. Smith, and a protective order was issued. According to Ms. Banks, she requested that the housing authority change her locks because Mr. Smith had a key to her unit, but the request was denied. On September 2010, Mr. Smith was arrested for violating the protective order. Ms. Banks alleged that she renewed her request to the housing authority to change her locks, but was again denied.

Efforts to Assist Ms. Banks with Her Case

On May 4, 2009, Ms. Banks filed a fair housing complaint with the Department of Housing and

NHLP Available to Provide Assistance to OVW Transitional Housing Grantees

The National Housing Law Project (NHLP) is pleased to announce that it is now available to provide training, technical assistance, and materials to OVW Transitional Housing grantees. NHLP will continue to provide these services to Legal Assistance to Victims grantees.

NHLP has provided numerous trainings and extensive technical assistance on the housing rights of survivors of domestic violence, sexual assault, and stalking. We are available to provide technical assistance consultations via phone and email regarding a variety of subjects, including legal rights of survivors whose housing is at risk.

For more information regarding NHLP's services, please contact Meliah Schultzman at (415) 546-7000 x. 3116 or mschultzman@nhlp.org, or visit <http://www.nhlp.org/OVWgrantees>.

Urban Development alleging that she was a victim of sex discrimination. The complaint was referred to the Louisiana Department of Justice, which conducted an investigation and found that the housing authority was aware of Mr. Smith's conduct but failed to take action. The state department of justice then contacted GNOFHAC on Ms. Banks' behalf because it is the only nonprofit organization in the state that provides free fair housing enforcement services.

According to GNOFHAC, it agreed to assist Ms. Banks because it considered her allegations to be especially egregious. GNOFHAC also asserted that the state department of justice's investigation revealed that the housing authority was aware that Mr. Smith had sexually harassed multiple female tenants, yet failed to remedy the matter. Thus, GNOFHAC believed the housing authority had engaged in a pattern of discriminatory behavior.

GNOFHAC made three trips to Bossier City, Louisiana, regarding the case. The agency canvassed the public housing complex, issued public records

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requests, developed a flier on sexual harassment, and distributed it to public housing residents throughout the city. The agency also designed a webpage about sexual harassment in response to Ms. Banks' case, conducted educational activities about sexual harassment in Bossier City, made door-to-door visits with tenants, and held an informational meeting. Ultimately the agency filed a lawsuit on Ms. Banks' behalf in federal court. As a result of this work, GNOFHAC alleged that it had to divert resources from its other activities.

Standing to Challenge Sexual Harassment

The housing authority filed a motion to dismiss the lawsuit on the grounds that GNOFHAC did not have standing to bring any claims. The court noted that an organization can establish standing if it demonstrates an "injury-in-fact." This requirement is met if the organization diverted resources to counteract the defendant's unlawful conduct.

The court noted that GNOFHAC set forth numerous instances where it diverted resources to counteract the housing authority's conduct, resulting in an impairment of GNOFHAC's ability to provide certain services and activities. The court found it particularly important that GNOFHAC relies on funding specifically designated for serving individuals in the greater New Orleans area, but when it learned of the alleged discrimination occurring in Bossier City, it diverted significant resources to counter the housing authority's alleged conduct and promote fair housing in Bossier City. The court further noted, "GNOFHAC also specified that as a direct result of its involvement in this case, it was forced to cut certain programs and, most important, it was unable to file a lawsuit against a landlord in New Orleans that discriminates on the basis of race. This is not a mere redirection of resources, but a depletion of resources necessary to prosecute a known case of racial discrimination." Accordingly, the court denied the housing authority's motion to dismiss and permitted GNOFHAC to continue its pursuit of the sexual discrimination case on Ms. Banks' behalf. ■

Technical Assistance Question and Answer of the Month

Q. An undocumented survivor applied for a Section 8 voucher with her children, who are U.S. citizens. The housing authority refused to provide assistance because the survivor did not have a Social Security Number (SSN). Are applicants for Section 8 vouchers required to have SSNs?

A. HUD regulations state that "mixed" immigration status families—those where some members are eligible for Section 8 and some are not—can apply for Section 8. The regulations further state that family members who do not claim eligible immigration status are not required to provide SSNs. The housing authority is likely confused because HUD recently issued regulations reminding all housing authorities and owners that they must collect SSNs. However, HUD also issued a notice making clear that undocumented individuals are NOT required to disclose an SSN, and that housing providers may NOT deny assistance to mixed families due to nondisclosure of an SSN by an undocumented person. The notice is titled PIH 2010-3, Guidance - Verification of Social Security Numbers (SSNs) and is available at www.hud.gov/hudclips.

For technical assistance or requests for trainings or materials, please contact:

Meliah Schultzman, mschultzman@nhlp.org
 Navneet Grewal, ngrewal@nhlp.org
 National Housing Law Project
 703 Market Street Ste. 2000
 San Francisco, CA 94103
 Phone: (415) 546-7000, x. 3116
www.nhlp.org

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