

Texas RioGrande Legal Aid, Inc.

4920 North IH-35
Austin, Texas 78751
Telephone (512) 374-2700
FAX (512) 447-3940 TDD (512) 417-8682
TOLL FREE 1-800-369-9270

Fred Fuchs – 512-374-2720

Date

Ms. XYX
Executive Director
Housing Authority
Street Address
City, State, Zip Code

Re: Jane Doe; Request for Reconsideration of
Hearing Officer's Decision; Notice of Intent
to File Suit

Dear Ms. XYZ:

I am writing on behalf of our client, Jane Doe, who was terminated from the Section 8 Housing Choice Voucher Program effective _____. Because the hearing officer's decision is neither in accord with the law nor supported by a preponderance of the evidence, I am asking you to reverse the decision and reinstate Ms. Doe's assistance.

Ms. Doe is _____ years old. She is disabled. She has _____ grandchildren residing with her. Following an incident in which Ms. Doe called the police on _____, the Housing Authority, sent Ms. Doe a notice of proposed termination of assistance on _____. See Exhibit 1.

The letter listed as the grounds for the termination the following: "Preponderance of evidence of involvement in violent or drug-related criminal activity by: Incident involving guns and knives on _____." The letter gave no other information, but advised Ms. Doe that she could appeal the decision. Ms. Doe timely appealed.

The appeal hearing was held on _____. The hearing officer, Sam the Man, issued his decision on _____ upholding the termination. See Exhibit 2. Sam the Man wrote the following:

This decision is based on the fact that you did not comply with the Family Obligations which state you, a family member or your guests may not engage in criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity. The Housing Authority may terminate assistance if it determines by a preponderance of the evidence that the participant engaged in criminal activity regardless of whether he or she has been arrested or convicted of such activity.

See Exhibit 2. There is no analysis of the evidence at the hearing and no explanation of what Ms. Doe or other members of the household did that constituted criminal activity.

The hearing officer's decision does not comply with HUD's requirements that the hearing officer briefly state the reasons for the decision. See 24 C.F.R. § 982.555(e)(2009). HUD has explained that this means: "The statement of decision required by the regulation must be truly informative as to the reasons for the decision. This would include a short statement of the elements of fact or law on which the decision is actually based. A bare and conclusory statement of the hearing decision, that does not let the participant know the basic reasons for the decision, will not satisfy the regulatory requirement." 49 Fed. Reg. 12215, 12230 (March 29, 1984) (comment on final rule).

Moreover, the evidence at the hearing does not support the conclusion that Ms. Doe engaged in criminal activity. It does not show that a family member engaged in criminal activity. It does not establish that one of Ms. Doe's guests engaged in criminal activity.

In addition, and very importantly, **Ms. Doe is the person who called the police and sought assistance on _____.** In addition, the police report states that Ms. Doe asked the officer to issue a criminal trespass warning to _____, one of the persons present during the incident. It is ironic

that had Ms. Doe not called the police seeking help she would likely not be in this position today facing loss of her voucher assistance.

The regulations allow for termination of a Section 8 participant if "**members of the household**" engage in criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents." See 24 C.F.R. § 982.551(1) (2009) (emphasis added). Here, the only member of the household is Ms. Doe. She did absolutely nothing wrong. No legal basis exists to terminate Ms. Doe's voucher assistance. Moreover, even if it were legal, terminating the assistance of a victim is reprehensible. It sends exactly the wrong message.

The evidence at the hearing consisted of the following: (1) testimony by Ms. Doe, (2) testimony by _____, the niece of Ms. Doe's deceased husband, (3) letters from three neighbors verifying that Ms. Doe is a good neighbor (See Exhibits 3, 4, and 5), (4) a character reference letter from an individual named _____ saying she knows Ms. Doe through her employer, _____, and stating that she is "a very strong _____ woman with very high morals and values," (Exhibit 6), and (5) the police incident report (Exhibit 7).

The basis for the termination was an incident allegedly involving "guns and knives." See Exhibit 1. The **only** evidence of "guns and knives" at the incident on _____ consists of a hearsay statement in the police report from a woman named _____, who lives in _____, State.

The investigating police officer stated that Ms. _____ told him the following:

ABC advised that DEF needed to use the bathroom so GHI allowed him to use the bathroom in _____. While in the apartment _____ was talking with _____ and telling him she was going to get her knife and stab him. ABC stated that **she was playing around with _____** and this is how she always acts. ABC reported that _____ said, "that's ok I have the heat." At this time _____ pulled a black large framed gun from his pants and held it to _____'s head. ABC stated several times that while he was doing this **he was smiling and appeared to be joking around like she was.** ABC said that during this time

nothing else was said and no threats were made.

. ...
At the bottom of her statement, Sgt. _____ requested that she state that she did not want to proceed with filing charges, to which she did.

See Exhibit 7 (emphasis added). This is not a case in which the police officer says in his report that he observed illegal conduct. In addition, there is no evidence that anyone had a knife. The police officer wrote in his report that _____ told him that she told _____ she would get her knife and she was "playing around with _____." She did not say she displayed a knife. Such conduct, even if assumed to be true, may be stupid, but it does not constitute criminal conduct.

With respect to the allegation that the incident "involved guns," there is no evidence that anyone had any gun other than Ms. _____'s hearsay statement set forth in the officer's report. And, if it is assumed she is telling the truth and _____ had a gun, she told the officer "no threats were made." Also, again assuming this was a true statement by Ms. _____, we do not know whether _____ had a gun permit and could legally carry a weapon.

A hearing officer in a voucher termination case may consider hearsay. But, the courts have held that termination decisions based on hearsay are suspect. See, e.g., *Basco v. Machin*, 514 F.3d. 1177 (11th Cir. 2008) (holding that a PHA illegally terminated a participant for allegedly permitting unauthorized persons to live in the unit; reasoning that a PHA termination decision premised on an address listed in police reports was legally insufficient to establish a program violation); *Young v. Maryville Housing Authority*, No. 3:09-CV-37, 2009 U.S. Dist. LEXIS 56539, *20-23 (E.D. Tenn. July 2, 2009) (noting that the police report on which the hearing officer relied consisted entirely of an officer's summary of statements made by the parties and was double hearsay; holding that plaintiff should have been given the opportunity to cross-examine the officer and the complaining party with respect to the statements attributed to them in the police report and relied on by the hearing officer); *Edgecomb v. Housing Authority of the Town of Vernon*, 824 F. Supp.312 (D. Conn. 1993) (ordering reinstatement of Section 8 voucher participant because hearing officer's decision based solely on hearsay police report and newspaper articles). Here, we have double hearsay -- the police officer is reporting

what _____ allegedly told him, not what he observed. The officer has no personal knowledge of whether Ms. _____ is telling the truth. But, more importantly, even if it is assumed _____ was telling the truth, her statements do not show any criminal conduct that supports termination of Ms. Doe's voucher.

Additionally, even if the regulations permitted termination of assistance for the criminal activity of a guest that disturbs the peaceful enjoyment of the premises, none of the persons involved was a guest of Ms. Doe on _____. As you know, HUD defines a "guest" as follows:

Guest ... means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

24 C.F.R. § 5.100 (2009) (emphasis added). Neither _____ nor _____ nor the man named _____ were Ms. Doe's guests - that is, temporarily staying in the apartment.

Ms. Doe's niece, _____, who lives in apartment ____ at XYZ Apartments, testified at the hearing that _____ lives in the State of _____ and was staying with her at the time. She further testified that shortly after the incident _____ returned to _____.

As previously noted, the police officer's report shows that _____ lives in _____. No one has alleged that the man named _____ was staying in the apartment. Ms. Doe testified that these persons had come to her apartment only because she had agreed to baby-sit their children that evening.

Finally, the hearing officer did not give any consideration to Ms. Doe's unique circumstances. She is bi-polar, manic-depressive and has _____. She lives on _____ Income. She is taking care of _____ grandchildren. Some courts have held that hearing officers must give some explanation of the reasons they are considering or not considering the individual circumstances. See *Carter v. Lynn Housing Authority*, 880 N.E.2d 778, 785-86 (Mass. 2008) (Decision of hearing officer must show he is aware of his discretionary authority under 24 C.F.R. § 982.552(c)(2)(i), to take all relevant circumstances, including mitigated circumstances into account and indicate

whether her did or did not choose to exercise that discretion).

For all of the above reasons, the decision of the hearing officer must be reversed. Accordingly, I am asking that you notify me **no later than 5:00 p.m. on _____, 2010,** whether you will reinstate Ms. Doe's voucher assistance. (If you need more time to consider the request and speak to an attorney or HUD, I will not proceed with filing suit if you will notify me in writing that, pending a final decision on your part, the Housing Authority will also pay the housing assistance payment to Ms. Doe's landlord for the month of _____ 2010.)

If I do not hear from you by _____, I shall assume you will not reconsider, and we will file suit asking the appropriate court to order reinstatement. If a lawsuit is necessary, our office will seek to recover attorneys' fees from the Housing Authority for the time spent on this matter and appropriate damages.

Finally, this letter is not intended to advise you about your legal rights and responsibilities. I have set forth our legal position in some detail to facilitate your decision. You must consult with your attorney with any questions you may have about the law.

I appreciate your courtesy in considering this request. My desire is to resolve this matter without litigation. You are welcome to call me to discuss this further, but you must obtain legal advice from your attorney.

Sincerely,

Fred Fuchs

Sent by Fax and First Class Mail

xc: Client

