

Hon. Thomas S. Zilly



07-CV-00657-DECL

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TINA HENDRIX,

Plaintiff,

vs.

SEATTLE HOUSING AUTHORITY and TOM  
TIERNEY, *Executive Director of the Seattle  
Housing Authority*, in his Official Capacity

Defendants.

No. C07-657 TSZ

CONSENT ORDER  
~~(Proposed)~~

This matter has come before the Court upon the Verified Application for Writ of Prohibition of Plaintiff Tina Hendrix; which Defendant Seattle Housing Authority (SHA) removed from the King County (Wash.) Superior Court to this Court. Now, upon stipulation of the parties and with the Court fully advised:

**Part I. Background & Recitals Regarding the Parties and the Section 8 Voucher Program**

1.1 Plaintiff Tina Hendrix is the "head of household" of a family that participates in the Section 8 Housing Choice Voucher Program ("Section 8" or "the program").

1.2. The Section 8 program is administered nationally by the U.S. Department of Housing & Urban Development (HUD), and operated at the local level by thousands of "public

1 housing agencies” or “PHAs.” See 42 USC 1437f(o); see 24 CFR 982.1 et seq.; see also 24 CFR  
2 5.100 (“Section 8 means section 8 of the United States Housing Act of 1937 (42 USC 1437f).”

3 1.3. Defendant Seattle Housing Authority (SHA) is a public housing agency. See 24  
4 CFR 982.4(b); SHA is a “public body corporate and politic” established pursuant to the Housing  
5 Authorities Law, RCW 35.82 et seq., authorized to exercise certain governmental powers and  
6 duties under the laws of Washington, operating within Seattle.

7 1.4. Defendant SHA receives federal funding for use in administering several low-  
8 income housing programs in Seattle, including the Section 8 Housing Choice Voucher Program,  
9 which is at issue in this case. See 42 USC 1437f(o); 24 CFR 982.1 et seq.

10 1.5. Defendant Thomas Tierney, who is joined to this action in his official capacity  
11 only, is the Executive Director of SHA and is responsible for implementing and carrying out  
12 SHA’s programs and policies, including the Section 8 Housing Choice Voucher program.

13 1.6. Plaintiff Tina Hendrix holds a Section 8 Housing Choice Voucher (“voucher”)  
14 that is administered by Defendant Seattle Housing Authority (SHA).

15 1.7. Under the Section 8 Voucher program, “participant families,” such as Plaintiff  
16 Tina Hendrix’s, pay a portion of the rent to their landlords themselves, and PHAs, such as SHA,  
17 pay the balance in the form of a federally-funded Section 8 subsidy called “housing assistance.”

18 **Part II. Summary of the Present Controversy**

19 2.1. Plaintiff Tina Hendrix and her family use her Section 8 voucher to subsidize their  
20 rent for a property at 11514 – 23<sup>rd</sup> Ave. NE in Seattle, Wash. (“the property”).

21 2.2. On March 30 and April 11, 2007, Defendant SHA issued notices (“termination  
22 notices”) to Tina Hendrix stating that SHA planned to terminate her Section 8 voucher for the  
23 reason that Tina Hendrix’s family allegedly violated certain “participant obligations” for the  
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1 Section 8 program, including a supposed "failure to report household changes in a timely manner  
2 and establishing a pattern of non-compliance with program obligations."

3 2.3. Tina Hendrix disputes the allegations and has demanded an "informal hearing" at  
4 which to contest the termination of her Section 8 housing assistance benefits. See 24 CFR  
5 982.555 ("Informal Hearing for Participant).

6 2.4. Such an "informal hearing" is a Section 8 participant's only opportunity to be  
7 heard in opposition to termination of a voucher; thus, if the informal hearing results in a decision  
8 upholding termination, SHA stops making housing assistance payments on the family's behalf.

9 2.5. At SHA, a person called a "hearing officer" presides over Section 8 informal  
10 hearings; the hearing officer must conduct the hearing in accordance with SHA's rules and  
11 policies. See 24 CFR 982.555(e)(4)(ii).

12 2.6. Prior to the filing of this action SHA hearing officers conducted Section 8  
13 informal hearings pursuant to certain practices and procedures summarized in the Stipulated  
14 Joint Statement of Facts, filed under Dkt. No. 26 in this action; such policies and practices have  
15 remained in use until this Consent Order.

16 2.7. Plaintiff, Tina Hendrix, claiming SHA's informal hearing practices and  
17 procedures are unlawful, brought this action challenging SHA's hearing practices on regulatory  
18 and constitutional grounds.

19 2.8. Since the commencement of this action, the parties have engaged in negotiations  
20 and have decided to settle their respective contentions on the terms in this Consent Order.

21 **Part III. Seattle Housing Authority Informal Hearings**

22 3.1. While Defendant SHA does not concede that its current informal hearing  
23 procedures do not comply with the regulations of the US Department of Housing and Urban  
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1 Development or the requirements of the US Constitution, SHA nevertheless agrees to adopt the  
2 policies and procedures described herein.

3 3.2. Whether or not required by law, the parties now agree that SHA shall afford, at  
4 minimum, the following procedural safeguards to any Section 8 participant facing termination  
5 from the voucher program:

- 6 (i) Adequate notice detailing the grounds for termination;
- 7 (ii) An opportunity to appear in person and present objections orally;
- 8 (iii) The right to present any information or witnesses on any pertinent issues;
- 9 (iv) The right to confront and cross-examine adverse witnesses;
- 10 (v) The right to have counsel (at the family's own expense);
- 11 (vi) A competent and impartial decision-maker;
- 12 (vii) Determination of relevant facts by a preponderance of the evidence;
- 13 (viii) A decision based solely on the evidence and arguments presented at the hearing;
- 14 (ix) A written decision that explains the legal reasoning and factual basis for the decision;
- 15 (x) The right to have a record made of the hearing.

16 3.3. Hearing officers presiding over SHA informal hearings shall consider all relevant  
17 facts and conform their rulings to all relevant legal authority, including, but not limited to:

- 18 a. The United States Constitution and U.S. Code;
- 19 b. All relevant federal regulations, particularly those codified at 24 CFR Part  
20 982.1 et seq. (concerning the tenant-based voucher program)
- 21 c. Other HUD policies, as applicable; see 24 CFR 982.52(a);
- 22 d. Internal SHA policies, in particular the Section 8 Administrative Plan;
- 23 e. All applicable State law, including Washington statutes and regulations  
24 and the common law of Washington State as reflected by judicial decisions;
- 25 f. All relevant charter provisions, ordinances, and other laws governing the  
26 City of Seattle, including the Seattle Municipal Code.

27 3.4. A participant family may present any relevant legal argument arising from any  
28 valid source of law at informal hearings, and hearing officers shall consider such arguments to

1 the extent they are relevant and germane to the case. An argument is relevant if the manner in  
2 which the contention is resolved could affect the outcome of the hearing. Relevance shall be  
3 determined by the hearing officer based on the specific facts and circumstances of each particular  
4 case. No legal theories or authorities shall be precluded from consideration at informal hearings  
5 or otherwise excluded on a categorical or near-categorical basis.

6 3.5. Evidence may be presented at informal hearings without regard to admissibility  
7 under the rules of evidence applicable to judicial proceedings; provided that Hearing Officers  
8 may exclude evidence that is irrelevant, immaterial, or unduly repetitious, and; provided further  
9 that Hearing Officers shall consider evidentiary principles, including, but not limited to:

10 a. That the information offered is not relevant to the proceeding; "relevant"  
11 means having a tendency to prove that any fact of consequence to the outcome of the  
12 hearing more likely or less likely than without the information;

13 b. That the information offered presents a danger of unfair prejudice,  
14 confusion of the issues, undue delay, or other deleterious effects that substantially  
15 outweighs the probative value of the information;

16 c. That the information is offered in violation of some public policy, such as  
17 evidence unlawfully obtained in violation of a family's legal or constitutional rights, or  
18 evidence obtained in the course of settlement negotiations, or evidence of a person's  
19 character offered to prove action in conformity therewith on a specific occasion; or

20 d. That the information lacks competence or is not based on personal  
21 knowledge.

1           3.6. Hearing officers presiding over SHA informal hearings shall adjudicate all  
2 material factual issues raised at an informal hearing. A factual issue is "material" if the  
3 adjudication of the fact tends to affect the outcome of the hearing.

4           3.7. In adjudicating factual issues at informal hearings, the burden of production and  
5 persuasion with respect to any fact shall be on the party asserting the fact.

6           3.8. Hearing officers shall not impose arbitrary limits on the length of time that a  
7 hearing may last, or the amount of time specific portions of the hearing may consume, or impose  
8 unreasonable limits on the number of witnesses that may be called or the number of exhibits that  
9 may be presented. Hearing officers may impose such limits but only as warranted for cause in  
10 their discretion, in which case the hearing officer should state the reasons for imposing the limits  
11 on the record or in the written decision.

12           3.9. A written informal hearing decision shall contain:

13           a. The names of all persons present at the hearing, and identification of their  
14 roles (whether as the hearing officer, a representative for SHA, a member of the family, a  
15 witness, interpreter, or other);

16           b. The date and location of the hearing (and if the hearing occurred over  
17 multiple days, the date the hearing began and the date it ended);

18           c. A summary of the factual allegations and the SHA action or decision  
19 under review;

20           d. A summary of any evidence and arguments presented by the parties;

21           e. A statement of the facts upon which the decision is based; and

22           f. A clear statement of the conclusions of law and any other relief ordered.

23 **Part 4: Hearing Officer Selection**

1 4.1. Persons having no other affiliation with Seattle Housing Authority (SHA) (i.e.,  
2 other than as hearing officers) shall serve as hearing officers in termination of Section 8 Housing  
3 Choice Voucher informal hearings; provided that, the Housing Authority reserves the right to  
4 establish an in house hearing officer position, and; provided further, that such an in house  
5 hearing officer shall meet the hearing officer qualifications, will be selected, and will be subject  
6 to performance reviews as provided herein.

7 4.2. SHA will maintain a roster of persons approved to serve as hearing officers. To  
8 the extent possible, the roster shall contain at least three (3) approved hearing officers at all  
9 times. SHA shall solicit applications (through paid advertising) when the number of active  
10 hearing officers on SHA's roster falls below three (3).

11 4.3. Consistent with SHA hiring policies, SHA will advertise for Hearing Officer(s)  
12 periodically, in order to maintain a minimum of three (3) Hearing Officers on a roster to serve as  
13 hearing officers for informal hearings.

14 4.4. Whenever the Housing Authority endeavors to recruit additional hearing officers  
15 for its roster, SHA will form a selection panel, composed of 5 members. The panel shall include  
16 housing authority officials and staff and non-housing authority personnel who have Section  
17 8 expertise, legal training and/or experience in mediation/arbitration. One panel member shall be  
18 appointed by the Seattle Tenant's Union and one panel member shall be appointed by the King  
19 County Bar Association Housing Justice Project's Sponsor Group, provided that no one from the  
20 following organizations shall be selected to serve on the panel; the Northwest Justice Project,  
21 the Legal Action Center, Columbia Legal Services, or any other organization whose members or  
22 staff regularly represent Section 8 participants in Seattle Housing Authority informal hearings.

1           4.5    The panel will review Hearing Officer applicant resumes, conduct in-person  
2 interviews and recommend candidates to the hiring authority for selection.

3           4.6.    SHA hearing officers shall have legal training and experience, defined as:

4               a.    A Juris Doctorate from an accredited law school; and

5               b.    At least three years relevant experience as an attorney, law clerk, judge,  
6 arbitrator, administrative law judge, or other legal professional.

7           4.7.    SHA will advertise a rate of compensation for hearing officers reasonably  
8 calculated to attract qualified applicants to apply for the position. All advertisements shall be  
9 posted to the websites of the Seattle Housing Authority, the Washington State Bar Association,  
10 the King County Bar Association, and the Advocate Resource Center. In advertising for hearing  
11 officer applicants, SHA include the criteria described in Paragraph 4.5.

12           4.8.    Except as set forth in paragraph 4.9, SHA will assign hearing officers from the  
13 roster to specific cases through a blind rotating basis; exceptions will be made only for good  
14 cause, which shall include, but not be limited to, scheduling difficulties and ethical conflicts.

15           4.9.    On written agreement of the parties, a person (or persons) not listed on SHA's  
16 roster of hearing officers may serve as the hearing officer for a particular case.

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18 **Part 5: Hearing Officer Evaluation**

19           5.1.    Consistent with SHA's Human Resource policies, each hearing officer will be  
20 subject to an annual performance evaluation.  
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1 5.2. To facilitate such reviews, SHA shall, at the conclusion of each informal hearing,  
2 distribute "Hearing Evaluation Forms" to all persons in attendance; the Informal Hearing  
3 Evaluation Forms shall ask:

- 4 a. Whether the hearing officer was courteous and respectful;
- 5 b. Whether the hearing officer allowed the participant a fair opportunity to  
6 present his or her evidence and arguments;
- 7 c. Whether the hearing officer was neutral and impartial; and
- 8 d. Any other questions, as determined by SHA.

9 5.3. The Informal Hearing Evaluation Form shall ask respondents to identify  
10 themselves as participants, advocates, witnesses, SHA staff, etc., but shall not ask persons to  
11 identify themselves by name, office, or other identifying characteristics. The Informal Hearing  
12 Evaluation Form shall contain information encouraging recipients to complete and deliver the  
13 form to SHA by mail, fax, e-mail, or hand-delivery and containing instructions on how to do so.

14 5.4. SHA may share information collected in the Informal Hearing Evaluation Forms  
15 with hearing officers for the purpose of assisting hearing officers in evaluating and improving  
16 their performance.

17 5.5. Prior to each hearing officer's annual review, SHA will send to any attorneys and  
18 other advocates who appeared before the hearing officer a "Hearing Officer Evaluation Form,"  
19 which shall ask to evaluate the performance of SHA hearing officers in the following areas:

20 :

- 21 a. Professionalism/Demeanor/Conduct of the proceedings;
- 22 b. Skill at evaluating evidence and determining facts;
- 23 c. The soundness of legal rulings;

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9.

- 1 d. Fairness & objectivity;
- 2 e. Quality of analysis & clarity of written opinions; and
- 3 f. Any other criteria, as determined by SHA.

4 5.6. The Hearing Officer Evaluation Form may ask respondents to identify themselves  
 5 as attorneys or other types of advocates, but shall not ask persons to identify themselves by  
 6 name, office, or other identifying characteristics. The Hearing Officer Evaluation Form shall  
 7 contain information encouraging recipients to complete and deliver the form to SHA by mail,  
 8 fax, e-mail, or hand-delivery and containing instructions on how to do so.

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11 **Part 6: Hearing Officer Training**

12 6.1. SHA shall establish a "Hearing Officer Training Program." All persons admitted  
 13 to SHA's roster of hearing officers shall complete the Hearing Officer Training Program within  
 14 three (3) months (of admission to the roster).

15 6.2. The Hearing Officer Training Program shall consist of at least six hours'  
 16 instruction in on the Section 8 Housing Choice Voucher Program and SHA's Section 8  
 17 Administrative Plan.:

18 6.3. SHA shall create a training manual for hearing officers; SHA shall post an  
 19 electronic copy of the manual on its website and shall distribute one copy, either in paper or  
 20 electronic form, to each hearing officer.

21 **Part 7: Recording of Hearings**

22 7.1. SHA shall record all informal hearings by electronic means, unless the family  
 23 objects to the recording. SHA shall safely keep and maintain the recording as a public record on  
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1 file for no fewer than thirty-seven (37) months after the decision date; if a family's Section 8  
2 participation is terminated pursuant to an informal hearing decision, SHA shall keep the hearing  
3 recording for at least thirty-seven (37) months from the date of the last Housing Assistance  
4 Payment made on behalf of the family. SHA shall also keep, for the same duration as the  
5 hearing recording, copies of all exhibits and other tangible materials presented to the hearing  
6 officer, whether or not admitted into evidence.

7 7.2. SHA shall provide a copy of a hearing recording to the family or its representative  
8 on request, provided that, that the family or its representative shall pay the reasonable  
9 reproduction costs prior to receiving the recordings.

10 7.3. If a participant family objects to its informal hearing being recorded, the hearing  
11 officer will not make an official recording, but may make a personal recording for his or her own  
12 use.

13 7.4. If a party seeks to record any informal hearing by means other than audio  
14 recording, such as by stenographic transcription or by audio/video recording, the hearing officer  
15 shall permit such alternative recording at the requesting party's expense, unless good cause exists  
16 to disallow the method of recording, in which case the hearing officer should state the reasons  
17 for denial on the record or in the written decision.

18 **Part 8: Public Access to Informal Hearing Decisions**

19 8. SHA shall permanently retain a non-redacted copy of each informal hearing  
20 decision in the participant family's file.

21 **Part 9: Implementation and Enforcement**

22 9.1. No SHA policy, practice or custom shall supersede the terms of this Consent  
23 Order.

1 9.2 Upon entry of this Consent Order, the SHA Board of Commissioners shall  
2 incorporate the contents of this Consent Order into Section 8 Administrative Plan.


3 9.3. SHA hereby agrees that after this Consent Order is signed SHA will informally  
4 conduct informal hearings according to the terms set forth herein until the SHA Board of  
5 Commissioners has officially amended the Section 8 Administrative Plan as required by this  
6 Consent Order; should any informal hearing be scheduled during this interim period, SHA will  
7 negotiate in good faith with the affected participant to select an appropriate hearing officer.


8 9.4. No person, other than Plaintiff Tina Hendrix, who alleges that SHA has violated a  
9 provision of this Consent Order that appears in SHA's Section 8 Administrative Plan shall be  
10 entitled to relief by way of contempt proceedings in this civil action, though any such person  
11 may pursue relief through a judicial appeal or other independent proceeding.

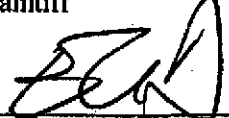
12 9.5. Defendant SHA shall pay costs of \$1,791.13 to Plaintiff within a reasonable time  
13 after entry of this Consent Order...


14  
15 9.6. This is a Final Order that resolves the last pending claim and closes this case.

16  
17 The undersigned stipulate and agree to the entry of this Consent Order:

18   
19 Tina Hendrix  
Plaintiff

  
Tom Tierney, Executive Director  
Seattle Housing Authority

20   
21 Eric Dunn (WSBA #36622)  
22 Northwest Justice Project  
Attorney for Plaintiff

  
James Fearn (WSBA #2959)  
SHA Office of General Counsel  
Attorney for Seattle Housing Authority

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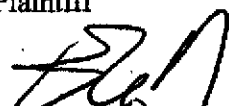
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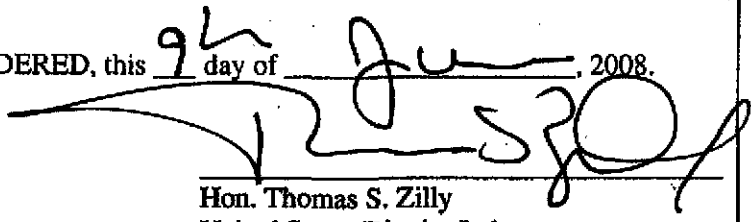
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SO APPROVED AND ORDERED, this 9<sup>th</sup> day of June, 2008.



Hon. Thomas S. Zilly  
United States District Judge

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