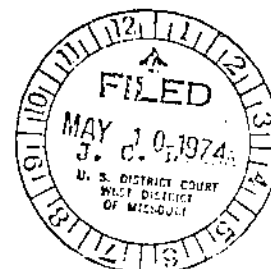


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



MARGARET HILL, by her
Next Friend, LaVerne Pouncil,
Plaintiff,

vs.

HOUSING AUTHORITY OF KANSAS CITY,
MISSOURI, a Municipal Corporation,
et al.,
Defendants.

Civil Action
No. 20563-2

ORDER

It is ORDERED that plaintiff's motion for summary judgment is granted to the extent that a declaratory judgment shall be entered in plaintiff's favor under 28 U.S.C. § 2201 (1970), declaring that plaintiff's Fourteenth Amendment due process rights were violated by defendants' action in denying plaintiff admission to housing on the basis of an unpublished admission standard on age.

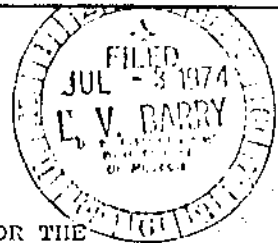
It is FURTHER ORDERED that plaintiff's motion for summary judgment is denied to the extent that plaintiff's prayer for injunctive relief shall be denied because plaintiff will become 18 years of age tomorrow, May 11, 1974, and an injunction, therefore, will provided no relief.

It is FURTHER ORDERED that plaintiff's prayer that this action be maintained as a class action is denied.

It is FURTHER ORDERED that defendants' motion for summary judgment is denied.

A Memorandum Opinion will be filed.

Wm R Collinson
District Judge



IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MARGARET HILL, by Her
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MEMORANDUM OPINION

This is an action under 42 U.S.C. § 1983 (1970). Plaintiff is a woman less than 18 years of age. Defendants are the Kansas City, Missouri, Housing Authority (Housing Authority) and two of its employees. Plaintiff claims that the defendants denied her admission to public housing under the Housing Authority's control and that this action violated the intent of the United States Housing Act, 42 U.S.C. § 1401 et seq. (1970), and abridged plaintiff's Fourteenth Amendment due process and equal protection rights. Plaintiff further claims that defendants' denial of her request for admission was based solely on her age. Plaintiff seeks a declaratory judgment under 28 U.S.C. § 2201 (1970) and injunctive relief. The action is now before the Court on cross-motions for summary judgment. Since no material facts are in dispute, the action is in a proper posture for disposition on the parties' motions.

I. Facts

The Housing Authority is a creature of Missouri law. Mo. Rev. Stat. § 99.010 et seq. (1969). The Housing Authority

is a "public housing agency," 42 U.S.C. 1402(11) (1970), and operates low-rent housing projects in Kansas City, Missouri. These projects are supported by federal financial assistance under the United States Housing Act, 42 U.S.C. § 1401 et seq. (1970). This Act is administered by the United States Department of Housing and Urban Development (HUD), 42 U.S.C. § 1403 (1970).

HUD and the Housing Authority are parties to an "Annual Contributions Contract." "An Annual Contributions Contract provides for a loan to assist in the development of a low-rent housing project and for annual contributions to assist in achieving and maintaining the low-rent character of the project." 24 C.F.R. § 275.4 (1973). This agreement also establishes conditions to be met by the Housing Authority for the federal assistance. These conditions may be and have been amended and supplemented by HUD through published circulars.

Three HUD circulars are relevant to this action. HUD Circular RHA 7465.1 (June 1969), received by the Housing Authority before January 1, 1970, established certain admission policies and procedures to be followed by all local authorities receiving assistance under the United States Housing Act:

5. Admission Policy

- a. The Local Authority shall formally adopt and promulgate, by publication or posting in a conspicuous place for examination by prospective tenants, regulations establishing its admission policies, and all revisions thereof. Such regulations must be reasonable and must give full consideration to the Local Authority's public responsibility for rehousing displaced families; to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran; and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income; and shall accord to families consisting of two or more persons such priority over families consisting of single persons as the Local Authority

determines to be necessary to avoid undue hardship. [Emphasis added.]

This circular implemented 42 U.S.C. § 1410(g)(2) (1970).

HUD Circular RHM 7465.1 (June 24, 1970), received by the Housing Authority before January 1, 1971, established notification procedures for applicants to public housing. Regarding applicants determined to be ineligible, the circular required written notification and, in most cases, a statement of the reasons for the determination. The circular also required that ineligible applicants be afforded an informal hearing at which they could present factual information which might lead to reconsideration of the ineligibility determination.

HUD Circular HM 7465.12 (June 2, 1971) reaffirmed the right of local housing authorities to establish appropriate admission and occupancy standards. The circular, quoting from an earlier circular, stated that local authorities "shall not establish policies which automatically deny admission or continued occupancy to a particular class, such as unmarried mothers, families having one or more children born out of wedlock, families having police records or poor rent-paying habits, etc."

On August 6, 1971, the Board of Commissioners of the Housing Authority passed Resolution Number 1788:

Now, therefore, be it RESOLVED by the Board of Commissioners that a complete review and study of policy and procedure for admitted [sic] applicants to public housing authority is hereby authorized; and be it further resolved that no action shall be taken on the admission of families, the head of such family who is under the age of eighteen years of age, until such review and study has been completed, and a decision has been made by the Board and the tenants, and subject to HUD approval.

This resolution was not distributed, published, or posted in any manner.

On August 10, 1972, plaintiff appeared at the Housing Authority's Central Office where all applications for admission

to the Housing Authority's projects are taken. Plaintiff told the receptionist that she wanted to apply for an apartment in the Pennway Plaza and that she was 16 years of age. The receptionist told plaintiff that she was too young to qualify for public housing and did not offer plaintiff an application for admission. Plaintiff did not ask for an application form and has never tendered a written application form to the Housing Authority. Plaintiff has never received written notification that she is ineligible for admission nor has she been afforded an informal hearing on the matter.

Plaintiff at that time was 16 years of age; she was unmarried and had one child. Plaintiff will be 18 years of age on May 11, 1974. Plaintiff was residing in an apartment in the Pennway Plaza project with her sisters and their children. Plaintiff is now residing in substandard housing in Kansas City. Her current income includes Aid to Depending Children in the amount of \$80 per month and Social Security Survivors Benefits in the amount of \$93 per month. She is attending Kansas City West High School.

On and prior to August 10, 1972, a document entitled "Statement of Policies" was posted in the Housing Authority's Central Office. This statement contained no standard excluding from admission those families in which no member had attained the age of 18 years. There also were no standards excluding applicants with respect to whom antisocial behavior or conduct amounting to a nuisance reasonably could be expected and from whom maturity and responsibility as tenants could not be expected.

On November 14, 1972, the Board of Commissioners of the Housing Authority passed Resolution Number 1882. This resolution amended the Housing Authority's "Statement of Policies"

to exclude from admission families with no member at least 18 years of age. This resolution was not posted in the Housing Authority's Central Office until April 17, 1973.

Between August 10, 1972, and April 17, 1973, 67 one-bedroom apartment were rented to new tenants in the Housing Authority's non-elderly projects.

II. Standing and Jurisdiction

Defendants' challenge plaintiff's standing on the grounds that plaintiff did not properly apply for admission and that the Housing Authority has now published and posted an admission standard based on age. Neither of these grounds has merit. First, plaintiff's intent to apply for admission was made clear to the Housing Authority's agent. That agent's statement to plaintiff amounted to a refusal to allow plaintiff to apply. This is sufficient for standing. See Male v. Crossroads Associates, 337 F. Supp. 1190, 1198-99 (S.D.N.Y. 1971), aff'd, 469 F.2d 616 (2d Cir. 1972). Secondly, the mere fact that defendants now have a published and posted admission standard based on age in no way affects the dispositive issue whether plaintiff was denied due process at the time she sought admission.

The Court has jurisdiction of this action under 28 U.S.C. § 1343 (1970). Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970), cert. denied, 401 U.S. 1003 (1971); Anderson v. Denny, 365 F. Supp. 1254 (W.D. Va. 1973); McClollan v. University Heights, Inc., 338 F. Supp. 374 (D.R.I. 1972); McMichael v. Chester Housing Authority, 325 F. Supp. 147 (E.D. Pa. 1971); McQueen v. Druker, 317 F. Supp. 1122 (D. Mass. 1970), aff'd, 438 F.2d 781 (1st Cir. 1971); Battle v. Municipal Housing Authority, 53 F.R.D. 423 (S.D.N.Y. 1971); Holt v. Richmond Redevelopment and Housing Authority, 266 F. Supp. 397 (E.D. Va. 1966).

III. Due Process In Admission Procedures

Public housing projects must conform to the due process requirements of the Fifth and Fourteenth Amendments in dealing with tenants and applicants for tenancy. Public housing tenants may not be evicted and leases may not be terminated without procedural safeguards, e.g., notice and hearing. E.g., Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973); Glover v. Housing Authority, 444 F.2d 158 (5th Cir. 1971); Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970), cert. denied, 401 U.S. 1003 (1971); Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir.), cert. denied, 400 U.S. 853 (1970); Anderson v. Denny, 365 F. Supp. 1254 (W.D. Va. 1973); Brown v. Housing Authority, 340 F. Supp. 114 (E.D. Wis.), aff'd, 471 F. 2d 63 (1972); McClellan v. University Heights, Inc., 338 F. Supp. 374 (D.R.I. 1972); McMichael v. Chester Housing Authority, 325 F. Supp. 147 (E.D. Pa. 1971); McQueen v. Druker, 317 F. Supp. 1122 (D. Mass. 1970), aff'd, 438 F.2d 781 (1st Cir. 1971); Ruffin v. Housing Authority, 301 F. Supp. 251 (E.D. La. 1969).

Applicants for public housing cannot be denied admission without procedural safeguards. Holmes v. New York City Housing Authority, 398 F.2d 262 (2d Cir. 1968); Neddo v. Housing Authority, 335 F. Supp. 1397 (E.D. Wis. 1971); Davis v. Toledo Metropolitan Housing Authority, 311 F. Supp. 795 (N.D. Ohio 1970); Colon v. Tompkins Square Neighbors, Inc., 294 F. Supp. 134 (S.D.N.Y. 1968). One of these required safeguards is the establishment and publication of "ascertainable standards" for admission. This safeguard is also administratively required by HUD Circular RHA 7465.1, 15a (June 1969).

On August 10, 1972, when plaintiff appeared at the Housing Authority's Central Office and was told that she was too young to qualify for public housing, no admission standard

relating to age had been published or posted. Assuming that the Housing Authority's Resolution Number 1788 was a standard relating to age (a doubtful proposition at best), it was not published or posted and, therefore, was not an ascertainable standard. The Court must conclude that the Housing Authority's conduct on August 10, 1972, violated plaintiff's Fourteenth Amendment due process rights and violated HUD Circular RHA 7465.1, ¶5a (June 1969). Accordingly, plaintiff's motion for summary judgment has been granted by order filed May 10, 1974, to the extent that a judgment will be entered declaring plaintiff's rights.

IV. Equal Protection In Admission Standards

Admission standards for public housing projects must conform to the equal protection requirements of the Fifth and Fourteenth Amendments. E.g., Crossroads Associates, 469 F.2d 616 (2d Cir. 1972), aff'g 337 F. Supp. 1190 (S.D.N.Y. 1971); King v. New Rochelle Municipal Housing Authority, 442 F.2d 646 (2d Cir. 1971), aff'g 314 F. Supp. 427 (S.D.N.Y. 1970); Cole v. Housing Authority, 435 F.2d 807 (1st Cir. 1970); Battle v. Municipal Housing Authority, 53 F.R.D. 423 (S.D.N.Y. 1971); McDougal v. Tamsberg, 308 F. Supp. 1212 (D.S.C. 1970); Thomas v. Housing Authority, 282 F. Supp. 575 (E.D. Ark. 1967).

Having resolved this action on other grounds, the Court need not determine whether equal protection is denied by an eligibility standard which denies admission to applicant families with no member 18 years of age or older. The Court observes, however, that to sustain an age standard the Housing Authority would be required to show at least that the standard is reasonably related to some legitimate objective. Although the Housing Authority has suggested the existence of legitimate objectives in promulgating its age standard, the Court has grave

doubts whether the age standard is reasonably related to those objectives.

V. Conclusive Presumption

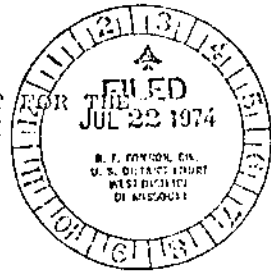
The due process clauses of the Fifth and Fourteenth Amendments forbid a statutory or administrative conclusive presumption, "when that presumption is not necessarily or universally true in fact, and when the state has reasonable alternative means of making the crucial determination." Cleveland Board of Education v. LaFleur, 42 U.S.L.W. 4186 (U.S., Jan. 21, 1974); Vlandis v. Kline, 412 U.S. 441 (1973); Stanley v. Illinois, 405 U.S. 645 (1972).

Having resolved this action on other grounds, the Court need not determine whether the Housing Authority's admission standard relating to age is a conclusive presumption forbidden by the due process clause of the Fourteenth Amendment. The Court observes, however, (1) that the Housing Authority's standard on age conclusively presumes that a family with no member 18 years of age or older is unsuitable to live in public housing; (2) that this presumption is not necessarily or universally true in fact, and (3) that the Housing Authority has reasonable alternative means to determine whether such a family is suited to live in public housing. The Court also observes (1) that the Housing Authority constitutionally could presume that such a family is unsuited to live in public housing, (2) provided that the Housing Authority allows such an applicant family an opportunity to offer evidence to rebut that presumption, and (3) further provided that the Housing Authority promulgates and posts ascertainable standards to which such an applicant family could address its evidence of suitability and by which that evidence would be judged. The Housing Authority is already required by HUD Circular RHM 7465.1 (June 24, 1970)

to provide an informal hearing to applicants who are denied admission.

Wm. P. Holloman
District Judge

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THE HOUSING AUTHORITY OF
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Defendants.)

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J U D G M E N T

This action having been before the Court, the Honorable William R. Collinson, United States District Judge, on cross-motions for summary judgment, and the issues having been duly considered and a decision having been duly rendered, it is

ORDERED, ADJUDGED AND DECREED that plaintiff's Fourteenth Amendment due process rights were violated by defendants' action in denying plaintiff admission to housing on the basis of an unpublished admission standard on age. Costs are taxed to defendants.

Dated at Kansas City, Missouri, this 22nd day of July, 1974.

R. F. CONNOR

Clerk of Court

Attest: A true copy,
R. F. CONNOR, Clerk
U.S. District Court
Western District of Missouri
[Signature]