



U.S. Department of Housing and Urban Development
Los Angeles Office, Region IX
1615 West Olympic Boulevard
Los Angeles, California 90015-3801

AUG 28 1986

Mr. William Rosenberger
Executive Director
Housing Authority of the
County of Riverside
5555 Arlington Avenue
Riverside, CA 92504

ATTN: Cathy Mitchum

Dear Mr. Rosenberger:

On August 12, 1986 we received an administrative complaint from Inland Counties Legal Services concerning your policies of (1) requiring that potential and actual tenants, including Gladys Chapman, who are seeking Section 8 Certificates under the existing housing program, obtain legal guardianship before they can obtain low and moderate income housing subsidies and, (2) denial of an informal review of decisions denying assistance to an applicant.

We have reviewed this complaint and have the following comment on the two points raised:

1. Although 24 CFR 882.209 (a)(2) provides that the "PHA shall determine whether an applicant for participation qualifies as a family", Section 882.204 (b)(3)(ii) states that the PHA's administrative plan must state the PHA's policies and procedures for "handling applications and determining family eligibility". Furthermore, these procedures must be approved in advance by HUD and HUD can require elimination of unreasonable selection procedures (49 FR 12220 dated March 29, 1984).

Current HUD occupancy standards would not permit the PHA to require legal guardianship under these circumstances for the purpose of determining family eligibility because the practice would not stand the "test of reasonableness". You must stop this practice.

2. The PHA is required pursuant to 24 CFR 882.216 (a) to give prompt written notice and an opportunity for an informal review of the decision denying assistance to the applicant (including a decision denying listing on the PHA waiting list, issuance of a Certificate of Family Participation, or participation in the program). It is our opinion that you violated HUD regulations in

denying this applicant an informal review. There is no provision that permits a PHA to "put an applicant on hold" in order to avoid the requirement of an informal hearing. You must stop this practice. We are sending Inland County Legal Services a copy of this correspondence.

Please contact your housing management specialist if you have any questions.

Sincerely,

Beverly Kendrick

Beverly Kendrick
Chief

Assisted Housing Management
Branch, 9.4HMA

cc: 



U.S. Department of Housing and Urban Development
Los Angeles Office, Region IX
1615 West Olympic Boulevard
Los Angeles, California 90015-3801

Mr. Michael Givel
Inland Counties Legal Services
1860 Chicago Ave
Bldg I-3
Riverside, CA 92507

Dear Mr. Givel:

We have received the administrative complaint dated August 7, 1986 concerning Riverside County Housing Authority's policy on legal guardianship and denial of informal review of such decisions denying assistance to an applicant.

After review of the issues presented, we determined that current HUD occupancy standards would not permit the PHA to require legal guardianship under the circumstances for the purpose of determining family eligibility because the practice would not withstand the "test of reasonableness". We also found that the PHA violated HUD regulations in denying this applicant an informal review. They have been notified to stop these practices (See copy of letter attached).

Thank you for your concern in these matters. If we can be of any further assistance, please contact us.

Sincerely,

Beverly Kendrick

Beverly Kendrick
Chief

Assisted Housing Management
Branch, 9.4HMA



Serving Riverside and San Bernardino Counties

Inland Counties Legal Services

1860 Chicago Ave., Bldg. I-3
Riverside, CA 92507 / (714) 683-7742

Irene Cárdenas Morales
Executive Director

John Connor
Managing Attorney

August 7, 1986

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch
U.S. Department of Housing
and Urban Development
1615 W. Olympic Boulevard
Los Angeles, California 90015-3801

Re: Administrative Complaint

Dear Ms. Kendrick:

I am directing this official administrative complaint to you and the appropriate legal counsel within the United States Department of Housing and Urban Development on behalf of Gladys Chatman, an applicant for Section 8 Existing Housing with the Riverside County Housing Authority. This administrative complaint concerns the Riverside County Housing Authority's policy of requiring that certain potential and actual tenants including Mrs. Chatman, who are seeking Section 8 Certificates under the Existing Housing program, obtain a Legal Guardianship before they can obtain low and moderate income housing subsidies.

Executive Office

1860 Chicago Ave., Bldg. I-3
Riverside, CA 92507
(714) 784-1020

Branch Offices

45-550 Grace Street
Indio, CA 92201
(619) 342-1591

129 N. Euclid Ave.
Ontario, CA 91762
(714) 963-0037

362 N. Arrowhead Ave.
Suite 310
San Bernardino, CA 92401
(714) 884-8615

3435 Alhambra Rd.
Suite 1
Victorville, CA 92392
(619) 245-1147
Senior Citizens (619) 245-0774

Page 2

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

It is clear that neither federal statutes, (See 42 U.S.C.A., Supp., Section 1437a (3), Federal Regulations, (See 24 C.F.R., Part 812.2 revised as of 4/1/85) or internal H.U.D. Administrative guidelines, (See for example, Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program, Chapter 4, Section 4(a), specifically defines what constitutes a family beyond definitions for a disabled family, handicapped family, or elderly family.

It is equally clear, that the statute and regulations purposely allow for a broad definition of what constitutes a family. This is particularly true and logical when one considers the rapidly changing composition of the family in present American society.

The Riverside County Housing Authority's practice of requiring a Legal Guardianship in order for, Mrs. Chatman's family and her to be officially recognized as a family, is extremely inflexible, overly restrictive and creates an unconstitutional and conclusive presumption of what constitutes a family. As a practical and policy matter, this practice also constitutes an undue invasion of privacy; a denial of equal protection under the law; a denial of due process under the law; and effectively has caused an arbitrary and malicious delay of Mrs. Chatman's right to obtain low and moderate income housing subsidies.

Page 3 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

The following is a more specific and comprehensive explanation and description of these points.

The right to privacy which is protected by the Federal and California Constitutions, includes the right of a person not to have unreasonable government intrusion into his or her family affairs. In Jacobs vs. Superior Court (36 CA3d 489; 493-494), the Court stated:

"The basic test as to whether there has been an unconstitutional invasion of privacy is whether the person has exhibited a subjective expectation of privacy which is objectively reasonable and, if so, whether that expectation has been violated by unreasonable governmental intrusion. This test of reasonableness is dependent upon the totality of acts and circumstances involved in the context of each case."

In Armenta v. Superior Court (61 CA3d 584; 132 Cal. Rptr. 586), the Court also stated:

"The basic test of whether there has been a violation of this right is if a person's personal and objectively reasonable expectation of privacy has been infringed by unreasonable governmental intrusion.

In addition, in Stanley v. Illinois (405 U.S. 645), the U.S. Supreme Court stated, "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," "basic civil rights of man," and rights far more precious than property rights.The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment,..."

Page 4 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

The Court continued by stating, "Nor has the law, refused to recognize those family relationships unlegitimized by a marriage ceremony."

In Cleveland Board of Education v. LaFleur (414 U.S. 632) the Court also stated that, "This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."

When the Riverside County Housing Authority requires that Mrs. Chatman and her family obtain a Legal Guardianship, this is an arbitrary and potentially detrimental intrusion into the personal affairs of her family. A Legal Guardianship is not warranted or desired by Mrs. Chatman. It is also our position that family relationship verification techniques such as the use of birth certificates or duly verified affidavits or documents which attest to a particular family relationship are all that are necessary when the Riverside County Housing Authority seeks to certify a family for the Section 8 Existing Housing Program.

The Riverside Housing Authority's requirement that Mrs. Chatman obtain a Legal Guardianship constitutes an unjust and arbitrary classification of a family under the Equal Protection Clause.

In Colon v. Tompkins Neighbors Inc. (294 F.Supp. 138) the Court stated "It is established in law that the Equal Protection Clause is only satisfied when classification rests upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed."

In King v. New Rochelle Municipal Housing Authority (442 F2d 648) the Court, stated with regard to the Equal Protection Clause that, "The traditional test requires only that the classification be rationally related to a premissible goal."

Page 5 - Continued

Mrs. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

In addition, in Thomas v. Housing Authority of Little Rock, (282 F Supp. 579), the Court noted that, "As stated, the Housing Authority is a public body, not a private landlord; hence, it cannot act arbitrarily or capriciously in selecting and evicting its tenants."

The Riverside County Housing Authority's requirement for Legal Guardianship for minor children under the care of a blood relative such as Mrs. Chatman, constitutes an inflexible classification of a family without rational connection to the myriad of forms that a family may take. This required classification improperly assumes that a family relationship does not exist without a Legal Guardianship, in contrast to other presumed family relations that do exist among other tenant families. This arbitrary classification and denial of housing benefits is a violation of the right to equal protection under the law.

The Riverside County Housing Authority's requirement that Mrs. Chatman obtain a Legal Guardianship is also a violation of her due process rights. As was stated before in Stanley v. Illinois (405 U.S. 645), and Cleveland Board of Education v. LaFleur (414 U.S. 632), the U.S. Supreme Court has recognized that freedom of personal choice in family life is protected by the Due Process Clause of the Fourteenth Amendment. In the Stanley case the Court also stated:

Page 6 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

"The Constitution recognized higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones."

Mrs. Chatman's right to maintain her family as she sees fit is a guaranteed right under the Due Process Clause. When the Housing Authority attempts to intrude into this precious relationship, under the guise of bureaucratic efficiency it is grossly violating her due process rights.

In both LaFleur and Stanley, the Court also decided that a conclusive presumption made by a public body, when it comes to family matters, is also a violation of the Due Process Clause. In the June 23, 1986 letter from the Riverside County Housing Authority (See Attachment "A"), our request for an informal review was denied. The basic premise of the letter was that the Riverside Count Housing Authority's decision was unchallengeable, conclusive and final. Essentially, the Housing Authority had determined under an conclusive presumption that Mrs. Chatman's family does not exist because a Legal Guardianship has not been obtained. This a denial of due process under the law and severely violates the rights of Mrs. Chatman, as well as other tenants who are required to obtain Legal Guardianships.

Page 7 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

Finally, the Riverside County Housing Authority's requirement for Legal Guardianship for minor children under the care of a blood relative is an arbitrary and malicious delay and/or denial of Mrs. Chatman's right to secure low and moderate income housing subsidies. The right to secure safe, sanitary, and decent housing is a nationally recognized low income housing goal. As the Court in the Thomas v. Housing Authority of City of Little Rock (282 F. Supp. 575), stated:

"That evils result from slum living is generally accepted; the will range of alleged evils need not be detailed here. The theory of the low rent housing program is that if families of low income can be removed from the slums and placed in safe, sanitary, and decent housing they will be motivated and enabled to lead better, healthier, and more productive lives.

In passing upon the question, due regard must be had to the humanitarian nature of the public housing. It is the function of the Housing Authority to carry out that program in the City of Little Rock, that is to say to provide housing for low income families."

If Mrs. Chatman is required to obtain a Legal Guardianship, she will undergo unnecessary and extremely time consuming delays before receiving low and moderate income housing subsidies while the Legal Guardianship process is carried forth. In addition, the Housing Authority of Riverside County is not in the business of morally or personally judging what composition a family should assume. It is in the business of providing low rent housing for poor people.

Page 8 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative complaint

By mandating unconstitutional, arbitrary, and unwarranted requirements and classifications on what constitutes a family through the Legal Guardianship process on Mrs. Chatman and other tenants, it violates both the spirit and intent of the Section 8 Existing Housing program.

The Riverside County Housing Authority also claims (See Attachment "A"), that according to 24 CFR 882.116(c) and 24 CFR 882.118(A)(1) the requirement for Legal Guardianship is necessary; (Please note that the Housing Authority is not disputing the fact that Rufus Johnson Jr., is Mrs. Chatman's grandson), (See: Paragraph One of Attachment "A"), in order to avoid either fraud or qualifying an otherwise ineligible grandparent for assistance or a larger bedroom size.

With regard to the first part of this claim, there is more than adequate recourse and remedy through 24 CFR 882.212 et.seq. and 24 CFR 882.210(3) for the Housing Authority to deal with any alleged problems of fraud with regard to family size. In addition 24 CFR 882.118(a) (1) and 24 CFR 882.112(b) (2) specifically addresses the issue of the family's duty to report its accurate family size and not to commit fraud.

Page 9 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

As was mentioned before, this assumption by the Housing Authority of tenants in general, and Mrs. Chatman in particular, that a family doesn't exist unless a Legal Guardianship is obtained creates an unconstitutional conclusive presumption and due process violation that Mrs. Chatman's family does not exist. Because Mrs. Chatman's family does exist, the requirement for a Legal Guardianship is also an invasion of privacy, a violation of equal protection, and a gross violation of Section 8 Existing Housing goals and objectives.

The claim made by the Housing Authority that a Legal Guardianship is required in order to avoid qualifying an otherwise ineligible grandparent for assistance or for a larger bedroom size is also an unconstitutional conclusive presumption and due process violation; a violation of equal protection; an invasion of privacy; and a gross violation of Section 8 Existing Housing goals and objectives. This policy unjustly, and irrationally presumes that all tenants including Mrs. Chatman are engaged in such a policy, and therefore, must be required to obtain a Legal Guardianship to prove that the situation is otherwise. Again, it is Mrs. Chatman's position that she has raised her grandson since he was one, (he is now 15), and that a family relationship has and now exists.

Page 10 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Assisted

Re: Administrative Complaint

This raises one final issue. The Housing Authority has violated the Due Process Clause in another manner through its conclusive policy that a family does not exist unless a Legal Guardianship is obtained. 24 C.F.R. 882.216(a)(2) allows an applicant the opportunity for an informal review of a decision denying assistance (including a decision denying listing on the Public Housing Assistance waiting list, issuance of a Certificate of Family Participation, or participation in the program). The Housing Authority claims using an unconstitutional conclusive presumption as its basis, that it is not denying Mrs. Chatman her housing subsidy, but rather it has put her application "on hold" until she obtains a Legal Guardianship, and therefore, she is not entitled to a informal review. It is our position that this is Orwellian bureaucratic doublespeak and is really a "hidden" way of grossly denying our client her due process rights. It is also our position, that putting Mrs. Chatman "on hold" is a defacto denial of her benefits and entitles her to an informal review.

Because of this unconstitutional and arbitrary denial of Mrs. Chatman's housing benefits and due process rights we are hereby demanding that the following actions be taken.

Page 11 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

1. The Riverside County Housing Authority immediately cease and desist from using Legal Guardianships or Legal Custodies as a means to classify a family relationship in Mrs. Chatman's case in particular, and for all tenants in general who are affected by this policy. If family verification is required for Certification to a Section 8 program, family verification techniques such as the use of birth certificates or duly verified affidavits or documents are all that are warranted to certify a family relationship.

2. The Riverside County Housing Authority immediately cease and desist from using Legal Guardianship or Legal Custodies as means to deny low and moderate income housing subsidies to Mrs. Chatman in particular, and for all tenants who are affected by this policy in general.

3. The Riverside County Housing Authority immediately cease and desist from denying Mrs. Chatman her right to an informal review pursuant to 24 C.F.R. 882.216(A) (2). In addition, that the Riverside County Housing Authority immediately provide to our agency a copy of its informal review procedures pursuant to 24 C.F.R. 882.216(a)(2), as well as a copy of written procedures for informal hearings pursuant to 24 C.F.R. 882.216(6).

Page 12 - Continued

Ms. Beverly Kendrick
Chief of Assisted
Housing Branch

Re: Administrative Complaint

We hereby request a reply and immediate action on these demands within the next 21 days. If we do not hear from you we will proceed with further administrative and/or legal action forthwith.

Kindest regards,

A handwritten signature in cursive script, appearing to read "Michael Givel".

Michael Givel
Authorized Representative

MG:as

cc: Cathy Mitchum



HOUSING AUTHORITY

of the COUNTY of RIVERSIDE 3640 Ninth Street, Riverside, CA 92501-3869

June 23, 1986

(714) 369-4301

Michael S. Givel, Housing Advocate
Inland County Legal Services
1860 Chicago Avenue, Bldg. I-3
Riverside, CA 92507

RE: Your Letter Dated June 12, 1986
Gladys Chatman

Dear Mr. Givel:

As of this date, Ms. Chatman has neither been denied a Certificate or determined ineligible for rental assistance. Completion of her application has been placed on hold pending her receipt of legal custody or guardianship of her grandson, Rufus Johnson, Jr.

Your letter requested a fair hearing in accordance with the federal regulations. Please note that Ms. Chatman is an applicant for the Section 8 Program, not a participant. Therefore, in the event she is denied a Certificate or determined ineligible, she would have the right to request an Informal Review, not an Informal Hearing (or fair hearing, as you called it).

In response to your objection of our policy requiring legal guardianship or custody in cases such as Ms. Chatman, it is the opinion of this agency that the policy is both necessary and allowable in accordance with Sec. 882.116(c) and 882.118(a)(1) of the regulations, and Chapter 4, c.(1) of Handbook 7420.7. Proper establishment of the family unit is necessary not only for eligibility purposes, but also to determine the level of assistance needed to supply housing (i.e., bedroom size). It is not uncommon for us to find the same children listed as dependents by both the actual parents and the grandparents, or split between families to qualify an otherwise ineligible grandparent for assistance or a larger bedroom size.

Since we cannot pend an application indefinitely, I am sure Ms. Chatman would appreciate any assistance you could give her in obtaining legal custody or guardianship.

Sincerely,

Cathy Mitchum
Deputy Director, Housing Services - West County

CM/wyn

cc: HUD, Los Angeles Area Office
Clerk of the Riverside County Board of Supervisors