



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**COLUMBUS FIELD OFFICE
COLUMBUS FAIR HOUSING CENTER
200 NORTH HIGH STREET, 7TH FLOOR
COLUMBUS, OHIO 43215**

SENT VIA CERTIFIED AND REGULAR MAIL

March 31, 2014

Ray C. Freudiger, Esq.
Freund, Freeze & Arnold
Fifth Third Center
1 South Main Street, Suite 1800
Dayton, OH 45402-2017

Subject: Request for Relief
Letter of Findings of Non-Compliance
HUD Case No.: 05-06-0276-4

Dear Mr. Freudiger:

On February 25, 2014, I received your correspondence, dated February 21, 2014, in response to the Department's January 24, 2014 Letter of Findings of Non-Compliance. The Department's findings outlined in its Letter of Findings of Non-compliance and GDPM's responses are summarized below.

The Department found that, after entering into a VCA with the Department, the provisions of which required GDPM to accommodate Complainant Jordan's disabilities in the manner outlined in the VCA, GDPM desired to revisit and terminate the accommodations agreed upon in the VCA. The Department found that GDPM failed to contact Director Murphy, and instead, solicited an opinion from Director Murphy's subordinate employee, Linda Sanford, concerning whether Complainant Jordan's requested accommodation constituted an undue financial and administrative burden. GDPM subsequently refused to provide the accommodations agreed upon in the VCA.

GDPM stated that Christopher Green, GDPM's general counsel, was hired after the VCA became effective and was, therefore, unaware of the VCA's existence. GDPM stated that the documents in Complainant Jordan's tenant file are voluminous, and the VCA was contained in a different volume of the file than the volume Mr. Green reviewed in making his decision to terminate the accommodation. GDPM further states that neither Linda Sanford, nor Complainant Jordan's attorney, nor anyone else from HUD, made any mention of the existence of the VCA, or contacted GDPM in an attempt to investigate or enforce the VCA. Linda Sanford allegedly did not instruct Mr. Green to contact anyone else at HUD.

The Department found that GDPM's determination of whether or not Complainant Jordan's request imposes an undue financial and administrative burden or would fundamentally alter the nature of the Section 8 Housing Choice Voucher Program should have been made before GDPM signed the VCA in 2007.

GDPM asserts that after the VCA was made effective, Complainant Jordan unilaterally expanded the scope of her requested accommodation by demanding that GDPM read "all communications" on cassette tape. The VCA requires only that GDPM read "all correspondence" on cassette tape. GDPM argues that given its limited staff and resources, complying with Complainant Jordan's expanded request would be an undue financial and administrative burden.

The Department found that GDPM did not perform an analysis of the costs it would incur in providing the accommodation, or a review of GDPM's current financial resources, or lack thereof, or the benefits that the accommodation provided to Complainant Jordan before it determined that continued provision of the requested accommodation imposed an undue financial and administrative burden.

GDPM asserted that Elaine Letton, Housing Choice Voucher Senior Manager, has direct knowledge of the budget for the Section 8 Housing Choice Voucher Program, as well as the time it would take to read all communications directed to Complainant Jordan onto cassette tape. Ms. Letton estimated that it cost GDPM at least \$1600 per year in staff time to read the required forms that would be forwarded to Complainant Jordan. Further, GDPM alleges that it receives a monthly administrative fee of \$37 per family under lease, which is not enough to pay for Complainant's Jordan's requested accommodation. Mr. Green's reliance upon Ms. Letton's information and opinion was sufficient for him to make a decision that the requested accommodation was an undue financial and administrative burden.

The Department found that GDPM should have followed the terms of the VCA, which required that the agency contact Director Murphy if it believed the accommodation was unreasonable and should be changed. This would also be

the appropriate action if GDPM believed that Complainant had “expanded” the scope of her reasonable accommodations to interpret the applicability of the VCA.

GDPM asserted again that Mr. Green was unaware of the VCA's existence as he was hired after it was executed; and that the VCA was contained in a different file than the one he reviewed in making his decision.

Conclusions

The Department has completed its review of GDPM's responses and the accompanying documentation and has determined that GDPM has not adequately demonstrated that providing Complainant Jordan's requested accommodation constitutes an undue fiscal and administrative burden. The Department further finds that the “communications” language that Complainant allegedly used to describe the accommodations provided to her under the VCA is consistent with the “correspondences” language in the VCA, and is not an expansion of the terms of the VCA. The VCA requires GDPM to “...provide audiotapes of all written correspondence sent to Complainant. This provision applies to **all departments** of Dayton Metropolitan Housing who correspond with Complainant.” The provisions of the VCA protect Complainant Jordan's right to receive every document that is received by other program participants, in a format that ensures she has an equal opportunity to participate in, and enjoy the benefits of, the agency's programs, as required to comply with federal law.

The Department cannot grant the agency's request that it be relieved from the provisions of the VCA. The VCA provisions remedy violations of Section 504 of the 1973 Rehabilitation Act, 29 U.S.C. § 794; 24 CFR Part 8.; (“Section 504”). Section 504 requires that recipients of Federal financial assistance give primary consideration to the requests of the disabled individuals in determining what auxiliary aids are necessary to afford the individual an equal opportunity to participate in, and enjoy the benefits of a program or activity, unless the recipient can demonstrate that the action would result in a fundamental alteration in the nature of a program or activity or in an undue financial and administrative burden.

GDPM did not adequately demonstrate that the \$1600 it costs the agency to provide the services required to accommodate Complainant Jordan imposes an undue burden on its \$18 million budget. The fact that GDPM has experienced a reduction in its budget is a reality experienced by almost every Housing Authority across the country and does not relieve the agency of its obligations under Section 504. The cost of the requested accommodation represents .0001% of GDPM's \$18 million budget. This cost is not significant enough to adversely impact GDPM's operations or budget. Further, the Department also finds that GDPM has sufficient staff resources for the number of correspondence recorded

each year. If GDPM determines that staff cannot be spared, it can contract out the recording, as the agency's \$18 million budget is sufficient to do so.

The other assertions in GDPM's response are also not significant. Mr. Green is not only GDPM's chief counsel, but he is also the Section 504 Coordinator. Hence, he functions as the responsible official for compliance with federal disability laws to which GDPM is subject, primarily Section 504. Had Mr. Green exercised due diligence by reviewing Complainant Jordan's **entire** case and file before deciding to terminate the required accommodations and pursue the matter in court, he would have realized the VCA existed.

Even if the VCA did not exist, Section 504 requires GDPM to ensure effective communication with applicants, beneficiaries, and members of the public. Significantly, Section 504 requires GDPM to consider alternate accommodations if, in fact, the requested accommodation would present an undue financial and administrative burden (which is not the case here). It does not permit recipients to simply deny the accommodation, taking no further action. Part 8.6 of the Section 504 states in pertinent part:

(a)(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with "handicaps" an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.

(c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with "handicaps" receive the benefits and services of the program or activity receiving HUD assistance.

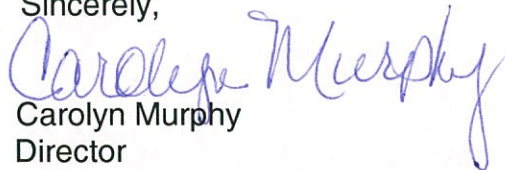
Again, the Department has determined that GDPM has not adequately demonstrated that providing Complainant Jordan's reasonable accommodation constitutes an undue fiscal and administrative burden.

Further, Mr. Green's decision to consult a subordinate Equal Opportunity Specialist, rather than Director Murphy or even another FHEO manager, can be viewed as an intentional, and certainly negligent, circumvention of the terms of the VCA. Mr. Green previously met Carolyn Murphy, Director of the Columbus Fair Housing Center, and Elva Lewis, Program Compliance Branch Chief and

Linda Sanford's supervisor, in 2011 when they met with GDPM staff and a local disability organization to discuss and resolve a disability issue. Mr. Green met Elva Lewis again when she and her staff, including Linda Sanford, conducted a Section 504 compliance review at GDPM offices. Therefore, Mr. Green knew, or should have known, that Linda Sanford was a subordinate employee and was not the appropriate HUD official from whom he should have sought such an important opinion.

In that GDPM's request for relief under the VCA is denied, the recipient remains in violation of the VCA and federal law. If the violations are not remedied within 30 days, the Department will move to enforce the VCA.

Sincerely,



Carolyn Murphy
Director
Columbus Fair Housing Center

cc:

MAURICE MCGOUGH, DIRECTOR, FHEO REGION V