

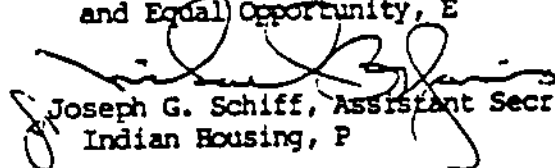


U. S. Department of Housing and Urban Development
Washington, D.C. 20410

DEC 31 1990

MEMORANDUM FOR: All Regional Administrators - Regional Housing
Commissioners
All Regional Directors for Fair Housing and Equal
Opportunity
All Regional Directors for Public Housing
All Regional Directors for Indian Housing
All Managers, Category A and B Offices

FROM: Gordon H. Mansfield, Assistant Secretary for Fair Housing
and Equal Opportunity, E


Joseph G. Schiff, Assistant Secretary for Public and
Indian Housing, P

SUBJECT: PHA Determination of "Ability to Live Independently"
as a Criterion for Admission to Public Housing

A Federal District Court recently found that a public housing agency had discriminated against handicapped applicants by requiring them to show that they could "live independently" before becoming eligible for public housing. (Cason, et. al. v. Rochester Housing Authority). The Authority claimed that the policies which the Court found discriminatory were based, in part, on HUD advice to PHAs in the Public Housing Occupancy Handbook (HB 7465.1, REV-2, August, 1987).

In that handbook, "independent living" is discussed in Paragraph 4-2, ABILITY TO UPHOLD LEASE. Subparagraph 4-2 a. (1) (a) says that the PHA must judge whether the applicant "...could live independently or could be assisted in doing so with available resources." Subparagraph 4-2 b. (2) says: "The PHA may need to give special attention to persons who are not living independently at the time of application, such as those who have been in nursing homes, halfway houses, or under institutional care." Subparagraph 4-2 b. (5) advises PHAs to "...check with a doctor, health clinic, or social service agency... to verify whether the applicant would have the capacity to live independently...."

The Cason case and other information have raised the concern that the advice provided to PHAs in this handbook has been used as a basis for policies which may discriminate against disabled applicants. Consequently, the Handbook is being revised to conform more closely to the requirements of anti-discrimination laws and to provide technical assistance to PHAs in making determinations of suitability for tenancy affecting handicapped applicants.

In the meantime, PHAs requiring technical assistance in developing or administering tenant selection criteria should be advised that:

1. PHAs should rescind policies which may treat handicapped applicants differently from others. The most appropriate criteria for determining suitability for tenancy are those that demonstrate ability to meet the obligations of tenancy such as paying the rent on time, maintaining the dwelling as required by the lease and avoiding disruptive or destructive behavior. Usually the same sources of information that are relied upon in making such determinations with respect to non-handicapped applicants will be sufficient. While a housing provider may fear that an applicant who appears handicapped requires support services not offered by the program, the housing provider may not require or request a special showing by a handicapped individual that he or she can comply with the terms of the lease based on speculation that the applicant's disability may make compliance more difficult.
2. Where a handicapped individual is applying for public housing and the individual's eligibility for admission, level of benefits, or qualification for preferences or priorities does not depend upon his or her being a handicapped person, PHAs may not inquire about the existence, severity of any physical or mental impairment, nor require proof that the applicant is "capable of independent living." However, to the extent necessary to determine eligibility and rent, PHAs may require applicants to provide information about the nature and extent of their handicap or related conditions.

In their routine contacts with PHAs, field staff should be alert to situations involving possible discrimination against the handicapped, especially situations where handicapped applicants are held to a higher standard of behavior or subjected to more extensive investigations of suitability for tenancy than applicants who are not handicapped. Field staff should seek advice from FHED staff as necessary to determine if PHA policies or practices are potentially discriminatory.