

Legal Opinion: GCH-0038

Index: 2.505  
Subject: Preference Rule--Assisted Housing

January 29, 1992

Mr. Christopher W. White  
Community Legal Aid Society  
235 S. Queen Street  
Dover, Delaware 19901

Dear Mr. White:

This is in response to your November, 26 1991, letter concerning the certification of involuntary displacement by the Delaware State Housing Authority (DSHA). Specifically you are concerned with the priority status assigned by the DSHA to your client, Barbara Winters.

In selecting applicants for housing assistance, PHAs are required to apply Federal preference requirements (e.g., 24 CFR § 887.157). However, PHAs and IHAs may use State or local preferences as a means of selecting among Federal preference holders (24 CFR § 887.157(b)(iii)). For example PHAs and IHAs may rank the preferences (e.g., a PHA may provide that those living in substandard housing have a greater need than those paying more than 50 percent of family income for rent).

The Delaware State Housing Authority (DSHA) ranks the preferences and in doing so gives greater weight to the involuntarily displaced than to those paying more than 50 percent income for rent. In applying the preferences to your client, Ms. Barbara Winters, DSHA initially classified Ms. Winters as first priority based on her having been involuntarily displaced. Subsequently, but prior to the verification of her classification as involuntarily displaced, Ms. Winters informed the DSHA that she was living in a mobile home. The DSHA informed Ms. Winters that she was no longer eligible for a first priority because she lived in standard replacement housing. Ms. Winters was reclassified as second priority on the basis of her paying more than 50 percent of her income for rent.

HUD regulations provide that "an applicant qualifies for a Federal preference if . . . the applicant has been involuntarily displaced and is not living in standard, permanent replacement housing" (24 CFR § 887.157(c)(i)). Standard, permanent replacement housing is defined as decent, safe, and sanitary; adequate for the family size; and occupied pursuant to a lease or occupancy agreement. 24 CFR § 887.157(c)(5)

It is your contention that Ms. Winters did not find replacement housing, in accordance with 24 CFR § 887.157(c)(5). You argue that standard, permanent replacement housing does not include

housing for which an applicant pays as rent more than 50 percent of his or her income. In support of this contention you cite the Final Rule, (Preference in the Provision of Housing to Families Who Are Occupying substandard Housing, Involuntarily Displaced, or Paying More than 50 Percent of family Income for Rent), 53 FR 1122 (page 1132 of the preamble) and HUD's response to a commenter who thought it unfair that under the rule a family could lose its involuntary displacement preference before verification. In response HUD stated:

The proposed rule excluded such a family because, . . . the family is living in standard housing, and (assuming that the family is not paying more than 50 percent of its income for rent) no longer has the urgent need for housing assistance that the preferences are designed to address."

You understand HUD's response to mean that if a displaced family, moves into replacement housing, for which it must pay more than 50 percent of its income, prior to verification of its status as an involuntarily displaced family, the family continues to receive a preference as involuntarily displaced.

A family which finds standard, permanent replacement housing in accordance with § 887.157(c)(5) does not continue to qualify for a preference as involuntarily displaced because it pays more than 50 percent of its income as rent for such housing. The parenthetical phrase in the quoted language refers to the family's continued need for housing assistance that the preferences are designed to address and not the family's continued status as involuntarily displaced. The family's status as a displaced family ends after securing housing in accordance with 24 CFR § 887.157(c)(5). Although initially displaced, the rules regarding the exception (i.e., that they find standard replacement housing) have been met.

With regard to the issue, what is considered "adequate for family size" in determining standard, permanent replacement housing, the Department expects PHAs to use the applicable occupancy standards contained in HUD regulations and handbooks, and as set out in the PHAs administrative plan (see Section 887.61). However, the Federal preference requirements were enacted after many of the handbooks were written and thus the handbooks do not necessarily reflect the current standards of the program.

The handbook to which you referred, 7420.7 (Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program) governs the Section 8 Existing Housing Program, which does not include the Section 8 Voucher Program, for which Ms. Winters applied. Section 887.251 provides the

minimum housing quality standards for the Section 8 Voucher

Program. Section 887.251(c)(2) provides that:

A dwelling unit must contain a living room, kitchen area and bathroom. The dwelling unit must contain at least one bedroom or living/sleeping room of appropriate size for each two persons.

A room which qualifies as a living room under § 887.251(c)(2) is not disqualified as such because it is also used as a sleeping area. We note that § 887.251 is a minimum standard and a PHA may set a higher one in its administrative plan. It is our opinion that the unit as described in your letter meets the minimum standards of 887.251(c)(2).

If you have any further questions regarding the DSHA's implementation of the housing quality standards for the Section 8 Voucher Program or implementing the preference rules we suggest you request a copy of the DSHA's administrative plan. Any further correspondence to HUD on this matter should be addressed to:

Sidney B. Severe, Director  
HUD Philadelphia Regional Office  
Liberty Square Building  
105 S 6th Street  
Philadelphia, PA 19106-3392

I hope information provided has been helpful.

Very sincerely yours,

Michael H. Reardon  
Assistant General Counsel  
Assisted Housing Division