UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of George Spinner,

Charging Party,

v.

Housing Authority of the City of Reno,

Respondent.

CORRECTED COPY

HUDALJ 09-97-1291-8
June 19, 2002

M. Hope Young, Esq.
For the Charging Party

Theresa L. Kitay, Esq.
For the Respondent

Before: Constance T. O'Bryant,
Administrative Law Judge

ORDER
DENYING CHARGING PARTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT and GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On October 30, 2001, the Charging Party, on behalf of George Spinner ("Complainant"), filed a Charge of Discrimination ("Charge") alleging that the Housing Authority of the City of Reno ("Respondent" or "Reno Housing Authority") had discriminated against Mr. Spinner on the basis of his handicap in violation of the Fair Housing Act, as amended, 42 U. S. C. §§ 3601-3619 ("the Act"). Specifically, the Charge alleges that Respondent refused to make reasonable accommodations in rules, policies, practices or services, when such accommodations were necessary to afford him, a handicapped person, an equal opportunity to use and enjoy his dwelling, in violation of 42 U. S. C. § 3610 (f) (3) (B). *See also* 24 C. F. R. § 100.204.

The matter was referred to this Office on October 30, 2001, and a hearing was set for January 29, 2002, but was later continued to April 9, 2002. On March 19, 2002, after completion of pretrial discovery, both parties filed motions for summary judgment. The Charging Party filed a Motion for Partial Summary Judgment, seeking a favorable ruling on the liability issue, and the Respondent filed a Motion for Summary Judgment, seeking dismissal of the entire case. Each party then filed an opposition to the other's motion. The undersigned then suspended the trial date pending rulings on the Motions.

STATEMENT OF UNDISPUTED FACTS

1. Complainant, George Spinner, at all relevant times, has been a single man who has Tourette's Disorder, a neurological condition which causes him to have involuntary verbal outbursts and severe muscle tics or spasms. His sight is impaired and he wears a patch over one eye. At all relevant times he has met the Act's definition of a person with a "handicap" as defined at 42 U. S. C. § 3602(h).

2. The Section 8 Housing Choice Voucher Program is a program of the United States Department of Housing and Urban Development ("HUD"). It provides housing subsidies and affordable housing to low-income people. R4 at ¶7; R5 at ¶3.[1]

3. Respondent Reno Housing Authority is a quasi-public entity organized by the laws of the State of Nevada. It receives federal funds to operate approximately 760 public housing units and 1,997 Section 8 Certificates and Vouchers in Reno, Nevada. R15 at ¶3. It administers the Section 8 Housing Choice Voucher Program in the Reno area through a contract with HUD. Under the Section 8 program, participants receive rental assistance for private housing and pay rent according to a formula calculated on the basis of their income and qualified expenses. R4 at ¶4.

4. Since 1996 Mr. Spinner has lived at 3215 S. Virginia, a privately owned apartment in Reno, Nevada, and has been the recipient of the Section 8 housing voucher program from the Reno Housing Authority. Complainant's rent is partially paid by a Section 8 subsidy, and the balance is paid from his own resources.

5. Prior to moving to Reno, Mr. Spinner had lived in Tucson, Arizona where he received Section 8 subsidy rental assistance from the local housing authority.

[1]The following abbreviations are used: "CP#" for Charging Party's exhibits, and "R#" for Respondent's exhibits.

6. Mr. Spinner's file from the Tucson Housing Authority which was transmitted to the Reno Housing Authority in 1996, contained a letter from a physician, Dr. Bruce Christianson, stating that Complainant suffered from severe Tourette's disorder which made it "extremely dangerous for him to use fire to prepare food and also virtually impossible for him to keep his living space neat and clean" and that he "has had and will continue to need housekeeping assistance indefinitely."

7. While residing in Tucson, Complainant received weekly housekeeping services to maintain his apartment, independent of his assistance from the Tucson Housing Authority. As to his meals, Complainant prepared and ate breakfast at home, usually of milk and cold cereal. He received home-delivered hot meals once a day from Meals on Wheels, a social service program. Mr. Spinner usually ate his third meal of the day at a local restaurant.

8. In calculating Complainant's rent contribution under the Section 8 voucher program, the Tucson Housing Authority allowed Complainant to deduct as "unreimbursed medical expenses" the portion of his rent equal to the cost of eating one meal per day at a restaurant.

9. When he moved to Reno, Complainant's Section 8 assistance from the Tucson Housing Authority transferred to the Reno Housing Authority pursuant to HUD's policy regarding portability of vouchers. Following its established procedure, Respondent initially issued Complainant Section 8 assistance based on the same factors as had the Tucson Housing Authority. Its policy was to continue assistance based on the same factors used by the former housing authority until the Section 8 tenant's case came up for annual review or until the case was reviewed for some other reason during the interim.

10. At all relevant times, the Reno Housing Authority was aware that Complainant suffered from Tourette's Disorder and that his disorder caused him to have involuntary verbal and physical outbursts and muscle tics, and that in the opinion of his doctor, it was "extremely dangerous" for him to "use fire" to prepare his food.

11. Respondent did not specifically approve any of Complainant's meals expense as part of a "medical expense" deduction for the purpose of calculating his rent payment. Instead, Respondent simply carried forward the calculation of the Tucson Housing Authority based on the certified information presented from Tucson. R8 at 29-30.

12. Complainant's apartment in Reno has an electric stove and range and a microwave oven. His disability-related limitations make it dangerous for him to cook on the electric stove top; however, there is no agreement between the parties as to whether

he could

prepare hot meals using the microwave. Complainant does not use the microwave oven to prepare any meals. He states that this is because he cannot see clearly enough "to start messing with it . . . I just might break it or mess up the buttons on there. . . . I'm not saying if I will or not, but I could knock the buttons and mess them up where it don't work." *Spinner deposition* - R2 at 121-124.

13. In Reno, Complainant initially went without the assistance of Meals on Wheels or a similar meal delivery program. He continued to prepare and eat breakfast at home of cold cereal and milk, and adopted the practice of eating lunch and dinner out at nearby restaurants. R2 at 32-33;115-116.

14. In early 1997, Complainant found himself short of money with which he could continue to eat out and to purchase other necessary items. Because he was short on funds, he asked Respondent to further reduce his monthly rent contribution, specifically, to increase his "medical expense" deduction and thereby decrease the amount of rent he was required to pay under Section 8. Mr. Spinner's request triggered a review of his eligibility for Section 8 assistance and a recalculation of his rental obligation.

15. During its review of Mr. Spinner's account to determine if he were eligible for an increased "medical expense" deduction, the Reno Housing Authority determined that the meal expense as a medical expense deduction was not a proper deduction.

16. Respondent operates the Section 8 program through an Administrative Plan that is submitted to HUD. In its operation and administration of the program, Respondent must follow certain regulations, notices, and guidance promulgated by HUD, including detailed instructions regarding the calculation of a resident's contribution toward rent payments. To the extent that the HUD regulations, notices, and guidance statements allow for some discretion or latitude on the part of the housing authority, the Administrative Plan describes how the housing authority intends to exercise that discretion. The Administrative Plan must be approved by the housing authority's Board of
Commissioners and submitted to HUD as an attachment to the housing authority's overall Agency Plan, an operating document governing all aspects of the housing authority's operation. HUD has the authority to object to any provision in the housing authority's Administrative Plan, and the housing authority must revise the plan if HUD makes objections. R4 and5.

17. HUD's handbook governing operation of the Section 8 program permits a reduction of rent for unreimbursed medical expenses for qualified residents. The deduction is allowed for "[t]hose medical expenses, including medical insurance

premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance." R6 at 3-52. HUD allows housing authorities to exercise their own discretion and judgment, within the regulatory framework and the dictates of the Administrative Plan, to determine what constitutes a deductible medical expense. R5. Respondent's Administrative Plan stated: "When it is unclear in the HUD rules as to whether or not to allow an item as a medical expense, IRS Publication 502 will be used as a guide." R7 at ¶41. The instructions in IRS publication 502 address the issue of deducting meal costs as a "medical expense":

> You can include in medical expenses the cost of meals at a hospital or similar institution if the main purpose for being there is to get medical care. You cannot include in medical expenses the cost of meals that are not part of inpatient care.

R8 at 11.

18. Respondent concluded that the meals' expense requested by Complainant was not a qualified expense that could validly be used in calculating his rental contribution, and that granting Complainant's request would be contrary to its Administrative Plan, as well as HUD's Handbook provisions governing Section 8. It, therefore, disallowed the deduction and recalculated the amount of rent Mr. Spinner was required to pay.

19. By letter dated February 10, 1997, Mr. Spinner was notified of the denial of his request for increased deduction and that the meals allowance deduction was being rescinded, with the result that his rental obligation was being increased. Complainant's rent contribution increased from $126 per month to $174 per month. CP 8.

20. Mr. Spinner protested the increase in his rental obligation due to the denial of the asserted "medical expense" deduction and on several occasions in 1997 requested that the meal allowance deduction be reinstated. On each occasion his request was denied. CP's 1, 10.

21 . In April, 1997, Washoe Legal Services ("Washoe"), acting on Mr. Spinner's behalf, met with Respondent, and contending that Mr. Spinner's disability directly

limited his ability to prepare meals thereby increasing his food expenditures, argued that his increased meal expenses resulting from his disability should be considered an unreimbursed medical expense for purposes of his rent calculation. Respondent held firm in its determination that the meals expense was not a valid "unreimbursed medical expense" deduction for the purpose of calculation Complainant's portion of the rent payment. R4 at ¶4. ¶7; R5 at ¶3.

22. In a letter to Respondent dated May 14, 1997, Washoe argued that even if Respondent would not normally consider meals expense as an allowable medical expense deduction, that in Mr. Spinner's case Respondent should make "a reasonable accommodation to its rules, policies, and practices under the federal Fair Housing Act" and allow the deduction to accommodate Mr. Spinner's disability by allowing the deduction. R11.

23. Respondent denied the requested modification of its rules, policies, practices and services to "accommodate" Mr. Spinner's disability by allowing a deduction for the cost of his meals.

24. Respondent gave two primary reasons for denying the requested accommodation: 1) Respondent did not believe that allowing a meals expense as a "medical expense" deduction for Complainant constituted a "reasonable request to meet his particular disability," since the request "was not a request that was in direct correlation to his disability" *See deposition testimony of Respondent's Director of Housing Program*, R12 at 27; and 2) that to grant the request would be financially and administratively burdensome to its operation. R13 at 32.

25. Although it denied the meal allowance, Respondent offered as an alternative to Mr. Spinner's request, to provide a live-in person who would cook hot meals for him. CP 9 at 11-12; R12 at 11; R13 at 12-13. This accommodation was permissible under Respondent's rules, policies and practices. R13 at 12-13.

26. Mr. Spinner did not find the alternate suggestion for a live-in assistant to be acceptable and rejected it. He lived alone and preferred to live alone. In his own words: "I didn't want nobody to live with me." R2 at 132.

27. Later, Respondent assisted Complainant by contacting the state Medicaid office, and arranging to have him put on a waiting list for agencies that would provide in-home

cooking services through a Medicaid waiver. R12 at 59.

28. In October 1997, Complainant filed a complaint with HUD alleging that Respondent had failed to reasonably accommodate his disability. On October 30, 2001, HUD filed a Charge of Discrimination against Respondent, alleging that Respondent's disallowance of the cost of a daily meal as an unreimbursed "medical expense" constituted a failure to reasonably accommodate Complainant's disability. *Charge* at ¶ 16.

29. In July 1998, Complainant's name came up on the waiting list for services provided by Medicaid and since that time he has received daily assistance with housekeeping, including cleaning and preparation of two meals a day. This assistance is provided by a person who does not live with Complainant. R2 at 99. Mr. Spinner stated that with the in-home services he began receiving in July 1998, he no longer needed the requested accommodation. R2 at 153-154.

APPLICABLE LAW

Summary Judgment

Summary judgment is appropriate where the moving party shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as
a matter of law." Fed. R.Civ. P. 56(c). Moreover, Rule 56(c) provides that "[a] summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

"Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 248 (1986). *See also Gamble v. City of Escondido*, 104 F. 3d 300 (9th Cir. 1997). A party may demonstrate that there is no genuine issue of material fact preventing the entry of summary judgment by demonstrating that "there is an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett*, 477 U. S. 317 at 327 (1986). A complete failure of proof concerning an essential element of the Charging Party's case will necessarily render all facts immaterial. *Id*. at 323.

In the instant case, both parties agree that there is no genuine issue as to any material fact that would prevent the entry of summary judgment, at least as to the issue of liability.

Liability under the Fair Housing Act

Under the Fair Housing Act as amended, 42 U. S. C. §§ 3601-3619, the failure to reasonably accommodate the disabled in the context of housing is defined as an act of discrimination. The Act prohibits discrimination in housing against persons with physical and mental disabilities. *City of Edmonds v. Oxford House, Inc*., 514 U. S. 725, 728 (1995). Unlawful discrimination against the handicapped person includes:

> a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . ..

See 42 U.S.C. § 3604(f)(3)(B). A dwelling is defined as "any building, structure, or portion thereof which is occupied as . . . or intended for occupancy as, a residence by one or more families. . . ." 42 U. S. C. § 3602(b). *See also Gamble v. City of Escondido*, 104 F. 3d 300 (9th Cir. 1997). If required to accommodate a plaintiff's handicap, a defendant may be required to incur "reasonable costs"; however, he is not required to provide any accommodation that poses an "undue hardship or a substantial burden." *Salute v. Stratford Greens Garden Apartments,* 136 F. 3d 293, 300 (2d. Cir. 1998).

The Supreme Court has recognized the FHA's "broad and inclusive compass" and has accorded it a "generous construction" in order to effectuate its broad, remedial purposes. *City of Edmonds,* 514 U. S. at 731. The objectives of the Act demand unprejudiced thought and reasonably responsive reaction on the part of all involved; however, they do not demand action "beyond the realm of the reasonable." *See US Airways, Inc. v. Barnett*, __U. S__ , 122 S. Ct. 1516 (Apr. 29, 2002).

The elements of a *prima facie* case in a reasonable accommodation case were set out in *U. S. v. California Mobile Home Park Management Co.*, 107 F. 3d. 1374, 1381 (9th Cir. 1997). The court stated that to meet his initial burden of proof the Secretary must demonstrate that: 1) the Complainant has a disability as defined in 42 U. S. C. § 3602(h); 2) the Respondent knew of the Complainant's disability; 3) the accommodation of the disability may be necessary to afford the Complainant an equal opportunity to use and

enjoy the dwelling; and 4) the Respondent refused to make such accommodation. *See also HUD v. Dedham Housing Authority*, 2 FH - FL (Aspen), ¶ 25,015 at 25,212 (HUDALJ 1991).

DISCUSSION

Based on the stipulated facts, elements 1, 2, and 4 of the *prima facie* case are established. It is undisputed that Complainant was, at all relevant times, a handicapped person as defined in the Act. It is also undisputed that Respondent was aware of Mr. Spinner's handicap and that Respondent refused to make the accommodation requested. Thus, to meet its initial burden of proof, the Charging Party need only establish element 3 - to show that the accommodation that Complainant sought from Respondent, (i.e., that Respondent modify its rules, policies, and practices regarding rent calculations under Section 8 to allow Complainant to deduct the cost of restaurant meals as a "medical

expense"), was an accommodation that was "necessary" to afford Complainant equal opportunity to use and enjoy his dwelling, i.e., his apartment unit.

The essential elements of the reasonable accommodations provision found at section 3604(f)(3)(B) are: "equal opportunity," "necessary," and "reasonable." *See Smith & Lee Associates, Inc., v. City of Taylor*, 102 F. 3d 781 (6th Cir. 1996). The phrase "equal opportunity" for the disabled as used in the reasonable accommodations provision of the Act (section 3604(f)(3)(B)) means equal opportunity to use and enjoy one's dwelling, i.e., housing unit. The intended objective of the Act is to enable those with disabilities to obtain the same opportunities and enjoyment that those without disabilities automatically enjoy, *(See U. S. Airways v. Barnett*, _U. S_, 122 S. Ct. 1516 (Apr. 29, 2002)), or stated differently, equal opportunity to enjoy the "full benefits" of one's housing. *See Southeastern Community College v. Davis*, 442 U. S. 397 (1979) (Complainant must show that but for the accommodation he likely would have been denied an equal opportunity to enjoy the "full benefits" of his housing).

In this case, the apartment provided Complainant by the Reno Housing Authority came equipped with a kitchen with electric stove and microwave oven, among other appliances. Other residents were able to prepare all their meals at home if they so desired. The undisputed evidence establishes that Mr. Spinner's disability prevents him from "using fire" to prepare his meals. The parties agree that his disability would prevent him from cooking over an open flame or exposed heating elements, such as on a gas or electric stove. Because of this limitation, the Charging Party argues that the accommodation sought by Mr. Spinner was necessary to afford him equal opportunity to

use and enjoy his apartment. Its argument is as follows:

> In the instant case, Mr. Spinner's inability to prepare meals necessitated his going out to eat meals, which resulted in increased food costs. Without the requested accommodation, Mr. Spinner was unable to afford his rent, along with his other normal expenses, adversely impacting his quality of life and ability to use and enjoy his dwelling. Said another way, but for the accommodation, Mr. Spinner would 'likely' have been 'denied an equal opportunity' to use and enjoy his dwelling. . ." *CP's Motion* at 6-7.

Respondent answers that the requested accommodation was neither necessary nor reasonable. It argues that Complainant's disability needed no accommodation from Respondent and that Complainant enjoyed equal opportunity to use his apartment. It contends that to the extent Complainant's disability presented a difficulty in his daily meal preparation, he had alternative methods of obtaining or preparing food which required no accommodation by Respondent. In Respondent's view, Complainant's

disability "did not prevent him from obtaining or preparing meals in any of a number of alternative methods. For example, he could eat cold food, he could use his microwave oven, he could have someone else prepare his meals, or he could, as he apparently prefers, eat his meals out." R at 12-13.

It is not clear whether Mr. Spinner's disability-related limitations would prevent him from cooking food in a microwave. However, even if so, there remains the question of whether using only the microwave to prepare hot meals would afford him opportunity to "fully benefit" from his housing unit, i.e., equal opportunity to prepare all his meals at home in the same manner as other tenants who could fry, bake, roast and/or broil their meals in their apartments. It is not necessary to resolve this issue in order to rule on the motions before me. For the purpose of these motions, I assume that because of his disability-related limitation, Mr. Spinner would not have had equal opportunity to fully use and enjoy his apartment and that his circumstances warranted some accommodation of his disability. The question presented is whether the specific accommodation sought by Mr. Spinner was "necessary" to accommodate his disability, and, if so, whether it was a "reasonable" one.

As to whether the requested accommodation was "necessary," Respondent argues that what Complainant sought was an accommodation of his *financial* circumstances, *not* his disability, and that a request for financial accommodation is not a request for

"accommodation," as that term is defined by the Act. I agree. Because I agree with Respondent that the Charging Party has failed to establish that the requested accommodation was necessary to afford Mr. Spinner an equal opportunity to use and enjoy his apartment, it is unnecessary to address Respondent's argument on the reasonableness of the request.

To satisfy the "necessary" element in 42 U. S. C. § 3604(f)(3)(B), there must be a direct nexus or correlation between the requested accommodation and the complainant's disability. *See U. S. v. California Mobile Home Park Management Co.,* 107 F. 3d. 1374, 1381 (9th Cir. 1997) ("Without a causal link between defendants' policy and plaintiff's injury, there can be no obligation on the part of the defendants to make a reasonable accommodation. . . . Once this link is established, only then do we consider whether it is reasonable to require the [landlord] to provide the accommodation.") *See also Gamble v. City of Escondido,* 104 F. 3d 300 (9th Cir. 1997) (zoning variance accommodation denied where building proposed would house not only disabled persons but also an adult health-care facility used by both the disabled residents and the disabled community at large); *Marks v. BLDG Management Company, Inc., No. 99 Civ. 5733 (THK), 2002 WL 765573 (S. D. N.Y.), April 26, 2002* ("plaintiff presented no evidence that having a roommate while she was away . . . was necessary in any way to assist her in dealing with her AIDS-

related medical condition, or that it mitigated in any way the difficulties associated with her illness)"; and *Southeastern Community College v. Davis,* 442 U. S. 397 (1979), (a complainant must show that but-for the requested accommodation he likely would be denied an equal opportunity to enjoy the "full benefit" of his housing, and that the desired accommodation will affirmatively enhance his quality of life "by ameliorating the effects of [his] disability.") *See also Smith & Lee,* 102 F. 3d 781 (6th Cir. 1996), *citing Bronk v. Ineichen,* 54 F. 3d 425, 429 (7th Cir. 1995).

The Charging Party argues that Complainant's requested accommodation was, in fact, directly related to his disability:

> It is indubitably manifest that Mr. Spinner's requested accommodation would not have been needed if he were not handicapped. But for his disability, Mr. Spinner would have been able to prepare his own meals, and, as such, would not have incurred greater expense by having to eat out. *CP's Response to Respondent's Motion* at 3.

However, this argument is not persuasive. In Mr. Spinner's case, the equal opportunity to enjoy the full benefits of one's housing - the objective of the Act - would be the equal opportunity for him to prepare (or have someone prepare for him) all his meals, in his

apartment, whether cold or hot, and as often as he wished. The accommodation initially suggested by Respondent would have done just that. Respondent offered to provide, at no cost to Complainant, a live-in assistant who would prepare hot meals for Complainant such that he could eat all his meals at home. Complainant rejected this proposed accommodation.

There is no direct nexus or link between the accommodation requested by Mr. Spinner and the limitation on his ability to prepare his hot food at home caused by his handicap. Complainant did not ask Respondent for an accommodation to allow him to cook at home. His own testimony shows that he sought the accommodation not to enable him to enjoy preparing and eating his meals at home but rather to obtain additional funds so that he could continue eating his meals *at restaurants* and still pay his rent. R2 at 106-107.

The Complainant's case is not unlike that of the plaintiff in *Marks.* The handicapped plaintiff in *Marks* requested her landlord to accommodate her disability by waiving its policy prohibiting tenants who were absent from their apartments for significant length of time from maintaining roommates or subletting their apartments for their absence from the apartment. Plaintiff, who had always had a roommate, wanted her roommate to reside in the apartment during about six months each year when she went to Florida where, she claimed, the warm weather helped her medical condition. In rejecting

her claim of violation under the Act, the court stated that by definition an accommodation sought "in connection with her absence from the apartment" was not related to her "use and enjoyment" of the apartment. Like the plaintiff in *Marks*, Complainant's request was not related to his "use and enjoyment" of *his apartment*. He sought funds to allow him to continue to enjoy eating hot meals at neighborhood restaurants, not in his apartment.

That Complainant's accommodation request was not linked to his disability-related limitations can readily be seen from the fact that had the accommodation been granted, Complainant would not have been restricted in his use of the additional funds made available to him. He could have used the additional funds to purchase restaurant meals or for *any* purpose he so desired.

Moreover, Complainant cannot show that absent the reduction in his rent he would have been denied an equal opportunity to use and enjoy his dwelling. *See Southeastern Community College v. Davis*, 442 U. S. 397 (1979). Complainant acknowledges that the in-home hot meals service provided him since July 1998 through the state Medicaid

program has, in fact, accommodated his disability-related needs. Complainant has not shown that such service was not obtainable in February 1997. Additionally, Respondent stood ready and willing to provide him with similar service in early 1997, albeit with a live-in cook.

I agree with Respondent that what Complainant sought was an accommodation of his *financial* circumstances or "economic accommodation." The Charging Party's own statements show that it was Complainant's lack of funds that he sought to have accommodated, not any disability related limitations: "Without the requested accommodation he was *unable to afford his rent*, along with his other normal expenses, adversely impacting his quality of life . . . ." *CP's Motion* at 6. Simply stated, the Complainant wanted to have more money to spend. Although it is likely that his quality of life would have improved with having more money to spend, it is not the objective of the Act to enhance the economic condition or the quality of life of the handicapped person not directly related to his housing needs. *See Gamble,* 104 F.3d at 306 (proof that the disabled in general desired access to an adult health-care facility was insufficient to establish that accommodation was necessary under the Act).

It is well established that accommodation of a disabled housing tenant's financial or economic circumstance is not required where there is no direct nexus between the accommodation sought and a hardship created by the plaintiff's handicap. *See Salute v. Stratford Greens Garden Apartments,* 136 F. 3d 293 at 301-302 (2d Cir. 1998) ("What stands between Plaintiffs and the apartment at Stratford Greens is a shortage of money, and nothing else. . . . Thus, the accommodation sought by plaintiffs is not 'necessary' to

afford handicapped persons 'equal opportunity' to use and enjoy a dwelling) and ("We think it is fundamental that the law addressed the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps"); *Schanz v. The Village Apartments*, 998 F. Supp. 784 792 (E. D. Mich. 1998) ("[plaintiff's] handicap is not preventing him from renting an apartment . . . it is plaintiff's financial situation which he is requesting that defendants accommodate"); and *Marks v. BLDG Management Company, Inc., No. 99 Civ. 5733 (THK), 2002 WL 765573 (S. D. N.Y.), April 26, 2002, citing Salute v. Stratford Greens Garden Apartments,* 136 F. 3d 293, (2d Cir. 1998*)* ("Simply put, Plaintiff's request for a roommate had nothing to do with her sickness and, from all that appears, everything to do with her pocketbook.") Such is the case before me.

The Charging Party has cited cases for the proposition that economic considerations may satisfy the "necessary" requirement of 42 U. S. C. § 3604(f)(3)(B);

however, these cases are inapposite. In *U. S. v. California Mobile Home Park Management Co. II*, 107 F. 3d. 1374, 1381 (9th Cir. 1997)[2] the court held that the plaintiff had failed to prove her *prima facie* case where she failed to show why waiving the fee for her caretaker's parking was necessary for plaintiff's use and enjoyment of her home. In *Samuelson v. Mid-Atlantic Realty Co., Inc.*, 947 F. Supp. 756, (D. Del. 1996), the court *did not* require Mid-Atlantic to reasonably accommodate the disabled plaintiff. It held that whether the landlord had failed to reasonably accommodate the tenant was "fact-intensive inquiry" not suited for the procedural posture of a motion to dismiss. 947 F. Supp. at 763. In the other cases cited, *Groome Resources Ltd. v. Jefferson Parish,* 234 F. 3d 192, 197 (5th Cir. 2000), *ReMed Recovery Care Centers v. Township of Willistown*, 36 F. Supp. 2d 676 (E. D. Pa. 1999), and *Tsombanidis v. City of West Haven*, 180 F. Supp. 2d 262, (D. Conn. 2001), there existed a nonfinancial nexus between the requested accommodation and the handicapped to establish the "necessary" requirement of the Act . In these cases a zoning variance was sought by a housing developer. As the court observed in *California Mobile* II, causation posed no barrier in such cases because the city's zoning policies, in each instance, directly interfered with the use and enjoyment of the handicapped because they prevented the housing from being built. 107 F. 3d 1374 at fn 3. The financial benefit to the developer was incidental to the accommodation and not the accommodation itself.

The Charging Party cited the earlier opinion in this case, *United States v. California Mobile Home Park Mgmt. Co.*, 29 F. 3d 1413 (9th Cir. 1994), where the court allowed that under some circumstances a defendant could be required to waive generally applicable fees to accommodate a person's disability. After trial on the merits, the court ruled that "necessity' had not been shown and waiver of fees was not required.

I conclude that the Charging Party has failed to establish that the requested accommodation was necessary to afford Complainant an equal opportunity to use and enjoy his apartment and therefore has failed to carry its burden of establishing a *prima facie* case of discrimination based on handicap. Accordingly, summary judgment in favor of the Respondent is required as a matter of law.

So **ORDERED** this 19th day of June, 2002.

/S/

CONSTANCE T. O'BRYANT
Administrative Law Judge