

**TESTIMONY BY THE LEGAL AID SOCIETY, BEFORE THE CITY
COUNCIL COMMITTEE ON PUBLIC HOUSING ON THE NEW YORK
CITY HOUSING AUTHORITY'S SECTION 8 RECERTIFICATION
PROCEDURES**

SEPTEMBER 27, 2011

INTEREST AND EXPERTISE OF THE LEGAL AID SOCIETY

The Legal Aid Society is the oldest and largest provider of legal assistance to the poor in the United States. The Society's Civil Practice operates 14 neighborhood offices and city-wide units serving residents of all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance and other civil areas of primary concern to low income families and individuals. The Society is counsel in numerous class-action cases concerning the rights of Section 8 recipients.

We appreciate the opportunity to testify before the City Council's Public Housing Committee. We praise the leadership of Chair Rosie Mendez and her commitment to Section 8 program participants.

We come before this Committee a little at a loss. We have testified before the City Council on the Housing Authority's Section 8 program many times. For years, we have provided recommendations on how to improve the program. While we still support those recommendations, our testimony today will focus on returning the program to the level it functioned at two years ago. Over the last two years, the Housing Authority has terminated thousands of tenants without notice, without an opportunity to be heard, and without cause. Later in the testimony, we will describe how the Housing Authority changed the program and the real devastating consequences to our clients caused by these changes. However, first I would

like to describe our attempts to work with the Housing Authority to find solutions to these problems and what we have learned from those attempts.

Since we learned about depth and breadth of the Housing Authority's failings, we have been regularly meeting with the Housing Authority to discuss the problems with the program. We have been able to resolve the problems of many of our individual clients, restoring them to the program after they had been illegally terminated. In restoring our clients to the program, we have been able to prevent many families from becoming homeless. However, the Housing Authority has repeatedly refused to resolve problems on a system-wide scale. As you know, because of funding constraints, the legal services community is able to assist a small percentage of those who need our help. Additionally, there are innumerable tenants who do not know that they can receive our help and they are falling through the cracks. The Housing Authority's failure to address these problems other than on a case by case basis has greatly harmed thousands of low-income families. The Housing Authority is in denial as to the scope of this self-created crisis. The Authority must acknowledge the problem and then fix it, immediately, not in some distant time. After months of attempting to work with the Authority, The Legal Aid Society and Legal Services NYC today will file two federal cases on behalf of approximately thirty clients against the Housing Authority for its repeated failure to comply with the constitutional requirements of the Due Process Clause, federal law and regulation, State law and the Housing Authority's own administrative plan.

NYCHA's New Customer Service System

Over the last two years, the Housing Authority has made substantial changes in the way it interacts with Section 8 participants. These changes have resulted in Section 8 participants

experiencing numerous barriers to the timely, proper processing of their recertification packages and interim recertification requests.

In the past, Section 8 participants worked with a housing assistant who was responsible for processing their annual recertification, annual Housing Quality Standards inspections, and interim recertification requests. The housing assistants were based at the Housing Authority's local borough offices and worked with tenants who resided in the borough. If a Section 8 participant had questions or concerns regarding the annual recertification process they could reach out to their housing assistant by coming into the local office or calling the housing assistant directly.

NYCHA has replaced housing assistants with a centralized phone system. Now when a Section 8 participant has a question or concern regarding their subsidy they must call a "customer service line" to speak with someone who has no direct knowledge of their Section 8 subsidy. Particularly troubling is the lack of continuity of service. For example, if a Section 8 participant is informed by the "customer service representative" that they need to submit a specific form to complete the recertification process, the Section 8 participant cannot send the form directly to the "customer service representative" and call the "customer service representative" to confirm receipt of the form.

In addition to replacing housing assistants with a "customer service line" the Housing Authority has automated the recertification and interim recertification process. Many files and important documents were lost, misplaced or not properly scanned when the Housing Authority automated its files. A large number of recertification packages were not scanned and many Section 8 participants have not received their recertification papers at all. Unfortunately, the computer is programmed to automatically issue termination notices and terminate Section 8

subsidies. The automated termination process continues even when a Section 8 participant was not issued a recertification package or when a Section 8 participant has submitted a recertification package that was not scanned into the computer. To add insult to injury, when a Section 8 participant requests an administrative hearing to challenge the termination of their Section 8 subsidy, their hearings are not scheduled. A Section 8 participant who loses their rental subsidy is at extreme risk for eviction.

Annual Recertification

Section 8 program participants are required to annually recertify their income so the Housing Authority can determine the participant's continued eligibility for Section 8 and set the "tenant's portion" of the monthly rent. The Housing Authority's repeated failure to properly process Section 8 annual packages submitted by participants has created significant difficulties for vulnerable tenants at risk of eviction if their share of the monthly is not adjusted or their Section 8 subsidy is terminated.

The facts of two Legal Aid Society clients illustrate this failure. Ms. Keflom and her family began participating in the Section 8 program in 2010. Ms. Keflom was supposed to recertify for her Section 8 subsidy in late 2010 or early 2011. In March 2011, Ms. Keflom's landlord commenced a nonpayment proceeding against her. It was then that Ms. Keflom discovered the Housing Authority had stopped sending the Section 8 subsidy to her landlord. Ms. Keflom went to the Housing Authority's offices to investigate, and was told her Section 8 subsidy was terminated due to her failure to submit an annual recertification package. Ms. Keflom never received a recertification package prior to being sued for nonpayment of rent. However, Ms. Keflom received a recertification package in May 2011. Ms. Keflom immediately completed and returned the recertification package to the Housing Authority. To date, there has

been no response from the Housing Authority, and Ms. Keflom and her children remain at risk of eviction.

Abel Campos' annual recertification process routinely commences in August when he receives a mailed recertification package from the Housing Authority. Mr. Campos submitted his annual recertification package in May 2011. In August 2011, he received a voucher change notification.¹ Mr. Campos contacted the Housing Authority and was told to wait until his recertification was processed. A few weeks later Mr. Campos contacted the Housing Authority and was informed his subsidy was suspended. During a meeting at the Housing Authority's Bronx office, Mr. Campos was informed his subsidy was inactive. Mr. Campos was advised to request a hearing. Mr. Campos mailed a request for a hearing to the Housing Authority on September 7, 2011.

The Legal Aid Society contacted the Housing Authority on Mr. Campos' behalf and was informed the subsidy was inactive because Mr. Campos failed to complete the annual recertification. A few seconds later, the Housing Authority's representative, apparently reviewing Mr. Campos' file, realized Mr. Campos had in fact completed the annual recertification and the recertification was approved. The Housing Authority also informed the Legal Aid Society that while there was no record of a hearing request in the system, Mr. Campos' file contained a notation for the Housing Authority to contact him.

Ms. Keflom and Mr. Campos' experiences with the Housing Authority's automated annual recertification process illustrate how deeply flawed the process has become, and how difficult it is for tenants and even their advocates to navigate the process.

¹ This is the form informing the participant of what the new subsidy amount and tenant share will be for the new lease period. It is typically received after the recertification is completed.

Interim Recertification

The Housing Authority is also responsible for processing interim recertification requests made by Section 8 participants when their income has changed prior to their annual recertification. When a Section 8 participant experiences a loss of income as the result of losing a job, a decrease in work hours, or a change in household composition, the tenant's portion of the monthly rent can become unsustainable placing tenants and their families at risk of eviction.

Section 8 participants who have experienced a loss of income are experiencing significant delays in having their tenant's portion adjusted downward to reflect the loss of income. After waiting months for their interim recertification requests to be processed, Section 8 participants are faced with many additional difficulties with their interim recertification requests.

The Housing Authority frequently inaccurately calculates the "tenant's portion" of the monthly rent and improperly determines the effective dates of the change to the "tenant's portion". The Housing Authority often unlawfully applies the tenant's share change prospectively, instead of retroactive to the effective date of the income reduction, leaving the tenant permanently liable for the unaffordable share which accrued during the recalculation period.

Section 8 participants are not provided with notice of the change to the "tenant's portion". Nor are Section 8 participants advised of the calculation methods used by the Housing Authority to determine the "tenant's portion". More troubling still is the Housing Authority's failure to advise Section 8 participants of their right to challenge NYCHA's determination of the "tenant's portion" at an administrative hearing.

The Legal Aid Society is currently advocating on behalf of many clients who are at risk of eviction as a result of the Housing Authority's failure to timely and properly process interim

recertification requests.

For example, Ms. Bienvenida Bencosme lives with her two children in an affordable rent stabilized apartment in the Bronx. Ms. Bencosme is a Section 8 program participant. Her Section 8 subsidy is administered by NYCHA. Ms. Bencosme experienced a significant loss of income in August 2010 when she suffered an injury which left her disabled and unable to work. Ms. Bencosme and her family subsequently began receiving public assistance benefits. In September 2010 Ms. Bencosme went to the Housing Authority's Bronx Leased Housing Borough Office and requested an interim Section 8 certification and adjustment in her family share due to the loss of income. At that time, Ms. Bencosme supplied NYCHA with proof of her loss of income. In February 2011, after several months had passed with no response from the Housing Authority, Ms. Bencosme contacted the leased housing office to inquire about the status of her interim recertification request. Ms. Bencosme was informed that no action had been taken on her interim recertification request. Concerned that the Authority's failure to complete the interim recertification was placing her and her children at risk of eviction, Ms. Bencosme requested an informal conference. After requesting the informal conference Ms. Bencosme received a receipt from NYCHA stating NYCHA did not have the means to complete the interim recertification at that time:

“Tenant came in to follow up on income adjustment requested in September 2010. Currently our database is under construction, tenant will receive notice by mail, once the adjustment to her income and rent portion has been completed. Tenant also requested an informal conference to discuss this matter.”

On July 12, 2011, Ms. Bencosme had an informal conference regarding the adjustment of her family share. The Housing Authority's representative asked Ms. Bencosme to submit additional information. The request for additional information was completely unnecessary and

served only to delay the processing of the interim recertification request. Ms. Bencosme had already provided documentation to the Authority establishing that her family's sole source of income was public assistance. The Authority also informed Ms. Bencosme she needed to provide a letter from her former employer with her last work date and apply for unemployment insurance benefits. However, she had already been rejected for unemployment and her family's receipt of public assistance was predicated on her inability to receive unemployment insurance benefits. Unable to provide the documentation requested by the Housing Authority, Ms. Bencosme submitted her final paycheck and a signed affidavit stating her last date of employment. Although Ms. Bencosme currently receives a shelter allowance from public assistance of just \$400 per month, the maximum shelter allowance for a family of three, NYCHA has refused to adjust her family share. Ms. Bencosme's family share remains improperly set at \$763.00 per month. Since Ms. Bencosme cannot afford to pay her family share of the rent, her landlord has commenced a non-payment proceeding and is seeking to evict Ms. Bencosme and her children. As a result of the Housing Authority's failure to process Ms. Bencosme's interim recertification she remains liable for a rent in excess of the amount allowed under federal law and she and her children are in danger of imminent eviction.

Another Legal Aid Society client, Christian Faloye resides in the Bronx with his four children in an affordable rent stabilized apartment. The family has lived in their home for nearly ten years. The family's source of income is Mr. Faloye's disability benefits. In March 2009, Mr. Faloye completed an annual recertification. The family's monthly income was \$3,107.92, and the family's share of the month rent was set at \$969.00 per month. Mr. Faloye and his wife separated. On March 31, 2011, Mr. Faloye's ex-wife permanently vacated the apartment, lowering the household income to \$837.00 per month. Mr. Faloye promptly reported the change

in household composition and income and provided proof of these changes. Mr. Faloye requested an interim recalculation of the tenant portion or, in the alternative, an informal conference regarding the adjustment of the tenant's portion. On April 27, 2011, an informal conference was held. At the informal conference the housing assistant acknowledged the tenant's portion had been set incorrectly. However, as of this date, the Housing Authority still has not adjusted Mr. Faloye's share. Mr. Faloye's family share is currently \$969.00 per month, which is significantly more than his monthly income

Mr. Faloy's landlord has commenced a non-payment proceeding against him. The Housing Authority's failure to timely and properly adjust Mr. Faloye's share of the rent has resulted in Mr. Faloye being liable for rent in excess of the amount allowed under federal law, and he and his children are in imminent risk of eviction.

As Ms. Bencosme and Mr. Faloye's stories vividly demonstrate, the Housing Authority's actions, or rather, lack of actions, have serious consequences for those families who rely on Section 8 subsidies. The Housing Authority's failure to properly process interim recertification requests has resulted in Section 8 participants being held responsible for an improper and unaffordable "tenant's portion" they are not able to sustain on a monthly basis. As a result, these families have faced unnecessary Housing Court proceedings, unsatisfied monetary judgments, and the ongoing threat of eviction from their homes.

CONCLUSION

We call upon the Housing Authority to stop terminating Section 8 recipients until the Housing Authority can ensure that it has not terminated the family in error and restore families it has terminated until it can ensure that it has not made errors in the termination procedures. In

addition, NYCHA must change its procedures concerning interim recertifications to ensure that Section 8 recipients are not being overcharged in rent. Thank you again for the opportunity to testify before the City Council Committee on Public Housing.

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