

True Reformer Building
1200 U Street, NW
Washington, DC 20009
(202) 328-5500
www.legalclinic.org

Board

David E. Rogers
President
John R. Jacob
Vice President
Stanley O. Sher
Treasurer
Susan M. Hoffman
Secretary
Jonathan L. Abram
Joan Walsh Alker
Fonda Allen
Cheryl K. Barnes
Jeffrey D. Bauman
Laurie B. Davis
Robert D. Dinerstein
Wesley R. Heppler
Laura Tuell Parcher
James E. Rocap, III
Valerie E. Ross
Jeff Schwaber
Effie Smith
Marsha Tucker
Emily Whiting
David Wittenstein

Semper Nobiscum

Mary Ann Luby
1940 - 2010

Staff

Patricia Mullahy Fugere
Executive Director
Marta I. Beresin
Staff Attorney
Julie M. Broas
Staff Attorney
Jones Day Senior Fellow
LaJuan Brooks
Administrative Assistant
Amber W. Harding
Staff Attorney
David M. Booth
Disability Rights Initiative
Kristi Matthews
Kressley Fellow for
Grassroots Advocacy
Scott McNeilly
Staff Attorney
William R. Merrifield, Jr.*
Staff Attorney
Nassim Moshiree
Staff Attorney
Becky O'Brien
Staff Attorney
Leslie Plant
Administrator
Ann Marie Staudenmaier
Staff Attorney
Misty C. Thomas
Staff Attorney
Emily Uhar
Volunteer Coordinator

*Admitted in Ohio Only

The Washington
LEGAL CLINIC
for the Homeless
A Voice for Housing & Justice for 25 Years

Should D.C. Residents Need a Lawyer to Access Emergency Shelter?

Report on Violations of the Legal and Human Right
to Shelter in the First Half of Winter Season: 2012-2013

February 5, 2013

WLCH has been designated "one of the best small charities in the greater DC region"
by the Catalogue of Philanthropy 2009/10.



Executive Summary

For nearly thirty years, District of Columbia law has embraced the ideal that *all* residents should have a warm and safe place to sleep when the temperature is freezing. For those who are homeless, that ideal is expressed in the legal right to emergency shelter. However, D.C. government practice has not always comported with the law. In the current system, it is exceedingly more difficult for families who are homeless to access shelter during the winter than it is for unaccompanied adults. The system's front door has been blocked by unlawful procedures that have created almost insurmountable obstacles for far too many families trying to access emergency shelter this winter.

In the pages that follow, we outline some of the significant challenges that parents have faced in trying to navigate the emergency shelter system, including having to employ legal assistance in order to enforce their rights to shelter and services.

It should not take the intervention of a lawyer to assure that:

- hypothermia alerts are called accurately and in a timely manner;
- the District government acts consistently with its stated policy of sheltering D.C. families with no safe place to go whether or not an alert has been called;
- eligible families are admitted to shelter in accordance with the law;
- parents don't lose jobs and children don't miss school because of threats of wrongful termination or unreasonable demands by shelter intake staff; and
- families that are placed in shelter have access to heat and hot water, pest-free living spaces and cribs for their babies.

It shouldn't, but unfortunately this winter, it has.

The goal of this report is to provide recommendations to the D.C. government which can serve as a blueprint for actions it can take to better respond to the families that we all are committed to serve. Nearly all of the situations described in this report could be rectified on a systemic level with: 1) greater contract monitoring by and accountability to D.C.'s Department of Human Services (DHS); 2) improved communications among DHS and its contractors and subcontractors, and between each of these parties and the families who seek their assistance; 3) follow-through and consistency by the D.C. government on its stated policies and practices; and 4) the engagement of both the DC Council and the DC Interagency Council on Homelessness in assuring that DC's homeless services system lives up to the ideals that can be expected of a human rights city.

Too many vulnerable families have already been turned out into the cold. It is our sincere hope that D.C. takes swift action to prevent further violations before a tragedy occurs on its watch.

Background

The Homeless Services Reform Act (HSRA) requires that the District provide shelter to individuals and families in “severe weather,” or whenever the actual or forecasted temperature, including wind chill, falls below 32 degrees. D.C. Code §§ 4-751.01(21), 4-754.11(5). The Interagency Council on Homelessness (ICH) is charged by the HSRA with developing a plan for how to meet the emergency shelter needs of D.C. residents in severe weather, which is called the Winter Plan. See D.C. Code § 4-752.02(b)(9). The Winter Plan includes information about how many additional beds are needed for each population of people experiencing homelessness (women, men, families, youth), which sites will be used as winter shelters, and how transportation will be provided, among other planning details.

It is important to understand that emergency shelters are set up very differently for individuals without minor children than they are for families with minor children. For individuals, most year-round and all hypothermia shelters admit clients on a first come, first served basis, usually after clients have lined up outside the shelter in the afternoon or early evening. There is no centralized intake or admission process for individuals; each shelter decides who can come in and most shelters impose very few restrictions on entry. The majority of shelter beds for individuals are in “12 hour” shelters, meaning that clients are not allowed to stay in the shelter during the day.

For families with minor children, there is one centralized intake center, the Virginia Williams Family Resource Center (FRC). FRC is operated by the Coalition for the Homeless through a contract with the Community Partnership for the Prevention of Homelessness (TCP), which is the primary homeless services contractor with the D.C. Department of Human Services (DHS). FRC staff make determinations about each applicant family’s eligibility, priority, and placement, sometimes in coordination with TCP or DHS staff. D.C. only operates one winter shelter for families, which is D.C. General family shelter, operated by TCP. This winter, DHS “reserved” 118 shelter units at D.C. General to be used as winter shelter. D.C. General is a “24 hour” shelter, meaning that families are not required to leave the shelter in the morning and can store their belongings in their rooms. In fact, once families are admitted to D.C. General, they cannot be forced to leave until they are lawfully terminated.

The right to shelter in severe weather was narrowed via 2010 legislation to “any resident of the District who is homeless and cannot access other housing arrangements.” D.C. Code § 4-753.01(c)(1). Being unable to “access other housing arrangements” “means that the homeless person is living in a place not intended as a residence, such as outdoors, in a vehicle, or in a condemned or abandoned building or is living in a situation that is dangerous to the health or safety of the person or of any family member.” D.C. Code § 4-753.01(c)(4). For individuals, the change in law has had little to no impact on eligibility determinations, as applicants are presumed eligible. No one asks individuals where they have been staying or whether any friends or family will put them up for the night.

For families, it has had a significant impact. Families are no longer placed in shelter unless they can prove that they have no safe place to sleep. Families must prove each element of their eligibility, usually with third party verification. If the family can prove that it has no safe place to

sleep, than it is determined to be a “Priority One” family. If the temperature is below freezing, Priority One families have a right to be placed in shelter.¹

The Washington Legal Clinic for the Homeless (Legal Clinic) participated actively in the development of the 2012-2013 Winter Plan and in oversight of its execution. Every year we provide legal representation to clients seeking to assert their right to shelter, and every year, through client representation, we learn of systemic concerns and attempt to resolve them either informally with DHS or through litigation if necessary.

This winter, we have had a conference call nearly every other week about problems our clients are having asserting their right to shelter. These calls are usually with DHS, primarily represented by Fred Swan, the Administrator of the Family Services Administration. Recently Michele Williams from TCP has joined these calls. Every one of the cases and concerns raised in this report have been raised with DHS, and most with TCP.

Late Calling of Hypothermia Alerts

During the 2011-2012 winter season, advocates raised repeated concerns that, even though the forecast is available from the National Weather Service by 7:00 a.m., hypothermia alerts that should have been called were not and many of the alerts were called far too late in the day.² The timing of calling of an alert impacts the family and the individual shelter systems in different but equally critical ways. For individuals, short notice hampers and often precludes shelter providers from securing adequate staff for hypothermia placements. Individuals seeking shelter cannot know in a timely way whether the facilities that only open on hypothermia nights are available. For families, if the alert is called after families have left the FRC, it can be difficult, if not impossible, to notify them of their right to shelter and/or to arrange the necessary transportation and assistance to effectuate that right, particularly because the doors of FRC usually close to new intakes at 4:00 p.m.

Reflecting months of negotiations, the 2012-2013 Winter Plan sought to address these concerns by: (1) reorienting the system for calling the alerts by focusing on the forecasted rather than the actual temperature, particularly for the overnight period; and (2) requiring D.C. to announce the status of the overnight alert no later than 3 p.m. each day.

Based on available information as of January 31, 2013, alerts have been called forty-eight times, more than one-fourth of which were called after 3:00 p.m.³ Often alerts were called many hours later, including one on December 14, 2012 that was called at 11:40 p.m., which was so late that hypothermia shelters were unable to open. Several of the alerts were announced only after Legal Clinic attorneys advised the District of the overnight forecast and asked why an alert

¹Families which are homeless but have a safe place to sleep, such as “doubled up” in a friend or family member’s apartment are considered to be “Priority Two.” Priority Two families do not have a right to be placed in shelter and are unlikely to receive such a placement unless they become Priority One.

²The Coalition of Housing and Homeless Organizations (COHHO) tracks the calling of the alerts throughout the season. COHHO’s review of the weather data indicated that, during the 2011-2012 winter season, there were eight nights on which an alert should have been called but was not: 11/5, 11/6, 12/1, 12/3, 1/25, 1/28, 2/3, and 3/3. Thus far in the 2012-2013 winter season, alerts were not called on two nights – 12/1 and 12/8 – when the weather was below freezing and an alert should have been called.

³With our encouragement, calling of the alerts has improved; of the twenty alerts called in January, only three were called after 3 p.m., and they were all called by 3:15 p.m.

had not yet been called. An alert on January 15, 2013 was called off in the afternoon despite a Legal Clinic inquiry and a National Weather Service forecast that showed overnight temperatures, with wind chill, falling far below freezing.

Priority One families continue to report to Legal Clinic attorneys problems accessing shelter as a result of late alerts, including being told to leave FRC without a placement referral when an alert should have been called already. Families are sometimes, but not consistently, notified that they can call the Shelter Hotline later that night to check if an alert has been called. Families without cell phones, however, are not able to utilize this alternate method of accessing shelter on hypothermic nights and may be left without shelter.

Recommendations:

- 1) DHS should devise a system to ensure that the Winter Plan protocol around alerts is strictly observed and should provide this new plan to the ICH.
- 2) DHS should develop a communication strategy for families without cell phones and FRC should make sure that every applicant family is advised of the after-hours procedure for placement into shelter.

Failure to Place Priority One Families on Non-Hypothermic Nights

In late fall, the Legal Clinic was relieved to hear DHS Director David Berns' report to the ICH Executive Committee that the policy of DHS would be to provide shelter or other immediate assistance to every family with no safe place to sleep this winter even on non-hypothermic nights. Mayor Gray's Chief of Staff Chris Murphy reiterated the policy publicly, stating that: "Since Oct 1, 2012 we have been finding alternatives or placements for all families determined to be priority one even on non-hypothermia nights."

This policy, however, was not implemented by the FRC from October 1 through late December. Based on conversation with staff at both organizations, neither TCP nor Coalition for the Homeless staff members seemed to be aware that this was the policy of DHS until the Legal Clinic and then DHS brought it to their attention.⁴

As a result, the Legal Clinic worked with more than a dozen families over five weeks who were found to be Priority One but were not placed initially because it was not a hypothermic night. These families were only placed when a lawyer intervened and brought their case to the attention of DHS. Some of these families spent several nights with no safe place to go before they were placed. The Legal Clinic notified DHS repeatedly of this issue while advocating for individual clients and during our biweekly telephone calls with Fred Swan.

On December 5, for example, the Legal Clinic heard from four families that had been determined Priority One but were told they would not be placed because no alert had been called. When the alert was called around 4 p.m., a Legal Clinic staff attorney spoke with one of the FRC intake workers and informed her that the alert had been called. She replied that that changed everything and that the families would be placed. At that point, all four families who had called the Legal Clinic that afternoon were placed in shelter. There was no dispute over the

⁴Even then TCP and the Coalition did not immediately change their practice of only placing families on hypothermic nights. During the week of December 17th, we were told by Fred Swan that DHS would issue a written directive to its contractors to place all Priority One families every night. We have yet to see the written directive.

eligibility or priority status of the families, just a failure to apply the correct placement policy on non-alert nights.

Recommendations:

- 1) DHS should provide the ICH with a copy of the written directive that was provided to FRC, along with the date of such provision.
- 2) DHS should send monitors to FRC on non-hypothermic days to observe intake sessions for compliance with its policy.

Wrongful Denials of Eligibility and Placement

Every year the Legal Clinic reports that families are wrongfully denied their legal right to shelter in the winter. This season many of the wrongful denials have been given by experienced staff and in areas where the law has remained unchanged for years, which raises questions about what intervention would be effective at reducing such denials. For instance:

- (1) A woman who was more than eight months pregnant was turned away from FRC and told to return when she delivered the baby. This was a violation of D.C. Code § 4-751.01(16)(B), which defines “family” as including “a pregnant woman in her third trimester.”
- (2) In multiple cases the father of the children, the fiancé of the mother, or an over-eighteen child was not allowed to be placed with the family in shelter, despite D.C. Code § 4-751.01(16)(B), which defines “family” as including “a group of individuals with at least one minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit.”
- (3) None of the families who have approached the Legal Clinic this winter because they were denied a shelter placement had received the written notice of the denial as required by D.C. Code §§ 4-754.33(b), (d). This made it challenging to determine the underlying factual and legal disputes, and it made resolving cases much more complicated than necessary. Adequate notices that comply with the due process standards outlined in the HSRA are key to ensuring the rights of all shelter applicants are upheld and that those in need are appropriately served. DHS does not dispute that lawful notices are necessary, yet provision of such notices is a problem every year.

Legal Clinic attorneys also have observed that the standard for determining whether an eligible family is Priority One and thus will be placed is either inconsistently applied or poorly defined. For instance, although DHS staff had stated that a family without heat in its apartment should qualify as Priority One until the lack of heat could be resolved, one family that reported it had no heat in its apartment and was about to be evicted was not found to be Priority One until a Legal Clinic lawyer intervened.

The Legal Clinic recently learned that the agency and its contractors differed in how to determine whether a family was Priority One. DHS, in a position that the Legal Clinic supports, believes that a family that cannot identify a specific safe place to sleep tonight (after previous living arrangements have been ruled out) should be determined Priority One and placed in shelter. The Coalition for the Homeless and TCP, on the other hand, were requiring that a family assert that it will be sleeping in a specific *unsafe* place, such as a car or a park, in order to be considered Priority One and be placed in shelter. As a result, some families were being forced to sleep in dangerous places for at least one night before they were placed in shelter, in direct contravention of DHS' stated policy that no family would sleep in an unsafe place this winter.

When Fred Swan discovered the difference in standards, he instructed TCP to implement the agency's policy at FRC.

Recommendations:

- 1) DHS and TCP should improve or increase monitoring of FRC to ensure that families are not unlawfully denied eligibility for or placement in shelter.
- 2) DHS should implement the attached policy and protocol developed by the Legal Clinic and the D.C. Coalition Against Domestic Violence in collaboration with Fred Swan from DHS, which articulates the circumstances that should qualify an applicant family for Priority One status. The protocol includes the types of verification that might be obtained from the applicant family.
- 3) DHS and TCP should monitor FRC closely to ensure all shelter applicants receive lawful notices regarding eligibility, prioritization, and placement. This monitoring should include reviewing files, sitting in on intake interviews, and surveying families as they exit FRC to determine if they received proper notices.

“Respite Care:” Threats of Wrongful Expulsion from Shelter

From sometime in November until mid-December, families applying for emergency shelter at FRC did not get traditional referrals to D.C. General. Instead, every eligible family received a “respite stay” placement referral, which conditioned continued receipt of shelter benefits (beyond 1-3 days) on completing steps prescribed by a worker at FRC. As the attached redacted form shows, families were told: “If you fail to complete these steps as indicated, you will not be authorized for continued respite stay.”

The respite stay placement policy and procedure existed in direct violation of the rights and protections accorded to clients by the HSRA. First, D.C. Code § 4-754.36 outlines the only authorized bases for a provider to terminate a family from shelter, and failure to comply with paperwork requirements is not one of the bases. Second, all providers are required to give clients fifteen days prior written notice of any termination from shelter and an opportunity to appeal. See D.C. Code §§ 4-754.11(15), (16); 4-754.33(c), (d); and 4-754.41(b). Providers cannot terminate shelter before a final decision on such an appeal, except in the very limited set of circumstances that involve the threat of an imminent act of violence. D.C. Code § 4-754.11(18). In respite stay cases, clients were told that they would be not be allowed to return to shelter if they did not comply with the requests of the FRC worker. Yet the notice was not given fifteen days in advance of such date, it did not extend a right to appeal the decision, and it proposed depriving the family of its shelter placement prior to a final decision.

The Legal Clinic received dozens of calls from families who were scared that they would not be able to return to D.C. General if they were unable to comply with the workers' requests.⁵ On the morning of their return visit to FRC, families reported that they were woken up early in the morning by D.C. General staff and told they had to get on the van to go to FRC. They were told not to leave any of their belongings in the room because they were not guaranteed continued placement.

When they arrived at FRC, many families had to wait nearly all day before speaking to anyone about their case. Many had to wait with their children because it was difficult to get them to school before the van left for FRC. All worried about where they were going to go that night. At

⁵ It was unclear to our clients (and to us) who at FRC was giving them the notices—Economic Security Administration, Family Services Administration or FRC shelter intake workers.

some point, usually after many hours of waiting, a worker would step into the waiting room, look at the updates or documents that the family had brought in, and then issue another respite stay form for a few more days with new instructions for what to bring back the next time. This process repeated itself multiple times a week for most clients. One client reported being forced to return to FRC ten to fifteen times before eventually receiving a “final” placement.

Many of the Legal Clinic’s clients expressed significant anxiety over their respite care placements, and several had already been harmed by their reliance on the threat of loss of shelter by the time a Legal Clinic attorney intervened. For example:

1. A mother was reported to Child Protective Services when her son missed school because she could not both take him to school and get to FRC by the required time. This occurred on two different days within one week.
2. A mother missed multiple doctor’s appointments and two meetings with her probation officer because she believed her family would lose its shelter placement if she failed to report to FRC on those days. She is now at risk of getting “stepped back” to prison.
3. A mother who worked from 1:00 p.m. to 10:30 p.m. Monday through Friday at her full-time job was placed at D.C. General for one night of “respite stay.” She was instructed to return to FRC the next morning with all of her belongings in tow. She then had to leave from there to store her belongings at a friend’s house before she went to work. When she got off work, she had to go pick up her daughter from one friend’s house and then her belongings from another friend’s house. By the time she and her daughter made it back to D.C. General, it was after 12:30 a.m. Because the mother did not think her daughter was getting enough sleep and because she was worried about losing her job, she left D.C. General and is now doubled-up in an overcrowded apartment.

When we discussed with DHS and TCP our concern that this new respite care system was operating outside of and in violation of the law, they expressed surprise at the pervasiveness of the practice and that there had been forms created which clearly did not comply with the law. After an investigation, they shared that it was never their intention to establish such a system or to threaten families with unlawful shelter terminations in order to gain compliance with paperwork or case management requests. They agreed that the system should not be set up in a way that interferes with a family’s ability to pursue employment and housing opportunities. They also agreed that the policy needed to be revised and that, from then on, families could: 1) make specific appointments with FRC workers to turn in documents, or turn in documents in alternative ways, such as via facsimile; 2) set such appointments at a mutually convenient time so that families were able to take care of other pressing engagements; and 3) not be threatened with loss of shelter for any grounds other than what is currently delineated in the law.

Recommendations:

- 1) DHS should provide the ICH with a copy of a written directive to all FRC staff (both TANF and Shelter) that respite stays are no longer the policy of FRC and that no family’s placement at D.C. General can be made conditioned on its producing documents not relevant to its eligibility.;
- 2) DHS and TCP should increase monitoring and oversight of FRC and D.C. General (which is operated by TCP) to ensure that providers are not unilaterally adopting unlawful processes or systems.

D.C. General Has Reached Capacity, Yet Hotel Usage Has Been Minimal Due to Housing Placements

The Winter Plan estimated a 23-30% increase in families needing shelter from last season to this. The Plan assumed that D.C. General family shelter would have 153 filled units at the beginning of the season. In order to stay at or below that number of shelter units and “avoid utilizing overflow capacity (e.g., the additional 118 units at D.C. General Shelter, hotels, etc.)” (page 20), the Winter Plan states that D.C. would need to make between 473 and 509 placements into housing or additional shelter units.

According to Fred Swan, as of January 4, 2013, DHS had placed only 153 families into housing. By this time, DHS should have placed over 200 families in housing to stay on track with the goals of the Winter Plan. As a result, D.C. General has been over its capacity of 153 all winter season and reached its full capacity of 271 units on January 7, 2013.

While D.C. is not yet on pace to meet its housing placement goals, the availability of housing enabled D.C. to maintain some capacity at D.C. General for placement without resorting to hotels until the week of January 21. Even since then, D.C. has only placed a few families in hotels. Compared to last year, this is significant progress. During the same week last year, 192 families were residing in hotels; the hotel census peaked last winter at 223.

Although, D.C. was in a far worse situation last year without the housing, the impact of D.C. General reaching capacity on the community is twofold:

- 1) DHS has only agreed to place Priority One families on non-hypothermic nights if D.C. General has space, so as long as there are families in hotels, they will be placed into D.C. General before new applicants. (DHS has not committed to placing any families in hotels on non-hypothermic nights.) Families sleeping in places like parks and cars with minor children when the temperature is just barely above freezing will have no access to shelter.
- 2) DHS has stated that it will have to cut shelter beds for individuals, among other services, in the spring of 2013 if the agency has to spend more money than anticipated on placing families in hotels this winter. In addition, DHS officials state that they do not have enough funding this fiscal year to serve additional Priority One families after the winter season ends unless they are able to keep the capacity of D.C. General down to below 153. In other words, D.C. children will once again go more than half the year without any emergency shelter safety net, leaving them in dangerous settings.

Recommendations:

- 1) DHS should identify any barriers to increasing their rate of housing placements and report these findings to the ICH.
- 2) Members of the ICH should support DHS in removing such barriers, such as assisting in reaching out to landlords.⁶
- 3) DHS should identify its spending pressures for the remainder of Fiscal Year 2013 and submit a request to the Mayor for additional funds in order to ensure adequate shelter for any family or individual who has no other safe place to go throughout the year.

⁶ Fred Swan has stated that they are having difficulty obtaining large units and accessible units, which has impeded their ability to place those families.

D.C. General Conditions: Lack of Heat and Hot Water, Pest Infestations and other Violations Threaten the Health and Safety of Shelter Residents

Recently, the Legal Clinic has received numerous complaints about legal violations at D.C. General shelter that impact the health and safety of the families residing there. In particular, families report inadequate heat and hot water, pest infestations, and lack of appropriate beds for infants. Because the buildings used for D.C. General Shelter are owned by D.C., the Department of General Services (DGS) is responsible for most maintenance and repairs. The provision of beds, however, is likely the responsibility of DHS or TCP.

On January 25th, the Legal Clinic received reports from clients at D.C. General of heat outages in their rooms and throughout the common areas of the shelter. One client reported that the heat had been out in her room since the first week of January. Others reported that heat outages had been occurring since Christmas week. As of January 29th, the heat was still inoperable in many rooms as well as common areas such as the halls and bathrooms. Clients also reported a lack of hot water, which has been an on-going challenge all season at the facility.

Given the age and size of the building and the number of residents (as of January 27th, 598 children and 376 adults resided at the facility), it's not surprising that there are difficulties with the heating and hot water systems. However, the law requires that each shelter have "properly functioning heating and cooling systems" (D.C. Code § 4-754.22(5)) and "hot shower facilities" (D.C. Code § 4-754.23(2)). Clients without heat in their rooms should have been provided with space heaters or moved to another room or a facility with heat. One client, who had an infant daughter, reported that she had been requesting a space heater from staff for three weeks to no avail. She was not moved to a room with working heat until after the Legal Clinic brought her situation to the attention of DHS. A second client likewise was not provided with a working space heater until the Legal Clinic intervened.

Families residing at D.C. General have reported to the Legal Clinic that the building is infested with mice, bed bugs, and water bugs. Some families have also reported being bitten by spiders. All DC shelters providers must "[m]aintain safe, clean, and sanitary facilities that meet all applicable District health, sanitation, fire, building, and zoning codes." D.C. Code § 40754.21(2).

While some families with babies were given cribs when they arrived, many families have reported that they do not have cribs for their babies. One mother reported that she has a crib of her own from her prior housing but that it is too large to fit in her room. When she asked her case manager for a smaller crib she was told to go buy one. The lack of a crib poses a serious risk to babies who can roll over and out of a regular bed and onto the hard hospital floor. The failure to provide a crib for a baby in shelter is a violation of DC Code § 4-754.22(1), which requires that shelters provide each resident with a bed.

Recommendations:

- 1) When heat or hot water go out at any shelter, DGS or DHS should immediately report the outage to the ICH, along with what corrective actions will be taken, how long the repairs will take, and what interim accommodations will be provided to ensure the safety of shelter residents.
- 2) The Department of General Services should regularly inspect for the presence of rodents, insects and other pests and exterminate as appropriate.
- 3) DHS or TCP should provide cribs that meet consumer safety standards for all babies who need them.

Refusal to Provide Due Process to Applicants for Pre-LRSP Housing

The Fiscal Year 2013 Budget Support Act (BSA) increased the budget for the Local Rent Supplement Program (LRSP) by \$4 million and required, via the "Housing for Homeless Families Amendment Act" (an amendment to the HSRA), that DHS devise eligibility criteria for and refer between 200-300 families to the D.C. Housing Authority (DCHA) for LRSP vouchers. DHS was also instructed to issue regulations pertaining to eligibility for placement in "pre-LRSP" housing and subsequent referral to LRSP. DHS then published regulations, including regulations governing appeals by families denied eligibility for the new LRSP vouchers. The purpose of this appropriation and supporting legislation was to clear much-needed space in emergency shelters by providing housing to homeless families.

When two clients who had been denied a referral or placement in pre-LRSP housing requested fair hearings at the Office of Administrative Hearings (OAH), DHS argued that families who had been denied eligibility and placement had no right to due process, and that its explicit granting of that right via regulations "*was in error, and will be amended immediately.*" See Case No. 2012-SHEL-00181 (emphasis added). OAH ruled against DHS, finding that the HSRA requires a hearing at OAH because: 1) "the emergency [DHS] rules say so" and OAH is "not free to disregard validly adopted emergency rules based on an agency's belief that it made a mistake when it adopted them," and 2) "even if the rules were silent on the question, the HSRA requires a hearing in these cases." The Administrative Law Judge further clarified that "DHS may not ignore the provisions of the HSRA that grant clients... the right to a hearing at OAH if they disagree with a denial of an application or with an administrative review decision."

Nevertheless, DHS, both during the OAH hearing and afterwards, has stated repeatedly its intention to amend its regulations to remove the right to a hearing from families denied eligibility for the new LRSP vouchers.

One of the clients who appealed her denial was not fully literate and therefore had not filled out the application properly. After a Legal Clinic lawyer's intervention, TCP reviewed and reversed the denial, agreeing that she qualified for the program and should receive an LRSP voucher. Due process is a critical check on actions taken by government agencies that ensures that if a mistake is made it will be corrected. It ensures greater fairness in distribution of public benefits such as emergency shelter and affordable housing subsidies. The government has a strong interest in making sure that those who are eligible for a particular program are served.

Recommendations:

- 1) DHS should not amend its regulations to strip clients of their rights to due process appeals of denials of eligibility for an LRSP voucher.
- 2) DHS should embrace the concept of due process embodied in the HSRA, a law they helped draft, as a mechanism to ensure that qualified applicants are served in all of its programs and as a mechanism for people living in poverty to advocate for justice in their lives.
- 3) If DHS chooses to proceed with changes to its regulations that diminish the rights of applicants, the D.C. Council should disapprove such regulations.

Legal Rights Education for Clients

Each winter for the past few years the Legal Clinic has trained volunteer lawyers, law students, college students and others to conduct outreach to shelter applicants in the waiting room at FRC. Our volunteers have provided hundreds of shelter applicants with legal rights flyers,

resource flyers, and information on how to contact the Legal Clinic. As a result 50-100 family shelter applicants each winter season have contacted the Legal Clinic—the majority of whom were then placed in shelter after Legal Clinic attorneys brought their case to the attention of DHS officials and resolved their appeals either informally or through the administrative review process. The continued presence of Legal Clinic outreach volunteers is critical to ensuring that the rights of homeless families to access shelter in freezing conditions are protected.

The information in this report was primarily obtained by such volunteer outreach to FRC. From these efforts, Legal Clinic attorneys assisted more than thirty families in accessing the lifesaving shelter that they were entitled to but would not otherwise have received this winter season. At the prior location of FRC, Legal Clinic volunteers were able to speak with families in the waiting room and provide them with materials on their legal rights every day. Since the location of FRC has moved to 33 N Street, NE in November, however, DHS has decided that Legal Clinic volunteers cannot do client outreach and education in the building. Instead, volunteers are asked to only speak to families outside the building, in contravention of a prior court ruling upholding the Legal Clinic's right to be present in the waiting room.⁷ Fewer families speak to volunteers outside the building, particularly when their right to shelter is implicated, i.e. when the temperatures have fallen below freezing.

Recommendation:

- 1) DHS should allow Legal Clinic volunteers to speak to families inside FRC.

Conclusion

The D.C. government has the opportunity and the obligation to ensure that, for the remainder of this winter season and those that follow, every D.C. resident in a housing crisis has the support she or he needs, no children are sleeping in unsafe settings, and no person is at risk of hypothermia because the shelter doors are closed. No one should need a lawyer to access basic lifesaving services. When such high barriers are placed in front of families trying to access emergency shelter, the D.C. government risks real harm to its residents, particularly its children. It also risks litigation. By immediately adopting the recommendations in this report, D.C. will stem the flow of these unintended consequences and meet its critical mandate to shelter those with no safe place to sleep.

For more information about this report, contact Amber W. Harding at (202) 328-5503 or amber@legalclinic.org.

⁷*Washington Legal Clinic for the Homeless v. Barry*, 107 F.3d 32 (1997) invalidated a prior attempt by DHS to limit advocates' presence in the FRC waiting room. The court found that DHS had no reasonable basis for the restriction and thus its policy violated the First Amendment.

Summary of Recommendations

- 1) DHS and TCP should increase or improve monitoring of its contractors:
 - a) For compliance with its policy to admit Priority One families on non-hypothermic nights.
 - b) To ensure that families are not unlawfully denied eligibility for or placement in shelter.
 - c) To ensure all shelter applicants receive lawful notices regarding eligibility, prioritization, and placement. This monitoring should include reviews of files, sitting in on intake interviews and surveying families as they exit FRC to determine if they received proper notices.
 - d) To ensure that providers are not adopting unlawful processes or systems.
- 2) DHS should devise a system to ensure that the Winter Plan protocol around alerts is strictly observed and should provide this new plan to the ICH.
- 3) DHS should develop a communication strategy for families without cell phones and FRC should make sure that every applicant family is advised of the after-hours procedure for placement into shelter.
- 4) DHS should provide the ICH with the written directives:
 - a. Detailing its policy of admitting Priority One families even on non-hypothermic nights, along with the date of such provision.
 - b. Stating that respite stays are no longer the policy of FRC and that no family's placement at D.C. General can be made conditioned on its producing documents not relevant to its eligibility.
- 5) DHS should implement the attached policy and protocol that articulates the circumstances that should qualify an applicant family for Priority One status.
- 6) DHS should identify any barriers to increasing their rate of housing placements and report these findings to the Interagency Council on Homelessness.
- 7) Members of the Interagency Council on Homelessness should support DHS however they can to remove such barriers to housing placements.
- 8) DHS should identify its spending pressures for Fiscal Year 2013 and submit a request to the Mayor for additional funds in order to ensure an adequate shelter safety net for any family or individual who has no other safe place to go throughout the year.
- 9) DHS should not amend its regulations to strip clients of their rights to due process appeals of denials of eligibility for an LRSP voucher. Instead, the agency should embrace the concept of due process embodied in the HSRA.
- 10) If DHS chooses to proceed with changes to its regulations that diminish the rights of applicants, the D.C. Council should disapprove such regulations.
- 11) DHS should allow Legal Clinic outreach volunteers to educate families of their legal rights inside FRC.

**STANDARDS FOR DETERMINING WHETHER AN EMERGENCY
EXISTS SUCH THAT A PRIORITY 1 FAMILY SHOULD BE
PLACED IN TEMPORARY SHELTER OR HOUSING ON THE
DAY OF APPLICATION**

General Rule: To support a determination that a family is not Priority 1, the case record must specifically contain a finding that, based on all the credible evidence, temporary housing remains available to the applicant's family at one or more specific locations that provide safe housing. When any of the following concerns regarding a prior placement are alleged by an applicant as the reason that the applicant cannot return to a prior placement, the concern must be adequately investigated by the eligibility worker as outlined below.

Use of Standards: The following standards should be used to determine whether there is any potential placement that is actually available to the family and safe. Each prior placement a family has stayed in the last 60 days should be explored. If a placement is alleged to be unsafe for any of the following reasons, the factors listed below should be considered and a determination made based on the totality of the circumstances rather than on any one individual factor.

Verification: Any of the below listed forms of verification are acceptable. In order to preserve resources however, site visits should be made only when no other documentation is adequate or when conflicting information is obtained. Where the applicant does not have documentation on the day of application, intake workers should assist with gathering documentation by way of collateral contacts, which may include telephone interviews and/or computer data base checks (e.g., Superior Court or HMIS systems). When no other documentation is available and site visits are not appropriate then affidavits should be used to verify Priority 1 status.

Sleeping in a place not meant for human habitation:

Standard: Is the family or any member of the family staying or will they be forced to stay in a place that is not meant for human habitation?

Places not meant for human habitation include but are not limited to:

1. In a park or other outdoor location;
2. In a vehicle;
3. In a condemned, abandoned or empty building or apartment;
4. In a train, bus or metro station;
5. On a train, bus or subway;
6. In a hospital emergency room;
7. In a hallway of an apartment building.

Factors to consider:

1. Has the family slept in one of the above-referenced places or similarly unsafe places in the last week?
2. Will they have to sleep in such a place again if not placed today?
3. Are the children in a safe place but a parent is sleeping in an unsafe place because there is no place for the entire family to be together at night?

Acceptable Verification:

1. Statement by an eye-witness who has seen the family or family member sleeping or preparing to sleep in a place not meant for human habitation;
2. Photographs;
- 3.
4. Affidavit from head of household;
5. Site visit.

NOTE: In the Following Three Situations (Domestic Violence, Child Abuse And Neglect, and Dangerous Activities in Housing Unit), the utmost care should be taken to ensure that applicants and their children are not put at risk by the verification process. There should be a presumption that the applicant is telling the truth and no collateral contacts should be made to prior hosts without the explicit permission of the applicant.

Domestic violence involving a person in the potential placement:

Standard: Would returning to the potential placement put the applicant or a member of the applicant household at risk due to domestic violence?

Factors to Consider:

1. Has the applicant alleged s/he is a victim of domestic violence and cannot return to the potential placement because it is unsafe? Note: Domestic violence that would make it unsafe to return includes: physical, sexual or emotional abuse or threats thereof.
2. Has the applicant applied and is s/he eligible for a hotel stay via the Crime Victims Compensation Program (“CVCP”)? Note: lack of eligibility for CVCP does not mean that the applicant is not a victim of domestic violence.
3. Does the abuser reside in the potential placement in question or would he have access to the victim if she remained in the housing. For example, does he have keys to the location? Does he have knowledge of the location?

Acceptable Verification:

1. A Temporary Protection Order (TPO) or Civil Protection Order (CPO);
2. Hospital record of injuries;
3. Police report of assault or threats;
4. Currently receiving the TANF Family Violence Option;
5. A signed HUD self-verification form 50066;
6. Verification of domestic violence from a qualified third party, which includes;
 - a. A law enforcement officer

- b. A sworn officer of the D.C. Housing Authority Office of Public Safety;
- c. A health professional; or
- d. A domestic violence counselor (employee of a domestic violence service provider).

Risk of Child Abuse and Neglect involving a person in the potential placement:

Standard: Is the applicant's child the victim of or at risk of abuse or neglect by a person residing in the housing in question?

Factors to consider:

- 1. Does a person with a history of abuse or neglect of children reside in the potential placement?
- 2. Does a person who has threatened to harm the children reside in the potential placement?
- 3. Does the applicant have a reasonable fear that the children will be harmed by a person residing in the potential placement due to that person's history?

Acceptable Verification:

- 1. Hospital records of injuries to the applicant's child or children;
- 2. Police report of assault or injury to the child;
- 3. Court documents of a child welfare or criminal case against the host;
- 4. Collateral phone call by intake staff to CFSA personnel;
- 5. Affidavit from head of household;

Dangerous Activities in Housing Unit:

Standard: Is the housing unsafe for the family's return due to illicit activities carried on or directly around the premises?

Factors to consider:

Examples of illicit activities that could endanger children if the family were forced to return include, but are not limited to:

- 1. Prostitution;
- 2. Illegal drug activity including use, possession, sale, or manufacture of illegal drugs;
- 3. Acts or threats of acts of violence;
- 4. Illegal possession of weapons.

Acceptable Verification:

- 1. A recent police report of illicit activities occurring at or directly around the residence in question;
- 2. A charging document or any other criminal court paperwork regarding illicit activities occurring at the residence in question;
- 3. Statement from eye witness;

4. Photographs;
- 5.
6. Affidavit from head of household.

Unsafe Conditions:

Standard: Are conditions at the location such that the applicant's return would pose a substantial risk to the applicant's health or safety?

Factors to Consider:

To be safe, there must be:

1. unobstructed access and egress in each sleeping room;
2. adequate space between furniture;
3. access between rooms must be maintained (i.e. no blocked doors);
4. no fire or safety hazards;
5. heat in the winter months;
6. electricity;
7. gas if necessary for cooking; and
8. water;

But note that with regard to utilities, efforts should be made to assist with restoration of utilities rather than placement wherever possible. Likewise, where another unsafe condition can be rectified immediately and ameliorate the need for placement, efforts should be made to do so.

Acceptable Verification:

1. Intake worker's contact with utility company;
2. Intake worker's contact with host regarding conditions;
3. DCRA inspection report;
4. Utility company termination notice;
- 5.
6. A site visit shall be conducted using Form _____, which includes a checklist with each of the above factors.
7. Affidavit from head of household

Overcrowding:

Standard: Does each child and adult have a bed, cot, or mattress on which to sleep that is located in an appropriate, safe, and non-overcrowded housing unit and that is not shared with an inappropriate person or number of people?

Factors to consider:

Adequate sleeping arrangements should NOT include:

1. shared rooms by children of different sexes over 12 (unless a parent is also in the room);
2. shared rooms by unrelated adults of different sexes not in an on-going partner relationship;

3. shared beds by greater # of persons than intended for normal use;
4. shared beds by unrelated adults, except those in partner relationships;
5. more than one person per twin/single bed;
6. more than two adults in a double or queen;
7. an unreasonable # of children (depends on ages and sizes) in a double or queen (should be comfortable to sleep, with questionable cases being resolved in favor of the lower # of occupants)

Acceptable Verification:

1. Statement from eye witness;
2. Photographs;
3. A site visit shall be conducted using Form _____, which includes a description of each room, the location of each bed, where each member of the host and applicant households sleeps, and which includes the names, ages, and genders of each host and applicant household and their relationships to one another.
- 4.
5. Affidavit from head of household.

Imminent Eviction:

Standard: Will the family be evicted by the U.S. Marshalls on the next business day, and do they have friends or family who can provide safe temporary housing?

Factors to consider:

1. Where is the family in the landlord-tenant court process?
2. Is there a live writ?
3. Can payment of the back rent prevent the eviction?
 - a. Is the applicant eligible for ERAP or other prevention funds?
 - b. Is there enough time to obtain funding to prevent the eviction?
 - c. Can the household afford the unit going forward?
4. Is the family's unit on the US Marshall's list of evictions for the next business day?

Acceptable Verification:

1. The intake worker can contact the US Marshall's office to verify that the address in question is on the US Marshall's list of evictions for the next business day;
- 2.
3. Affidavit from head of household.

Host family at risk of Eviction:

Standard: Does the applicant family pose a real threat that the host/prime tenant would have to vacate the unit?

Factors to consider:

1. Is there a possibility or procedure for procuring permission from the landlord for the applicant family to remain?
2. What action has the landlord taken against the prime tenant?
3. Is the host family willing to let the applicant family stay if the landlord grants permission?

Acceptable Verification:

1. Copy of a Notice to Quit for unauthorized guests;
2. Complaint for Eviction based on unauthorized guests or other evidence that a case has been filed (the intake worker can check <http://www.dccourts.gov/internet/CCO.jsf> to verify that a case has been filed against the host);
3. HCVP Termination Notice from DC Housing Authority based on unauthorized guests;
4. Any other documentation from the host's landlord (including the DC Housing Authority, a private landlord, or a non-profit housing provider) stating that the presence of the applicant family is a violation of the lease and/or threat to the host family's continued occupancy;
5. The intake worker shall make collateral contact with host family and, if host family agrees, with the landlord to seek permission for applicant family to remain and determine the duration of permission to remain.
- 6.
7. Affidavit from head of household.

Medical Inappropriateness or Inaccessibility of Proposed Placement to someone with an Illness or Disability:

Standard: Are conditions at the location such that the applicant's return would pose a substantial risk to the applicant's health or safety?

Factors to consider:

1. Has a substantial medical issue (illness or disability) been raised?
2. What, if any, conditions in the potential placement pose a risk to health or safety?
3. Examples include, but are not limited to:
 - a. Lack of wheelchair access to building or unit for an applicant family member who uses a wheelchair;
 - b. Severe mold or other allergen, which is seriously impacting the health of an applicant family member;
 - c. Lack of electricity, when electricity is necessary for a medical device.But note that efforts should be made to assist with removing the risk to health or safety or increasing accessibility rather than placement wherever possible.

Acceptable Verification:

1. Medical records of the illness or disability and its link to the housing condition may be necessary but is not necessary if the issue is apparent without it, such as

the use of a wheelchair by a household member and a information indicating the unit is not accessible.

2. Housing inspection records from DCRA or DCHA that verify the existence of the housing condition or inaccessibility alleged;
4. A site visit can be conducted to verify and document the existence of the condition or inaccessibility alleged.
- 5.
6. Affidavit from head of household.

Moving around on a nightly basis:

Standard: Is the family moving around so often that the health or safety of the children or parents is at risk?

Factors to consider:

1. Is the family moving every night or nearly every night?
2. At what time each day do they usually determine where they will be staying that night? (The later in the day/evening, the more risk and harm to the family.)
3. Have they had to stay in the last 30 days in a place not meant for human habitation, such as a bus or train terminal, emergency room, park, or abandoned building because they were unable to locate a place to stay that night?
4. Do the parents or children have any special health-related needs that are negatively impacted by the constant moving from place to place?
5. Does history tend to show that the placement in question is extremely unreliable for more than a few days at a time, i.e. that relationships tend to deteriorate quickly and the applicant family is asked to leave?

Acceptable Verification:

1. If medical conditions exist, medical documentation of conditions that may be negatively impacted;
2. Affidavit from the head of household regarding where the family has slept each night for the past 10 days and contacts to hosts to verify information in affidavit.
- 3.

Family Split Up:

Standard: Is the parent forced to split up from one or more minor or dependent children in order to find a safe housing accommodation for the entire family?

Factors to consider:

1. Parents should not be forced to separate from a child/children and place the child/children with a third-party caretaker who is not the child's other parent or a long-term caretaker.
2. Children should not be forced to separate from a biological parent or long-term caretaker.

Acceptable Verification:

1. Intake worker can make collateral contacts (phone calls or in person interviews) to determine whether family has had to split up in the recent past in order to obtain housing for all family members;
- 2.
3. Affidavit from applicant.
4. Affidavit from parent or long-term caretaker who is separated from child/children,

Respite Stay Form

Name [REDACTED] Date:

You are being approved for a ^{2 night}~~one night~~ Respite Stay at: DCU
to allow for completion of the unified intake process.

You will need to report to the respite location within two hours.

You should not bring any large electrical appliances which would include (televisions, game consoles, etc.) and only items that you are able to carry.

NEXT STEPS:

You will need to complete the following steps:

1. 9:30 appt. at Bright Beginnings
2. Get appt. w/ Jubilee jobs / jobs with Priority
3. An appt. will be made w/ strong families
4. case has been forwarded

You will need to return to the Virginia Williams Family Resource Center at 33 N Street NE, WDC:

Date: 12/05/12

Time: 9 AM

If you fail to complete these steps as indicated, you will not be authorized for continued respite stay.