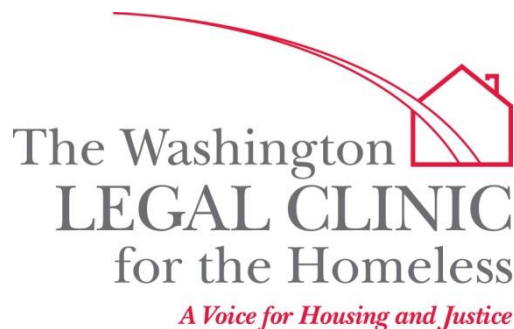


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Testimony before the Committee on Human Services and the Committee on Housing & Neighborhood Revitalization
Oversight Hearing on the Department of Human Services and the Interagency Council on Homelessness
Amber W. Harding
January 29, 2020

Good morning Chairwomen Nadeau and Bonds and members of the Committees. My name is Amber Harding and I am an attorney at the Washington Legal Clinic for the Homeless. The Legal Clinic envisions – and since 1987 has worked towards – a just and inclusive community for all residents of the District of Columbia, where housing is a human right and where every individual and family has equal access to the resources they need to thrive. Today I will focus on family shelter access and the rapid re-housing program.

DHS is fully aware that a high barrier family shelter intake system is not only inconsistent with national best practices¹ but results in direct harm to families. The agency has made a deliberate choice to restrict shelter admissions rather than ensuring that all families are safe, rather than believing families when they tell the agency they have nowhere to go. In September, DHS published emergency and proposed regulations that take the amendments to the Homeless Services Reform Act and twist them beyond recognition, enshrining the agency's existing harmful intake practices into law.²

The system that DHS has designed and formalized through regulation harms people experiencing homelessness and controverts legislative intent and public policy.³ Where the DC Council clearly intended families to be able to easily overcome a presumption of safe housing with an oral or written statement that they can no longer access safe housing,⁴ DHS has concluded that a family's own statement can *never be considered credible* in

¹ The U.S. Interagency Council on Homelessness recommends that localities “create low-barrier access to emergency shelter.” https://www.usich.gov/resources/uploads/asset_library/emergency-shelter-key-considerations.pdf

² We, along with Bread for the City, Children’s Law Center, DC Coalition Against Domestic Violence, Legal Aid Society of the District of Columbia, and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, submitted 53 pages of comments on the proposed regulations. <https://www.legalclinic.org/wp-content/uploads/2019/10/Comments-on-Homeless-Services-Reform-Act-Regulations.pdf>. DC Fiscal Policy Institute also

submitted similar comments on the regulations separately. So far, there has been no response from DHS. The emergency regulations lapsed and they plan to reissue them as emergency.

³ Among our many concerns with the regulations is that both what is present and what is missing from these regulations violate the Administrative Procedures Act—for example, there are no regulations on homelessness prevention or Targeted Affordable Housing, and many aspects of programs are left vague or punted to program rules or contracts.

⁴ Chairman Mendelson verified three times in discussion of that provision at first reading that credible evidence would include an applicant’s own statement, including oral statements: “The standard would permit an oral statement, if it’s

that circumstance, that a family’s own statement about their safety can never be considered “worthy of belief.” What a cynical worldview that represents, and what an impossible hurdle for families to overcome when they are in crisis. Where the DC Council clearly intended to *increase* the ways that families could prove DC residency, DHS has ratified its practice of using evidence of contact with another jurisdiction to trump any and all documentation of DC residency. After an applicant has verified its DC residency, DHS can conclude that the family is nevertheless *not* a DC resident if DC has just one document showing a connection to another jurisdiction, such as voter registration. This means that an applicant could have been determined by three different District agencies to be DC residents—and still be found not to be a DC resident because of an outdated voter registration from a prior address.

Despite the Council’s clear intent to ensure all families have sufficient due process protections, DHS continues to narrow or even completely subvert due process. DHS now requires families in Interim Eligibility to file, within 48 hours, a written request for a hearing that cites the legal and factual bases for appealing a denial of shelter. That is basically a legal brief, and a higher burden for requesting an appeal than exists in any other public benefit context. Similarly, DHS reports to the Committee on Human Services that they will *not* provide notices of ineligibility to families denied shelter at intake if they are referred to prevention instead and that prevention providers will not provide notices of denial when they refuse a family’s application for shelter, even when the family has only applied for shelter.⁵ These are denials of shelter and families are legally entitled to a lawful notice and an opportunity to appeal. By diminishing due process protections for homeless families seeking shelter, DHS is effectively reducing the number of families that will appeal denials, intentionally blinding themselves to agency error at the expense of homeless families, and masking the true number of shelter denials.

In November, the Washington City Paper wrote a story about my client, Shadon Freeman, and her experience being denied shelter at the Virginia Williams Family Resource Center.⁶ Ms. Freeman had been staying with friends and family in DC but had nowhere to go on November 13, a hypothermic night, when she applied for emergency shelter. She was scheduled for a c-section in a few days and had her one year old with her. Ms. Freeman provided the intake worker with proof that she was born in DC, her kids were born in DC, and she has DC Medicaid benefits. On her application, she was asked to list every place she had stayed in the last two years. She listed three places she had stayed, two DC addresses and a friend in Maryland she had last stayed with in January of 2019. She listed the reason for leaving as “he passed away.” She also noted on the application that she was a survivor of domestic violence.⁷ (In fact, she had been denied by Virginia Williams once before in 2019 after a stay in DC SAFE, a DC-funded domestic violence program.)

credible than that would meet the burden;” “If your question is whether oral evidence is permitted, of course it would be;” and “If it’s credible, yes.” See http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4199 (starting at 2:14).

⁵ They claim denials of shelter with a referral to prevention are not denials because they have determined that the family is generally eligible for homeless services and “it is not a denial of such [shelter] placement if ultimately required.” (Question 56a.) They seem to be claiming that prevention providers will not provide notices of ineligibility to families who request shelter placement because all families are provided shelter when they need it. (Question 56b.) They are not. Many of the cases we raise to the attention of DHS come from clients denied placement by a prevention provider.

⁶ <https://www.washingtoncitypaper.com/news/article/21102603/a-pregnant-homeless-woman-was-turned-away-after-requesting-emergency-shelter>

⁷ As a survivor, Ms. Freeman is exempt from the residency provisions and should not have had to prove residency at all. Note, though, that DHS may have further narrowed that exemption. According to their oversight answers (question 58), the exemption is provided to “applicants *actively* fleeing domestic or sexual violence.” That language is not in the statute. It is unclear how they will determine that someone is actively fleeing from violence at the time of application.

The intake worker told Ms. Freeman that she was a Maryland resident and could not be placed in shelter. Ms. Freeman strongly disagreed, pointing out it has been a year since she had been there and that she was never more than a guest. She was told that she needed to bring back the deceased friend's lease to prove that she was not on the lease. Ms. Freeman told them she had no idea how to get that lease. She began to cry and told them she had nowhere to go. The woman at the front desk said something along the lines of "you think we don't know when you're lying but we do." They gave her a list of Maryland phone numbers and services. When she began to cry even harder, they called security over. The security officer tried to calm her down, then told her she had to leave. The officer allowed her to make a phone call at the security desk before going outside. She stood outside, shaking in the cold, until a man who worked next door at the Superior Court office came out to see if she was okay. He let her come inside to get warm. They made phone calls together, including calling the shelter hotline, where a worker said they could not help her. Eventually he gave her cab fare and she spent the night in a chair in the emergency room at Howard University Hospital.

Director Zeilinger has repeatedly stated that no family is ever turned away who has no safe place to go. Yet DHS workers knew Ms. Freeman had nowhere to go. She was not offered an Interim Eligibility placement. She was given no notice of ineligibility. When she protested their decision, she wasn't assisted with an appeal, she was escorted to the door. Intake workers walked by her on their way home for the night, standing outside, shivering with her daughter in her arms. They offered her nothing but a list a phone numbers in Maryland.

When faced with Ms. Freeman's story, you might expect that DHS would be horrified at how Ms. Freeman was treated. You might expect them to review her file or speak with her about what had happened. Director Zeilinger, though, in response to a reporter's questions, took no responsibility. She denied everything and implied that Ms. Freeman lied about what happened to her, including claiming there was a video showing that she was not escorted out by security, as if that were the most damning part of her story. The agency's own case file on Ms. Freeman supports her story, as do the papers with Maryland phone numbers that she has in her possession.

Ms. Freeman was in the hospital when a family member sent her the video of Director Zeilinger implying that she had never been denied shelter. All she could say is "why would I make that up?" She said to me later: "I've never even met this woman. She wasn't there. How can she say what happened to me didn't happen?" Afterwards, Ms. Freeman sent an email to Wayne Turnage, the Deputy Mayor for Health and Human Services, asking him for a meeting to talk about what happened to her. He never responded. To this day, no one from the Bowser Administration has followed up with Ms. Freeman or expressed anything but disbelief.

Ms. Freeman is in shelter now. But her journey is not over. Now she is being offered rapid re-housing, yet another program that DHS refuses to fix, despite all the work of families to convince them otherwise and despite their own data.⁸ DHS convened a taskforce last fall to discuss ways to improve rapid re-housing. Unfortunately, despite a lot of energy and good people in the room, DHS refused to entertain any solution that addressed the core problem in the program: families cannot

⁸ The regulations published in September make the program even more opaque to clients than it was before—it's unclear who is eligible for the program, how much rent participants will pay, or what the time limit is for the program. DHS stated to this Committee that 148 families exited rapid re-housing in 2019 because they "reach maximum time allowed," yet neither the statute nor the regulations state what that maximum time is, meaning it would be a violation of the Administrative Procedures Act to enforce such a rule. See question 106. The regulations also shift the program from a voluntary services model, consistent with best practices, to a mandatory services model, meaning clients can lose their housing for not meeting with a case manager. The regulations also fail to incorporate any of the statutory protections around program exits into the regulations.

afford housing when they reach their time limit. This is a simple math problem. According to oversight answers, the average rent for a two bedroom unit is \$1534, a three bedroom is \$2163 (question 94). The average monthly income at entry in 2019 was \$929.75, at exit it was \$1006.37 per month (a difference of about \$76 per month).⁹ (Question 99.) Almost half the families surveyed were sued in eviction court *while* they are in the program. (Question 104.)

It is mathematically impossible for families to sustain their housing when they are exited when their *total income* is less than the rent. DHS knows that. Yet they refuse to even put on the table any proposal that solves this core deficiency. Unsurprisingly, families, primarily Black families, will be harmed, will exit rapid re-housing worse off than they were when they entered (with evictions or new debt on their records), will uproot their kids and their lives, will be turned away when they seek help again, or will be displaced entirely from the District. Unless they re-enter shelter, though, each of those families will be counted as a success by DHS.¹⁰

When an agency's policies and practices harm Black residents of the District and are poisoned by racist and classist myths, the agency has a problem with institutional racism. Further, when government officials are faced with clear evidence of negative impact of their practices on their customers, and they either refuse to make changes or, worse, enshrine those practices into law, we cannot keep giving them the benefit of the doubt regarding their intent.



⁹ In addition, 67% of families receive Temporary Assistance for Needy Families (TANF). Only 7% of families increased their income at all last year.

¹⁰ Speaking of re-entering shelter, the data reported in the oversight responses (question 103) seems inconsistent with the ICH data from last year hypothermia debrief, which found that 61 families had come from rapid re-housing before being placed in shelter in 4 months of FY19.