

SNTs, Public Benefits Eligibility, and Housing Issues for People with Disabilities

*Patricia E. Kefalas Dudek
Amanda E. Filizetti
Katherine E. Lionas*

Part Three Basics: Section 8 and Supportive Housing Issues

I. Background

The disability community believes that all people should have the right to live in the community with the supports they need, and advocates for public policy support this right. Adults with developmental disabilities should have the same range of lifestyles and opportunities as any other member of the community. Although individuals with disabilities will encounter many obstacles in their pursuit of fair housing, Section 8 Housing is a public resource that will assist them in reaching their goal.

II. Section 8 Housing: Specifics

A. How it Works

Section 8 Housing is a federal program that provides housing assistance to individuals with disabilities. The Section 8 Housing Assistance Payments Program was created by the Housing and Community Development Act of 1974. Housing and Urban Development Agency (HUD) pays rental subsidies for eligible families, to ensure that they live in a safe environment. HUD funds Public Housing Agencies (PHAs), and PHAs contract with the owner to make rent payments on behalf of the family, if the PHA determines that the family's unit and tenancy is appropriate.¹

Generally, the subsidy is based on a payment standard that is determined by the average cost to rent in that specific locality and the family pays 30% of their adjusted monthly income for rent.

B. Types of Section 8 Housing

- Tenant-Based
 - Paid to units selected by the family

¹ Begley, Thomas D. and Canellos, Angela, *Special Needs Trusts Handbook*, §2.07[A] (2008).

- Project-Based
 - Paid for families who live in specific units
- Vouchers for Individuals with Disabilities
 - Vouchers for people with disabilities are essentially tenant based vouchers that are funded through notices of funding availability (NOFAS) and are set aside for a family that includes a person with a disability.

C. Benefits of Section 8

- In Section 202 housing, assistance is limited to specific “projects.” In contrast, Section 8 vouchers can be used anywhere.
 - Under Section 202, if a tenant moved from the designated project, they immediately lost assistance.
 - Rental assistance under Section 8 is available to tenants, not just projects, to help alleviate this problem.
- Section 8 places the choice of housing in the hands of the individual family.
- Section 8 vouchers are flexible enough to allow families to move without losing their housing assistance.

D. Drawbacks of Section 8

- One of Section 8’s main goals is to spread those who receive the public housing benefit around in the community, to prohibit the creation of “ghettos” of low-income residents. Unfortunately this has been quite difficult because a landlord must first agree to accept Section 8 tenants. Landlords are not required to accept Section 8 tenants. This can sometimes cause the same problem that occurred with Section 202 – many Section 8 families, all concentrated in one geographic area.

E. Section 8 Eligibility

Eligibility for Section 8 housing assistance is based on meeting the definition of “family”, the family’s size, and the total gross income of the family.² The statutory definition of family is broad and includes both single individuals and groups of people.³ A family’s income may not exceed 50% of the median income for the county or locality where the family

² The regulations that cover this program are found at 24 CFR § 982.

³ 24 CFR § 982.201(a).

chooses to live.⁴ Median income levels vary by location and are published by HUD.⁵

- “Countable Income” includes:
 - Social Security and Disability Benefits
 - Pensions
 - Annuities
 - Alimony
 - Certain welfare payments
 - Regular contribution from others
 - Payment in lieu of earnings

- “Non-Countable Income” includes:
 - Temporary/infrequent income
 - Gifts
 - Reimbursement for medical expenses
 - Lump sum acquisitions such as: inheritances, insurance payments, and capital gains
 - Deferred periodic payments of SSI and SSDI that are received in a lump-sum payment or in prospective monthly payments
 - Amounts paid by a state agency to a family with a developmentally disabled family member living at home (to offset the cost of keeping that person at home)

- Income from Trusts
 - Whether income from trusts is countable depends on the applicant’s access to income and/or principal
 - If a trust is revocable, it is considered countable
 - If a trust is irrevocable it depends whether the income is currently available or not. If there is no access to the income or principal, it is non-countable income
 - Please note, trust assets that are included are the cash value of the trust that may be withdrawn by the family, and assets disposed of for less than FMV during 2 years preceding certification or recertification
 - See Attachment 1.

F. Section 8 Compatible Housing

Any unit in which the housing voucher is used for must pass initial and annual inspections of units to determine compliance to the lease. To receive vouchers, the unit must follow thirteen performance requirements:

⁴ *Housing Choice Vouchers Fact Sheet*, U.S. Department of Housing and Urban Development, available at: http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm#4.

⁵ *Id.*

- Sanitary facilities
- Food preparation and refuse disposal
- Space and security
- Thermal environment
- Illumination and electricity
- Structure and materials
- Interior air quality
- Water supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition, and
- Smoke detectors

For additional information on Section 8 housing issues, feel free to email Patti, pdudek@hshcdlaw.com.

III. *ADA/Olmstead* and Section 8

A. Reasonable Accommodation Requirement

Most folks prefer to live at home with supports, and will do just about anything to stay out of a group home, institution, or nursing home. We, as advocates cannot allow options that most people do not want to be the responsive of public officials worried about pent up-demand for Medicaid long-term care services. We must use *Olmstead* and the ADA to advocate for services in the least restrictive setting.

B. Negotiate to Achieve Least Restrictive Setting with private dollars

Use private resources from family members, or a special needs trust as a means to negotiate for services in the least restrictive setting. It can be used to demonstrate that the service request can be reasonably accommodated. Use new models such as Self-Determination, that allows elders and people with disabilities to have control over their services. The Medicaid budget is forwarded to a Fiscal Intermediary, under contract with the Community Mental Health Board, or contract Agency. Allows for a creative use of the private dollars with the public dollars. For example, the Medicaid budget could be used to hire staff, and the private trust funds could be used to provide for extra training, and benefits. This could allow the person with a disability and their family to recruit, hire, train, and maintain quality staff people.

IV. Supportive Housing Resources

The disability community believes that all people should have the right to live in the community with the supports they need, and advocates for public policy support this right. Adults with developmental disabilities should have the opportunity to pursue the same range of lifestyles and opportunities as other members of the community.

A. *Housing First*

A team of NPR News radio and Web journalists is producing *Housing First*, a yearlong special reporting project. *Housing First* explores why it's so difficult for Americans with special needs to find good housing -- and how the lack of housing often stymies their efforts to join, and flourish in, the mainstream of society.

<http://www.npr.org/news/specials/housingfirst/index.html>

B. Other Resources:

- *NEW: Opening Doors*, Issue 28 - The Section 8 Project-Based Voucher Program. A new HUD Final Rule published on October 13, 2005 now makes it much easier for Public Housing Authorities (PHAs) to use the Project-Based Voucher program. This issue of *Opening Doors* provides a basic overview of these new HUD voucher policies, including how the disability community and PHAs can work together to expand affordable, accessible, and permanent supportive housing opportunities.
- Community Housing Network: a network, a community economical development organization dedicated to building and management of resources for the benefit of people with disabilities. Their link includes information on their Housing Resource Center and their Housing Manual at:
www.communityhousingnetwork.org
- *Home Control Through Trust and Estate Planning* by Theresa M. Varnet and Richard C. Spain, January 2004. A 60 page booklet on understanding government benefits, preserving eligibility for government benefits through estate planning, and planning for residential options for persons with developmental disabilities, "HOME CONTROL" was originally commissioned by

and funded through a grant from the Illinois and Missouri Planning Councils on Developmental Disabilities. A copy of "Home Control Through Estate and Financial Planning" costs \$15.00; contact:

SPAIN, SPAIN & VARNET P.C.

33 N. Dearborn #2220
Chicago, IL 60602
(312) 220-9112

- *A Bill of Rights for Homeowners in Associations: Basic Principles of Consumer Protection and Sample Model Statute* by David A. Kahne, July, 2006, AARP, Public Policy Institute at www.aarp.org/ppi
- *Meaning of Homeownership for Individuals With Developmental Disabilities: A Qualitative Study*, Volume 44, Number 4-295-303: In-person interviews were conducted with 7 homeowners selected by 6 state home-ownership programs as representing good examples of home ownership by individuals with developmental disabilities. Recurring themes were found in the choice of a home, advantages and disadvantages of home ownership advice. Although the process of purchasing the home was described as lengthy and difficult and ownership brought unexpected problems, these were outweighed by the financial, social, and psychological benefits of owning one's own home. Written by David Hagner, Judith Snow, and Jay Klein.

Amanda E. Filizetti is a 2008 graduate of Ave Maria School of Law in Ann Arbor, Michigan. She currently works as a law clerk for Patricia E. Kefalas Dudek.

Katherine E. Lionas is a 2008 graduate of Thomas M. Cooley Law School in Lansing, Michigan. She currently works as a law clerk for Patricia E. Kefalas Dudek.