



## Community Legal Aid

*Fairness and justice... for all.*

MARION HOHN  
Staff Attorney  
mhohn@cla-ma.org

ONE MONARCH PLACE, SUITE 400  
SPRINGFIELD, MA 01144  
(413) 781-7814 • (855) 252-5342  
(413) 746-3221 FAX

**OFFICES:**  
FITCHBURG  
GREENFIELD  
MILFORD  
NORTH ADAMS  
NORTHAMPTON  
PITTSFIELD  
SOUTHBRIDGE  
SPRINGFIELD  
WORCESTER

May 28, 2015

To: Chris McClave, DHCD  
Cc: Adrian Walleigh, DHCD  
Michael Malamut, DHCD

Re: Rescission and/or Remand Request for XXXX, Case No. 14-2071

Dear Chris, Adrian, and Michael,

I am writing on behalf of XXXX who contacted our office last week after she learned that had lost her EA shelter appeal. Ms. XXXX and her eight months old daughter currently face ouster from their shelter placement after the termination of Ms. XXXX' EA shelter was upheld by the attached hearing decision. Ms. XXXX filed a request for judicial review in housing court. In the meantime, I wanted to touch base with you regarding the hearing decision to request that it be set aside.

Ms. XXXX' EA shelter benefits were terminated effective October 19, 2014 because Ms. XXXX did not stay at her new shelter placement, located at 110 Hampshire Street #3LA, Holyoke, MA, on March 27, 2014. Please note that the termination notice incorrectly states that Ms. XXXX did not stay at 155 Belmont Ave. 3L-A. However, 155 Belmont Ave. 3L-A in Springfield, MA is Ms. XXXX' current shelter address where she has been staying since her aid pending placement on August 29, 2014.

Ms. XXXX first was placed in shelter on March 13, 2014 at the Howard Johnson hotel in Springfield. At the time of her placement, Ms. XXXX was pregnant and her household included the child's father. Ms. XXXX was transferred to 110 Hampshire Street #3LA, Holyoke on March 27, 2014 because of a domestic violence incident. *See hearing decision, p. 2 and exhibit 4.*

When Ms. XXXX arrived at her new placement in Holyoke on March 27, 2014, she panicked and therefore was unable to stay at the shelter. *See hearing decision, p. 4.* Ms. XXXX suffers from anxiety and depression and was not on medication at the time. Furthermore, Ms.

[www.communitylegal.org](http://www.communitylegal.org)



XXXX, who is from Springfield, was not familiar with the area of her new shelter placement in a different town. Ms. XXXX had a psychiatric appointment to get back on medication which was scheduled in Springfield early the next morning. Ms. XXXX testified that she was really anxious to go to her appointment and that she had no transportation to get to her appointment from Holyoke. *See hearing decision, p. 4 and hearing testimony.*

Ms. XXXX, while at the shelter, had a mental breakdown and broke down in tears. Ms. XXXX did not feel safe at the shelter. Ms. XXXX, who had just been the victim of domestic violence, was also dismayed that when she arrived at her unit, another family, who she did not know and which included an adult male, was already in the unit. Ms. XXXX testified that she did not feel comfortable and that she was not in the right state of mind because she was not on her medication. *See hearing decision, p. 4 and hearing testimony.*

Ms. XXXX did not go back to DHCD at the time because she did not know the EA shelter system and she did not know what to do. *See hearing decision, p. 4.* In addition, Ms. XXXX testified that she had been told that she could not receive any help for a year and therefore was trying to find alternatives. *Hearing testimony.* Ms. XXXX reports that it was the shelter staff who told her on March 27, 2014 that she would be terminated and could not get help for one year if she did not stay at the placement.

After leaving the placement on March 27, 2014, Ms. XXXX, who had not yet given birth to her only child, couch surfed for several months. At the end of August, Ms. XXXX, who was about to give birth and who had exhausted all places to stay, went to HAP, Inc. for assistance. She did not go to DHCD because she thought she could not get help from DHCD for one year. *Hearing testimony.*

Ms. XXXX reports that HAP informed her that she had not been terminated yet and that she was still listed as "in shelter" in the system. According to Ms. XXXX, HAP called the prior shelter to confirm that Ms. XXXX was no longer in shelter and advised her to return to DHCD. On or about August 29, 2014, Ms. XXXX went to DHCD to ask for a shelter termination notice because she was under the impression that she needed a termination notice to get help from HAP. Only when she explained her situation to the DHCD worker did Ms. XXXX learn that she could return to shelter since no termination notice had issued, and she could appeal the notice now to be placed in shelter aid pending.

Ms. XXXX was placed at 155 Belmont Ave. 3LA, Springfield on August 29, 2014 pending her appeal of the termination. She gave birth to her child on September 6, 2014. *See hearing decision, pp. 2 & 4.* The Department subsequently rescinded the August termination notice and issued a new termination notice on October 9, 2014.

At the close of the hearing, the hearing officer provided Ms. XXXX with her fax number and informed Ms. XXXX that it is the hearing officer's responsibility to look at the reasons why Ms. XXXX left the shelter and to determine if her leaving was excusable. The hearing officer encouraged Ms. XXXX to provide her with a letter from her doctor confirming that Ms. XXXX had an appointment on March 28, 2014 and that she needed her medication. *Hearing testimony.*

On December 23, 2014, the hearing officer issued a decision which instructed Ms. XXXX to file a request for a reasonable accommodation pursuant to the Americans with Disabilities Act (ADA) and stayed the proceedings pending the outcome of the ADA request. (The ADA request and any procedure for requesting it was not mentioned during the hearing.) Ms. XXXX submitted the ADA request which was denied by DHCD on February 6, 2015.

After the denial of the ADA request, the hearing officer issued a decision denying Ms. XXXX' appeal. Unfortunately, the hearing decision merely restates, without any analysis or discussion, that the ADA request was denied and therefore Ms. XXXX did not have good cause:

Based on the findings by the ADA Committee and the denial of the Appellant's ADA Accommodation Request, I find that the Appellant did not have good cause to refuse the shelter placement and did not have good cause to remain out of shelter for 2 consecutive nights without authorization to do so.

*See hearing decision, pp. 6-7.*

G.L. c. 23B §30(F) provides that the hearing officer's final decision shall be the decision of the department. In addition, 801 CMR 1.02 (10)(f) requires the hearing officer "to reach a fair, independent and impartial decision based upon the issues and evidence presented at the hearing and in accordance with the law." By merely restating that based on the ADA denial, Ms. XXXX did not have good cause, the hearing officer failed to make an independent and impartial decision based upon the issues and evidence presented at the hearing and in accordance with the law.

Good cause is defined by 106 CMR 701.380 and 760 CMR 67.03(4). While ADA related reasons are included in what constitutes good cause, good cause is not limited to ADA reasons. Pursuant to 106 CMR 701.380 good cause also includes crises or emergency situations or other compelling circumstances. Pursuant to 760 CMR 67.03(4) good cause includes transportation issues. In the present case, it is undisputed that Ms. XXXX suffered a mental health crisis when she arrived at the shelter which prevented her from being able to stay at her new shelter placement. In addition, it is undisputed that Ms. XXXX had transportation issues as she did not have transportation from Holyoke to Springfield the next morning to attend her psychiatric appointment. Both of those reasons fall squarely within the good cause criteria in 106 CMR 701.380 and 760 CMR 67.03(4) and Ms. XXXX therefore should have good cause for failing to stay at the shelter.

Assuming arguendo that Ms. XXXX were required to show good cause for the entire time she was out of shelter, Ms. XXXX should be considered to have good cause on that basis too. Ms. XXXX was informed that she could not get shelter again for twelve months when she did not stay at her new placement. She therefore did not return to DHCD but desperate, within a week of giving birth, approached HAP, Inc for assistance which referred her back to DHCD.

Ms. XXXX also did not go back to DHCD earlier because she did not know the EA shelter system and she did not know what to do. Prior to the end of August, Ms. XXXX did not receive a notice of termination – which was only issued to her on August 29, 2014 when she went back to DHCD after seeking assistance from HAP. Ms. XXXX therefore was unable to challenge her termination and to present her reasons for leaving the shelter until after August 29, 2014. This, together with the fact that she believed that she was barred by the 12-month rule, should be considered good cause as an extension of the original good cause reasons which caused her to leave the shelter. In the alternative, these reasons should be considered good cause as other compelling circumstances.

In addition to failing to consider whether Ms. XXXX had good cause independent from a reasonable accommodation, the hearing officer improperly delegated her authority by not deciding whether the Department's denial of the ADA request was in accordance with the law. G.L. c. 30A §11(8) requires that hearing decisions "shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision, unless the General Laws provide that the agency need not prepare such a statement in the absence of a timely request to do so."

The Department denied Ms. XXXX' ADA request because it believed that Ms. XXXX failed to "provide reliable disability related documentation showing a nexus between the diagnosed disability and the requested accommodation."<sup>1</sup> Here, Ms. XXXX, who testified and documented that she suffers from anxiety, provided the hearing officer with an explicit, uncontroverted explanation of how her mental health disabilities prevented her from staying at her shelter placement. As such the hearing officer should have made a determination whether the Department's denial of the ADA request was warranted in this case.

For the foregoing reasons, the hearing decision should be set aside. Thank you for your consideration.

Very truly yours,

Marion Hohn  
Staff Attorney

---

<sup>1</sup> Please note that the proper course of action would have been for the Department to request additional information from Ms. XXXX before denying the accommodation request if it believed that the information provided did not support the need for the requested accommodation.



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Rolito, Lt. Governor ♦ Chrystal Komegay, Undersecretary

**DIVISION OF HEARINGS  
EMERGENCY SHELTER**

**DECISION OF DHCD**

---

Case No.: 14 - 2071

Appellant's Name  
and Address 155 3LA Belmont Avenue  
Springfield, MA 01108

SS No.: XXX-XX-

Place of Hearing: Springfield DHCD Office

Hearings Officer: Carla Sauvignon

Reason for appeal: The Appellant was terminated because she  
refused placement without good cause and  
abandoned her shelter placement without good  
cause.

Present at the hearing: - Appellant  
Jordan Thomas - Department  
Representative/Hearings Specialist

**PROCEDURAL HISTORY**

Filing date: 10-17-14      Hearing date: 11-17-14      Decision date: 4-2-15

---

**FACTS**

After review of all the testimony presented and evidence submitted in this case, I find the following facts:

On 10/9/14, the Department issued to the Appellant a Notice of Termination for Emergency Assistance (EA) because the Appellant refused her shelter placement without good cause and

abandoned her shelter placement at the Hampden County CHD 155 Belmont Ave. 3L-A without good cause.

Specifically, the Notice stated:

“You arrived on 03/27/14 for shelter at Hampden County CHD 155 Belmont Ave 3L-A, but decided not to stay. Without authorization or good cause and are therefore deemed to have abandoned their emergency shelter placement.” *Exhibit 1.*

On 10/17/14, the Appellant filed an appeal of the Notice of Termination. *Exhibit 2.*

On 11/17/14, a hearing was conducted at the Springfield DHCD Office.

At the Hearing, the Department Representative testified that on 2/25/14, the Appellant applied for EA shelter for herself, her partner and their unborn child.<sup>1</sup> The Department representative testified that on 3/13/14, the Appellant was found eligible for EA shelter benefits and placed at the Howard Johnson/Springfield. The Department representative testified that the Appellant signed for and received all the rules, responsibilities and consequences for noncompliance therewith during the intake/placement process.

The Department representative testified that the Appellant was transferred to the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke on 03/27/14.

The Department representative testified that the Department was notified that the Appellant arrived at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke but made the decision not to stay. The Department representative testified that the Appellant abandoned shelter and violated the rules of the EA program. The Department representative testified that the Appellant reappeared at DHCD on 8/29/14 and was issued a Notice of Termination for refusing the shelter placement and abandoning shelter.

The Department representative testified that the Notice of Termination was properly issued to the Appellant for refusing the shelter placement and abandoning the shelter placement by spending 2 consecutive nights or more out of shelter without authorization and without good cause.

The Department representative testified that the Appellant appealed the Notice of Termination and requested Aid Pending placement in shelter during the duration of her appeal. The Department representative testified that the Appellant was placed at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke on 8/29/14 where she resides as of today.

The Department representative testified that due to a scrivener's error on the Notice of Termination issued on 8/29/14, a new Notice of Termination was issued on 10/9/14 to the

---

<sup>1</sup> Documents submitted by the Department representative stated that the Appellant's boyfriend was no longer part of the EA household after a domestic violence incident occurred.

Appellant for refusing shelter placement at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke and abandoning shelter on the 03/27/14 without good cause.

---

To support his testimony, the Department representative submitted the following documents:

- (1) Notice of Termination, dated 10/9/14, *Exhibit 1*;
- (2) Appeal Request, dated 10/17/14, *Exhibit 2*;
- (3) Letter stating in pertinent part:  
"On March 27, 2014;                      arrives at 289 Walnut ST Holyoke MA shelter, staff took her to the unit she was assigned which was 110 Hampshire 3L-A. . . Before staff left her in the unit, she informed staff that she would not be staying at the shelter and left shelter grounds shortly after.                      never stayed in shelter," dated 11/14/14, *Exhibit 3*;
- (4) Case Notes, dated 2/25/14 – 10/10/14, *Exhibit 4*;
- (5) Emergency Placement Request (aid pending), dated 8/29/14, *Exhibit 5*;
- (6) Email from Annette Jackson (OCD) to Tracey Burton (OCD) stating in pertinent part:  
"Ms.                      ; arrived on 03/27/14 for shelter placement at Hampden County but decided not to stay," dated 10/9/14, *Exhibit 6*;
- (7) Email from Nadine Rivera (DTA) to Olga Samoilova (OCD) regarding the Appellant's placement stating that the Appellant attend therapy 2x a week in Springfield, dated 3/13/14, *Exhibit 7*;
- (8) Program History for the Appellant, *Exhibit 8*;
- (9) Notice of Shelter Transfer, dated 8/29/14, *Exhibit 9*;
- (10) Placement Letter, dated 3/13/14, *Exhibit 10*;
- (11) Emergency Placement Request, dated 3/13/14, *Exhibit 11*;
- (12) Notice of Approval for EA, dated 3/13/14, *Exhibit 12*;
- (13) EA Eligibility Application, dated 2/25/14, *Exhibit 13*;
- (14) Notice to Emergency Assistance Families Placed in Hotels/Motels signed by the Appellant, dated 3/13/14, *Exhibit 14*;
- (15) Client Responsibilities While in a Temporary Emergency Shelter signed by the Appellant, dated 3/13/14, *Exhibit 15*;

(16) Re-Housing Plan signed by the Appellant, dated 3/13/14, *Exhibit 16*; and

(17) Uniform Shelter Program Rules signed by the Appellant, *Exhibit 17*.

At the Hearing, the Appellant stated that she is appealing the Notice of Termination because she and her daughter, born on 9/6/14, are in need of shelter. She stated that she does not work. She stated that she plans to go back to school. She stated that she receives cash benefits and food stamps. She stated she does not receive child support.

The Appellant stated that she signed the rules and regulations of the EA shelter program during intake.

The Appellant stated that she was transferred from the Howard Johnson's/Springfield to the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke. She stated that on 3/27/14, she went to the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke and panicked. She stated that she had not taken her prescribed medicines and didn't know the area because she was not from there. She stated that she is from Springfield. She stated that she suffers from anxiety and depression. She stated that currently she is on Zoloft but was not on it at the time she was transferred. She stated that when she arrived at the Hampden County CHD 155 Belmont Ave. 3L-A, she broke down in tears. She stated she didn't know anyone and she didn't feel safe. She stated she went to her unit and discovered that another family was also there. She stated that she was not in the right state of mind. She stated that she had an appointment scheduled the next day with her therapist. She stated that because she was now in Holyoke, she would not be able to commute back to Springfield for her appointment. She stated that she left shelter that night and stayed with a friend.

The Appellant stated that the next day, she went to see her therapist, Dr. Kirk, at the Bay State Western Women Center and was prescribed Zoloft. She stated that she remained out of shelter for several months, April, May, June and July. She stated that she couch surfed during this time. She stated that she didn't know the EA shelter system and didn't know what to do. She stated that she returned to the office in August to reapply for EA shelter and it was then that she received the Notice of Termination.

To support her testimony, the Appellant submitted the following document:

- (1) Appointment confirmation from Center For Psychological and Family Services, Inc. stating that the Appellant was seen on 3/28/14, *Exhibit A*;
- (2) Appointment confirmation from Center For Psychological and Family Services, Inc. stating that the Appellant was seen on 4/30/14 and receives Zoloft, *Exhibit B*;

#### DISCUSSION

760 CMR 67.06(6)(a)4 provides as follows:



The EA household shall have its temporary emergency shelter benefits terminated when the EA household either fails to appear at the designated placement or refuses the available placement without good cause as defined in 106 CMR 701.380: *Good Cause Criteria* and 760 CMR 67.03(4).

“Good cause” may exist in one or more of the following circumstances: 1) appropriate child care is totally unavailable, 2) EA recipient must provide care or support during a family crisis or emergency situation, 3) a disability or health condition prevents compliance, or 4) Recipient has transportation issues. 106 CMR 701.380; 760 CMR 67.03(4).

760 CMR 67.06(6)(a)5 provides as follows:

The EA household shall have its temporary emergency shelter benefits terminated when: . . .

5. The EA household abandons the temporary emergency shelter placement. For the purpose of this section, the EA household shall be deemed to have abandoned placement if it fails to stay at the placement for two consecutive nights or longer, or has repeated absences from the placement. It shall not be considered an abandoned placement if the absence is authorized by the shelter’s Executive Director, or his or her designee, or the Department’s caseworker or for good cause, as defined in 106 CMR 701.380: *Good Cause Criteria* or 760 CMR 67.03(4); provided further, good cause shall include, but not be limited to, transportation issues, a medical emergency or death in the family or other compelling circumstances.

Client Responsibilities While in a Temporary Emergency Shelter states in pertinent part:

That the EA household must obey the rules of the temporary emergency shelter(s) or hotel/motels in which you are staying, including the Uniform Shelter Program Rules provided to you upon approval of your application for Emergency Assistance benefits. Your temporary emergency shelter benefits will be terminated if: you abandon the shelter placement.

The Uniform Shelter Program Rules provide in pertinent part:

Families are expected to stay at the shelter every night. However, EA Household may take a total of four nights (overnights) out of the shelter per month, whether as an entire household or as individual members, with the prior approval of the shelter. In addition, **absences by individual EA Household members for more than 48 hours are not permitted**, except when explicitly allowed by DHS for good cause (e.g. children attending summer camp, custody agreements, hospitalizations). [Emphasis added.]

I find the Department’s testimony is supported by the evidence submitted that the Appellant received and signed for all standard intake documents stating the rules, responsibilities and consequences of noncompliance therewith during intake when she was placed in shelter on 3/13/14.

The Department representative bears the burden of proof to show that the Appellant refused placement at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke on the date noted on the Notice of Termination, 3/27/14. The Department representative testified that the Appellant went to the shelter at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke on 3/27/14 and told staff that she would not stay. The Department representative testified that the Appellant left shelter and did not return. The Department representative testified that as a result of the Appellant refusing the shelter placement, she was issued a Notice of Termination for refusing the placement as well as abandoning the shelter placement because she spent more than 2 nights away from shelter without authorization and in fact, remained out of shelter until August, several months later.

The Appellant bears the burden of proof to show good cause as to why she refused the shelter placement at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke as well as why she remained out of shelter for 2 or more consecutive nights without authorization and therefore abandoned shelter. The Appellant testified that when she arrived at the shelter placement at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke, she broke down in tears. She stated she was unfamiliar with the area, had not taken her prescribed medicines for her anxiety and depression and worried about commuting to her therapist the next day for scheduled appointment.

Based on the Appellant's testimony as well as the evidence she submitted into evidence, I find that the Appellant should be considered for an American with Disabilities Accommodation Request ("ADA"). The Appellant states her mental health issues prevented her from staying at the shelter at the Hampden County CHD 155 Belmont Ave. 3L-A/Holyoke and returning to shelter until several months after the fact.

Therefore, the Appellant was given 10 days to request an ADA Accommodation. An ADA request form was sent to the Appellant who completed it and submitted it to the ADA Committee on 1/9/15. This case was stayed pending the outcome of the ADA Accommodation request.

On 3/31/15, this Hearings Officer was notified that a decision had been reached on the Appellant's ADA Accommodation Request on 2/6/15 and I was sent a copy of the decision along with the Appellant's supporting documents. The Appellant's ADA Accommodation Request was denied on the basis that the Appellant failed to provide reliable disability related documentation showing a nexus between the diagnosed disability and the requested accommodation. *See Exhibit 18.*

The ADA committee emailed the following document:

- (1) Denied Request for an ADA Accommodation with supporting documents, dated 2/6/15, *Exhibit 18.*

Based on the findings by the ADA Committee and the denial of the Appellant's ADA Accommodation Request, I find that the Appellant did not have good cause to refuse the shelter placement and did not have good cause to remain out of shelter for 2 consecutive nights without

authorization to do so. Therefore, I find that the Department properly issued a Notice of Termination to the Appellant.

**DECISION**

The appeal is DENIED. A Notice of Termination shall issue.

**JUDICIAL REVIEW**

If the appellant is dissatisfied with the final decision of the hearing officer, s/he may exercise the right of judicial review in accordance with M.G.L. c.30A §14 by filing a complaint with the Superior Court in the county where s/he resides or has a principal place of business, or in Suffolk Superior Court within 30 days after receipt of this decision.

April 2, 2015

Date

Carla Sauvignon

Carla Sauvignon  
Hearing Officer