

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2012-

**ARISE FOR SOCIAL JUSTICE,
COALITION FOR SOCIAL JUSTICE,
MASSACHUSETTS COALITION FOR THE
HOMELESS, and
NEIGHBOR TO NEIGHBOR - MASSACHUSETTS,
Plaintiffs,**

v.

**THE DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT, et al.,
Defendants.**

AFFIDAVIT OF KELLY TURLEY

1. My name is Kelly Turley. I am the Director of Legislative Advocacy at the Massachusetts Coalition for the Homeless (MCH or the Coalition). The Coalition is a statewide non-profit agency dedicated to remediating homelessness in the Commonwealth. The Coalition is a membership organizations whose members include families experiencing homelessness and in need of emergency shelter to keep them safe. I make this affidavit based on my personal knowledge.

2. In the course of my work, I monitor administration of the Emergency Assistance (EA) program by the Department of Housing and Community Development (DHCD), including by making public records requests, and regularly communicating with and receiving information from DHCD about EA-related matters. In addition, I and my colleagues regularly receive phone calls from families experiencing homelessness who are unable to access emergency shelter through the EA program. We try to find these families places to stay,

which is more often than not impossible, and to connect them to the few emergency resources that are available.

3. The Coalition is very concerned about the impact of the proposed regulations restricting access to emergency shelter on families themselves and the Coalition as an organization. The demand for our services will increase exponentially if these regulations go forward. We are also very concerned about the lack of any opportunity for public comment on the proposed regulations before they take effect and the short amount of notice that was provided to the Legislature. This has provided insufficient time to address the serious problems with these regulations, portions of which are scheduled to take effect on Thursday, August 2, 2012.

4. Attached to this Affidavit as Exhibit A is a letter dated July 17, 2012 from Aaron Gornstein of the Department of Housing and Community Development (DHCD) to various members of the Legislature purporting to give only 15 days notice prior to implementation of revisions to EA regulations governing what level of health and safety risk is necessary to qualify a family for emergency shelter.

5. Attached to this Affidavit as Exhibit B is a copy of the proposed revised regulations that were enclosed with Exhibit A and that relate to required “health and safety assessments.” DHCD has informed me and others that it intends to implement these regulatory changes as “emergency regulations” on August 2, 2012, with far less than 60 days notice to the Legislature and no opportunity for prior public comment.

6. Attached to this Affidavit as Exhibit C is a copy of another letter dated July 17, 2012 from Mr. Gornstein to certain legislators describing additional changes to the EA

program that DHCD intends to implement on or about September 17, 2012, after 60 days notice to the Legislature.

7. Attached to this Affidavit as Exhibit D is a copy of the proposed revised regulations that were enclosed with Exhibit C. DHCD has informed me and others that it intends to implement this full set of revised regulations as “emergency regulations” on or about September 17, 2012, with no prior notice to the public or opportunity for prior comment by the public.

8. After the July 17 letters were sent to the Legislature, several concerned State Representatives and Senators asked to meet with representatives of the Administration. I attended one of these meetings on Monday, July 23, 2012, at which Representatives expressed their concerns about how greatly the regulations will limit access to emergency shelter for families with children experiencing homelessness. The Representatives expressed the view that 60 days notice was required before any of the policies were implemented.

9. Late in the day on Friday, July 27, 2012, I received from Ruth Bourquin of the Massachusetts Law Reform Institute an email forwarded from DHCD to which was attached three documents: (i) a list of changes to the proposed regulations that DHCD said it is willing to make, a copy of which is attached to this Affidavit as Exhibit E; (ii) a proposed time line for implementation showing that DHCD still intends to implement the “health and safety” portions of the regulation on August 2, 2012, a copy of which is attached to this Affidavit as Exhibit F; and (iii) Responses to Legislative Questions on EA regulations, a copy of which is attached to this Affidavit as Exhibit G.

10. In response to a return email from Ruth Bourquin, DHCD’s legislative liaison stated on Friday, July 27 that DHCD would attempt to provide the actual revised regulations

with the promised changes sometime on Monday, July 30, 2012. The proposed revised version was sent out by email in the afternoon of July 30. A copy of the proposed regulations as revised is attached as Exhibit H. That set of regulations is the version that DHCD intends to implement on September 17. Although we have requested them, as of this writing, we have not received a copy of any revised version of the proposed regulations that will go into effect on August 2. However, I have seen an email from counsel for DHCD indicating that a revised version of the “health and safety” regulations” to be implemented on August 2 with the changes noted on July 30 will be available as of August 2. It therefore appears that the slightly revised language that appears in 106 C.M.R. 309.040(A)(1) and (6) in Exhibit H is language that the Administration intends to implement with respect to “health and safety” on August 2, 2012.

11. The Coalition and our allies have advocated over the years for budget language requiring DHCD (and the Department of Transitional Assistance before DHCD took over the program in July 2009) to provide at least 60 days advance notice to the Legislature before it takes any steps to restrict access to emergency shelter. During FY 2012 and FY 2013, the Legislature adopted particularly broad versions of the 60 days notice requirement because of attempts by DHCD to circumvent the notice requirement.

12. In the initial FY 2012 budget, the 60 day advance notice proviso read: “notwithstanding any general or special law to the contrary, 60 days before promulgating any such eligibility restrictions or benefit reductions, the undersecretary shall file with the house and senate committees on ways and means [and] the clerks of the senate and house of representatives a determination by the secretary of housing and economic development that available appropriations from the program will be insufficient to meet projected expenses and

a report setting forth such proposed changes.” St. 2011, c. 68, § 2, item 7004-0101. In October 2011, three months after the budget was signed into law, DHCD proposed drastic restrictions on access to emergency shelter without any advance notice to the Legislature, contending that no advance notice was required because it was restricting access to benefits without “promulgating” new regulations. Within days, the Legislature amended the line item to require notice whenever the Department intended to “promulgat[e] or amend[] any regulation or policy affecting eligibility, benefits or administration of the program.” St. 2011, c. 171, § 6. When DHCD then started taking the position that the revised language prevented it from even instructing DHCD workers as to how properly to apply existing policy for the benefit of homeless families, the Legislature once again amended the language to make clear that it applies to any promulgation or amendment of “any regulation, administrative practice or policy that would alter eligibility for, or the level of benefits under, this program, other than that which would benefit the clients” St. 2012, c. 36, § 32. This is the same language that is included in the FY 2013 budget. St. 2012, c. 139, § 2, item 7004-0101.

13. Someone who attended a Department of Transitional Assistance (DTA) advisory board meeting in Hyannis on Friday, July 27, 2012 reported to me that at that meeting a DHCD representative stated that DHCD expects that 2/3 of the more than 3600 families now in emergency shelter through the EA program would not have been eligible if the proposed revised regulations were in force at the time of their applications. Based on my experience with DHCD and its efforts to deny families shelter whenever possible and my reading of the proposed new regulations, I would estimate that an even greater number of families will be denied emergency shelter if the regulations are allowed to take effect.

Signed under the pains and penalties of perjury this ___ day of July, 2012.

Kelly Turley