HADA Housing Authority Defense Attorneys

HAI Group

The Keys to Not Going South

Protecting the PHA and Yourself in 504 Cases

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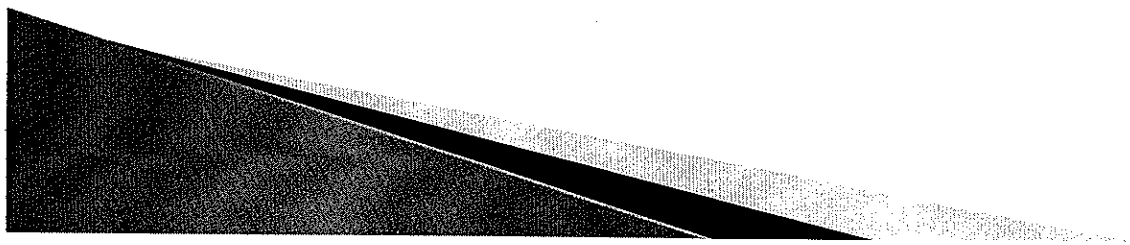
What is a Disability

- Physical
- Mental
- Cognitive



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Due Process

- Knowledge of Charges
- Opportunity to Respond
- Right to Fair Hearing

Mental/Cognitive Issues

- Understanding what was required
- Knowing consequences of violation
- Being able to effectively respond

Hearing Officer Suggestions

- If represented by an attorney/other representative, ask if person understands what he/she is charged with
- Get this on tape
- Ask if there are any questions
- Ask if they are ready to proceed (but be ready to go forward)

Reasonable Accommodation Requests

- Put into notice of charge that an accommodation should be requested prior to the hearing
- Request must be reasonable
- Try to provide if possible
- Put it on the record

Case No. 1: Physical Disability

- 20 year employee of the HA
- Worked in maintenance
- Made no prior complaints of any disability
- Had asthma and high BP for years
- Worked at several properties
- Two years ago was transferred to another facility
- Close to chicken processing and sewage facilities

Case No. 1 continued

- Never complained
- Had some personal issues
- Was transferred to another property
- Allegations made to another employee of possible inappropriate conduct (rumors)
- Went to HR and reported that he felt he was the victim of discrimination
- Investigation done and concluded: Not substantiated but decision made to separate the two

And Then ...

- He learns he is going to be transferred back to original property. He did not want to go back there. He wanted to be at property closer to his home.
- No opening there, so he was sent to the original property (near the chicken plant)
- Refused to go to new property: chicken plant made him sick
- PHA asked for doctor note
- Doctor gave him a note

Finally:

- He goes on leave for several months
- Doctor writes a letter saying the employee needs to work where he is not exposed to sunshine, heat, or cleaning chemicals
- No job available with those restrictions
- Hands in resignation
- Files Suit for ADA
- Was awarded SS
- Lost the lawsuit

The Opinion

- A copy of the opinion is in the handouts
- Good treatise on ADA, reasonable accommodations, and other related issues

Case No. 2: Mental Disability

- Section 8 participant
- Assistance was terminated because she would not sign forms for new apartment
- She complained to HUD
- Threatened to "put two bullets" in Section 8 Coordinator's head (told to HUD)

The Procedure

- She got her notice of termination
- Asked for the informal meeting
- Hired a lawyer
- Hearing officer selected by the PHA (not objected to by her attorney)
- Notice sent of time and place for hearing
- Hearing continued several times
- Participant complained that hearing was not done in ten days: She continued to get assistance

The Hearing

- Raised mental issues: location
- Accommodation addressed: size and entry
- Fired her lawyer
- Did not appear for the hearing
- WHAT DO WE DO?

Hearing Officer Dilemma

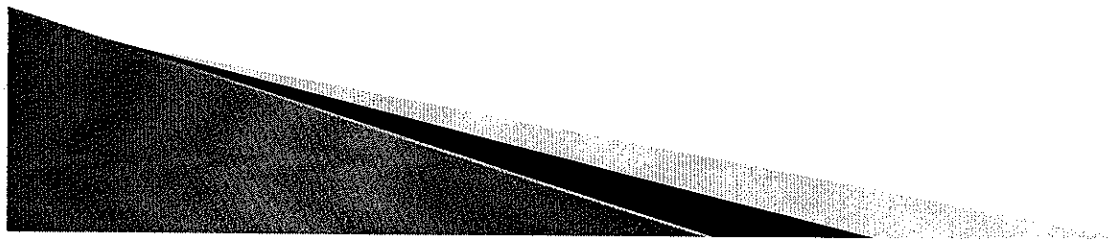
- Retired Circuit Judge
- Called to get some advice: "What in the hell do I do?"
- Wrote opinion
- Gave her 10 days to respond
- She filed suit
- Depos at courthouse for protection
- Threatened to kill the Judge

Lawsuit Video Excerpts

- Video 1
- Video 2

What Does a Lawyer Do Now?

- Recognize disability (mental/cognitive)
- Is Plaintiff able to understand/respond
- Does the Plaintiff need an attorney
- Does an attorney represent in cognitive issues
- What if he/she has an attorney
- Ethical Issues
- Court case – Eviction: PHA to pay for Guardian ad Litem and case delayed (probably lost)



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CONCLUSION

- Prepare for accommodations
- Know how to handle
- Anticipate
- Train staff and hearing officers
- Alert 504 Coordinator: keep him/her involved
- Consult with your attorney