

REMAINING KEY PROBLEMS WITH PROPOSED EA REGULATIONS (Notwithstanding promised DHCD revisions)

On July 17, 2012, the Patrick-Murray Administration gave the Legislature notice of its intention to begin implementing new regulations that will drastically restrict access to emergency shelter for homeless families with children. The Department is implementing the most onerous of these regulations on or about August 2, 2012, without the 60 days advance notice to the Legislature required by the line item.

After advocates informed the Legislature of the myriad ways in which the proposed regulations are unfair and will leave homeless children and their families at risk and after a meeting between Administration officials and certain State Representatives and advocates on July 23, the Department of Housing and Community Development said it will issue some revisions to the proposed regulations addressing some of the concerns. The exact wording of the changes that will be made is at yet unknown.

While we are very grateful for the improvements that may be made, DHCD has not agreed to address the substantial problems that will remain, including:

1. Children who are at imminent risk of having to sleep in a place not meant for human habitation will not be eligible for shelter. They must first *actually sleep* in such places.
2. Except for victims of domestic violence, families who are tenants will never be eligible for shelter regardless of how extreme the risk to their health and safety is. So if a family is a tenant living in an apartment with no water, heat or electricity and the landlord refuses to fix and the tenant does not have the resources to fix the conditions, and the unit has not yet been condemned, the family will still be ineligible for shelter and children will be forced to stay in the unsafe situations. And if a family is a tenant in housing in which they are regularly being threatened, beaten up or shot at in retaliation for having reported neighborhood crime, they cannot access emergency shelter as a means of escape and safety for their children.
3. Families who were evicted for purely no fault reasons, such as the landlord wanting to sell the building, will be ineligible for shelter even if they are unable to find any other housing.
4. Families who are homeless and temporarily doubled up with hosts whose lease is being violated by their presence are not eligible for shelter even though, if they remain, the host will get evicted, resulting in not just one but two homeless households.
5. Families who tried to avoid seeking shelter earlier by renting private market housing that they really could not afford, perhaps in the hopes of obtaining employment that never came through, and who are now evicted for nonpayment of rent are not eligible.
6. Families doubled up in housing where there are extremely unsafe conditions and the landlord could fix the problems but refuses to fix them are not eligible.
7. Families doubled up in housing in which a neighbor is regularly assaulting members of the homeless family are not eligible. And families in housing in which a primary tenant is regularly stealing the very resources the families needs to pay for daily living expenses or otherwise exploiting the vulnerable family will not be eligible for shelter. (Of course these families are going to be extremely reluctant to go to the police about these issues given that they will then be turned out with nowhere else to go and not eligible for shelter unless and until their children sleep in a place not meant for human habitation).

8. Families living in double up situations where they are being victimized by crime, are at risk from the results of mental health or substance abuse issues by others in the unit, or are living in places not meant for human habitation are *still* not eligible unless they are at *risk of “significant direct” harm*. This level of harm is defined extremely narrowly in proposed Guidance issued by the DHCD. For instance, a threat of harm is not “direct” enough if the threat is that one person will have another person kill or maim a member of the family (no matter how credible) because the third person “might not do it.” Harm is not qualifying if the threat is to a member of the immediate family who was living in the unsafe housing but is not applying for shelter with the other family members (perhaps because a father needs to stay close to a job and can stay with his family who does not have room for his wife and child). Harm is not sufficiently “direct” unless it is “imminent” which is defined extremely as “hanging over the applicant at all times, creating constant fear that the threat could be carried out at any moment.” And “[o]nly when the threat meets all the requirements” does it qualify for DHCD purposes. These rigid standards will also govern when a family will (not) have had good cause for leaving subsidized housing due to a direct threat of harm.
9. Families in which a child but not her parent has been taken in by a friend or relative are not eligible for shelter, even if the mother has nowhere to sleep but a car or another place not meant for human habitation. The regulations thus abandon these desperate families to permanent separation of mother and child due to their homelessness.
10. Former homeowners who have become homeless after being foreclosed upon will always be found “at fault” for their eviction, without regard to predatory lending, the foreclosure having been caused by a no fault loss of income, or the foreclosure having been illegal.
11. The Department is imposing very complicated and confusing verification requirements, including with respect to whether evictions for nonpayment were caused by medical conditions or disabilities.
12. At the same time, DHCD is eliminating important protections such as its duty to assist families in getting needed verifications, the right of families to apply at any time (thus trying to legalize its practice of sending people away without taking an application), and its duty to treat people decently.
13. The Administration has taken no steps to alert churches, medical providers, social services agencies, or other members of the public that thousands of families will soon be rendered ineligible for emergency shelter and will be turning to them for help to keep their children safe. In addition, the Department of Children and Families has established no protocols or procedures to ensure that it meets its statutory duty to keep the homeless children who will now be denied access to EA shelter safe and with their families.

The Administration made a commitment to ending family homelessness by 2013. **These regulations do nothing to end family homelessness; they simply turn the Commonwealth’s back on homeless families.** We can and must do better.

Please ask your state legislators to ask the Senate President, the Speaker of the House and the Chairs of the House and Senate Committees on Ways and Means to adopt legislation immediately preventing these regulations from being implemented. And please continue to call the Governor to ask him to direct DHCD not to implement any of the proposed regulations on August 2.

For more information contact the Massachusetts Law Reform Institute, 617-357-0700 (Ruth Bourquin ext. 333 and rbourquin@mlri.org), Greater Boston Legal Services (Steve Valero 617-603-1654 and svalero@gbls.org), or the Massachusetts Coalition for the Homeless 781-595-7570 (Kelly Turley ext. 17 and Kelly@mahomeless.org).