

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SCHERÉ BARCLAY, et al.,

Plaintiffs,

-against-

JOHN B. RHEA, as Chairman of the New York
City Housing Authority, and the NEW YORK CITY
HOUSING AUTHORITY,

Defendants.

**STIPULATION OF
SETTLEMENT**

2011 Civ. 6740 (TPG)

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WHEREAS, a complaint in this action, dated September 23, 2011, sought declaratory and injunctive relief and alleged that the New York City Housing Authority ("Housing Authority") policies and practices unlawfully delayed processing interim recertifications, thereby requiring participants in the Section 8 Housing Choice Voucher program to pay unaffordable and illegal rents and face ongoing threats of eviction; and

WHEREAS, plaintiffs' claims for individual relief have been separately resolved; and

WHEREAS, the Housing Authority maintains that its policies and practices comply with applicable law and regulations; and

WHEREAS, the parties wish to resolve this dispute amicably; and

WHEREAS the parties have agreed to the entry of this Stipulation without any admission of liability and without an adjudication on the merits;

NOW, THEREFORE, IT IS HEREBY AGREED by counsel for the undersigned parties that:

1. The Housing Authority will perform interim recertifications of family income and household composition when a tenant orally reports a change in household income, assets,

expenses or family composition since the last annual review, or the tenant submits a written request for an interim recertification based on such changes.

Interim Recertification Procedure

2. Where an interim recertification is requested based on a change in income, the Housing Authority will perform the interim recertification.

3. After a tenant notifies the Housing Authority of a change in household income, assets, expenses, or family composition, the Housing Authority shall promptly, within 10 days, notify the tenant what additional information or documentation, if any, is required in order to process the interim recertification. All document requests must relate to changes in household income, assets, expenses, or family composition.

4. The Housing Authority shall complete processing of interim recertifications within 30 days of the date the tenant submits all information and documentation required by the Housing Authority. The Housing Authority, however, may delay processing of the rent adjustment for up to 60 days from the date the tenant submits all information and documentation in situations where it is unclear whether a reduction in household income will be permanent. If after 60 days the reduction in income remains in effect, the Housing Authority will then implement the reduction retroactively.

5. The effective date of the reduction, if any, in the tenant share will be the first of the month after the Housing Authority receives documentation reflecting that the household income has decreased.

6. In 2013, NYCHA will develop a calculation worksheet that will inform tenants of the income, deductions, and calculations used to determine the tenants' portion of the rent. When implemented, it will be provided to tenants along with Voucher Change Notifications.

Interim Recertification Leased Housing Directive ("LHD")

7. Within 30 days after this Stipulation is "so ordered" by the Court, the Housing Authority will rescind LHD #11-12 and replace it with a new LHD (attached to this stipulation) incorporating and implementing the terms of this agreement.

8. The Housing Authority shall train its employees on the policy and procedures described in the attached LHD.

Stipulation Period

9. The Court shall retain jurisdiction to enforce the terms of this stipulation for three years after the date this stipulation is "so ordered" by the Court (the "Stipulation Period"). The court's jurisdiction under the Stipulation Period may be extended by motion by plaintiffs' counsel upon a showing of systemic non-compliance by the Housing Authority. Such motion must be made no less than 90 days prior to the end of the Stipulation Period.

10. During the Stipulation Period, the Housing Authority may amend the attached LHD as long as such amendment is in accordance with all applicable law and is not unreasonable. The Housing Authority shall notify plaintiffs' counsel at least 30 days prior to amending the attached LHD of both the proposed change and the reason for the change. Plaintiffs' counsel shall notify the Housing Authority at least seven days prior to any motion or proceeding challenging any modification to the LHD. If Plaintiffs' counsel challenges the modification to the LHD, Plaintiffs' counsel shall have the burden of proving that the modification is either unlawful or unreasonable.

11. During the Stipulation Period, Plaintiffs' counsel may bring to the Housing Authority's counsel's attention any Section 8 participants whose interim recertification they believe the Housing Authority improperly failed to process on or after January 1, 2011. The

Housing Authority will adjust the rents of such participants prospectively and retroactively upon a showing that such adjustment is required by federal law and Housing Authority procedure as set forth herein and in the accompanying LHD.

12. Nothing in this Stipulation shall alter the rights of Section 8 participants to request grievances regarding interim rent adjustments pursuant to federal law, Housing Authority procedure, and applicable court decrees.

Attorneys' Fees and Costs

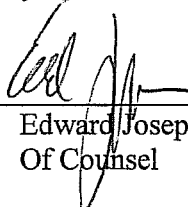
13. Defendants shall pay plaintiffs \$65,000.00 (Sixty-Five Thousand Dollars) for attorneys' fees and costs.


14. This action is discontinued with prejudice except the Court will retain jurisdiction during the Stipulation Period for enforcement of this agreement.

Dated: New York, New York
December 26, 2012

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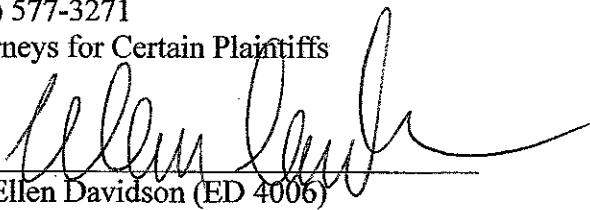
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A handwritten signature in cursive script, appearing to read "Ellen Davidson", written over a horizontal line.

Ellen Davidson (ED 4006)
Of Counsel

This memorandum rescinds LHD #11-12, dated December 7, 2011, LHD #10-04, dated May 5, 2010, LHD #06-26, dated October 16, 2006, and LHD #99-11, dated April 7, 1999.

There are three events that trigger an interim recertification:

- 1) The family reports a change in household income, assets, expenses, or family composition;
- 2) The family submits a written request for an interim recertification because of changes in household income, assets, expenses, or family composition since the last determination; or
- 3) NYCHA otherwise deems it appropriate to conduct an interim recertification.

I. Family Responsibilities

The family must comply with the following:

- A) The family must report a change in income within 30 days of the effective date of the change.
- B) The family must notify NYCHA of the birth, adoption or court awarded custody of a child within 30 days of the event. The family must request NYCHA's approval before adding any other new household members as occupants of the unit.
- C) The family must notify NYCHA when a household member moves out of the household or dies within 30 days of the event.
- D) The family must supply any information requested by NYCHA in reviewing a request for an interim recertification within 30 days of NYCHA's request. For decreases in income, NYCHA will not process the request if the tenant without good cause fails to provide requested documentation within the 30-day period, but the family may submit a new request for an interim recertification. Good cause shall be defined as a delay that is caused by other governmental agencies. Additionally, if a tenant requests additional time as a reasonable accommodation for a disability, NYCHA shall follow its policies and procedures in considering such request.

Note: Failure to comply with these obligations may constitute grounds for termination of the family's participation in the Section 8 program.

II. NYCHA Responsibilities

In processing an interim reexamination, staff must comply with the following:

- A) NYCHA will make a request for information and documents from the family within 10 days of the date the family reports a change in income or submits a written request for an interim reexamination.
- B) Staff must process an interim recertification based on current income within 30 days of the date the family submits all information and documents requested by NYCHA. NYCHA may delay processing the adjustment for up to 60 days from the date the tenant submits all information and documentation in situations where it is unclear whether a reduction in household income will be permanent. If after 60 days the reduction in income remains in effect, the Housing Authority will then implement the reduction retroactively.
- C) Staff may only request documents from the family relating to the change in income, except as set forth in subsection (E) below.

Note: Staff will verify income according to the hierarchy set forth in LHD 10-13. As more fully set forth in that LHD, staff will first attempt up-front verification through the HUD Enterprise Income Verification (EIV) system and then through a non-HUD EIV system. If up front verification is not successful, staff will attempt to verify through a document generated by a third party within the preceding 60 days and provided by the tenant. If the tenant is unable to provide a document generated by a third party within the preceding 60 days, staff must attempt to verify income through written response by a third party to a standardized form; then through oral verification by a third party. If income or expenses still cannot be verified, the tenant may submit a notarized statement or affidavit of reported income and/or expenses.

- D) In no event may the Housing Authority require that a tenant apply for additional income, whether the tenant is eligible or not, as a condition to the processing of an interim reexamination, as set forth in LHD #03-13. If the tenant's reported income appears unrealistically low, according to the standards set forth in LHD 03-13, staff shall follow the procedures in that LHD to offer the tenant an opportunity to explain the household income.
- E) When processing an interim recertification, staff must not change the voucher payment standard. The voucher payment standard will be updated at the next regularly scheduled annual review.
- F) When adding new members to the household, staff must comply with the procedures set forth in LHD #07-22.

- G) When staff completes the recertification, staff must immediately send a Voucher Change Notification (“VCN”), Form 059.205, to the tenant and the landlord. With the VCN, the staff shall send the tenant a calculation worksheet which will provide the tenant with the income, deductions, and calculations used to determine the tenant portion.
- H) Staff must process an interim recertification even if the subsidy has been suspended.
- I) Staff must not process an interim recertification due to a loss of welfare benefits for fraud or failure to participate in self-sufficiency or work activity.

III. Effective Date of Change in Income

A) Decrease in Income

The effective date of a reduction in the tenant share will be the first of the month after NYCHA’s receipt of a document evidencing the reduction in income.

B) Increase in Income

Tenant Notification Within 30 Days – If the tenant reports an increase in income within 30 calendar days of the increase, the effective date of the increase in the tenant share is the first day of the month following one full calendar month after NYCHA sends the VCN to the tenant.

Example: A tenant obtained employment on May 1st. NYCHA’s policy requires the tenant to report the increase in income by May 31st (30 calendar days after employment). The tenant reports his or her employment on May 15th. NYCHA completes the processing of the interim recertification on June 1st and sends the VCN to the tenant on June 1st. The effective date of the increase in rent is July 1st.

Tenant Notification After 30 Days – If the tenant fails to report an increase in income within 30 days, the effective date of the increase is the date of the increase. Staff must process a retroactive adjustment, which may include a demand for repayment of excess assistance received in prior months.

Example: A tenant obtained employment on May 1st. The tenant reports the employment on July 15th. NYCHA completes the processing of the interim recertification on August 1st. Because the tenant reported his or her employment after the 30-day period, the effective date of the increase is May 1st (the date of employment) and staff must process a retroactive charge back to May 1st.

IV. Change in Family Composition

If a tenant states that household members have moved out of the unit, staff will process the interim recertification within 30 days of the receipt of all documentation. A list of documents which may be used to document the departure of a household member can be found on NYCHA's website at:

http://www.nyc.gov/html/nycha/downloads/pdf/Removing_Section_8_Household_Members.pdf

The payment standard will be adjusted at the next annual review to the unit size appropriate for the new family composition. If the family chooses to remain in the apartment that is too large for the new family composition, the family's decision may result in the family paying more than 30 percent of its household income in rent. The family may request a transfer voucher at any time to relocate to a unit more appropriate for the family size.