

RULING WIDENS SHELTER RIGHTS FOR HOMELESS

By Barbara Basler

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A New York State appeals court ruled unanimously yesterday that all homeless families have the legal right to emergency shelter.

The ruling was, in effect, an extension of a landmark 1979 decision that gave to homeless single men and later single women the constitutional right to shelter.

And, while the court refused to rule on specific complaints about conditions in New York City's welfare hotels - where most of the homeless families are sheltered - it invited the state's highest court to review the very legal precedents that it said stood in the way of such rulings. Practical Effect

The decision, handed down by the Appellate Division of State Supreme Court in Manhattan, castigated state and city officials for failure to provide decent housing for homeless families. Its practical effect was to bar the city from permitting homeless families to spend nights on countertops or chairs in welfare offices, a situation that became severe last December when city officials said there was a shortage of space in shelters or welfare hotels.

In a 32-page decision written by Justice Ernest H. Rosenberger, the appeals court said lawyers for the homeless had documented "unsafe and squalid conditions" that were "prevalent" in welfare hotels.

The judge also said thousands of children were put "at risk" mentally and physically and were subject "to inevitable emotional scarring because of the failure of city and state officials to provide emergency shelter for them which meets minimum standards of decency and habitability." "Too Precious"

Judge Rosenberger said that "the lives and characters of the young are too precious to be dealt with" in that way.

"This case is for poor families what *Brown v. Board of Education* was for discrimination," said Scott Rosenberg, a lawyer with the Legal Aid Society, which brought the original suit, *McCain v. Koch*, in 1983.

"This is a truly major decision, and it's been a disgrace that it's taken years of litigation to force the Mayor to do for homeless children what the courts ordered done for homeless men six years ago," said Robert M. Hayes, counsel to the Coalition for the Homeless, one of the advocate groups that later joined the Legal Aid Society suit.

He said yesterday's decision clarified a lower-court ruling that had left uncertain the city's obligation to shelter homeless families and led both parties to carry the suit to the Appellate Division.

In a prepared statement, George Gross, the Commissioner of the city's Human Resources Administration, said: "The city of New York spends more than \$100 million a year to provide shelter to all homeless families who request it. We believe we are the only city to provide this service. We understand that the Appellate Division in its decision today found that homeless families have a right to this shelter. At the same time, the court also found that the nature of the shelter provided is up to the city."

Mr. Gross, in his statement, pointed out that the court decision touched on several other issues, with the judges declining to interfere with the city's right to move homeless families from one shelter to another, and refusing the advocates' request to bar group shelters for families. Mr. Gross said, "We think this is proper recognition of the discretion this city must have in continuing to administer this complex, costly program."

City officials did not say whether they would appeal yesterday's decision. Earl Weber, a spokesman for the H.R.A., said city officials would have no further comment until they had studied the decision. 'Deplorable' Conditions

"Essentially the court found that conditions in the welfare hotels were deplorable," Mr. Rosenberg of the Legal Aid Society said. "And its decision asks the State Court of Appeals to remove the precedents that prohibit the courts from getting involved in questions about those conditions."

He said that while the request for a judicial review was not binding on the highest court, "it is persuasive - and we plan to appeal these precedents based on this decision."

The city now shelters about 4,100 families in 55 welfare hotels, four group shelters and four family centers operated by nonprofit groups.

The original case, *McCain v. Koch*, involved a number of homeless families, including Yvonne McCain and three of her children who were placed in a room at the Martinique Hotel in midtown Manhattan. 'A Safe Place to Live'

Mr. Rosenberg said that the suit asked the court to find that the families had a right to shelter and that "if shelter means anything, it means a safe place to live and not a roach-infested room with a urine-soaked mattress and filthy sheets - which is what the city gave the McCain family."

The family, he said, still lives at the Martinique.

Other plaintiffs included families who had been forced to spend the night in welfare offices.

In its decision, the court refused to set specific conditions for welfare hotels, but it ruled that the city must follow the state's regulations that require clean linens, window guards and a number of other safety and sanitary measures. Three Other Issues

Mr. Rosenberg said three other separate issues were litigated under the umbrella of the McCain case, including the advocates' request to close the city's barracks-like shelters for families.

The appeals court upheld a lower-court decision and refused that request. But the judge noted that the court was "not overly optimistic" that these facilities were an improvement over the welfare hotels. He also said that "the lack of privacy clearly renders such facilities unsuitable for long-term stays."

The court also reversed a lower-court decision in favor of the advocates and found that the city could transfer homeless families from one welfare hotel to another without a hearing.

It also upheld a lower-court decision in favor of the advocates and ruled that the city must give homeless families money for school transportation.

The five judge panel that ruled on the case also included Theodore R. Kupferman, Joseph P. Sullivan, David Ross and Arnold L. Fein.

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