

SOURCE OF INCOME AND FAIR HOUSING

Presented by Northwest Fair Housing Alliance



THE FAIR HOUSING ACT

DISABILITY INCOME





SSI Recipients

- FHA definition is broader than the definition used to qualify for Social Security disability benefits
- A person may be protected under the FHA but still not be eligible for disability or supplemental security income (SSI).

Complaint filed w/ HUD 9/21/10.

Complainant is bipolar and has social phobia, and is a person with a disability residing in WI.

Complainant received Social Security Disability Insurance ("SSDI") of approx. \$1,445 per month for herself and 2 children, and unemployment insurance of \$354/wk.

The manager told Complainant he would not rent to anyone who is disabled or unemployed, because if they do not pay him, he cannot go after them for the money.

SSDI – Refusal to
Rent
*HUD, on behalf
of Tunisha
Perkins, v.
Barbara Tremel
and David
Nowicki,*
ALJ No. FHEO
No. 05-10-1808-8
– 1/18/12
Charge of
Discrimination

Metropolitan Milwaukee Fair Housing Council conducted a test.

A tester called the manager and stated that her family had Social Security disability income. The manager stated, "Okay. That presents a little bit of a problem. I'm in kind of [a] tough spot that way [o]n this particular building because the building does not qualify for rent assistance."

The tester asked, "Just to be clear, this is not available because of the income from Social Security?" The manager replied, "You heard the particulars ... I cannot. Let me put it this way. It's an 18-mos lease. If you end up breaking the lease for whatever reason and there's cost involved and all that, I cannot execute a judgment against your source of income...I eat the loss and I just can't do that..."

- Respondent violated the FHA when **he denied Complainant the opportunity to rent** the property because of **disability**, and when he made **statements** with respect to renting the subject property that indicated a preference, limitation, or discrimination based on disability.
- Settled for \$7,500 in June 2015.



REASONABLE ACCOMMODATIONS RELATED TO DISABILITY INCOME

Disability, Reasonable Accommodation Requests

Co-signors

The 9th Circuit Crt. held in 2003 that **when a neutral policy's adverse effect on disabled persons** is attributable to financial limitations faced by disabled persons in securing housing, the FHA may require an **exception to the policy as a reasonable accommodation**. *Geibeler v. M&B Assoc.*, 343 F.3d 1143 (9th Cir. 2003).

A **request by a person with a disability receiving SSDI for a waiver of a landlord's "no cosigner" rule was a reasonable accommodation** because the disability precluded him from working and meeting the 3-times the rent income reqt.

Housing providers must conduct individual assessments of risk of non-payment created by an applicant with a disability's situation rather than inflexibly applying a rental policy that forbids cosigners.



OTHER PROTECTED CLASSES & INCOME

Section 8 Vouchers: Race / Sex / Familial Status Discrimination

When a refusal to participate in a Sec. 8 program results in a disparate impact on a protected class, and there is no business necessity not to participate, some courts and have said landlords must consider Section 8 applicants.



According to a 2008 survey by HUD:

- 62% of voucher holders nationally are designated as a **minority**,
- 48% of voucher holder households nationally are **female**-headed households with **children**.

Disparate Impact
of
“No Welfare” Policy
on
Race

A HUD administrative law judge held that a landlord’s “**no welfare policy**” had a **disparate impact on women** in a particular region of MA, because MA Dept. of Public Welfare stats. established that an **overwhelming percentage of AFDC recipients in that region are women**. The landlord did not meet its burden of showing a justifiable business necessity for the policy. The landlord was found to have committed **sex discrimination** in violation of the FHA. *U.S. v. Ross*, HUDALJ 01-92-0466-8 (1994).

Bronson v. Crestwood Lake Section 1 Holding Corp., 724 F.Supp. 148 (S.D.N.Y. 1989)

- Court granted a preliminary injunction to **minority-race plaintiffs**, recognizing their disparate impact claim.
- A housing provider refused to consider applications if income was not at least **3 times the rent**, even though one plaintiff offered power of attorney to a 3rd party to pay rent out of a bank acct into which SSI was deposited, and another offered a co-signor.
- The applicants brought suit **asserting that the financial rental policies disproportionately and adversely impacted minority populations** as compared to white applicants.

Disparate
Impact

of

Rent Ratio
Requirements

on

Race

A WA landlord's **decision to terminate participation in a Sec. 8 certificate and voucher program** was found to violate the FHA based on disparate impact on **African American women and children**. *Green v. Sunpointe Associates, Ltd.*, No C96-1542C (W.D. Wash. 1997).

Disparate Impact
of “No Section 8”
policy
on Race

Spokane Municipal Code Title 18:

Housing Choice or Other Subsidy Program Discrimination in Housing

“Discrimination” means different or unequal treatment because of

♦ race ♦ religion ♦ creed ♦ color ♦ sex ♦ national origin ♦ marital status ♦ familial status ♦ domestic violence victim status ♦ age ♦ sexual orientation ♦ gender identity ♦ refugee status ♦ **honorably discharged veteran or military status ♦ disability** ♦ use of a guide dog or service animal

♦ use or eligibility for the use of housing choice or other subsidy program or alternative source of income.

Spokane Municipal Code Title 18:

Housing Choice or Other Subsidy Program Discrimination in Housing

“Discriminate” means



**to treat differently or unequally
because of ...the use or
eligibility for the use of housing
choice or other subsidy program
or alternative source of income.**

...

Spokane Municipal Code Title 18:

Housing Choice or Other Subsidy Program Discrimination in Housing

“Housing
choice or
other
subsidy
program”
means,
without
limitation:

any **short or long term** federal, state or local government, private nonprofit, or other **assistance program** in which a tenant's rent is paid either partially by the program (through a direct arrangement between the program and the owner or lessor of the real property), and partially by the tenant or completely by the program; or

HUD-Veteran Affairs Supportive Housing (**VASH**) vouchers, Housing and Essential Needs (**HEN**) funds, and short-term rental assistance provided by **Rapid Rehousing** subsidies.

Spokane Municipal Code Title 18:

Housing Choice or Other Subsidy Program Discrimination in Housing

“**Income**” means lawful, verifiable income derived from all sources, including without limitation:

- ♦ wages♦ salaries or other compensation for employment♦ unemployment benefits
- ♦ Soc. Sec. benefits♦ **SSI**♦ retirement programs♦ **child support** ♦ Refugee Cash Assistance♦ Aged, Blind or Disabled Cash Assistance Program Pmts♦ financial aid for college students♦ per capita payments or distributions received from a federally-recognized **tribe** ♦ any federal, state, local govt., private, or nonprofit-administered benefit program, including w/o limitation pmts. from any housing choice or other subsidy program as defined in this ch.

Spokane Municipal Code Title 18:

Housing Choice or Other Subsidy Program Discrimination in Housing

Ch. 18.03 Nondiscrimination in Housing Practices.
Sec 18.03.010 **Prohibited Practices.** It is a violation for any person to discriminate by:

- **refusing to ...lease, rent** or otherwise make available any offered real property;
- **expelling a ...lessee or renter...**;
- **altering the price, terms, conditions** or privileges relating to the ... rental, lease or occupancy of real property, or in the furnishing of any facilities or services in connection with real property;
- **attempting to discourage** the ...rental or lease of any real property to a ... lessee or renter;
- publishing, circulating, issuing or displaying, or causing to be published, circulated, issued or displayed, any **communication, notice, advertisement** or sign of any kind relating to the ...rental or lease of real property which indicates any preference, limitation or specification w/ respect thereto;

1. Review the complaint to determine whether the allegations stated on the face of the complaint, if true, would be a prohibited practice as stated in Spokane Municipal Code (SMC) chapter 18.03 SMC;
2. If NWFHA determines that the complaint does not state a violation of 18.03 SMC, the complaint shall be dismissed immediately.
3. Complaints that claim a violation of state or federal law shall be referred to the appropriate state or federal agency.
4. Review the factual allegations of the Complaint, interview the Complainant, and take a statement from the Complainant.
5. Interview the person accused of discrimination (Respondent) and document that interview in a writing.
6. If applicable, interview all participants and witnesses having relevant information regarding the allegation of discrimination, and document those interviews in writing.

During the investigation, NWFHA will:

1. If the investigation indicates that there is no evidence establishing jurisdiction, the case will be dismissed.
2. If, as the result of the investigative interviews, NWFHA determines that the complaint states a violation of SMC chapter 18.03, NWFHA shall communicate that determination in writing to the Complainant and the Spokane City Attorney's Office.
3. Complaints that claim a violation of a prohibited practice established only in this Title 18 shall be referred to a Washington State Dispute Resolution Center established under chapter 7.75, RCW, or by a mediator agreed upon by all parties, within thirty days of the filing of the complaint. Mediation sessions are not open to the public. If the mediation resolves the complaint, the mediator will notify the City of the resolution and the complaint file will be closed.
4. Complaints that are not resolved through mediation shall be submitted to the City Prosecutor for a determination as to the filing of a civil infraction pursuant to chapter 1.05 SMC.

At the Conclusion of the Investigation:

Administrative Appeal and Judicial Review:

Any person whose complaint has been dismissed pursuant to SMC 18.01.050 B(5) may appeal the dismissal to the hearing examiner, who shall review the complaint and the decision to dismiss the complaint under an abuse of discretion standard of review. The hearing examiner may affirm the dismissal, reverse the dismissal, or remand the complaint to be processed as set forth in SMC 18.01.050(B).

Judicial review. Any person who is aggrieved by the decision of the hearing examiner on administrative appeal under this section may institute an action for judicial review in the Superior Court pursuant to RCW 49.60.330.

The commission of an act of discrimination as defined in this Title 18 is punishable as a Class 1 civil infraction pursuant to chapter 01.05, SMC.

Penalty for Violation



THANK YOU!

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