

THE ABILITY CENTER

GREATER TOLEDO • OTTAWA COUNTY • BRYAN

Partnering to Build Communities
that Work for Everyone

abilitycenter.org

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OAN
The Ohio Abilities Network
Creating Communities
that Work for Everyone



February 25, 2015

Lucas Metropolitan Housing Authority
435 Nebraska Avenue
PO Box 477
Toledo, Ohio 43697-0477

Re: Comments on Reasonable Accommodation Policies

Dear Ms. Garrett and Ms. Willis:

The Ability Center and Toledo Fair Housing Center are organizations that work to support individuals with disabilities in the Toledo area and to make changes in policy to affirmatively further Fair Housing. As you know, the Fair Housing Act provides that it is discrimination to refuse to "make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."¹ To that end, we ask that you make revisions to the Lucas Metropolitan Housing Authority (LMHA)'s reasonable accommodation policies based on the Fair Housing Act and the HUD/ DOJ Joint Statement on Reasonable Accommodations.

The HUD/ DOJ Joint Statement on Reasonable Accommodations gives guidance on how much a provider can inquire into a person's disability in order to verify that they qualify for Fair Housing Act protections. The Joint Statement provides:

If a person's disability is obvious, otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.²

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only the information that is *necessary to evaluate* the disability-related need for the accommodation.³

¹ 42 U.S.C. 3604(f)(3)(B).

² Joint Statement of The Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004 at 12.

³ *Id.* at 13.

OUR MISSION: To assist people with disabilities to live, work and socialize within a fully accessible community.

These principles are in line with the LMHA's ACOP and Administrative Plan policies.⁴ However, its current forms and practices should be brought in line with this guidance.

I. The LMHA's Reasonable Accommodation Physician/Medical Care Provider Verification Form should allow a reliable third party to verify an individual's need for a reasonable accommodation.

LMHA's current verification form requires a physician or medical care provider to verify an individual's status as an individual with a disability and need for a reasonable accommodation. Under HUD guidance, a physician or medical care provider can supply the verification, but "a peer-support group, non-medical service agency, or reliable third party who is in a position to know about the individual's disability"⁵ may also verify the individual's status as an individual with a disability. Once the status has been verified, a housing provider may "seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability."⁶ LMHA's policy cites this portion of the guidance, but the verification form is limited to requesting a medical provider.⁷

There is no HUD or FHA requirement that medical providers verify a disability or need for an accommodation, and the process is too restrictive. In our experience, getting a medical provider to verify a disability and need for disability can be cumbersome due to providers' time constraints and fears of lawsuits, and the resulting delays can interfere with the ability of an individual with a disability to transition from a nursing facility into the community or acquire an accommodation.

II. LMHA should eliminate question number 4 on the Reasonable Accommodation Physician/Medical Care Provider Verification Form.

LMHA's verification form asks for the verifier's state medical license number as well as asking whether the medical provider is willing to testify under oath regarding the need for a reasonable accommodation. The Fair Housing Act, its implementing regulations, and HUD guidance do not permit these types of inquiries. The HUD/DOJ joint statement states, "A provider is entitled to obtain *information that is necessary to evaluate*" whether the request is necessary because of a disability.⁸

Some health care providers are hesitant to fill out LMHA's form or refuse entirely to complete it because they are intimidated by the implication that they may be required to go to court. This, again, makes the reasonable accommodation process cumbersome and calls into question LMHA's compliance with fair housing law and its duty to affirmatively further fair housing. LMHA should revise its Physician/Medical Care Provider Verification Form to allow verification from a reliable third party and should eliminate question number 4 on the form.

⁴ ACOP at 2-8, 2-9; Administrative Plan at 2-5 - 2-10.

⁵ Joint Statement, *supra* note 2 at 13-14.

⁶ *Id.*

⁷ ACOP at 2-9.

⁸ Joint Statement, *supra* note 2 at 12.

III. LMHA should change its “Special Accommodations Request Questionnaire” in the Section 8 Voucher application to remove the requirement that a disability and accommodation be verified where the disability is readily apparent.

Additionally, while the LMHA Administrative Plan states policies and procedures for reasonable accommodations in line with the HUD/ DOJ Joint Statement, the application for a reasonable accommodation as part of the Section 8 Voucher program is too restrictive. The application includes a “Special Accommodations Requests Questionnaire” that states, “the need for special accommodations must be verified.” The form also states:

It is your responsibility to provide medical or professional documentation to verify any need for the above claimed accommodation(s). If you do not provide this information, we will not be able to validate your claim.

We appreciate that LMHA has a request for accommodation as part of the application packet, but the requirement that the accommodations *must* be verified, even where readily apparent, does not follow LMHA policies or HUD guidance. Additionally, as noted above, the specific request for “medical or professional documentation” is not in line with the Fair Housing Act or HUD guidance that a reliable third party can verify a disability or need for accommodation. This form will give both landlords and tenant applicants the impression that medical documentation must be provided in order for an accommodation to be granted, despite LMHA and HUD policy that states otherwise.

IV. LMHA should change its “Request for a Reasonable Accommodation” form.

Likewise, LMHA’s “Request for a Reasonable Accommodation” form asks for a physician or health care provider’s information and has the following paragraph:

You will be mailed by LMHA an “Authorization for Release of Information” which will be forwarded to your physician, medical provider. Your physician/ medical provider will then be required to confirm your eligibility and accommodation request to LMHA. Once this process has been completed, your Housing Manager/ Housing Specialist will be in contact with you.

The Request for a Reasonable Accommodation form should have a provision that allows the accommodation to be documented and granted without additional verification, and should specify that, if additional verification is needed, a reliable third party can verify the disability and need for an accommodation.

It has been the experience of the Ability Center that when a person is transferring from a nursing facility into a NED 2 voucher property, a reasonable accommodation request and verification form is always required. This is true even where a disability is “readily apparent” such as when a person receives SSI income or uses a wheelchair. Because housing is one of the factors that must be in place to complete a nursing home transition, the extra step of verifying a disability and getting a certified medical provider to complete

a form can unnecessarily delay a transition. LMHA should revise its forms in order to enforce its policy there is no need to verify a “readily apparent” disability or “readily apparent” need for an accommodation. Additionally, LMHA should revise its forms to enforce its policy that a certified medical provider need not be the party to verify a disability or need for an accommodation.

V. LMHA should end any requirement for annual re-certification of reasonable accommodation.

We are also concerned about whether LMHA requires individuals who have received accommodations to annually re-request and verify their need for the accommodation. The Fair Housing Act, and HUD do not require periodic re-verification of a need for a reasonable accommodation. Moreover, the Fair Housing Act makes it unlawful to “. . . plac[e] conditions on their residency, because those persons may require reasonable accommodations.”⁹ A policy that requires an annual re-request and re-verification of a reasonable accommodation is comparable to placing additional conditions on the person with a disability’s residency. Where LMHA requires annual re-request and verification of a reasonable accommodation, it should end that practice.

VI. LMHA should make reasonable accommodation request forms readily available on their website.

Additionally, LMHA’s website should clearly advertize its fair housing policies, procedures and forms. LMHA should include symbols and messaging on its website and throughout its publications that brand LMHA as an entity that seeks to provide equal housing opportunities for all. LMHA should also place links to fair housing materials on its website. For example, the Greater Dayton Housing Authority has a Fair Housing/ Reasonable Accommodation tab that lists their reasonable accommodation policy and the contact information for their 504 coordinator.

In the particular context of reasonable accommodations, LMHA should have a tab that makes fair housing documents available online, such as LMHA’s reasonable accommodation policies and procedures and any pertinent forms. A tenant may request a reasonable accommodation at any time during his or her tenancy.¹⁰ No guidance is present as to when and how a person can request a reasonable accommodation or modification on LMHA’s website.

Additionally, LMHA’s Landlord Guidebook¹¹ does not discuss reasonable accommodations. The guidebook mentions one statement about reasonable accommodations that states, “If the owner is a family member, an exception can be made with verification that the relationship would provide reasonable accommodation for a family member with a disability.”¹² A single sentence regarding reasonable accommodations is inadequate to provide landlords with guidance regarding reasonable accommodation procedures.

⁹Joint Statement, *supra* note 2 at 2.

¹⁰*Id.* at 10.

¹¹LMHA Landlord Guidebook.

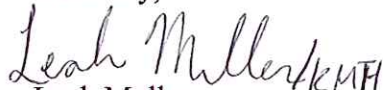
¹²*Id.* at 15.

VII. Additional suggestions for improvement.

Simply stated, "It is the housing provider's responsibility to know the applicable laws and comply with each of them."¹³ Before and during the creation of any housing policy, lease agreement, or the like, it is imperative that the housing provider comply with fair housing laws. A violation thereof could lead to serious consequences. Further training of LMHA staff and continued discussions with LMHA Board and staff on areas in need of improvement are strongly recommended.

In short, we ask that LMHA revise its reasonable accommodation forms and practice to come into line with the Fair Housing Act and HUD/ DOJ Joint Statement and that it take further actions to affirmatively further fair housing. We appreciate the cooperative relationship that our agencies have had in the past, and we look forward to discussing these issues with your further.

Sincerely,



Leah Mullen

Attorney-at-law

Toledo Fair Housing Center



Katie Hunt Thomas

Attorney-at-law

Ability Center of Greater Toledo

Enclosure

Reasonable Accommodation Physician/ Medical Care Provider Verification Form

Special Accommodations Request Questionnaire

Request for a Reasonable Accommodation Form


¹³U.S. Department of Housing and Urban Development, Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, April 25, 2013, p. 6.



Lucas Metropolitan Housing Authority

211 S. Byrne Road • Toledo, OH 43615-9911 • (419) 259-9448 • Fax (419) 259-9495 • TDD (419) 259-9529



November 1, 2012


Aspen Grove Center for Pain Management
7575 Secor Road
Lambertville, MI 48144

RE: 

Dear Physician/Medical Care Provider:

The LMHA has received a request for a reasonable modification and/or accommodation by this client. By law, LMHA may make a reasonable modification to the unit and must make a reasonable accommodation to LMHA's policies and/or procedures so that an individual with disabilities may have an equal opportunity to use and enjoy a dwelling, including public and common use areas. The definition of "an individual with disabilities" and a copy of the resident's release are enclosed for your convenience.

LMHA requests verification so that a feasible and practical modification and/or accommodation can be made.  states that he needs an extra bedroom for exercise equipment for daily in-home exercise, therapy and rehabilitation. Please advise if  requires a separate bedroom to store medical equipment as a reasonable accommodation by answering the questions below and indicating the need on question three. If you have any questions please feel free to contact me at 419-259-4475.

Therefore, Physician/Medical Care Provider:

1) Is the tenant an individual with disabilities? (Please do not identify the specific disabilities.)

Yes: No: (Please circle one)

2) If the resident is an individual with disabilities, does the resident need a reasonable modification to the unit and/or a change in LMHA's policies and/or procedures (reasonable accommodation) so that the resident may have an equal opportunity to use and enjoy a dwelling?

Yes: No: (Please circle one)

3) If so, please describe exactly what is requested to accommodate the limitations imposed by the disabilities.

4) Would you be willing to testify under oath regarding the above captioned resident's need for a reasonable accommodation?

Yes: No: (Please circle one)

My State Medical License Number is

Physician/Medical Care Provider's Signature

Date

Sincerely,

Crystal Rogers
Section 8 Housing Specialist
Enc/CC: Client's file

DEFINITIONS

To: Dr. O

Pursuant to 24 CFR 8.3, the definition of an individual with disabilities is provided below:

Individual with disabilities means any person who has a physical or mental impairment that:

- A). is expected to be of long, continued and indefinite duration; and
- B). substantially limits one or more major life activities;
- C). has a record of such an impairment; or
- D). is regarded as having such an impairment.

For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

Physical or mental impairment includes:

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) Is regarded as having an impairment means:

- (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

SPECIAL ACCOMMODATIONS REQUIREMENT(S) QUESTIONNAIRE

This questionnaire is given to every applicant applying for a Housing Choice Voucher with the Lucas Metropolitan Housing Authority. It is used to determine whether an applicant or family member will need special accommodations for assistance. The need for special accommodations must be verified.

Head of Household's Name: _____

Social Security Number: _____

- 1) _____ At this time, I choose not to claim any special need for myself or any household member, but I understand that for consideration in the future, I need to provide documentation to verify any claim for a special accommodation.
- 2) Do you or any other person on your application claim a need for any of the following considerations?
(check all that apply):
____ Separate Bedroom (for medical purpose)
____ One-level unit
____ Reading Impairment
____ Writing Impairment
____ Learning Impairment
____ Speech
____ Mental Retardation
- 3) If you have checked any of the above listed categories, please explain exactly what you need to accommodate your situation:

- 4) Can you or your household member(s) go up and down stairs unassisted? ____ Yes ____ No
If "no", please indicate how your family needs to be accommodated: _____

- 5) Will you or any household member(s) require a live-in aide to assist a member of your household? ____ Yes ____ No
If "yes", please explain: _____

- 6) What is the name(s) of the household members who need assistance identified on this form:

NAME	NEED

It is your responsibility to provide medical or professional documentation to verify any need for above claimed accommodation(s). If you do not provide this information, we will not be able to validate your claim.

Head of Household/Spouse Signature

Date

Request for a Reasonable Accommodation

The following member of my family has a handicap/disability:

(Do not tell the LMHA the name of your disability or the nature or extent of your disability.)

What barriers to housing do you want removed? Please provide this/these reasonable accommodation(s)
[Please mark all that apply]:

- ☐ To have annual recertification conducted via mail instead of in person
- ☐ To have a companion animal – Cat _____ ; Dog _____ ; Other (Please specify) _____
- ☐ To have a live-in aide
- ☐ To be transferred to a ground-level/1st floor unit
- ☐ To be transferred to a: 1 _____ ; 2 _____ ; 3 _____ ; 4 _____ ; bedroom unit
- ☐ Other: [Please specify]

A reasonable accommodation is needed because:

- _____ It will help you live in the housing or take part in LMHA's program;
- _____ It will help you meet the lease requirements of LMHA's program;
- _____ It will help you meet other requirements of LMHA's program.

Physician, Health Care Provider's name, address and telephone number:

By signing below you confirm the accuracy of the information submitted above. You will be mailed by the LMHA an "Authorization for Release of Medical Information" which will be forwarded to your physician, medical provider. Your physician/medical provider will then be required to confirm your eligibility and accommodation request to LMHA. Once this process has been completed, your Housing Manager/Housing Specialist will be in contact with you.

Tenant/Applicant/Participant's Signature

Phone Number

Date of Request

Tenant's Address