

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PATRICIA MYERS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-3338  
 )  
 SARASOTA HOUSING AUTHORITY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A final hearing was conducted on September 12, 2011, in Sarasota, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division). By prior Order, Petitioner participated in the hearing by telephonic conference call from her residence in Englewood, Florida.

APPEARANCES

For Petitioner: Patricia Myers, pro se  
6139 Grandeur Street  
Englewood, Florida 34224

For Respondent: Ricardo L. Gilmore, Esquire  
Saxon, Gilmore, Carraway  
and Gibbons, P.A.  
201 East Kennedy Boulevard, Suite 600  
Tampa, Florida 33602-5819

STATEMENT OF THE ISSUES

The issues are whether Respondent, Sarasota Housing Authority (the Housing Authority), discriminated against

Petitioner, Patricia Myers (Ms. Myers), based on her medical disability in violation of the Florida Fair Housing Act (the Act), and, if so, the relief to which Petitioner is entitled.

PRELIMINARY STATEMENT

The Florida Commission on Human Relations (FCHR) and the United States Department of Housing and Urban Development (HUD) administer the Act, sections 760.20 through 760.37, Florida Statutes (2010).<sup>1/</sup> In March 2011, Ms. Myers was notified that the Housing Authority was no longer allowing her 100 percent of her supplemental assistance payments regarding her food, water, bedding, and clothing, but was instead granting her 25 percent of her requested supplemental assistance payments. Ms. Myers immediately requested an administrative hearing regarding the disallowance of the 100 percent supplemental assistance payments.

On July 1, 2011, Ms. Myers executed a Petition for Relief (Petition), which was filed with the FCHR on July 5, 2011. The Petition alleged that the Housing Authority violated the Act as amended. Specifically, Ms. Myers's complaint alleged that the Housing Authority failed to provide a "REASONABLE ACCOMODATION when it calculated my medical deductions for this year."

On July 6, 2011, the FCHR transferred the case to the Division. A Notice of Hearing dated July 14, 2011, scheduled

the hearing for August 2, 2011. Following one continuance, the hearing was held on September 12, 2011.

At the final hearing, Ms. Myers testified on her own behalf and called one witness, Bennie Howard (Mr. Howard). Ms. Myers offered one composite exhibit (consisting of eight pages), which was admitted into evidence over Respondent's objection.<sup>2/</sup> The Housing Authority called one witness: Paula Hoffman (Ms. Hoffman), director of the HUD housing choice voucher assistance, a/k/a Section 8 housing choice voucher benefits (Section 8 program), for the Housing Authority. Respondent offered three exhibits, which were admitted into evidence over Petitioner's objections.

There was no court reporter present at the hearing. Accordingly, there was no transcript filed.

Petitioner requested additional time in which to submit her proposed recommended order (PRO), and the parties were given until the close of business on Friday, October 7, 2011, to file any PROs. Both parties have timely submitted their PROs, and each has been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Ms. Myers testified she began her participation in the Sarasota community with the Sarasota Office of Housing and Community Development (development program) approximately 14 and

one-half years ago, because she was unable to join the Housing Authority, when she was living in Venice. Further she testified she has multiple health issues.

2. Based on an October 1, 2010, merger of the development program and the Housing Authority, Ms. Myers's participation in the Section 8 program came under the authority of the Housing Authority.

3. The Housing Authority is a public housing authority that administers the Section 8 program, within Sarasota County, Florida. The Section 8 program is to assist low-income families, the elderly, and the disabled to afford safe and sanitary housing in the private market. The Housing Authority is a municipal public housing authority, operated pursuant to chapter 421, Florida Statutes.

4. Under the Section 8 program, the Housing Authority uses funds, supplied by HUD, to pay a percentage of the monthly expenses for its participants, within guidelines that have been established.

5. Mr. Howard, a former director within HUD for the disabled community, testified that, when he was employed at HUD, and his office was contacted by Ms. Myers, he simply picked up the telephone and communicated with the appropriate housing authority, and the problems were resolved. However, Mr. Howard retired from HUD in 2007. Further he testified that he had not

reviewed Ms. Myers's file with the Housing Authority, nor had he reviewed the Section 8 program guidebook or the Housing Authority's administrative plan.

6. Mr. Howard did testify that the Housing Authority granted Ms. Myers's reasonable accommodation with respect to her annual or recertification housing inspection, in that the housing authority allowed Ms. Myers to have a telephone inspection of her rental unit.<sup>3/</sup>

7. Although Mr. Howard testified that he thought the Housing Authority failed when it did not allow all of Ms. Myers's medical expenses, he acknowledged that he lacked specific knowledge regarding Ms. Myers's case and the Housing Authority's programs and procedures. As such, Mr. Howard's testimony is not credible with respect to the specifics of Ms. Myers's case presentation.

8. Mr. Howard further testified that he did not know how the Housing Authority arrived at the disallowance of Ms. Myers's medical deduction, yet he professed a superior judgment to the Housing Authority or the current Miami HUD field office. This position makes his testimony less than forthright.

9. With the merger of the two programs (development program and the Housing Authority) on October 1, 2010, Ms. Myers was one of approximately 425 family units affected by the merger. Additionally, she was one of eight family units who

were found to actually live in another county, yet be serviced by the Housing Authority.

10. Since the Housing Authority took over, participation requirements are different from the development program, and all the participants were notified that their benefits would be reviewed at their recertification time.

11. Ms. Myers testified that she received a letter from the Housing Authority stating why there was a change in her assistance payments.

12. Ms. Myers testified that she has been paid approximately \$2,000 of her requested \$5,000 medical expenses. She believes she should be reimbursed for it all because she has medical sensitivities which are a lot different than other people's issues. Ms. Myers did testify she was not totally denied her medical reimbursement.

13. Ms. Hoffman, the director of the Section 8 program, confirmed that the development program and the Housing Authority merged on October 1, 2010. At the time of the merger, the Housing Authority had created an operational document that related to how it would determine payments or benefits to all its clients, including the 425 new families. Ms. Hoffman confirmed that the development program participants were allowed to maintain those program benefits until they reached their individual recertification cycle. She testified that, when each

participant came up for renewal, the Housing Authority had to review their benefits, including a review of all their income, assets, medical expenses, bank statements and related expenses.

14. The Housing Authority has an administrative plan, a guidebook as to how it handles participants. This administrative plan is approved by the Board of Commissioners.

15. Ms. Hoffman was involved in Ms. Myers's recertification, in that she reviewed the documentation and determined what was approvable and what was not approvable. At first, there were several items that were not approved, such as non-VOC paints and an air purifier. However, after discussions with the Miami HUD field office, the Housing Authority agreed to give Ms. Myers the non-VOC paints and an air purifier with filters as a one-time expense.

16. The Housing Authority utilized the approved calculation method to determine what prescriptions or non-prescription items could be paid. Although the Housing Authority initially denied all of Ms. Myers's requested supplemental assistance purchases, upon additional review, it determined to provide her a 25 percent credit for those purchases. The Housing Authority determined that all people on the program must have food; however, because she does pay more for organic foods, an allowance was made.

17. The Housing Authority simply applied the approved financial formula to Ms. Myers's submitted financial documents to reach the 25 percent credit for her items. The Housing Authority did not engage in any discriminatory practice to reach this determination.

18. On March 24, 2011, the Housing Authority notified Ms. Myers of its determination to grant her the reasonable accommodation with respect to the annual recertification of her rental unit inspection as well as the basis for the 25 percent allowance for items such as food, water, clothing, and bedding.

19. Ms. Hoffman credibly testified that the HUD field office was fully aware of the Housing Authority's decision and direction with this matter.

20. Although not listed in her July 1, 2011, Petition filed with the FCHR, Ms. Myers was reasonably accommodated by the Housing Authority with respect to her housing recertification.

#### CONCLUSIONS OF LAW

21. The Division has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011).

22. Ms. Myers has the burden of proving by a preponderance of the evidence that the Housing Authority violated the Act by discriminating against her.



23. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary, 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000).

24. The Act is codified in sections 760.20 through 760.37. Section 760.23 reads, in pertinent part:

Discrimination in the sale or rental of housing and other prohibited practices.--

\* \* \*

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

25. There is, in housing discrimination cases, a shifting of the burden of persuasion between a petitioner and a respondent. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Supreme Court established an analysis to be followed. Under that analysis, a petitioner has the initial burden to prove a prima facie case of discrimination. In order to establish a prima facie case, Ms. Myers must simply show that she is a member of a protected class (handicapped/disabled); the Housing Authority is aware of her protected class; and the Housing Authority took an action against her because of her

protected class. That prima facie case has not been established. See, e.g., Wells v. Burger King Corporation, 40 F. Supp. 2d 1366 (Dis. Ct. No. Dis. Fla. 1998).

26. As shown by the preponderance of the evidence, the Housing Authority merged with another housing program. As a result, the Housing Authority reviewed Ms. Myers's participation to determine whether or not any adjustments to her benefits were necessary to comply with the Housing Authority regulations.

27. There is no evidence in the record to support the allegation of discrimination based on Ms. Myers's disability. There is no evidence that the Housing Authority discriminated against any protected class. There is no persuasive evidence that Ms. Myers was discriminated against by the Housing Authority. Ms. Myers failed to prove her claim.<sup>4/</sup>

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief filed by Patricia Myers in its entirety.

DONE AND ENTERED this 18th day of October, 2011, in  
Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of October, 2011.

ENDNOTES

<sup>1/</sup> All references to Florida Statutes are to the 2010 version, unless otherwise noted.

<sup>2/</sup> Although Petitioner's Composite Exhibit 1 was admitted into evidence, the documents are hearsay. Pages 1 through 6 were not corroborated by the medical providers to support reliance thereon. Page 7 contained two receipts for items ordered in October 2010 and March 2011, respectively; however, there was no credible comparison of similar items provided. Page 8 contained four receipts from food stores; however, they appear to be after the date the Petition was filed.

<sup>3/</sup> Although hearsay, Mr. Howard's testimony was corroborated by Ms. Myers's testimony.

<sup>4/</sup> As previously stated, Ms. Myers did not plead discrimination in an actual housing issue, although her recertification for housing was discussed at length during the hearing. The Housing Authority did provide Ms. Myers with a reasonable accommodation with respect to her recertification for continued housing via the Section 8 program.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.