

INTERIM REPORT

March 2012

Barbara McDowell & Gerald S. Hartman Foundation

Legal Aid Justice Center – Excessive Utility Billing of Public Housing Residents

The essence of our project is to keep public housing affordable for lower-income households. As articulated in our grant application and award, the United States Housing Act directs that the resident's share of rent in most federally assisted housing programs be limited to no more than 30% of the household's adjusted monthly income. This tenant housing payment includes both rent and the additional costs for reasonable amounts of utilities that are not included in the rent. In an effort to ensure that residents' basic housing costs are appropriately limited, federal guidelines require local housing authorities to justify, document and update the schedule of utility allowances for their residential units. Tenants' usage is metered and they are billed for amounts over the allowance. It is generally expected that only a small minority of tenants will receive excess charges on a monthly basis. On behalf of a group of affected tenants, we are investigating noncompliance with these requirements by a local housing authority.

We have worked over the past six months to acquire and analyze historic data of actual utility consumption and billing by the housing authority in question. As a successful claim usually requires good facts as well as favorable law, our efforts have been directed toward building a solid factual foundation. We believe that we have that in the data.

For nearly nine years, the housing authority has billed residents and collected excess charges for electricity based on an alleged schedule from a study the housing authority cannot produce. The lack of allowances based on current data results in as many as 80% of the residents being assessed excess charges in some months during 2010 and 2011. The housing authority assessed the residents total surcharges for electricity of approximately \$54,100 in 2010 with an average of 72% of residents receiving surcharges during the year. The comparable amounts in 2012 are a total of approximately \$53,700 with an average of 74% of residents receiving surcharges. Extrapolating those surcharges over the last five years, reveals that residents have experienced illegal excess charges for electricity equal to approximately \$270,000 (5 x \$54,000).

While accumulating and analyzing the data, we have been drafting the Federal complaint. We have been recruiting individual named plaintiffs to fairly and fully represent that class of residents harmed by the excessive billing. We have indentified, interviewed and signed retainers with residents from each of the major public housing complexes under the housing authority including two larger complexes as well as smaller scattered sites and single family homes. In addition, we have secured a former tenant as a named plaintiff to represent that share of harmed residents.

In the third week in March we held a meeting with many of the named plaintiffs to review their roles in a class action suit such as their duty to the class, the need to respect one another, the need for confidentiality, the need to effectively control publicity and how they might approach settlement offers. It was a good meeting and we are very pleased with our plaintiffs as a class and as individuals.

We have drafted a demand letter, which we will deliver to counsel for the housing authority by the end of March. It outlines the legal basis for our claim and lists the remedies that we are seeking. It opens the door for negotiations but clearly states our intention to file the lawsuit in the absence of significant and continuing progress.

We greatly appreciate the Foundation's support for our work on behalf of these clients, and look forward to sharing our continuing progress in our final report.