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In this issue...

What is Public and Subsidized Housing? 98 Eligibility Criteria for

Public and Subsidized
Housing98

Calculation of Tenant's Rent Obligation 100 Conclusion 103

Special Features

Advocacy Programs for Housing Subsidy Issues99

Website Support on Subsidized Housing Issues 102

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KEYS TO EFFECTIVE BENEFITS PLANNING, ASSISTANCE AND OUTREACH

PUBLIC AND SUBSIDIZED HOUSING

Housing Subsidies and Work Incentives for Tenants with Disabilities

Like all Americans, persons with disabilities must have a place to live. For those who also have limited income, the cost of rental housing can be a major barrier to finding a suitable apartment that they can afford. This barrier is expanded for individuals who also need accessible housing based on the nature of their disability.

Public and subsidized housing programs have, during the past 50 years, grown to become a major source of affordable housing for individuals and families with limited income. These programs have also become a source of accessible housing for some individuals with disabilities. In many communities, the only rental units that can meet the needs of persons who are wheelchair users are those found in federally subsidized housing programs.

This article will discuss the public and subsidized housing programs available to persons with disabilities, with a focus on those sponsored by the U.S. Department of Housing and Urban Development (HUD). We will briefly summarize some of the key programs available, who runs them, who is eligible, and how the

tenant's share of rent is determined. We will then focus on some special rules that apply for the counting of income and resources of tenants or tenant family members with disabilities, with a specific emphasis on those "incentives" that encourage work activity and work goals for persons with disabilities. In particular, we will explain in detail the earned income disregard rules that were implemented in recent years for tenants in public housing and tenants with disabilities in four separate housing subsidy programs.

In this short article, we cannot possibly cover every issue involving public and subsidized housing programs. Nor will we be able to cover any number of other programs that provide housing opportunities for persons with disabilities, including state and locallysponsored programs, community residences (i.e., group homes), adult homes, and individual residential alternatives, just to name a few. As always, readers who have unanswered questions can call our state work incentives hotline, toll-free, at 1-888-224-3272. If the question goes beyond our expertise (and some housing issues will), we should be

for technical assistance in New York State Call
1-888-224-3272

OR CONTACT US BY EMAIL: nywisc@nls.org

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WHAT IS PUBLIC AND SUBSIDIZED HOUSING?

Federally subsidized housing programs began under the U.S. Housing Act of 1937. Over the years, the number of programs has greatly expanded. These HUD-sponsored programs take two forms: public housing and privately-owned housing that is federally subsidized. While both are forms of subsidized housing, when the term "subsidized housing" is used it is often referring to private subsidized housing as distinguished from public housing.

Public Housing

Historically, government-owned and managed public housing was the primary form of subsidized housing available to low-income families. Public housing is owned and managed by a local public housing authority (PHA). These units take many forms from high-rise apartment buildings to detached single-family dwellings, and may be located at one site or scattered over several sites. Federal law requires that public housing be accessible to individuals with disabilities making it an attractive option for low-income families that include a member with a severe physical or sensory disability.

Public housing may also be an attractive option for families who have a poor rent payment history due to financial circumstances. While such a history might otherwise preclude admission to public housing, a family member's willingness to increase family income by entering the workforce, or by enrolling in a training or employment program, may be considered by the housing authority to overcome this poor payment history. (Note: A tenant "family" generally includes families consisting of one individual.)

Subsidized Housing in the Private Market

Since the late 1960s, the focus has been to involve the private sector in low-income housing programs by providing subsidies for rentals in privately-developed, and/or privately-owned housing developments. In the last 40 years, a variety of federal housing programs have evolved to further this strategy of providing housing assistance to low-income families through the private housing market.

Project-based subsidy programs. These include, for example, the Section 8 program ("project-based Section 8"), Section 202 supportive housing for the elderly, Section 236 housing, and the Section 811 Supportive Housing Program. These programs are all HUD-sponsored, multi-family developments. The Section 811 program assists very low-income households that include persons with disabilities.

The Section 8 Housing Choice Voucher Pro-

gram. One of most popular programs to emerge is the Section 8 Housing Voucher Program, sometimes called "tenant-based" Section 8 because the tenant holds a voucher that can be used in the private housing market. The tenant-based rent subsided programs have been merged into one program called the Housing Choice Voucher Program. Because it replaces the longstanding Section 8 program, some call it the Section 8 Housing Choice Voucher Program; some still call it Section 8.

Under the Housing Choice Voucher Program, tenants can rent housing in the private market. Because assistance is tenant-based, the subsidy is considered portable and an eligible individual or family may use their voucher to lease a unit anywhere in the U.S. where a Housing Choice Voucher Program exists. The tenant pays a portion of the rent based on household income, and a public housing agency pays a portion of the rent directly to the private landlord. We mentioned earlier that public housing authorities are referred to as PHAs - - well, confusingly enough, Section 8 "public housing agencies" are also referred to as PHAs.

The PHA sets a "payment standard" based upon the HUD-calculated fair market rent for the area. Assisted families may rent units that cost more or less than the payment standard. If an assisted family rents a unit that costs more than the payment standard, the tenant will be responsible for paying their portion of the rent <u>and</u> the portion of the rent that exceeds the amount of the payment standard for the area.

The following is an example of a tenant family that must pay the portion of the rent that exceeds the payment standard for the area:

Candice and her one child receive a Housing Choice Voucher subsidy and live in a two-bedroom apartment that costs \$550. The payment standard for her community is \$500 per month, for this size apartment, and the family's countable income is \$600. Candice will owe \$230 as rent, based on 30 percent of her countable family income $(.30 \times $600 = $180)$ plus the amount by which her rent exceeds the local payment standard (\$50).

ELIGIBILITY CRITERIA FOR PUBLIC AND SUBSIDIZED HOUSING

While most of the core eligibility criteria will be uniform throughout the family of HUD-sponsored programs, there may be some differences from program to program. Readers should always check with the individual program for the most up-to-date rules governing the program.

VOLUME 4, ISSUE 1 Page 98

ADVOCACY PROGRAMS FOR HOUSING SUBSIDY ISSUES

Numerous advocacy programs exist, throughout the state, that may be able to assist tenants with disabilities when issues arise in a public or subsidized housing program. Keep in mind that agency priorities are set locally, meaning that some of these programs may offer more or less help than others:

Legal Services/Legal Aid: Offer free legal service to individuals with limited income. One will exist for each county or region of the state. For example, Neighborhood Legal Services, with its partner agencies, Niagara County Legal Aid and Oak Orchard Legal Services, covers a five-county area in Western N.Y.

Protection and Advocacy Programs: The state Commission on Quality of Care provides grants to legal services agencies, law schools, and other advocacy agencies to offer free legal services to individuals with disabilities. For example, one of these programs, Protection and Advocacy for Beneficiaries of Social Security, can assist SSI and SSDI beneficiaries if the non-enforcement of a housing rule presents a barrier to successful work.

Benefits Planning, Assistance and Outreach (BPA&O) Projects: The primary focus of these agencies is to assist SSI and SSDI beneficiaries, and the individuals who work with them, to understand and use the various work incentives that exist in SSI, SSDI, and other government programs, including housing subsidy programs. BPA&O staff will often assist beneficiaries, informally, to enforce their rights under the new earned income disregard rules that exist in some housing programs. However, if a hearing or litigation is needed to enforce the rule, the case would need to be referred to one of the programs mentioned above.

For information on the advocacy programs that exist in your area, call the State Work Incentives Support Center at 1-888-224-3272.

Income eligibility. This differs from program to program. An applicant's adjusted annual income must not exceed the income limit for the applicable HUD program. Income limitations are based upon the median income in the area where the program is located. For example, public housing applicants must be low-income families, defined by HUD as families with an income that is no greater than 80 percent of the area's median income. Housing Choice Voucher Program applicants must be very low-income families, with income not exceeding 50 percent of the area's median income.

Your local PHA can provide information about median income and income limits for your area. This information is also available from the HUD User website at *www.huduser.org* (select the "data sets" link). Applicants for federally-assisted and state-regulated developments must meet the federal program requirements. Household composition is a factor in determining income eligibility and in determining whether the household is eligible for a specific unit based upon occupancy standards and the number of bedrooms.

Tenant assets. There is no asset limit in HUD-assisted housing programs. However, annual income does include net income from family assets.

Citizenship status. Applicants for federally assisted housing must be citizens or non-citizens with eligible immigration status.

Disability-related preferences. Public housing authorities and agencies have a great deal of discretion in adopting local preferences. These preferences allow qualified candidates to move up on the waiting lists that often exist in a federally subsidized housing program. Some housing providers have chosen to give individuals with disabilities broader access to affordable housing through a disability-related preference. Others grant preferences to tenants who are currently working, or who are making the transition into the workforce. Advocates should be aware of local preferences that may assist tenants who are moving into the job market.

Disability-related preferences may also affect the assignment of accessible units in public housing and in project-based developments. Housing providers must first offer accessible units to current tenants who require the unit's special features. If no tenants meet this criteria, the provider must then offer the unit to the next qualified applicant on the waiting list with a family member who needs the special feature. Although a person does not need to meet the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) definitions of disability to qualify for these preferences, a person who receives either SSI or SSDI will automatically meet the disability criteria in HUD-sponsored programs. Persons whose disability is based solely on drug or alcohol dependence are not considered disabled for **HUD-sponsored programs.**

CALCULATION OF TENANT'S RENT OBLIGATION

Much of the core criteria for calculating rent obligations and determining what income is counted will be uniform throughout the family of HUD-sponsored programs. However, there will be some differences from program to program. Readers should always check with the individual program for the most upto-date rules governing the program, keeping in mind that these rules are so detailed that housing providers may not always be aware of all the special provisions that apply to persons with disabilities.

In general, families who receive federal housing assistance pay the <u>higher</u> of the following amounts as rent:

- 30 percent of the family's monthly adjusted income, or
- 10 percent of the family's monthly income, or
- If the family receives welfare assistance, the assistance that is specifically designated for housing.

Total tenant payment. The amount that the tenant family must pay, based upon the above criteria, is called the total tenant payment. For federally subsidized, project-based programs including public housing, the tenant rent is generally synonymous with total tenant payment. The calculation may be slightly different in the Housing Choice Voucher Program if the tenant rents a unit that rents for more than the payment standard as discussed above.

What counts as income? Because rent is based upon income, the way in which income is calculated and defined greatly impacts upon a family's monthly rental payment. Under federal regulations governing housing authorities and agencies, annual income is broadly defined as all amounts, monetary or not, which go to any family member (including temporarily absent family heads or spouses), unless an amount is excluded by law. Annual income also includes amounts derived during the year from assets belonging to any family member.

Income exclusions. Some of the mandatory income exclusions include:

- Wages of children, including foster children, who are under age 18
- Lump-sum additions to family assets: e.g., insurance payments under health and accident insurance, worker's compensation, and personal injury settlements
- Amounts received for or in reimbursement of the cost of medical expenses

- Income of a live-in aide
- Student financial assistance paid directly to the student or educational institution
- Amounts received under training programs funded by HUD
- Amounts disregarded for a limited time under SSI's Plan for Achieving Self-Support (PASS)
- Incremental earnings and benefits received by any family member in qualifying state or local employment training programs
- Amounts received by participants in publiclyassisted training programs for job-related expenses (e.g., special equipment, clothing, transportation, child care)
- Lump sum, retroactive SSI or Social Security benefits

Consider the following example, regarding a person who receives a lump sum of SSI benefits:

Joan is single and was recently awarded retroactive SSI benefits totaling \$20,000. Her monthly benefit will be \$587 and her first retroactive check is for \$7,044 (monthly benefit rate of \$587 x 12 months). Six months after receiving her first retroactive check, Joan receives a second check for \$7,044. She will receive a third check for \$5,912 six months after receiving the second check (making \$20,000 paid in full). Joan's monthly \$587 payment is counted as income. The retroactive payments are not.

Two other mandatory income exclusions can be important to individuals with disabilities. One covers the un-reimbursed medical expenses of elderly or "disabled families" (i.e., families whose head, spouse or sole member is a person with disabilities, or a family with two or more people with disabilities living together, or one or more persons with disabilities living with an aide). The other provision excludes un-reimbursed attendant care and auxiliary apparatus expenses for a family member with a disability to the extent necessary to enable any family member to be employed.

There are limitations that come into play with deductions for these special expenses. The first is that these deductions are equal only to the amount that the costs exceed three percent of the family's annual income. Another is that the deduction for attendant care and auxiliary apparatus expenses may not exceed the earned income received by family members 18 years of age and older, who are able to work because of such care or auxiliary apparatus. Auxiliary

VOLUME 4, ISSUE 1 Page 100

apparatus include wheelchairs, ramps, adaptations to vehicles, or special equipment to allow a blind person to read or type, but only if these items are directly related to enabling the individual with a disability or other family member to work. Allowable medical expenses include such items as transportation to treatment, eyeglasses, hearing aides, and monthly payments on accumulated medical bills.

The following example illustrates use of this income exclusion for an individual who is working:

Gary uses a specially equipped van to get to work. The annual payments on the van (in excess of payments on a car without special equipment) total \$3,000. Gary and his family also have \$1,200 in medical expenses. The family's annual income is \$20,000. Gary earns \$12,000 at his job. Three percent of the family's annual income is \$600. The family's combined disability and medical expenses exceed three percent of income and may be deducted. Gary's family is entitled to a \$3,600 deduction for their combined medical expenses that represents the amount by which the sum of both the disability and medical expenses (\$3,000 + \$1,200 = \$4,200) exceeds three percent of annual income (\$4,200 (expenses) -\$600 (three percent of income) = \$3,600 annual deduction).

NOTE: If we assume the total tenant payment for Gary's family is based on 30 percent of their countable income, these deductions will reduce their monthly rental obligation by about \$90 (\$300 monthly deduction x .30).

Additional earned income exclusions. Only public housing programs (<u>not</u> project-based or Housing Choice Voucher programs) may exercise broad discretion in adopting additional exclusions for earned income. These income exclusions may include amounts necessary to replace benefits lost due to employment (e.g., medical insurance or other medical costs), amounts paid to individuals outside the family (e.g., child support or alimony), or costs incurred in order to go to work (e.g., the cost of special tools, equipment, or clothing).

In addition to the mandatory income exclusions already mentioned, the annual income of federally subsidized tenant families is further adjusted by the following mandatory income deductions: \$480 for each dependent, \$400 for elderly families, and \$400 for disabled families. Public housing authorities may authorize additional deductions from annual income. Other HUD programs must calculate additional deductions only as permitted by applicable program regulations.

Special Earned Income Disregards

During recent years, some important work incentives have been introduced into public housing programs and four other subsidized housing programs. In public housing, these earned income exclusions apply to all tenant families. In the other four programs, they apply only to tenants with disabilities. The four additional programs include the Housing Choice Voucher Program, the HOME Investment Partnerships Program, the HOPWA (or Housing Opportunities for Persons with Aids) Program, and the Supportive Housing Program.

When a tenant family is entitled to the disregard. Within the tenant family, the person with increased income must meet the criteria for being unemployed or underemployed (see below). The disregard is also available for increased employment income if the family received welfare benefits (including such benefits as one-time payments and transportation assistance) during the prior six months or if the family income increased during a family member's participation in a self-sufficiency or job training program.

How these special rules affect the counting of earned income. If the tenant meets the criteria specified, housing subsidy providers, in the programs described above, must disregard 100 percent of any increased employment income for a period of 12 months from the date that a member of an eligible family is first employed or from the date that the family's income increases. In addition, for the second period of 12 months following employment or increased income, the PHA or housing provider is required to exclude 50 percent of any increase in employment-related income. The disallowance of increased income is limited to any 24 months (and they need not be consecutive months) within a 48-month period. An individual is entitled to this disregard only once in a lifetime.

This example illustrates how the earned income disregard can be applied:

Maria and her two children receive assistance under the Housing Choice Voucher Program. Maria is disabled and gets SSI benefits; her children receive welfare benefits. Maria, who has not worked during the previous 12 months, enters a job-training program and the monthly household income increases by a total of \$562. The \$562 increase in overall income will be disregarded and the household's share of the total rent remains the same. Maria remains in the program for 3 months. When the training program ends, the household's monthly income returns to the original level. Maria has used 3 months of her 12-month, 100 percent disregard. The earned income disregard at 100 per-

cent applies for a full 12-month period during which a tenant is receiving wages.

If employment is interrupted as in this example, the disregard is tolled or put on hold until the tenant is employed again. Tenants (i.e., all qualified household members, whether they are technically tenants or occupants) have 48 months total in which to use the earned income disregard. In Maria's case, let's say after completing the job-training program, she looks for work for 2 months, then finds a job and her total monthly household income increases by \$974. This \$974 increase in income will be disregarded for 9 months (making 12 months in total). At the end of 9 months, 50 percent of the increase, or \$487 will be disregarded for 12 more months, and the household's rent will be recalculated based upon this increased household income. (Keep in mind that the increase in income from wages will be offset, in part, by a reduction in her SSI benefits.)

Specific criteria is used to determine whether a family is eligible for an earned income disregard, based on 12 months of unemployment or underemployment. A tenant family is eligible for the disregard if the family income increases as a result of employ-

ment of a family member who was previously unemployed (defined as earning no more than would be received for working 10 hours per week for 50 weeks at the established minimum wage in the 12 months previous to employment) for one or more years.

Reporting changes in income. Most subsidized housing programs update income information about once per year. But what about income changes that occur in between reporting periods? What impact do interim reporting requirements have on the earned income disregard?

Interim income reporting requirements can have a big impact on how newly generated earned income affects a tenant's rental obligation. The various housing subsidy programs have different requirements about when a tenant has to report changes in income. For those consumers who are entitled to the earned income disregard, interim reporting requirements play less of a role. Consider the following example involving Roberta:

Roberta receives SSI payments totaling \$587 per month. Pursuant to her Housing Choice Voucher Program lease agreement, Roberta is not obligated to report increased income until her annual re-certification in December. In

WEBSITE SUPPORT ON SUBSIDIZED HOUSING ISSUES

The Greater Upstate Law Project: www.gulpny.org

- located in Rochester, N.Y., provides a wealth of information for housing advocates
- select "housing" at the GULP home page, then use their menu and links
- the "Housing Gateway" section provides numerous links to state-specific and national resources

The Coalition for Supportive Housing: www.csh.org

- a national organization, with a primary office in New York City
- the site provides a wealth of online resources and tools, including a new Funding Resources section; an expanded Resource Library; timely and in-depth Policy Updates; and a Calendar of Events for CSH's state and national programs.

U.S. Department of Housing and Urban Development: www.hud.gov

- HUD's national website
- links to detailed information on all public and subsidized housing programs
- links to information on all other HUD-sponsored programs and activities
- links to other useful housing information, including information on the Fair Housing Act

HUD User: www.huduser.org

- supported by the research arm of the federal Office of Housing and Urban Development
- use the "data sets" link to find information about median incomes and income limits in HUD-sponsored programs in your area

VOLUME 4, ISSUE 1 Page 102

July 2004 Roberta begins to work earning \$1,085 per month and her SSI check is reduced to \$87 per month. Without the earned income disregard, Roberta's rent would have increased in January 2005. However, because Roberta benefitted in January from not having to report her increased income for six months, she is entitled only to six more months of the 100 percent disregard.

Beginning in July 2005 and for 12 months thereafter, Roberta's rent will be calculated based upon a 50 percent disregard. When increases in earned income are not reported by a tenant the disallowance takes effect retroactively to the date the new rent should have taken effect. The tenant should not be penalized for the failure to timely report the increase in employment income as long as the tenant was eligible for the earned income disregard. This is due to the fact that the household would experience no increase in rent, at least for the first 12 months, as a result of the increase in earned income because of the earned income disregard.

Individual Savings Accounts

As an alternative to earned income disregards, public housing authorities may, at their option, also offer Individual Savings Accounts for those tenant families who pay an income-based rent. At the option of the tenant family, the public housing authority will deposit the total amount that would have been calculated as increased tenant rent, resulting from the increased employment income, into an interest-bearing savings account. The tenant family may only withdraw the monies deposited in the account for:

- Purchasing a home
- Paying the education costs of a family member
- Moving from public housing
- Paying other expenses approved by the housing authority that promote economic self-sufficiency

If the family moves from public housing, the housing authority must pay the family any balance in the account, minus any amounts owed to the housing authority.

The Family Self-Sufficiency Program

The Family Self-Sufficiency (FSS) program is a special work incentive designed to promote employment and to increase savings for families receiving Section 8 Housing Choice Voucher Program assistance or living in public housing. PHAs that received HUD funds for additional units between 1993 and 1998 are required to maintain FSS programs.

FSS program participants enter into a service plan and a contract that measure the family's progress in achieving self-sufficiency. Self-sufficiency is defined as independence from housing subsidies and welfare cash assistance. The head of the family is required to agree to seek and maintain suitable employment through the term of the FSS contract. Successful completion of the FSS program occurs when all the family's agreed upon self-sufficiency objectives are met or when 30 percent of the family's adjusted monthly income equals or exceeds the fair market rent for the family's unit.

The two main components of an FSS program are case management and the FSS escrow account. Each family in the FSS program is provided with a case manager. Participating families are provided with opportunities for education, job training, and counseling, together with services such as childcare and transportation assistance.

Under a fairly complicated set of rules, the money that goes into the FSS escrow account is largely dependant on the extra earned income generated by the tenant family member who starts work or increases the amount of work they are performing. For more details on this program, see *Supporting the Employment Outcomes of SSI and SSDI Beneficiaries in Section 8 or Subsidized Housing*, available on Cornell University's website at: www.ilr.cornell.edu/ped/dep/PP_8.txt (text) or: www.ilr.cornell.edu/ped/dep/PP_8.pdf.

CONCLUSION

This article has provided the reader with a brief overview of public and subsidized housing programs available to low-income individuals with disabilities. We have provided general guidance on the basic eligibility rules and rules for counting and excluding income, with a special emphasis on the earned income disregard rules related to persons with disabilities in certain programs. If you have questions concerning this article, please call the State Work Incentives Support Center at 1-888-224-3272. A special thank you to attorney, Grace Andriette of Neighborhood Legal Services for her contribution to this article.

For Technical Assistance in New York State Call

1-888-224-3272

The NY State Work Incentives Support Center will provide statewide services, including: training through traditional means and through use of the latest technology for distance learning; a toll-free technical assistance line, 1-888-224-3272 (English and Spanish); and a quarterly newsletter, *The Benefits Planner*. To subscribe to the Center's listsery, send your name and email address to tpg3@cornell.edu. To request a print copy of this newsletter, contact the toll-free number above.

In Our Upcoming Issues ...

♦ The Social Security Protection Act of 2004 -- How it will affect Social Security and SSI Recipients.

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Welcome to *The Benefits Planner*, a Quarterly Newsletter of the NY State Work Incentives Support Center

This newsletter will provide valuable information on how work for persons with disabilities affects government benefits, with an emphasis on the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) work incentives. Each newsletter will contribute to an ongoing dialogue on topics related to benefits and work. Back issues will appear on the Cornell University website, www.ilr.cornell.edu/ped and on the Social Security section of the Neighborhood Legal Services website, www.nls.org.

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