



L E G A L

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I N C O R P O R A T E D

TESTIMONY

“Oversight: Supportive Housing in New York City”

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL’S
COMMITTEE ON HOUSING AND BUILDINGS, COMMITTEE ON
GENERAL WELFARE

PRESENTED BY:

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I. Introduction

MFY Legal Services, Inc. (“MFY”) envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 10,000 poor and working poor New Yorkers each year benefitting over 20,000 people.

MFY’s Mental Health Law Project and Adult Home Advocacy Project address the needs of people with mental illness in the five boroughs of New York City. The Mental Health Law Project works in partnership with inpatient and outpatient behavioral health providers throughout the city and seeks to prevent homelessness, stabilize income, support employment, and promote recovery for adults living with mental illness. Last year, the Mental Health Law Project served over 2,000 clients with mental illness. The Adult Home Advocacy Project advocates for the rights of adult home residents and works to end the unnecessary segregation of people with psychiatric disabilities in large adult homes.

This testimony is being submitted to comment upon the Committee on Housing and Building’s Resolution No. 504 calling upon the Governor and Mayor to approve a fourth “New York/New York Agreement” to create permanent supportive housing. Resolution No. 504 describes the current shortage of supportive housing to house people with mental illness and the ongoing need for additional supportive housing in New York City. We appreciate the Committee’s work on this resolution and submit this testimony to highlight the potential impact for our client population.

II. Additional Supportive Housing is Necessary in New York City

A. There is a severe lack of affordable housing for people with mental illness and other disabilities

MFY supports the expansion of supportive housing for people with mental illness in New York City. The current supply of housing simply does not meet the needs of persons with mental illness living in the city. Federally subsidized public housing continues to be extremely limited and the cost of private apartments remains unaffordable for those relying on public benefits for income.

People with disabilities are more than twice as likely to live in poverty than people without disabilities. In New York, the poverty rate for people with disabilities is 28.6%.¹ Many New

¹ Press Release, Gov. Andrew M. Cuomo, *Governor Cuomo Signs Executive Order Establishing Commission to Create Employment First Policy for New York* (September 17, 2014) available at <http://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-establishing-commission-create-employment-first-policy-new>.

Yorkers with disabilities rely solely on public assistance or Supplemental Security Income (SSI) to meet their expenses. Public assistance provides only a \$215 monthly allowance for shelter, an amount that has not increased since 1990 and is grossly inadequate.² SSI beneficiaries receive \$820 monthly, which includes an \$87 supplement paid by New York State.³ A 2012 report found that an SSI recipient in the New York City area would have to pay 152% of her income for the average efficiency apartment.⁴

People with disabilities are employed at lower rates than other New Yorkers, but even full-time work at minimum wage only pays approximately \$1,400 monthly. With rents increasing faster than wages, many people with disabilities, even those who are employed, cannot afford the rising New York City rents.⁵

B. Supportive Housing is a critical resource for individuals with mental illness and other vulnerable populations

The creation of additional supportive units will help more vulnerable New Yorkers be able to afford safe, stable housing. People with mental illness benefit most from housing that is integrated in the community, rather than in shelters or institutional settings. Likewise, providing stable housing reduces hospitalizations, incarcerations, and unnecessary institutionalization. Studies examining the cost effectiveness of supportive housing have found that public investment in supportive housing results in long-term savings.⁶ Funding of additional supportive housing improves the lives of individuals living with mental illness, and ultimately saves taxpayer money. Our experience has shown that stable housing is crucial to positive outcomes for people living with mental illness. Two other common options for people with mental illness—adult homes and three-quarter houses—are not conducive to recovery.

1. Adult Homes

Many individuals with serious mental illness are unnecessarily institutionalized in adult homes. Residents often enter adult homes from nursing homes or hospitals and find themselves unable to leave. The adult home system has been criticized for being abusive, discriminatory, and expensive – more expensive than supportive housing. Many adult homes in New York City have hundreds of residents, almost all of whom are people with mental illness. Adult homes often have restrictive environments where residents receive services they do not want or need. Residents of adult homes must abide by regimented schedules for eating, taking medication, and

² *Jiggetts v. Grinker*, 75 N.Y.2d 411, 416 (1990).

³ New York State Office of Temporary and Disability Assistance, *SSI and SSP Benefit Levels Chart effective January 1, 2015* (October 30, 2014) available at <http://otda.ny.gov/policy/directives/2014/INF/14-INF-12-Attachment-1.pdf>.

⁴ Technical Assistance Collaborative Inc., *Priced Out in 2012: The Housing Crisis for People with Disabilities* (May 2013), p. 30.

⁵ NYU Furman Center, *NYU Furman Center & Capital One Release Affordable Rental Housing Landscape Illustrating NYC Rental Housing Trends* (April 24, 2014) available at http://furmancenter.org/files/pr/NYUFurmanCenter_NYCRentalLandscape_23APR2014.pdf.

⁶ Dennis Culhane et al., *Public Service Reductions Associated with Placement of Homeless Persons with Severe Mental Illness in Supported Housing*, *Housing Policy Debate*, Vol. 13, Issue 1 (2002) available at http://repository.upenn.edu/cgi/viewcontent.cgi?article=1067&context=spp_papers.

other aspects of daily life. They are subject to curfews and have little to no private space or freedom. Not only does this system create unnecessary expenses, it also infringes upon the rights of those residents who wish to, and would be able to, live independently.

MFY's advocacy and litigation helped bring widespread public attention to the plight of adult home residents and the lack of viable community-based housing and supports for people exiting New York State's psychiatric hospitals. Over the years, numerous reports have raised questions about overbilling, unnecessary medical services, and Medicaid abuse in adult homes.⁷

On July 23, 2013, three adult home residents, represented by MFY and our co-counsel, filed a class-action lawsuit on behalf of themselves and similarly situated residents against New York State. The U.S. Department of Justice filed a similar lawsuit at the same time. Both cases alleged that New York State violated the Americans with Disabilities Act (ADA) by failing to give adult home residents an opportunity to live in the most integrated setting appropriate to their needs. The cases were settled, ensuring that thousands of residents of large adult homes will have the opportunity to live in their own homes with the services they need to succeed and be part of their communities.

During the fairness hearing to determine the adequacy of the settlement, one of the plaintiffs, Ilona Spiegel, described in a poem what the move from an adult home to supported housing meant to her. It ended with this testimonial for supported housing:

This place is my home, my haven
my shrine
It's special most of all this
Place is mine!

On March 17, 2014, the Court approved the settlement. As a result, qualified residents with serious mental illness in 23 New York City adult homes will have the opportunity to move to supported housing if they want to move. The State will fund at least 2,000 units of supported housing for adult home residents and more if needed. Every adult home resident who qualifies will have the choice to move to community housing within five years.

This settlement followed years of litigation in a related case, *Disability Advocates, Inc. v. Paterson*. In 2009, after a trial, a federal court held that New York's practice of segregating thousands of people with mental illness in large adult homes is discrimination in violation of the ADA. The court emphasized that "Adult Homes bear little resemblance to the homes in which people without disabilities normally live."⁸ In contrast, supported housing provides a "home" where "people with mental illness live much like their peers who do not have disabilities."⁹ The

⁷ See, e.g., *Disability Advocates, Inc. v. Paterson*, 653 F.Supp.2d 184 (E.D.N.Y. 2009); New York State Commission on Quality of Care and Advocacy for Persons with Mental Disabilities (CQC), *A Review of Assisted Living Programs in "Impacted" Adult Homes* (2007); CQC, *Health Care in Impacted Adult Homes: A Survey* (2006); CQC, *Adult Homes Serving Residents with Mental Illness: A Study on Layering of Services* (2002); The New York Times, *Broken Homes* (April 28-30, 2002).

⁸ *Disability Advocates, Inc.*, 653 F.Supp.2d at 200.

⁹ *Id.* at 219 ("Scattered site supported housing is a "normalized" residential setting. In other words, it is a setting much like where individuals without disabilities live. It is a person's home.").

court concluded that “supported housing is a far more integrated setting than an Adult Home.” One witness, who moved into supported housing after living in an adult home for sixteen years, summarized the difference between the two settings: “I can limit what I eat or I can expand my choices. I can have as much salad as I like. I can have as little grease as I like. I can eat foods that were not permitted in the home. . . . I do my own shopping. I do my own food selection. It's free. It's freedom for me. It's freedom. It's being able to actually live like a human being again.”

2. Three-Quarter Houses

In addition, the lack of affordable housing options has led to an underground industry of unlicensed houses that hold themselves out as transitional residences for individuals coming out of prisons, jails, and substance abuse programs.¹⁰ These so-called “three-quarter houses” are usually one of the few options available for thousands of single adults who rely on the \$215 HRA shelter allowance to pay for their housing. The houses tend to be drastically overcrowded, with multiple housing code violations. The houses are rife with harassment and abuse, including illegal lockouts and mandated substance abuse treatment programs even for residents who do not need treatment.¹¹ There appears to be a financial relationship between the houses and the outpatient treatment programs, which bill Medicaid. A tenant who fails to attend a program or who successfully completes it is unlawfully evicted with no notice and no court process, enabling the house to bring in a new Medicaid-eligible tenant.¹² This revolving door creates instability and disruption in the lives of individuals attempting to rebuild their lives following incarceration, substance abuse treatment, and homelessness.

MFY’s Three-Quarter House Project, which began in September 2009, provides advice, counsel, and representation to residents on housing and related legal matters and conducts workshops for residents on their rights. Our work to defend residents of three-quarter houses and end abusive practices was recognized in a major recent exposé in the New York Times on May 31, 2015. The article exposed how operators exploit tenants, get kickbacks from treatment providers, and force tenants to “relapse” and re-enter treatment in order to keep their room. Following the publication of this article, Mayor de Blasio appointed a multi-agency taskforce to conduct emergency inspections of three-quarter houses and allocated \$5 million to taskforce efforts.

People like three-quarter house residents with criminal justice histories have been ignored in every supportive housing agreement to date. As a result, very few supportive housing units in

¹⁰ Prisoner Reentry Institute, John Jay College of Criminal Justice, Three Quarter Houses: The View from the Inside (hereinafter “PRI Report”) 5-6 (October 2013), available at <http://johnjayresearch.org/pri/files/2013/10/PRI-TQH-Report.pdf>. For background on policies that fed the growth of three quarter houses, see Coalition for the Homeless, Warehousing the Homeless: The Rising Use of Illegal Boarding Houses to Shelter Homeless New Yorkers (hereinafter “Warehousing the Homeless”) 5-7 (January 2008), available at http://coalhome.3cdn.net/ddc8dd543ded03ff12_lpm6bh1cr.pdf.

¹¹ Jake Bernstein, Inside a New York Drug Clinic, Allegations of Kickbacks and Shoddy Care, ProPublica (September 9, 2013) (detailing complaints by former staff at an outpatient program of payments to a three quarter house operator); PRI report supra note 10 at 25-26.

¹² Jake Bernstein, Inside a New York Drug Clinic, Allegations of Kickbacks and Shoddy Care, ProPublica (September 9, 2013) (detailing complaints by former staff at an outpatient program of payments to a three quarter house operator); PRI report supra note 10 at 25-26.

New York City have been targeted at this population, which has forced many into these three-quarter houses. The need is growing, as the proportion of inmates diagnosed with mental illness has climbed dramatically over the last decade who have no housing to go to upon discharge. In Rikers, for example, 40 percent of inmates have mental illness.¹³ Mayor de Blasio and Governor Andrew Cuomo should not only finalize a new City-State supportive housing agreement, but should also dedicate 15% of new supportive housing resources to individuals and families with criminal justice histories. New York City should also create a supportive housing pilot program for 18-25 year olds with juvenile justice or criminal justice involvement.

III. The Supportive Housing Program Should Be Improved

A. The application process for supportive housing should be reformed

In addition to funding more supportive housing, MFY supports improved access to the application process for individuals with disabilities. Presently, the process for applying to supportive housing is inaccessible for many consumers. The supportive housing application, called the HRA 2010E, is a computerized form that must be filled out by someone who has received special training. Even if an individual is connected to services, his or her service providers have often not received training on how to fill out the application. By denying the actual consumer a way to submit the application by him or herself, this process inserts a third-party as gatekeeper to the consumer's autonomy, choices, and security.

Additionally, after six months, the HRA 2010E approval and referrals expire. This means that the applicant must start the process all over again if any of the documentation or the application itself is over six months old. We have seen cases where a person was approved for housing, was accepted to a particular supportive housing program from a long waiting list, and then had to re-submit all of their documentation because the six month time frame expired. The process should be reformed to allow for flexibility, case-by-case determinations regarding whether additional documentation is needed from an applicant, and provision of assistance in obtaining that documentation, if needed.

B. The supportive housing program should expand its targeted priority populations

If an individual is not a member of a target population, he or she may be unable to access supportive housing. The program currently targets a number of populations, including chronically homeless individuals suffering mental illness or substance abuse problems. However, people with a mental illness facing imminent homelessness are not prioritized under the current system. As a result, a person facing eviction must often actually become homeless in order to access supportive housing.

Requiring someone to enter a shelter before accessing supportive housing makes little sense, considering the physical, emotional, and financial toll of entering the shelter system. The supportive housing program should expand its priority population to include individuals facing

¹³ Winerip, Michael and Schwartz, Michael. April 10, 2015. *For Mentally Ill Inmates at Rikers Island, a Cycle of Jail and Hospitals*. The New York Times.

eviction or who are exiting hospitals or institutions. And, as noted above, the new City-State supportive housing agreement should dedicate 15% of new supportive housing resources to individuals and families with criminal justice histories.

C. The subsidy for supported housing must be increased

The most cost-effective and integrated form of supportive housing is supported housing. Supported housing is an apartment in the community that comes with rent assistance and support services. Eligible individuals can live alone or with roommates. Support services can include visits from case managers and help with moving, health care, shopping, cleaning, medication, or personal care. Almost 20,000 individuals with mental illness are served in supported housing statewide,¹⁴ and over 11,000 in New York City alone.

The current New York City scattered-site supported housing rate is \$15,043 per client per year. This amount includes not only the rent subsidy, but also the housing-related case management that a resident needs. Unfortunately, given the increases in rent in New York City, this amount is no longer adequate.

D. Leases for supported housing should be in the resident's name

Residents of supported housing live much like other tenants. They live in their own apartments with privacy and choice of activities. They tend to these and other daily needs to the degree they are able, with supportive services offered to them by case managers and others as needed. These programs are designed to foster independence and recovery and to enable individuals to become as self-sufficient as possible.

However, the supported housing program is flawed in at least one respect—the tenant of record is often the supported housing provider instead of the person with mental illness. Although the Supported Housing Guidelines recommend that the lease be in the tenant's name, it is not required.¹⁵ Based on our experience representing many residents of supported housing, the lease is often in the supported housing provider's name. This leads to a number of practical problems, including making it more difficult for the person with mental illness to have the stability of staying in their home for the long-term. It also can lead to landlords attempting to subvert the goals of the rent stabilization laws and the unnecessary loss of affordable housing because a landlord can refuse to renew a lease with a corporate entity, thereby allowing the landlord to turn over the apartment every two years. Most importantly, it means that contrary to the program's design, supported housing residents are often not “afforded the same rights and responsibilities as other tenants.”¹⁶

¹⁴ Office of Mental Health, Residential Program Indicators Report, *available at* http://bi.omh.ny.gov/adult_housing/reports?p=rpi&g=Statewide&y=2013&q=Dec+31.

¹⁵ Office of Mental Health, Supported Housing Guidelines 7 (2015), *available at* https://www.omh.ny.gov/omhweb/adults/SupportedHousing/supported_housing_guidelines.pdf (“All recipients should be granted a lease for Supported Housing, preferably directly between the recipient and the landlord. If a direct lease is not used, the Provider should enter in a sublease with the recipient.”).

¹⁶ *Id.* at 9.

IV. Recommendations

MFY strongly supports the creation of at least 30,000 additional supportive housing units in New York City over the next ten years. The current stock of affordable housing for people with mental illness and disabilities is simply insufficient, and funding of additional units is crucial for our clients to avoid homelessness and unnecessary institutionalization. In addition, as described above, MFY recommends several improvements to the supportive housing program.

V. Conclusion

We thank the Committee on Housing and Buildings and the Committee on General Welfare for holding this hearing and considering our testimony. The shortage of affordable housing in this city is a serious problem affecting the most vulnerable of New Yorkers. MFY remains committed to improving housing for people with mental health needs and encourage the Committees' continued attention to this important issue.