

Working with Unhoused Clients: Common Issues, Emergency Shelter, and Encampments

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Outline

Homelessness Basics and Legal Framework

Emergency Shelter

Background

Shelter evictions

Due process

Landlord/tenant law

Following the money

Disability accommodation

Encampments



Definitions of Homelessness

HUD – qualification for most supportive housing

- * Emergency shelter or transitional housing

- * Sleeping in place not meant for habitation

 - Encampment

 - Car, stairwell, backyard tent, riding train

- * Fleeing domestic violence (vague definition)

Minnesota and U.S. Department of Education (McKinney-Vento)

- * All of the above plus:

 - Doubled up/couch-hopping (most common form of homelessness)

 - Hotel/motel

Homeless Subpopulations

- Single Adults
 - Campers
- Families with Children
- Unaccompanied Youth

Common Issues for Unhoused Clients Seeking Legal Assistance

- No statutory or regulatory code addressing homelessness or shelter
- Difficulties maintaining communication
 - Phone / text – no phone, not always on, not charged, needs WiFi
 - Email – limited access but helpful for exchanging documents
 - Facebook / social media – useful tool, but set boundaries
 - Messages with third parties – unreliable but sometimes the only choice
 - Mail – least reliable, avoid if you can
- Lost property and documents – ID, proof for case (i.e., medical records)
- Fear of Child Protection – unwillingness to disclose circumstances

Litigation Hurdles

Mootness – client obtains housing or gets into another shelter

- Collateral consequences
- Capable of repetition but evading review
- Functionally justiciable question of statewide significance
- Voluntary cessation

Losing touch with the client over the course of protracted litigation

Stacked shelter evictions

- Client evicted >> placed in another shelter pending appeal >> client evicted from that shelter >> ???
- Cases can quickly become procedurally and factually complicated

Homelessness and Mental Health

The dynamic: Musical chairs

Two-thirds report a mental health condition, *but...*

Primarily depression, anxiety, PTSD

Homelessness exacerbates symptoms

Treatment lapses

Difficult obtaining records, e.g. to request disability accommodation

HUD Requirements

Continuum of Care

- Regional body that allocates HUD funding to shelters and supportive housing

PIT (Point-In-Time) Count

- Annual count (on one night in January) of (1) all people in shelter and (2) any unsheltered who can be found
- Used to allocate HUD funding

HMIS (Homeless Management Information System)

- 14-page questionnaire for anyone who comes in contact with homeless response system

Definition of household

- Any group of people that presents together seeking shelter

Emergency Shelter



Types of Shelters

- Overnight only (line up in p.m., leave in a.m.) - common for singles
- 24 hour – the norm for families
 - But Ramsey has had a church overnight/day center model
- Hotel – adds confusion about what law applies

Getting Into Shelter

- Varies by jurisdiction, population, and type of shelter
- Families: Placement handled by central team
 - Hennepin: Shelter-all policy with residency requirement
 - Ramsey, Dakota: Waiting list
 - Washington, domestic violence system: First come, first-served
- Singles: Ramsey has a call-in nightly reservation system (previously lottery)

Barriers to Accessing Shelter

- Pets (service and support animals)
- Partners
- Possessions
- Work Schedules
- Drug Use
- History with particular providers

Staying in Shelter

- Shelter Rules
 - Curfew
 - Guests
 - Keeping kids under control
 - Manifestations of mental health symptoms
- Savings programs
- Length of stay limits
- Disability accommodations (more on this later)

Getting Into Housing from Shelter

Three types of HUD-funded supportive housing (24 C.F.R. parts 576 and 578):

- * Rapid rehousing: Private market housing with time-limited subsidy and social service support
- * Transitional housing: Time-limited income-based housing (currently disfavored)
- * Permanent supportive housing: Income-based with social service supports; usually reserved for "chronic" or "long-term" homeless (length of time plus disability)

Must meet HUD homeless definition on night before entry

Coordinated entry:

- * Jurisdiction must use screening tool and common waiting list

When can a shelter evict a resident?

1. Due process rights
2. When is a shelter a landlord?
3. Following the money
 1. Emergency Solutions Grant
 2. MFIP Consolidated Fund
 3. Housing Support
4. Disability and reasonable accommodation



Basic Elements of Due Process

Any time a **state actor** (i.e., government agency, or organization acting on behalf of government agency) deprives an individual of a **protected property interest** they must provide the individual:

- 1) Written notice “reasonably calculated to inform” recipient of:
 - Action to be taken
 - Reason(s) for action
 - Effective date of action
 - How to appeal
- 2) Opportunity to be heard “at a meaningful time in a meaningful manner”
 - Elements listed in *Goldberg v. Kelly*

Due process considerations

Goldberg v. Kelly, not *Mathews v. Eldridge*

- Basic survival benefit

Federal or state claim?

- Minnesota due process protections identical to federal
- *But* federal claims can be removed to federal court
- 8th Circuit: Minnesota has no private right of action for due process claims
 - MN courts have never held this, and have repeatedly decided due process claims brought as affirmative cases

Protected property interest

Washington Legal Clinic for the Homeless v. Barry, 107 F.3d 32 (D.C. Cir. 1997)

- Statutes or regulations providing “explicitly mandatory language,’ i.e., specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow”
- Held: No protected property interest for families *seeking* shelter where city administrators had complete discretion over allocation of insufficient shelter beds
- Does not address termination of shelter already granted

Cf. terminations of other benefits administered through waiting list—Section 8, child care assistance

When is private conduct “state action?”

“only by sifting facts and weighing circumstances”

- MN Supreme Court

1. Sufficiently close “nexus” between government body and challenged activity
2. “Symbiotic” relationship between government body and private contractor so that “power, property and prestige” of government underlie private action
3. Private entity performing traditional exclusive government function

State action?

Private nonprofit shelter contracts with single county

Shelter obtains residents solely through placement by that county

Funding (excluding in-kind):

- 60% MFIP Consolidated Fund and Housing Support through county

- 10% county levy funds

- 20% resident payments through Housing Support

- 10% corporate and private donations

When resident evicted, county ends Housing Support – “you do not reside in a facility”

County does not independently review terminations/evictions

Where can a resident be heard?

1. MN DHS Fair Hearing
2. Housing court if “residential tenant”
3. Both?
4. Other?

Hearing Rights

Is emergency shelter public assistance or a “program of social services granted by a county agency”?

- Includes entity under contract to administer programs under DHS supervision
- If yes, DHS Fair Hearing rights clearly attach under Minnesota law

Side issue: Right to shelter pending appeal

- If shelter is considered a “welfare benefit” *a la* cash assistance, medical assistance, food assistance then *Goldberg v. Kelly* will apply and a pre-termination hearing is required

When is a shelter a landlord?

"Residential tenant" means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, *that requires the payment of money or exchange of services*, [and] all other regular occupants of that dwelling unit[.]

- Minn. Stat. 504B.001, subd. 12.

Definitions and concepts from other states or common law:

1. Transfer of right of possession, right to exercise control to the exclusion of others
2. Exclusions in Uniform Residential Landlord and Tenant Act - transient occupancy

If residential tenant, evictions can only be accomplished through unlawful detainer – process laid out under Minnesota Statutes Chapter 504B

Following the money I: ESG (Emergency Solutions Grant)

If a program participant violates program requirements, the recipient or subrecipient may terminate the assistance in accordance with a formal process established by the recipient or subrecipient that recognizes the rights of individuals affected. The recipient or subrecipient must exercise judgment and ***examine all extenuating circumstances*** in determining when violations warrant termination so that a program participant's assistance is terminated ***only in the most severe cases.*** - 24 C.F.R. § 576.402(a)

ESG requirements

“Only in the most severe cases” = substantive standard

“Must * * * examine all extenuating circumstances” = procedural requirement

- Talk to the resident **before** making a decision
- Reasonable investigation of facts
- Disability accommodation?

Also 24 C.F.R. 576.400(e): Uniform standards for shelter discharge, including time limits, in comprehensive plan submitted to HUD

Following the money II:
Emergency Assistance
(MFIP Consolidated Fund)

10-day notice required for almost all terminations – Minn. Stat. 142G.21

- Technically no exception for endangerment

Appeal to MN Dep't of Human Services

Continuing benefits pending appeal required – Minn. Stat. 142G.45

- Doesn't have to be in same location
- New reason for termination requires new notice

No substantive standards

Following the money III:

Housing Support

Same procedural protections as MFIP

- 10-day notice, appeal to DHS, continuing benefits pending appeal
- Applied to payment or to shelter?

Substantive standards

- Agreement with state/county must include residency requirements that could result in eviction
- May be additional substantive or procedural protections based on
 - Type of state license
 - Contract with state/county

Disability accommodation

Americans With Disabilities Act *and* Rehabilitation Act

- Apply to recipients of ESG or any other federal funding

Fair Housing Act

- Applies to ESG recipients
- Applies to shelters “intended for occupancy as a residence for homeless persons,” which excludes some short-term shelter

Minnesota Human Rights Act

- Applies to real property, public services, and public accommodations

Disability discrimination

Unlawful to provide a disabled individual who meets basic requirements for service (i.e. homeless) with “an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 28 C.F.R. § 35.130(b)(1)(iii).

Disability defined as physical *or mental* impairment that substantially limits a major life activity

Requirement of accommodation

Covered entity must make “reasonable modifications to rules, policies or practices” where necessary to prevent discrimination against individuals with disabilities.

A modification is reasonable unless it would “fundamentally alter the nature of the program, service or activity.”

Covered entity must notify recipients of ADA protections

- Best practice: Post procedure and include in handbook

If getting ESG, must examine *all* extenuating circumstances

Exceptions to accommodation requirement

(1) Undue burden in particular circumstances

- Case by case determination
- Shelter has burden of proof

(2) Direct threat

- Significant risk to health or safety of others
- That can't be eliminated by reasonable accommodation
- Based on individualized assessment of medical or other objective evidence

Service and support animals

- Distinction based on whether the shelter is covered by the Fair Housing Act.
 - As noted earlier, some short-term housing is excluded.
- Under the **ADA** and regs:
 - Limited to dogs that are trained to perform tasks for people with disabilities.
 - Training does not require a specific certification, but requires actual training and identifiable tasks.
- Under the **Fair Housing Act** and regs:
 - Far broader. More than just dogs.
 - Falls under the typical reasonable accommodation analysis: The person has a disability, the animal is a necessary accommodation, and it's reasonable.

Current Practices and Trends in Shelter Evictions

Hennepin County – attempting to stretch 504B – cases settling

DHS – does not like shelter appeals

- Settlement – will now address disability accommodation issues
- Affirming based only on internal shelter rules – refusing to address ESG requirements and other procedural issues

Manipulation of funding:

- Dakota Woodlands – stopped taking Housing Support when maximum client contribution changed; offers cash settlements
- Ramsey Co. Family Service Center – switched from EA/Housing Support to county levy funds to evade mandate to provide shelter pending appeal

Encampments



Encampment "Sweeps"

Grants Pass v. Johnson

- *Martin v. Boise* (9th Cir.): Cruel and unusual punishment to enforce anti-camping ordinances unless sufficient shelter space
 - - Violation of a person's status. Like old laws against being a drug addict
- - *Grants Pass* undid that. Limited 8th amendment to penalties rather than types of crimes

Since then, cities have adopted or considered adopting ordinances

- Rochester: Previously passed a ban. Misdemeanor and fine.
- Duluth: Proposed criminal offense; compromised with civil citation and fine.
- Brainerd: Similar to Duluth and Rochester
- Others: renewed enforcement of old ordinances already on the books

Encampments – Other Efforts

Due process

- Procedural – must store property and provide notice of how to claim
- Substantive – state-created danger?

State constitutional claims

- New Mexico – state version of cruel & unusual clause

Disability accommodation

- San Bernardino settlement

Questions?

