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In The Matter Of: Marva Gorham

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**Department of
Housing Preservation
& Development**

LOUISE CARROLL
Commissioner

JIM QUINLIVAN
Executive Deputy Commissioner

Section 8 Appeals Unit
100 Gold Street, 4 M
New York, NY 10038

NOTICE OF SECTION 8 INFORMAL HEARING DECISION

Date: December 17, 2021

Ms. Marva Gorham
2034 Adam C Powell Blvd, --
Apt# 3D
New York, NY 10027

Dear Ms. Marva Gorham:

Following your Section 8 informal hearing on Wednesday, November 20, 2019 at 11:30 AM, HPD's hearing officer has made a final decision about your case. The hearing officer has:

- UPHELD** HPD's decision. This means that you will be terminated from the Section 8 program on _____. Your landlord will not receive rent payments from HPD after this date. You will have to pay the entire contract rent for your apartment or your landlord may evict you. If you disagree with the hearing officer's decision, you may request a review with the New York State Unified Court System within 4 months of the date of this notice.
- REMANDED** your case back to the Section 8 program for further review. This means that the Section 8 program will look at your case again and contact you with more information within 30 days.
- REVERSED** HPD's decision. This means that you will continue to participate in the Section 8 program and your landlord will keep getting rent payments from HPD.

The hearing officer's full written decision and explanation is attached. If you have any questions, please call (212) 863-6633.

Sincerely,

Section 8 Appeals Unit

Copies: Landlord w/o enclosure

Housing 2000 HDFC
2034 7 Avenue
New York, NY 10027



**NOTIFICACIÓN DE LA DECISIÓN DE AUDIENCIA INFORMAL
DE LA SECCIÓN 8**

Fecha: December 17, 2021

Ms. Marva Gorham
2034 Adam C Powell Blvd, --
Apt# 3D
New York, NY 10027

Estimado(a) Ms. Marva Gorham:

Después de su audiencia informal de sección 8 sobre Wednesday, November 20, 2019 at 11:30 AM, el oficial de audiencias del Departamento de Conservación y Desarrollo de Viviendas (Housing and Preservation Development, HPD) tomó una decisión definitiva sobre su caso. El oficial de audiencia:

- CONFIRMÓ** la decisión del HPD. Esto significa que **usted será expulsada del programa de la sección 8 el _____**. Su arrendador **no recibirá los pagos del alquiler de HPD luego de esta fecha**. Usted tendrá que pagar la totalidad del alquiler del contrato de su apartamento o su arrendador podrá desalojarla. Si está en desacuerdo con la decisión del oficial de la audiencia, usted puede solicitar una revisión en el Sistema Judicial Unificado del estado de Nueva York en un lapso de 4 meses a partir de la fecha de esta notificación.
- REMITIÓ** su caso de nuevo al programa de la sección 8 para una nueva revisión. Esto significa que el programa de la sección 8 revisará su caso de nuevo y la contactará con mayor información dentro de 30 días.
- REVOCÓ** la decisión del HPD. Esto significa que **continuará participando en el programa de la sección 8** y su arrendador seguirá recibiendo los pagos del alquiler por parte de HPD.

Se anexa la totalidad del texto de la decisión y la explicación del oficial de la audiencia. Si tiene alguna pregunta, llame al (212) 863-6633.

Atentamente,

Unidad de apelaciones de la sección 8

Copias: Arrendador sin el apéndice



Department of
Housing Preservation
& Development
nyc.gov/hpd

LOUISE CARROLL
Commissioner

JIM QUINLIVAN
Executive Deputy Commissioner

Office of the Commissioner
100 Gold Street
New York, N.Y. 10038

INFORMAL HEARING DECISION

IN THE MATTER OF:
MARVA GORHAM

2034 Adam C. Powell Blvd. #3D
New York, NY 10027

Date of Informal Hearing:
November 20, 2019

The New York City Department of Housing Preservation and Development (“HPD,” or “the Agency”) operates a Housing Choice Voucher Program (“Section 8”) in accordance with Title 24 of the Code of Federal Regulations Part 982 and the Department of Housing Preservation and Development Housing Choice Voucher Program’s Administrative Plan (“Administrative Plan”). Federal rules and regulations authorize HPD to conduct Informal Hearings regarding the termination of assistance of a participant of the HPD Section 8 Program. HPD is also authorized to have an impartial staff member conduct Informal Hearings.

This Informal Hearing was held at the office of HPD, 100 Gold Street, New York, NY 10038 on November 20, 2019. The Informal Hearing began at 11:50am and ended at 1:40pm. Pushpa Bhat appeared as the HPD Hearing Officer.

INFORMAL HEARING ATTENDEES

The following individuals were present at the Informal Hearing:

Pushpa Bhat, Presiding Hearing Officer

From HPD:

Valencia Thompson, Hearing Representative
Christian Vasquez, Hearing Representative (Observing)

For Participant:

Marva Gorham, the Participant
Yesenia Godoy, Esq. of the Legal Aid Society, the Participant’s attorney

LIST OF EVIDENCE SUBMITTED

Testimony and Evidence presented at the Informal Hearing, together with the Participant's entire HPD case file, constitute the Informal Hearing Record (the "Record"). Findings of fact are based upon the Record.

The HPD Representative entered the Participant's entire case file into the Record, and highlighted the following documents:

Exhibit 1: Section 8 Existing Housing Program Application for Rental Assistance, signed and dated March 28, 2000

Exhibit 1a: Section 8 Tenant Based Assistance Rental Voucher Program Voucher, signed and dated May 31, 2000

Exhibit 1b: Housing Assistance Payments (HAP) Contract, effective June 1, 2000

Exhibit 1c: HPD Letter, dated May 31, 2000

Exhibit 2: Section 8 Recertification Package with Annual Reexamination Rent Breakdown letter, dated April 27, 2017

Exhibit 3: HPD Elite Note History, dated September 20, 2017 to October 25, 2017

Exhibit 3a: Notice of Petition--Holdover, dated September 20, 2017

Exhibit 3b: Petition, Holdover, dated September 20, 2017

Exhibit 3c: Ten (10) Day Notice of Termination of Tenancy, dated August 29, 2017

Exhibit 3d: District Attorney, County of New York letter, dated July 6, 2017

Exhibit 3e: Affidavit of Police Officer Sid Caesar, dated March 9, 2017

Exhibit 3f: Affidavit of Inventory of Property Taken and NYPD Property Clerk Invoice, dated March 9, 2017

Exhibit 3g: Affidavit of Service by Mail, dated August 29, 2017

Exhibit 3h: Attorney's Verification, dated September 20, 2017

Exhibit 4: Pre-Termination Notice of Section 8 Non-Compliance, dated June 11, 2018

Exhibit 4a: Tenant Self-Certification of Information and HPD Receipt, dated July 10, 2018

Exhibit 5: Participant Date for Conference-Section 8, dated July 11, 2018, Participant Date for Rescheduled Conference-Section 8, dated July 31, 2018, and HPD Elite Note History, dated July 31, 2018

Exhibit 5a: Statement of Understanding-Section 8 Participant Obligations, dated August 15, 2018, with HPD Elite Note History

Exhibit 6: Participant Date for Rescheduled Conference - Section 8, dated October 2, 2018

Exhibit 6a: Statement of Understanding: Section 8, dated October 17, 2018, with HPD Elite Note History

Exhibit 6b: Letter from CREATE Inc., dated September 24, 2018

Exhibit 6c: Copy of Remington Pistol & Revolver Cartridges box

Exhibit 7: HPD Receipt, dated November 2, 2018, with email from Probation Officer

Exhibit 8: Stipulation of Settlement, Civil Court of the City of New York, dated January 29, 2019

Exhibit 9: Notice of Section 8 Rent Subsidy Termination, dated February 7, 2019, with attachment and documents



- Exhibit 10:** Appeal of Section 8 Rent Subsidy Termination, time stamped February 14, 2019
Exhibit 10a: Letter from Yesenia Godoy, signed and dated February 9, 2019
Exhibit 10b: Certificate of Disposition Indictment, dated June 14, 2018
Exhibit 10c: State of New York Certificate of Relief from Disabilities, dated October 24, 2017
Exhibit 10d: Institute Center for Counseling at Family Health Center of Harlem, dated January 28, 2019
Exhibit 10e: Stipulation of Settlement, Civil Court of the City of New York, dated January 29, 2019
Exhibit 11: Notice of Section 8 Rent Subsidy Termination, dated May 9, 2019, with Attachment to and Incorporated into the Termination Notice of Marva Gorham
Exhibit 12: Letter, dated April 25, 2019
Exhibit 13: HPD Elite Participant Document History of Marva Gorham

At the Hearing, the Participant's attorney submitted the following documents into the Record:

- Exhibit A:** Renewal Lease Form, dated October 20, 2017
Exhibit B: Order of Protection for Troy Williams, dated October 26, 2019
Exhibit C: Lab Reports from Mobile Health and Lab Corp. for Marva Gorham
Exhibit D: Quest Diagnostics Reports for Marva Gorham
Exhibit E: Decision and Order from the Supreme Court of the State of New York, dated November 5, 2015
Exhibit F: Printout of PACER search results

Pursuant to a Statement of Understanding issued at the Hearing, the Participant's attorney submitted the following into the Record:

- Exhibit G:** Memorandum of Law, dated January 6, 2020, with attachments

Under 24 C.F.R. 982.555(e)(5), “[e]vidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.” And, under 24 C.F.R. Part 982.555(e)(6), “[f]actual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the Informal Hearing.”

PROCEDURAL HISTORY

Marva Gorham (“Participant”), who resides at 2034 Adam C Powell Blvd, #3D, New York, NY 10027 (“Premises”), requested an Informal Hearing after receiving HPD’s Notice of Section 8 Rent Subsidy Termination (“Second Termination Notice”), which informed her that her Section 8 subsidy was being terminated because “*Other: Criminal Activity- see statement that is attached and incorporated into this notice.*”¹ The letter attached stated the following: “*General: 1. violation of family obligations as defined by the Housing Choice Voucher, and HPD Administrative; 2. failure to submit statement from your pastor or other representative of*

¹ HPD Exhibit 11



your Church concerning support services that you; 3. failure to submit Criminal Certificate of Disposition pertaining to your arrest on or about [] March 9, 2017, as required pursuant to the Statement of Understanding that you signed on 10/17/18 (see attached); and Criminal Activity Documents (see attached): 1. Warrant of the Criminal Court of the City of New York, dated March 1, 2017; 2. District Attorney letter to landlord Housing 2000 HDFC; 3. Affidavit of Inventory of Property Taken under Search Warrant 0307-2017; 4. NYPD Property Clerk Invoice/Voucher #1000919045, 1000919037, 1000919054, 1000919047, 1000919038, 1000919051, 1000919068; and 5. NYPD Lab report #2017-022311.”² The purpose of the Hearing was to determine whether HPD’s decision to terminate the Participant from the Section 8 program was correct, and if so, whether it should be upheld.

The Participant completed an application for Section 8 rental assistance, signed and dated March 28, 2000.³ On May 31, 2000, the Participant signed a Housing Choice Voucher, agreeing to abide by the rules and obligations of the Program.⁴ On June 1, 2000, a Housing Assistance Payment (“HAP”) contract went into effect for the Premises.⁵ According to HPD records, the household consists of two (2) individuals; the Participant and her son, Michael Gorham (“Michael”).⁶

Events Leading to Termination

On October 25, 2017, the Participant’s landlord submitted the following documents to HPD:

1. a Notice of Petition-Holdover and a Petition-Holdover against the Participant (“Holdover Petition”), dated September 20, 2017;⁷
2. a Ten (10) Day Notice of Termination of Tenancy (“10 Day Termination Notice”), dated August 29, 2017, which indicated, in relevant part, that the Participant and Troy Williams had been arrested at the Premises because *“the search warrant produced evidence that the premises were being used for the illegal business of narcotics dealing.”*⁸
3. a letter from the District Attorney of the County of New York to the Participant’s landlord, dated July 6, 2017 (“DA Letter”), which indicated that *“on March 9, 2017, officers of the New York City Police Department executed a search warrant in the above premises, of which you are the landlord. The search warrant produced evidence that the premises were being used for the illegal business of narcotics dealing;”*⁹
4. a Warrant from the Criminal Court of the City of New York (“Warrant”), indicating that the NYPD had probable cause to search the Premises;¹⁰

² *Id.*

³ HPD Exhibit 1

⁴ HPD Exhibit 1a

⁵ HPD Exhibit 1b

⁶ HPD Exhibit 7

⁷ HPD Exhibit 3a & 3b

⁸ HPD Exhibit 3c

⁹ HPD Exhibit 3d

¹⁰ HPD Exhibit 3e



5. a New York Police Department (“NYPD”) Property Clerk Invoice (“Property Invoice”), dated March 9, 2017, listing what was found at the Premises on the date the Participant was arrested;¹¹
6. a Laboratory Report (“Lab Report”), dated March 10, 2017, listing the results of tests completed on items in the Property Invoice;¹²
7. a Felony Complaint (“Felony Complaint”) against the Participant and Troy Williams (“Defendants”), dated March 9, 2017, filed by police officer Sid Caesar, which indicated that the Defendants had been charged with four drug-related counts and the factual basis for those charges included that the Participant had been present in the living room of the Premises and that illegal narcotics had been found in the living room;¹³
8. an Affidavit of Service by Mail, dated August 29, 2017;¹⁴
9. an Attorney’s Verification, dated September 20, 2017.¹⁵

On June 11, 2018, HPD sent the Participant Pre-Termination Notice of Section 8 Non-Compliance (“Pre-Termination Notice”), informing the Participant that her rental subsidy may be terminated because “*Other: Criminal Activity; see attached: 1. Notice of Petition, Holdover; 2. Petition Holdover; 3. Ten (10) Day Notice; 4. District Attorney Letter, Narcotics Eviction Program; 5. Police Officer Affidavit; 6. Affidavit of Inventory of Property Taken; 7. NYPD Property Clerk Invoice/Voucher #1000919045, 1000919037, 1000919054, 1000919047, 1000919038, 1000919051, 1000919068; 8. NYPD Lab report #2017-022311; 9. Affidavit of Service by Mail; 10. USPS Tracking Results; 11. Certified Mail Stubs; 12. Attorney’s Verification.*”¹⁶ The above listed documents were attached to the Pre-Termination Notice.¹⁷ The Notice also informed her that she may request a conference with an HPD staff member to review her file within fifteen (15) calendar days.¹⁸

On July 10, 2018, the Participant submitted a Tenant Self-Certification, requesting “*a hearing for my pre-termination.*”¹⁹ On July 11, 2018, HPD sent the Participant a Participant Date for Conference-Section 8, informing her that a conference had been scheduled for July 26, 2018 (“First Conference”).²⁰ According to the Record, the Participant asked to reschedule the First Conference and on July 31, 2018, HPD sent another Participant Date for Conference-Section 8 to the Participant, informing her that the First Conference had been rescheduled for August 15, 2018.²¹

¹¹ HPD Exhibit 3f

¹² *Id.*

¹³ *Id.*

¹⁴ HPD Exhibit 3g

¹⁵ HPD Exhibit 3h

¹⁶ HPD Exhibit 4

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ HPD Exhibit 4a

²⁰ HPD Exhibit 5

²¹ *Id.*



On August 15, 2018, the Participant attended the First Conference with her attorney, Yesenia Godoy Esq. (“Ms. Godoy”), who asked for another conference date because she wanted to review the Participant’s case file.²² On October 2, 2018, HPD sent the Participant a Participant Date for Conference-Section 8, informing her that a conference had been scheduled for October 17, 2018 (“Second Conference”).²³

The Participant and Ms. Godoy attended the Second Conference on October 17, 2018.²⁴ At the Second Conference, Ms. Godoy “requested that HPD consider length of tenancy, impact on [the Participant’s] son if she loses her subsidy” and informed HPD that “housing court case is scheduled for trial on 1/29/19. [The Participant] is willing to settle housing court case for 3-year probation. Arrest was 19 months ago and there have been no further legal issues.”²⁵ At the Second Conference, the Participant and Ms. Godoy submitted the following documents to HPD: [1] a letter from Create Inc., dated September 24, 2018 (“Create letter”), detailing the Participant’s substance abuse treatment;²⁶ and [2] a copy of a Remington pistol and revolver cartridge box.²⁷ The Participant and Ms. Godoy also agreed to submit the following documents to HPD by November 1, 2018 through a Statement of Understanding (“Conference SOU”): [1] a Certificate of Disposition from the criminal proceeding; [2] a statement from pastor or other representative of the church on the church’s letterhead, signed and dated, with a phone number and noting type of support services that the Participant is receiving; [3] toxicology reports since probation; and [4] any additional statements.²⁸

On November 2, 2018, Ms. Godoy submitted the results of a drug test that the Participant had taken on September 20, 2018.²⁹ On or about January 29, 2019, the Participant submitted a Stipulation of Settlement from the Civil Court of the City of New York (“Stipulation of Settlement”), dated January 29, 2019, which indicated that the Participant “was sentenced to three years’ probation for a guilty plea related to the incidents set forth in the petition on October 24, 2017” and that the Participant would be subject to a probationary period to run concurrently with “criminal probation.”³⁰

On February 7, 2019, HPD issued a Notice of Section 8 Rent Subsidy Termination (“First Termination Notice”), informing the Participant that her Section 8 subsidy would be terminated, effective March 31, 2019, because “see notice that is attached to and incorporated into the Termination Notice.”³¹ Attached to the Termination Notice was a letter stating that the Participant’s voucher was being terminated for the reasons listed below: “General: 1. violation of family obligations as defined by the Housing Choice Voucher, and HPD Administrative; 2. failure to submit statement from your pastor or other representative of your Church concerning support

²² HPD Exhibit 5a

²³ HPD Exhibit 6

²⁴ HPD Exhibit 6a

²⁵ *Id.*

²⁶ HPD Exhibit 6b

²⁷ HPD Exhibit 6c

²⁸ HPD Exhibit 6a

²⁹ HPD Exhibit 7

³⁰ HPD Exhibit 8

³¹ HPD Exhibit 9



services that you receive, as required pursuant to the Statement of Understanding that you signed on 10/17/18 (see attached); 3. failure to submit Criminal Certificate of Disposition pertaining to your arrest on or about [] March 9, 2017, as required pursuant to the Statement of Understanding that you signed on 10/17/18 (see attached); and Criminal Activity Documents (see attached): 1. Warrant of the Criminal Court of the City of New York, dated March 1, 2017; 2. District Attorney letter to landlord Housing 2000 HDFC; 3. Affidavit of Inventory of Property Taken under Search Warrant 0307-2017; 4. NYPD Property Clerk Invoice/Voucher #1000919045, 1000919037, 1000919054, 1000919047, 1000919038, 1000919051, 1000919068; and 5. NYPD Lab report #2017-022311.”³² The documents listed above were attached the Second Termination Notice.³³ The Notice also informed the Participant that she could request an appeal of HPD’s decision by requesting an informal hearing within thirty (30) calendar days of the issuance of the Termination.³⁴

On February 14, 2019, the Participant submitted an Appeal of Section 8 Rent Subsidy Termination (“Appeal”).³⁵ Along with the Appeal, the Participant submitted the following documents: [1] a letter from Ms. Godoy;³⁶ [2] a Certificate of Disposition Indictment from the Supreme Court of the State of New York (“Certificate of Disposition”), dated June 14, 2018, showing that the Participant was convicted by plea of criminal possession of a controlled substance on October 24, 2017;³⁷ [3] a Certificate of Relief from Disabilities from the State of New York, dated October 24, 2017;³⁸ [4] a letter from the Institute Center for Family Health, dated January 28, 2019 (“Family Health letter”), noting the results from the Participant’s psychosocial assessment;³⁹ and [5] a copy of the Stipulation of Settlement.⁴⁰

On May 9, 2019, HPD sent the Participant and Ms. Godoy the corrected Second Termination Notice, which informed the Participant that her Section 8 rent subsidy would be terminated, effective June 30, 2019, because “*Other: Criminal Activity-see statement that is attached and incorporated into this notice.*”⁴¹ Attached to the Second Termination Notice was a letter stating that the Participant’s voucher was being terminated for the reasons listed below: “*General: 1. violation of family obligations as defined by the Housing Choice Voucher, and HPD Administrative; 2. failure to submit statement from your pastor or other representative of your Church concerning support services that you receive [Pastor Statement], as required pursuant to the Statement of Understanding that you signed on 10/17/18 (see attached); 3. failure to submit Criminal Certificate of Disposition [Certificate of Disposition] pertaining to your arrest on or about [] March 9, 2017, as required pursuant to the Statement of Understanding that you signed on 10/17/18 (see attached); and Criminal Activity Documents (see attached): 1. Warrant of the Criminal Court of the City of New York, dated March 1, 2017; 2. District Attorney letter to*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ HPD Exhibit 10

³⁶ HPD Exhibit 10a

³⁷ HPD Exhibit 10b

³⁸ HPD Exhibit 10c

³⁹ HPD Exhibit 10d

⁴⁰ HPD Exhibit 12

⁴¹ HPD Exhibit 11



landlord Housing 2000 HDFC; 3. Affidavit of Inventory of Property Taken under Search Warrant 0307-2017; 4. NYPD Property Clerk Invoice/Voucher #1000919045, 1000919037, 1000919054, 1000919047, 1000919038, 1000919051, 1000919068; 5. NYPD Lab report #2017-022311; and 6. Felony Complaint, dated March 9, 2017.”⁴² The documents listed above were attached the Second Termination Notice.⁴³ The Notice also informed the Participant that she could request an appeal of HPD’s decision by requesting an informal hearing within thirty (30) calendar days of the issuance of the Termination.⁴⁴

On or about May 31, 2019, the Participant submitted a letter from Pastor Ramos of the Garden of Gethsemane Ministries, Inc. (“Pastor’s Statement”), dated April 25, 2019.⁴⁵

HPD accepted the Participant’s Appeal and an informal hearing was held on November 20, 2019.

Informal Hearing

At the Hearing, the Participant’s attorney, Ms. Godoy, argued that HPD’s decision should be reconsidered for the following reasons: [1] part of the Agency’s decision was improperly based on arrest records; [2] there are mitigating factor to support the Participant’s reinstatement; and [3] termination is an extreme penalty for failure to submit documents.

Attorney’s arguments

In support of her arguments, Ms. Godoy stated that pursuant to HUD guidance from PIH Notice-2015-19, dated November 2, 2015, arrest records alone cannot not be the basis of a participant’s termination. Additionally, Ms. Godoy noted that all the documents about the arrest were from police officer Sid Caesar (“Officer Caesar) and stated that the validity of these documents were, in her view, questionable. She noted out that the arrest occurred on March 9, 2017 but the substances found that day were only submitted for testing the next day (March 10, 2017), which raises chain-of-custody issues. Ms. Godoy also stated that Officer Caesar has been found “not credible” by at least one court and has had eight (8) lawsuits filed against him by defendants. She explained that she was ready to go to trial at housing court but Officer Caesar never showed up, despite a lengthy adjournment.

Ms. Godoy explained that the Participant pled guilty to criminal possession in the 3rd degree, subdivision 12, which indicates that the Participant knowingly possessed a controlled substance. She noted that there is nothing in this subdivision regarding an intent to sell. She also stated that she told HPD about the plea at the Second Conference. Ms. Godoy acknowledged that she didn’t submit the Requested Documents by the November 1 deadline. She explained that the pastor was delayed in getting the letter to her.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ HPD Exhibit 10e



Ms. Godoy explained that even though the Participant was in housing court in October 2017, the Participant's landlord executed a renewal lease with the Participant, effective November 1, 2017. She noted that the Participant has been on the Section 8 program for about 20 years and this is the first and only instance of criminal activity. She said that the Participant has made a conscious effort to rehabilitate through voluntarily going through treatment and becoming employed. Ms. Godoy indicated that the Participant must submit to drug tests for her jobs.

The Participant's testimony

The Participant testified that takes responsibility for what she did. She stated that at the time of the arrest, she was "*in a dark place*" and using drugs. She explained that she had drugs on her because she was using. The Participant stated that she was in an abusive relationship with Troy Williams ("Troy") at the time of the arrest. She explained that Troy had his own apartment in the Bronx but that he was often coming and going from her apartment. She stated that Troy had a history of guns and drugs and that she had been trying to leave him prior to the arrest. The Participant stated that at the time, her son, Michael was in college.

The Participant testified that she is in a "*better place now*" because she has the support she needs. She explained that she attends church, works at NYU Langone and Concepts of Independence, and attends a woman's group. She also explained that she has a restraining order out on Troy after he pulled a gun on her. The Participant stated that she learned from the arrest and that she does not want to tear her family apart again. She said that she went to drug rehab for her son and now her granddaughter. She explained that Michael is still living with her and has joint custody of his daughter. The Participant stated that her granddaughter has nowhere else to live due to issues with her mother's family and wants to add her to the household. She also stated that she has been drug free for almost three (3) years and was due to be off probation early in about June 2020.

Hearing Submissions

At the Hearing, Ms. Godoy submitted the following documents into the Record:

1. Renewal Lease for the Premises, signed and dated November 6, 2017;⁴⁶
2. Order of Protection against Troy Williams, dated October 26, 2019;⁴⁷
3. Lab Reports from Mobile Health and Lab Corp for the Participant;⁴⁸
4. Quest Diagnostics Reports for the Participant;⁴⁹
5. Decision and Order from the Supreme Court of the State of New York, dated November 5, 2015;⁵⁰
6. Printout of PACER search results.⁵¹

⁴⁶ Participant Exhibit A

⁴⁷ Participant Exhibit B

⁴⁸ Participant Exhibit C

⁴⁹ Participant Exhibit D

⁵⁰ Participant Exhibit E

⁵¹ Participant Exhibit F



Post-Hearing Submissions

Pursuant to a Statement of Understanding (“SOU”) issued at the Hearing, Ms. Godoy submitted the following document into the Record: Memorandum of Law, dated January 6, 2020, with attachments.⁵²

ANALYSIS

HPD is a public housing authority (“PHA”), which administers the Housing Choice Voucher (“Section 8”) Program in New York City. Under the Section 8 Program, the United States Department of Housing and Urban Development (“HUD”) “pays rental subsidies so eligible families can afford decent, safe, and sanitary housing.”⁵³

A. Applicable Laws and Regulations

Due Process

Under Federal Regulations, when terminating Section 8 assistance due to a participant’s act or failure to act, HPD “*must give the family prompt written notice...contain[ing] a brief statement of the reasons for the decision to [terminate assistance].*”⁵⁴ Moreover, under HPD’s Administrative Plan, “[i]f HPD decides to terminate assistance to [a] family, HPD must give the family a written notice of intent to terminate, with reasons [for that decision]...”⁵⁵ Courts have long recognized that recipients of housing subsidies—like recipients of other forms of public assistance benefits—have a property interest in the assistance they receive.⁵⁶ Courts have also held that adequacy of a notice to terminate such interest, “*must be judged in light of the due process requirements of Goldberg v. Kelly, 397 U.S. 254, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970).*”⁵⁷

Under Goldberg, “*due process requires: (1) timely and adequate notice, including the reasons for the proposed termination; (2) an opportunity to be heard at a [] hearing, including the right to present evidence and confront and cross examine witnesses; (3) a right to be represented by counsel at the hearing; (4) a written decision, including the reasons for the determination and the evidence on which the decision maker relied; and (5) an impartial decision maker.*”⁵⁸

With regard to the timely and adequate notice requirement, the Second Circuit has held that the “*purpose of requiring that notice be given to the tenant before the hearing is to insure that the tenant is adequately informed of the nature of the evidence against him so that he can*

⁵² Participant Exhibit G

⁵³ 24 C.F.R. 982.1 (a)(1).

⁵⁴ 24 CFR 982.555(c)(2)(i).

⁵⁵ HPD Administrative Plan at Ch. 15, §15.6.

⁵⁶ Edgecomb v. Housing Auth., 1993 U.S. Dist. LEXIS 12133 at *7 (D. Conn. June 10, 1993); *see also* Boykins v. Cmty. Dev. Corp., 2011 U.S. Dist. LEXIS 28650 (EDNY Mar. 21, 2011).

⁵⁷ *Id.*

⁵⁸ Boykins, 2011 U.S. Dist. LEXIS 28650, at *4. *See also* Falkowski v. North Fork Hous. Alliance U.S. Dist. LEXIS 92916 at *6 (EDNY Sept. 30, 2009).



effectively rebut that evidence.”⁵⁹ Additionally, New York Courts have held that one of the “fundamental requirements of due process” is that a notice must be “reasonably calculated to apprise an interested party of the action against him or her.”⁶⁰ Moreover, while neither the “Supreme Court or the Second Circuit has ever articulated a specific minimum standard for what a notice must contain,” a “notice which merely parrot[s] the broad language of the regulations is insufficient.”⁶¹

Criminal Activity

Under federal regulations, members of a household may not engage in drug-related, violent or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.⁶² Drug-related criminal activity is defined in the federal regulations as “the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.”⁶³

Pursuant to federal regulations, HPD may terminate assistance if any member of the family commits drug-related criminal activity.⁶⁴ The preponderance of the evidence standard is used to determine if the criminal activity occurred.⁶⁵

In 2015, HUD issued guidance regarding the use of arrest records in housing decisions. The guidance, PIH Notice 2015-19 (“PIH Notice”), indicated that before a PHA terminates the assistance of a participant on the basis of criminal activity by a household member or guest, the PHA must determine that the relevant individual engaged in such activity.⁶⁶ The PIH Notice specifically stated that the fact that the relevant individual has been arrested for a crime is not evidence that he or she has engaged in criminal activity and the record of an arrest cannot serve as the basis for a PHA’s decision to terminate a participant’s rental subsidy.⁶⁷ A PHA may terminate a participant based on the conduct underlying an arrest *if* that conduct indicates that [1] the PHA has sufficient evidence that the individual engaged in the conduct, other than the fact of arrest and [2] the individual is not suitable for tenancy.⁶⁸ Whether the evidence is sufficient is determined by a preponderance of the evidence standard.⁶⁹

Document Submission & Conferences

⁵⁹ *Escalera v. New York City Hous. Auth.*, 425 F.2d 85, 862 (2d Cir. N.Y. Apr. 29, 1970).

⁶⁰ *Matter of Decastro v. Wambua*, 43 Misc 3d 202, 979 NYS 2d 466 (NY County Sup. Ct. 2013).

⁶¹ *Boykins*, 2011 U.S. Dist. LEXIS 28650, at *6 (citing *Edgecomb*).

⁶² 24 C.F.R. 982.551(l)

⁶³ 24 C.F.R. 5.100

⁶⁴ HPD Administrative Plan, Ch. 15, § 15.4.2

⁶⁵ 24 C.F.R. 982.553(c)

⁶⁶ HUD PIH Notice 2015-19, at 3

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 24 C.F.R. 982.553(c)



A participant's failure to provide the required documents to the Agency for recertification or for other purposes may lead to termination—as it is a violation of Section 8 family obligations, agreed to by the participant when joining the program.⁷⁰

If participants of the Section 8 program fail to comply with this obligation, HPD will send the tenant a Pre-Termination Notice warning that their subsidy may be terminated.⁷¹ The Pre-Termination Notice serves as a second opportunity for participants to comply with HPD's requests—providing 15 additional days from the date of the notice to contact HPD and request a conference.⁷² If the participant fails to respond or inadequately responds to the Pre-Termination Notice, a Termination Notice will be sent that provides information concerning appeal procedures to contest the decision.⁷³

All requests for conferences must be made in writing and received by HPD within 15 calendar days from the date printed on the "Pre-Termination Notice of Section 8 Non-Compliance."⁷⁴ HPD will provide notices with an opportunity for a conference if HPD determines that a conference may resolve an outstanding matter.⁷⁵ At the conference, the participant or representative will be given the opportunity to present documents that demonstrate compliance with Section 8 requirements.⁷⁶ In addition, when agreed to at the conference, participants will be permitted to submit required documentation up to seven calendar days after the conference.⁷⁷ At the conclusion of the conference, participants will be required to sign a "Statement of Understanding – Section 8 Participant Obligations" detailing the documents submitted and the documents still required to be submitted, if any.⁷⁸ All documents submitted during a conference will be reviewed for completeness and accuracy after the conference.⁷⁹

B. HPD's decision to terminate the Participant's subsidy because she engaged in criminal activity was Incorrect.

HPD terminated the Participant's subsidy because the Agency believed that she has been engaged in criminal activity. Pursuant to federal regulations, HPD may terminate assistance if any member of the family commits drug-related or violent criminal activity.⁸⁰ Federal regulations define drug-related criminal activity as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.⁸¹

⁷⁰ HPD Administrative Plan, Ch. 13, § 13.1

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ HPD Administrative Plan, Ch. 16, §16.1.3

⁷⁵ HPD Administrative Plan, Ch. 16

⁷⁶ HPD Administrative Plan, Ch. 16, § 16.1.4

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ HPD Administrative Plan, Ch. 15, § 15.4.2

⁸¹ 24 C.F.R. 5.100



Here, HPD informed the Participant that her rental subsidy would be terminated through the Second Termination Notice & attached documents.

The Second Termination Notice stated that the Participant's rental subsidy would be terminated because "*Criminal Activity-see statement that is attached and incorporated into this notice.*"⁸² The attached notice stated that the Participant's subsidy was being terminated, in relevant part, for "*General: 1. violation of family obligations as defined by the Housing Choice Voucher, and HPD Administrative Plan...[and] Criminal Activity Documents (see attached): 1. Warrant of the Criminal Court of the City of New York, dated March 1, 2017; 2. District Attorney letter to landlord Housing 2000 HDFC; 3. Affidavit of Inventory of Property Taken under Search Warrant 0307-2017; 4. NYPD Property Clerk Invoice/Voucher #1000919045,1000919037, 1000919054, 1000919047, 1000919038, 1000919051, 1000919068; 5. NYPD Lab report #2017-022311; and 6. Felony Complaint, dated March 9, 2017.*"⁸³

While the Second Termination Notice and attached notice are vague in describing the reason for termination, the attached notice lists the actual documents that led HPD to its decision to terminate Participant for "*criminal activity.*" The documents listed were also attached to the Second Termination Notice ("Attached Documents"). The Attached Documents indicate that the Participant, along with Troy Williams, a non-household member, had been arrested at the Premises for alleged drug-related criminal activity on March 9, 2017. Because the Attached Documents adequately informs the Participant of the nature of the charges against her, the Second Termination Notice fulfills due process requirements.⁸⁴

Pursuant to HUD PIH Notice 2015-19 ("PIH Notice"), before a PHA terminates the assistance of a participant on the basis of criminal activity by a household member or guest, the PHA must determine that the relevant individual engaged in such activity.⁸⁵ However, the fact that the relevant individual has been arrested for a crime is not by itself evidence that he or she has engaged in criminal activity and the record of an arrest cannot serve as the basis for a PHA's decision to terminate a participant's rental subsidy.⁸⁶

In this case, the fact that the Participant was arrested on March 9, 2017 is not a sufficient basis for termination. However, a PHA may terminate a participant based on the conduct underlying an arrest if that conduct indicates that [1] the PHA has sufficient evidence that the individual engaged in the conduct, other than the fact of arrest and [2] the individual is not suitable for tenancy.⁸⁷ Whether the evidence is sufficient is determined by a preponderance of

⁸² HPD Exhibit 11

⁸³ *Id.*

⁸⁴ *Edgecomb v. Housing Auth.*, 824 F. Supp. 312, 315 (D. Conn. June 10, 1993) ("A proper notice in compliance with the regulations would state the particular felony and the person who allegedly committed it and would give a brief factual statement concerning the incident"); see also *Lawrence v. Town of Brookhaven Dep't of Hous.*, 2007 U.S. Dist. LEXIS 94947, *42 (E.D.N.Y. December 26, 2007).

⁸⁵ HUD PIH Notice 2015-19, at 3

⁸⁶ *Id.*

⁸⁷ *Id.*



the evidence standard.⁸⁸ The evidence itself can include police reports detailing the circumstances of the arrest and witness statements.⁸⁹

Here, the Warrant and DA Letter do not provide any information regarding the Participant's conduct. The Warrant is a search warrant and only indicates what the police believed they might find at the Premises and possibly on the Participant's person while the DA Letter doesn't even mention Participant by name.

When viewed together, the Property Vouchers, Lab Report, and Felony Complaint show that the Participant and Troy Williams were arrested on March 9, 2017 because the police found what they believed to be illegal drugs at the Premises. However, these documents do not provide any specific information regarding the Participant's conduct.

The Property Vouchers appear to note that the "owner" of the alleged illegal drugs was the Participant. However, there is no indication of why the Participant is considered the "owner" when the same document notes that two (2) individuals had been arrested. The Lab Report's results indicated that illegal drugs were in fact found on the Premises but doesn't provide any information about the Participant's conduct. Additionally, the evidence listed in the Property Vouchers was only submitted to the police lab on March 10, 2017, a full day after the arrest and felony complaint.

The Felony Complaint detailed the charges for which the Participant and Troy Williams had been arrested and described the factual basis for those charges. With respect to the Participant, the factual basis stated that at the time of the arrest, the Participant was in the living room of the Premises and that illegal drugs were found in the living room. However, the presence of illegal drugs at a unit does not warrant the conclusion that the apartment was "*utilized as a focal point for drug activity or that any such illegal use occurred customarily or habitually upon the premises.*"⁹⁰

Therefore, these documents are not sufficient to show that the Participant was engaged in either the illegal manufacture, sale, distribution, or use of a drug, or that she was actually in possession of a drug with intent to manufacture, sell, distribute or use the drug.⁹¹ Consequently, the documents HPD relied upon do not support the Agency's determination that the Participant, more likely than not, was engaged in drug-related criminal activity.

A review of the Record shows that on February 9, 2019, prior to the issuance of the Second Termination Notice, the Participant's attorney submitted the Certificate of Disposition, which indicated that on September 12, 2017, the Participant had been convicted by plea of criminal possession of a controlled substance in the 3rd degree and on October 24, 2017, was sentenced to three (3) years' probation.⁹²

⁸⁸ 24 C.F.R. 982.553(c)

⁸⁹ HUD PIH Notice 2015-19, at 3

⁹⁰ *Riverside Park Community, LLC v. Venture*, 37 Misc. 3d 1209(A) (quoting *Second Farms Neighborhood HDFC v. Lessington*, 31 Misc. 3d 144[A]).

⁹¹ 24 C.F.R. 5.100

⁹² HPD Exhibit 10b



The PIH Notice states that reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may be the basis for determining that the disqualifying conduct in fact occurred.⁹³

While the Certificate of Disposition is reliable evidence of a conviction for criminal conduct, HPD did not include it on its list of documents nor was it attached to the Second Termination Notice, even though HPD had the letter in its possession. The statement “*See attached*” indicates to the Participant and her attorney that they only need to look at the listed documents to understand what the Agency used as the basis for its decision in this case. Therefore, the Participant could only infer the reason for termination because of the Attached Documents, which did not include the Certificate of Disposition.

It should also be noted that the Certificate of Disposition does not, by itself, show that the Participant is not suitable for tenancy. A review of the evidence now in the Record seems to indicate the opposite. The Participant signed a renewal lease for two (2) years with her landlord on November 14, 2017, which was *after* the Participant had both pleaded guilty and been sentenced to probation.⁹⁴ The Participant also submitted several documents showing that she has received drug treatment and passed several drug tests, both for probation and for her employment.⁹⁵ Together, these documents indicate that the Participant’s landlord views her as suitable for tenancy.

C. HPD’s decision to terminate the Participant’s subsidy for failure to submit the Requested Documents was Incorrect in part and Correct in part.

HPD also terminated the Participant because she failed to submit the Certificate of Disposition and Pastor’s Statement (“Requested Documents”).

Participant and Ms. Godoy had initially requested a conference after receiving the Pre-Termination Notice, which indicated that the Participant was being terminated for engaging in criminal activity.⁹⁶ At the First Conference, Ms. Godoy requested to review the Participant’s entire case file and the conference was rescheduled.⁹⁷ It was at the Second Conference that HPD asked for the Requested Documents.⁹⁸ The Participant and Ms. Godoy signed the Conference SOU, agreeing to submit the Requested Documents within seven (7) days of the Conference.⁹⁹ The Record shows that the Participant and Ms. Godoy did not submit the Requested Documents by the deadline or prior to the issuance of the First Termination Notice.¹⁰⁰

⁹³ HUD PIH Notice 2015-19, at 3

⁹⁴ Participant Exhibit A

⁹⁵ Participant Exhibits B-D

⁹⁶ HPD Exhibit 4a

⁹⁷ HPD Exhibit 5a

⁹⁸ HPD Exhibit 6a

⁹⁹ *Id.*

¹⁰⁰ HPD Case File- Case Notes



Ms. Godoy submitted the Certificate of Disposition with the Appeal on February 14, 2019.¹⁰¹ The Second Termination Notice was issued on May 9, 2019.¹⁰² Ms. Godoy submitted the Pastor's Statement on or about May 31, 2019.¹⁰³

a. *Certificate of Disposition*

As noted above, at the time HPD issued the Second Termination Notice, the Participant had already submitted the Certificate of Disposition. Consequently, HPD's decision to terminate the Participant for failing to submit the Certificate of Disposition was incorrect.

b. *Pastor's Statement*

The Record shows that the Participant only submitted the Pastor's Statement after HPD issued the Second Termination Notice. Therefore, HPD's decision to terminate the Participant for failing to submit the Pastor's Statement was correct.

Under Federal and HPD policies, HPD has the discretion to consider all of the circumstances in each case, including the seriousness of the case, when determining whether or not to terminate Section 8 assistance because of the participant's failure to act.¹⁰⁴

Here, although HPD's decision was correct, a termination of the Participant's subsidy would be inappropriate at this time because the Participant has fully complied with HPD's request for documents.

DETERMINATION

Based on the foregoing, and a complete review of the Record, I find that HPD's decision to terminate Marva Gorham from the HPD Section 8 Rental Subsidy Program is hereby REVERSED in part and REMANDED in part.

- HPD is advised to review Participant Exhibits A-G and request additional documentation, if necessary
- The Participant is reminded that she has an obligation to fulfill her program responsibilities, including submitting documents to HPD in a timely fashion. As head of the household, she is responsible for ensuring that HPD receives any and all documents that are required of her in a timely fashion.

Date of Informal Hearing Decision: December 17, 2021

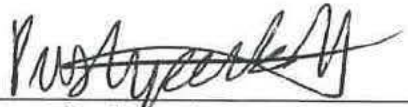
¹⁰¹ HPD Exhibit 10b

¹⁰² HPD Exhibit 11

¹⁰³ HPD Exhibit 10e

¹⁰⁴ HPD Administrative Plan at Ch. 15, §15.7



Hearing Officer: 
Pushpa Bhat

Cc:
HPD/ Section 8 Representative
File

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