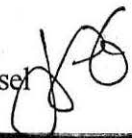


Memo

Date: November 17, 2006

To: Barb Lelli, Investigator

From: John Gause, Commission Counsel 

Re: 



H06-0523-A,B,C ; H06-0524

In response to your memo, dated, October 31, 2006, I think that the above-referenced complaints should be administratively dismissed.

In brief, Complainant alleges that Respondents discriminated against him in housing on the basis of disability because they denied him a preference for a Section 8 housing voucher that is granted to people who meet Respondents' definition of "disability." Respondents claim that their definition of "disability" is taken directly from the federal regulations under the Section 8 Housing Choice Voucher program.

The federal regulations under that program provide that "[t]he PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for admission of persons with a specific disability." 24 C.F.R. § 982.207(b)(3). The regulations define a "person with disabilities" as follows:

Person with disabilities:

(1) Means a person who:

- (i) Has a disability, as defined in 42 U.S.C. 423;
- (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - (A) Is expected to be of long-continued and indefinite duration;
 - (B) Substantially impedes his or her ability to live independently, and
 - (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
- (iii) Has a developmental disability as defined in 42 U.S.C. 6001.

24 C.F.R. § 5.403

Complainant's doctor has certified that he does not meet this definition. Therefore, Respondents have denied him a preference for a voucher. Nevertheless, he remains eligible for Section 8 and is on the waiting list with each Respondent.

In essence, Complainant alleges that Respondents are discriminating against him by choosing a particular category of disability for the preference that does not include his disability. Some people who have a protected disability under the MHRA and FHA will be entitled to the preference (because they also meet the Section 8 standard) and others will not. He does not allege discrimination between people with disabilities as defined by the MHRA and the FHA and people without such disabilities. Moreover, Complainant does not allege that he is being denied the preference because of *his* particular type of disability (say, for example, if Respondents had a policy of denying a preference to people with right ankle problems); rather, he alleges that he is being denied the preference because he does not have a particular type of disability. This type of discrimination is not unlawful. *See, e.g., Traynor v. Turnage*, 485 U.S. 535, 549 (1988) (“There is nothing in the Rehabilitation Act that requires that any benefit extended to one category of handicapped persons also be extended to all other categories of handicapped persons.”). *Cf.* Larson, Labor and Employment Law § 153.05(1) (no “reverse discrimination” under ADA).

Accordingly, because Complainant does not allege that he is being denied the preference because of *his* disability, the case should be administratively dismissed.

Cc: Patricia E. Ryan