

HOUSING RIGHTS & RESPONSIBILITIES FOR MENTAL HEALTH CONSUMERS LIVING IN THE COMMUNITY

Presented by:

Mental Health Advocacy Project

Disability Rights California

Office of Consumer Affairs

Introductions & Welcome

2

The Community Living Coalition exists to empower, educate, promote self-advocacy, and to ensure safe and supportive community housing for behavioral health consumers. The coalition builds connections and collaboration equally partnered by consumers, families, behavioral health providers, community housing operators, and advocates.

For more information, contact Lorraine Zeller:

Lorraine.Zeller@hhs.sccgov.org

408-792-2132

Introductions & Welcome

3

- Today's presenters are:
 - ▣ Kim Pederson, Senior Attorney – Mental Health Advocacy Project
 - ▣ John Hardy, Mental Health Peer Support Worker – Consumer Affairs
 - ▣ Jung Pham, Staff Attorney – Disability Rights California

Goals for Today:

4

- Overview of basic housing rights for ALL tenants, including:
 - ▣ Habitability
 - ▣ Fair housing for people with disabilities
 - ▣ Tips for tenants
 - ▣ Explanation of special rights of people living in licensed board & care homes
 - ▣ The eviction process
- Financial management, including:
 - ▣ Ensuring that a representative payee properly manages money
 - ▣ Information on how to become your own representative payee



HOUSING RIGHTS

Housing Rights: Who is a Tenant?

6

- Generally, anyone who pays money in exchange for living in a space.
 - Renters of apartments or houses
 - Includes subsidized housing/tenants with vouchers
 - Residents of room & board/independent living homes
 - Residents of licensed board & care homes
 - One main exception: Lodgers
 - A Lodger is someone who is the only person renting a room in an owner-occupied house
 - Main difference between a tenant & a lodger: eviction rules don't apply to lodgers – more on evictions later
- Unless otherwise specified, all information given today applies to all types of tenants

Housing Rights: Habitability

7

- Under California law, all landlords must provide the following:
 - ▣ Plumbing facilities in good working order, including hot & cold running water;
 - ▣ Heat, electrical and lighting systems in good working order (no exposed wires);
 - ▣ Clean and sanitary buildings and grounds, free of rodents, vermin, and exposed trash;
 - ▣ Adequate trash receptacles;

Housing Rights: Habitability

8

- Landlord's obligations, continued...
 - ▣ Floors, stairways and railings in good repair;
 - ▣ A working toilet, sink/faucet, and bathtub or shower;
 - ▣ Working smoke detectors & carbon monoxide detectors; and
 - ▣ Waterproofing, including unbroken windows, doors and a non-leaking roof.

Housing Rights: Habitability

9

- What if the landlord does not provide these things?
 - ▣ Talk to the landlord or write a letter to the landlord asking him to fix the problem.
 - ▣ If the landlord does not fix the problem after writing a letter or talking in person:
 - A tenant can “repair and deduct” or withhold rent, but these options are risky.
 - Call Code Enforcement (San Jose: 408-535-7770)
 - If the tenant has a subsidy, such as a Section 8 voucher, call the Housing Authority or subsidy administrator to report the problems
 - ▣ It is **ILLEGAL** for a landlord to retaliate against a tenant for making a complaint about the habitability of a unit.

Housing Rights: Fair Housing

10

- The Fair Housing laws prohibit discrimination in housing.
- What is discrimination?
 - ▣ *Treating people differently based on their membership in a protected class.*
 - ▣ *Having neutral policies or rules that disproportionately impact people in protected classes.*
- Apply to landlords, and other providers of housing-related services (ex: Housing Authority, Code Enforcement)

Housing Rights: Fair Housing – Protected Classes

11

- Disability (physical or mental)
- Familial Status (presence of children under 18)
- Race, Color, National Origin, Ancestry
- Religion
- Sex, Gender, Gender Identity, Gender Expression, Sexual Orientation
- Marital Status
- Source of Income (legal & verifiable)
- Medical Condition

Fair Housing – Prohibited Actions

12

- ❑ Refusing to rent or sell
- ❑ Providing different or inferior terms and conditions
- ❑ Making or publishing statements that show a preference or limitation
- ❑ Misrepresenting the availability of a property
- ❑ *Refusing to grant a reasonable accommodation to a person with a disability*
- ❑ Refusing to allow a person with a disability to make a reasonable modification, at her own expense
- ❑ Harassment
- ❑ Retaliation after a tenant exercises her fair housing rights

Fair Housing – Reasonable Accommodation

13

- A reasonable accommodation is:
 - ▣ A change in rules, policies, practices or services
 - ▣ When such change is necessary
 - ▣ To afford a person with a disability equal opportunity to use and enjoy a dwelling.

Reasonable accommodations are powerful tools that allow people with disabilities to obtain and maintain housing that works for them.

Fair Housing – Reasonable Accommodation Burdens of Proof

14

- In order to obtain a reasonable accommodation, a **tenant** must show:
 - ▣ She is a person with a disability (OK for landlord to ask for proof if not obvious);
 - ▣ That there is a rule, policy, practice or procedure that she needs changed because of the disability; and
 - ▣ That the accommodation is necessary because of her disability.
- **Landlord** may deny a requested accommodation if:
 - ▣ The requested accommodation would cost too much money or administrative time; or
 - ▣ Would result in a fundamental alteration of the program.

Remember the INTERACTIVE PROCESS!!

Fair Housing – Reasonable Accommodation Logistics

15

- TIMING: An accommodation can be requested at ANY TIME, from before a tenancy begins, up to the time that an eviction order is final.
- Interactive process required: when an accommodation is requested, if the requested accommodation cannot be granted by the landlord, the tenant and the landlord must engage in an “interactive process” to reach a compromise that will meet the tenant’s needs and will not be a burden on the landlord.

Fair Housing – Commonly Requested Accommodations

16

- Emotional Support Animals & Service Animals
 - Note: No extra deposit!
- Behavior (so long as not a direct threat)
- More time to meet deadlines or comply with notices
- More time to move out
- Live-in aides
 - Note: They do not become tenants on the lease
- Economic accommodations:
 - Co-signors
 - Adjusted rent due date
 - Payment plans
 - Waiver of fee for breaking a lease
- **ANYTHING ELSE**, so long as the person requesting the accommodation can show that it is necessary because of her disability

Fair Housing – Reasonable Accommodations & Evictions

17

- Reasonable accommodations can be used to stop evictions.
- Even tenants who have engaged in allegedly threatening or dangerous behavior are entitled to second chances at their tenancies if the behavior was related to a disability and they have a plan in place to minimize or eliminate the behavior in the future.
- **Eviction cases move FAST – if your client is being threatened with an eviction or has a pending case, refer him to MHAP ASAP!**



LICENSED BOARD & CARE HOMES

Requirements for Licensed Board & Care Homes

19

In addition to tenants' rights, residents of licensed B&C homes have additional rights under California law.

A licensed B&C home is legally required to:

- Provide transportation to/from medical/dental appointments, when necessary;
- Assist residents with voting in elections;
- Provide bedrooms that are shared by no more than two residents and are not passageways from one room to another;

Requirements for Licensed Board & Care Homes

20

Licensed homes must also provide...

- ❑ Clean linens, including blankets, sheets, bedspreads & towels;
- ❑ Personal hygiene items, such as soap, toilet paper, toothpaste, toothbrushes;
- ❑ Planned recreational activities, including games, sports and exercise;
- ❑ Safe, comfortable indoor & outdoor activity areas;
- ❑ A variety of reading materials;
- ❑ The opportunity to participate in religious activities or community events of your choosing;
- ❑ Three meals per day, as well as snacks;

Requirements for Licensed Board & Care Homes – Residents' Councils

21

- Operators of licensed B&C homes are required to assist residents with establishing and maintaining a residents' council.
- If a home has a residents' council, the operator must allow the residents to hold part of the council meetings without any B&C staff present.

Residents' Rights in Licensed Homes

22

Under California law, residents of licensed B&C homes have the following rights:

- To have private visitors during waking hours;
- To wear their own clothes;
- To have and control their own personal property, including money;
- To have access to a telephone in order to make and receive private calls;
- To send & receive unopened mail;

Residents' Rights in Licensed Homes

23

- To receive assistance with activities of daily living, such as dressing, eating and bathing;
- To be provided with basic laundry services;
- To leave the board & care home at any time – they are not locked facilities;
- To never be locked in a room;
- To have questions from your authorized relatives/representatives answered promptly and completely by B&C staff.



EVICTIIONS

Eviction Process

25

- The eviction process moves FAST:
 - 1) Notice – generally 3 to 90 days
 - 2) Unlawful Detainer/Eviction Lawsuit filed by Landlord
 - 3) Tenant has 5 days to file his Answer with the court
 - If the tenant does not Answer, the Landlord can get an automatic or “default” judgment against the tenant
 - 4) Court Date/Trial, usually within about 20 days from the tenant filing the Answer
 - 5) Resolution – Settlement or Judgment
 - Cases often settle for more time to move, or sometimes, the tenant gets to stay
 - 6) Possibility of extra time to move post-judgment
 - 7) Sheriff’s notice of lock-out

Eviction Process

26

- IT IS NEVER LEGAL FOR A LANDLORD TO LOCK A TENANT OUT WITHOUT GOING THROUGH THE EVICTION PROCESS.
- This applies to people who are placed on 5150/5250s and detained for psychiatric treatment – a landlord cannot refuse to allow a tenant back after a psychiatric hospitalization without going through the eviction process.

**** Exception: Lodgers. A landlord can lock a lodger out after giving the correct amount of notice.**



HOUSING RIGHTS – FINAL THOUGHTS

Tips for All Tenants

28

- ❑ Read your rental contract – it contains important information!
- ❑ A landlord can raise the rent with proper notice, but not if a tenant is in a fixed-term lease
- ❑ After a tenant moves out, the landlord has up to 21 days to return the security deposit or provide an accounting if money is deducted – give the landlord a new mailing address!
- ❑ If you move out and still have belongings in the unit, the landlord must store them for up to 18 days and can charge reasonable storage fees.



**FINANCIAL
MANGEMENT/
REPRESENTATIVE
PAYEES**

The Role of the Representative Payee

30

A representative payee is an individual or organization that receives SS or SSI benefits for someone who cannot manage, or direct someone else to manage, his or her money.

Who are Representative Payees?

31

- SSA usually selects someone living with you to be the representative payee. Someone who knows you can ask SSA if she or he can be the payee.
 - ▣ Make sure you are comfortable with and trust such individual.
- Organizations, institutions, or agencies also serve as Representative Payees.

Appointing a Representative Payee

32

- The decision to appoint a representative payee is never made as a convenience or from a desire to protect you, but rather it is a decision based on your capability to manage your own SS/SSI benefits.
 - ▣ Just because you have a disability does not mean you need a representative payee!

Determining Capability – Adult Beneficiaries

33

You are presumed to be capable of managing or directing the management of benefits!

- The burden is always on the SSA to prove that a beneficiary cannot manage their SS/SSI funds.

Is A Beneficiary's Capability Ever Reevaluated?

34

Although SSA may have determined your capability at some point in the past, capability can be reevaluated.

- That also means that YOU may at any time request a re-evaluation!

Situations in Which SSA Must Consider Reviewing Capability

35

- If there is an indication that you cannot manage or direct the management of your benefits. [SSA initiated]
- If you feel you are at a point in your life where you can become your own payee.
 - Note: If SSA believes your condition has improved to the point that you no longer need a payee, they may reevaluate your eligibility for disability payments.
 - Be careful that you only claim ability to self-manage money.

Duties of the Payee

(20 C.F.R. §§ 404.2035 and 416.635, POMs GN 00502.113)

36

- Only limited to SS/SSI benefits management.
 - ▣ No control of wages, inheritances, etc.
- Meeting or communicating with you on a regular basis to ascertain your current and foreseeable needs.
 - ▣ Notify you of all SSA notices involving you.
- Using funds to meet your “current needs”.
 - ▣ Ex. Rent, utility, medical, food...

Duties of the Payee (Cont.)

37

- Conserving and investing benefits not needed for the your current needs.
 - ▣ Sometimes, this may go against your wishes for the money, but it is their job to make sure you do not overspend.
- Keeping detailed and accurate records of how benefits are used in order to provide an accurate report to SSA.
 - ▣ You can always request an accounting of your money.
 - ▣ There should always be a sign-out sheet for your Personal & Incidental disbursements.
 - ▣ The representative payee must always save your receipts.
 - ▣ Your money should be saved in bank account clearly indicating that it is your money:
 - Ex. *Homestead Rep Payee Inc on Behalf of John Doe*. **NOT:** *Homestead Rep Payee Inc. Account*.

Duties of the Payee (Cont.)

38

- Reporting changes of address and custody.
- Acting for you on matters relating to the your SS/SSI claim.
 - ▣ Ex. Filing for reconsideration/appealing a re-evaluation or termination.
- Notifying SSA if you no longer need a payee;
 - ▣ Why regular communication is important!

Duties of the Payee (Cont.)

39

- Report events to the Social Security Administration (SSA) that may affect your entitlement or benefit payment amount;
- Report any changes in circumstances that would affect their performance as your representative payee;
- Provide SSA an annual Representative Payee Accounting Report to account for benefits spent and invested;
 - You can request to see this report.

Duties of the Payee (Cont.)

40

- Return any payments to SSA to which you are not entitled;
 - To prevent overpayments.
- Return conserved funds to SSA when no longer serving as the representative payee for you; and
- Be aware of any other income Supplemental Security Income you may have and monitor your savings to ensure you do not exceed resource limits.
 - \$2,000 for an individual and \$3,000 for a couple

Additional Ways The Organizational Payee Can Help You

41

- Establishing a budget and involving you as much as possible by meeting with you regularly;
 - ▣ No “conduit payee” arrangement without instructions.
- Explaining Social Security and/or SSI payments and your expenses;
- Ensuring that you are aware of current and large retroactive payments;

How Organizational Payee Can Help The Beneficiary (Cont.)

42

- Helping you complete applications for other needed services and cooperating with case-workers;
- Helping you file income tax returns;
- Recommending an alternate person or agency if they can no longer serve as payee for you;

How Organizational Payee Can Help The Beneficiary (Cont.)

43

- Determine your current needs for day-to-day living and use your payments to meet those needs;
- Maintain account records of how your benefits are received and used.

Examples of Special Purchases Allowed beyond Current Needs

44

- Improve daily living conditions
 - ✓ Furniture
 - ✓ A car (or car payments)
 - ✓ Home improvements
- Major health-related expenses
 - ✓ Dental care
 - ✓ Wheelchair
 - ✓ Rehabilitation expenses

Special Purchases Allowed (Cont.)

45

- Use the money to arrange you to go to school or get special training; or
- Spend some of the money on your recreational activities
 - ▣ Movies, concerts, magazine subscriptions, travelling etc.

Personal Needs Examples

46

- Clothing
- Convenience items
- Health and hygiene items
- Snacks and treats
- Hobby and Craft Items
- Living Area Furnishings
- Miscellaneous Items

How Do I Become My Own Payee?

47

- At any time you can request to be your own payee.
- Obtain supporting documentation to show you can manage your own funds.
 - ▣ Healthcare provider;
 - ▣ Caseworker;
 - ▣ Friends and family;
 - ▣ Businesses you go to who know you.
- Use form SSA-11.
- If you are denied you can appeal.

Who Can You Go To if Your Funds are Being Mis-managed?

48

- Notification of benefit misuses by a representative payee must be immediately filed with the SSA hotline at (800) 772-1213 and the local office.
- If misuse is found, SSA may:
 - ✓ Appoint new payee;
 - ✓ Direct payment to you;
 - ✓ Obtain restitution from the misuser;
 - ✓ Refer the case for possible criminal prosecution.

Resources

49

- Improving the Social Security Representative Payee Program: Serving Beneficiaries and Minimizing Misuse
<http://www.nap.edu/catalog/11992.html>
- <https://secure.ssa.gov/apps10/poms.nsf/partlist!OpenView>
- <https://secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&restricttcategory=02>
- <http://www.socialsecurity.gov/payee/>
- <http://ssa.gov/payee/NewGuide/toc.htm>

Questions?