

United States District Court, District of Columbia.
The WASHINGTON LEGAL CLINIC for the
HOMELESS, INC., et al., Plaintiffs,
v.
Marion BARRY, in his Official Capacity as Mayor of
the District of Columbia, Defendant.
Civ. A. No. 93-0691(JHG).

July 23, 1996.

ORDER

[JOYCE HENS GREEN](#), District Judge.

***1** In its February 1996 Memorandum Opinion and Order, the Court required the District of Columbia [FN1](#) to make certain modifications in documentation requirements imposed upon applicants for emergency family shelter, directed the District to implement measures to improve the exchange of information regarding eligibility between government agencies, and ordered the District to develop and implement policies and procedures to ensure prompt hearings and decisions on appeal for unsuccessful applicants for emergency shelter. The District was ordered to report to the Court within 60 days on actions taken in response to the Court's Order.

[FN1.](#) Because Marion Barry is sued in his official capacity as Mayor of the District of Columbia, this Order refers to the District of Columbia as the defendant.

The District timely filed a report to the Court. The report described actions taken by the District to ease documentation requirements on shelter applicants and to improve coordination of documentation between various offices within the Department of Human Services. With regard to the Court's order to improve the time frames for hearings and decisions on appeals, however, the District's report contends that it is bound by the time frames contained in the general statutory provisions governing fair hearings for public assistance programs, codified at [D.C.Code § 3-210.1](#) *et seq.* That provision requires applicants to file a notice of appeal within 90 days of an adverse determination, requires hearings to take place within 45 days of a request, and generally requires final decisions to be issued within 60 days of the request.

The District contends that these provisions, which were not brought to the Court's attention by either side during trial or in post-trial submissions [FN2](#), trump the statutory provisions and regulations governing the emergency shelter program.

[FN2.](#) The statute was included in plaintiffs' Notice of Filing of Applicable Laws and Regulations, as part of an 82-page chapter on "Public Assistance," the provisions of which concern "Old Age Assistance," Aid to Families with Dependent Children, General Public Assistance, and numerous other public assistance programs, as well as the emergency shelter provisions. Regrettably, the statutory provisions were not discussed by witnesses or highlighted by counsel for either side during trial; rather, the testimony and argument focused on the *regulations* governing the emergency shelter program.

Plaintiffs criticize the District's actions as deficient in numerous respects. Plaintiffs dispute the District's claim that it cannot modify the fair hearing process in light of [D.C.Code § 3-210.1](#), urging the Court to find that the statute governing the emergency shelter program specifically authorizes the Mayor to promulgate regulations on fair hearings for the program. In addition to making specific recommendations for further improvements, plaintiffs ask the Court to order the District to take further action to improve the documentation requirements and the fair hearing process.

The District has appealed from the Judgment issued in conjunction with the Court's Memorandum Opinion and Order, but it has not requested or been granted a stay of the Court's Order pending appeal. While the case is on appeal, the Court retains jurisdiction to enforce or modify its injunction, if appropriate, to preserve the status quo during the pendency of an appeal. [Fed.R.Civ.P. 62\(c\)](#); see also *Sierra Club v. Cedar Point Oil*, 73 F.2d 546, 578 (5th Cir.1996) ("district court's power to alter an injunction pending appeal is limited to maintaining the status quo'"); [McClatchy Newspapers v. Central Valley Typo. Union](#), 686 F.2d 731, 734 (9th Cir.), *cert. denied*, [459 U.S. 1071 \(1982\)](#) (same). However,

the Court does not have jurisdiction to revisit the underlying merits.

***2** The Court's directives to the District and the District's responses are discussed in turn below.

1. Modification of Documentation Requirements

The Court ordered the District to develop and implement policies and procedures to define “reasonably available” documentation and to provide relief from the requirements for applicants for whom the documents are not “reasonably available.” [*Washington Legal Clinic for the Homeless v. Barry*, 918 F.Supp. 440, 462 \(D.D.C.1996\)](#).

Pursuant to an April 23, 1996 memorandum from Annie Goodson, Acting Commissioner of the Department of Human Services, applicants are required to provide reasonably available documentation of their eligibility. “Reasonably available” is defined as “documents in the possession of the applicant or readily obtainable by the applicant.” Furthermore, “if the applicant can show that documents are not reasonably available despite reasonably diligent efforts to obtain them, the Department [of Human Services] may waive the requirement to produce the document.” Def.Exh.A.

Plaintiffs contend that the District's policy should be that “the only documents which are required are those documents currently in the possession of the applicant.” Response at 3. Plaintiffs' position misconstrues the Court's Memorandum Opinion and Order. The Court did not mandate that the District's requirements be so limited, but rather required the District to develop and implement policies to ease the documentation requirements in certain circumstances, recognizing the situation faced by many homeless family applicants who might not have ready access to the desired documentation.

The Court is concerned, however, that the definition of “reasonably available” lacks clarity and precision. Complicating matters is the fact that the policy grants total discretion as to whether to waive the documentation requirements. The District's policy states only that the District “may” waive a requirement if the applicant can show that the document is not “reasonably available.”

Accordingly, supplementation of the policy is necessary to further define “reasonably available” as well as to provide more concrete standards for waiving the documentation requirements. In preparing such supplementation, the District must bear in mind the Court's earlier Order that the District's policy should “provide for relief from certain documentation requirements for applicants for whom the documents are not ‘reasonably available.’” [918 F.Supp. at 462](#). Accordingly, if the documents are not “reasonably available,” the applicant should be relieved of the documentation requirement, and the matter should not be left to the discretion of an intake worker.

Finally, while the Court recognizes that the District's overall policy cannot address all possible scenarios in which documents are not available, the Court is confident, given the District's experience with the program, that it can provide greater guidance on the meaning of the term “reasonably available.” In this regard, the Court does not object to the District's general definition: “in the possession of the applicant or readily obtainable,” but believes that further elaboration on the meaning of “readily obtainable” for applicants who are homeless and lack resources and transportation, is necessary to effectuate the directives earlier issued by the Court.

***3** The District's supplementation must be provided by September 6, 1996. At that time, the District must also explain why the Document Checklist continues to request that documents be provided within seven days, when the District does not utilize the documents for an eligibility determination until such time that an applicant's waiting list number is called, typically far more than seven days after the date of application. See [918 F.Supp. at 457 n. 37](#).^{FN3}

[FN3](#). With regard to the waiting list, the Court observes that the modified information sheet concerning the waiting list states that applicants who fail to appear at the OESSS office on the day their waiting list number is called “may” have their space held for three days. However, the testimony at trial suggested that an applicant's space was retained for 14 days. The District must explain this apparent discrepancy in its supplemental submission.

2. Document Coordination

As previously stated, the Court required the District to develop and implement policies and procedures to ensure greater coordination between various offices within the Department of Human Services, so that applicants for family shelter would not be required to provide documentation already in the possession of the Department. According to the revised Document Checklist (Def.Exh.B), “For applicants currently receiving benefits from the Department of Human Services and former applicants ^{FN4} whose information is still contained in the data base for the agency, documents already in the possession of said Department will not have to be provided by applicants.” Assuming that “data base” refers both to computer data bases as well as hard copies of information, this policy complies with the Court's Order.

^{FN4}. It is unclear whether the District intended to refer to “recipients” rather than “applicants”. If so, the appropriate change should be made in the form.

However, the Court is troubled by statements in the Goodson memorandum which appear to dilute the plain statement on the Document Checklist. According to the Goodson memorandum, the shelter program will “attempt to verify eligibility from information in the Department's database” before requiring it from the applicant. The memorandum does not describe what sort of “attempt” will be made prior to requesting the documents from the applicant. In its supplemental submission, the District shall clarify this matter and shall describe the specific procedures its personnel will employ to obtain information from the Department's files. The District shall also clarify that “data base” includes both computer records as well as hard copies of documents from files.

3. Appeals Procedures

The Court previously found that the District's system for appeals from adverse eligibility determinations violated due process, and the Court ordered the District to develop and implement policies and procedures to provide prompt hearings and decisions on appeals. The Court stated that it would not dictate

a particular time frame within which hearings and decisions must take place, but rather directed the District to “establish a specific time frame for hearings and decisions, taking into account the critically important benefits in question.” [918 F.Supp. at 459](#).

As previously mentioned, the District responded by stating that it lacked authority to modify the time frames for fair hearings because the time frame for appeals from emergency shelter determinations was governed by the general statutory provisions concerning fair hearings for all public assistance programs. Consequently, the District modified the time frames on its Notice of Eligibility Determination (Def.Exh.D) to comport with [D.C.Code § 3-210.1 et seq.](#) Thus, the revised notice states that unsuccessful applicants for *emergency* shelter have 90 days within which to request a fair hearing, that a hearing shall take place within 45 days of the request, and that a decision regarding *emergency* shelter will be issued within 60 days of the request for a hearing. By contrast, the District's previous form stated that decisions would be rendered within *two* days of an appeal.

^{*4} In addition, in its revised Notice of Eligibility Determination, the District lengthened the time frames for informal administrative reviews. While the initial form stated that requests for administrative review must be made within 24 hours and a decision rendered within 24 hours of the request, the modified form states that requests must be made within 10 days and a decision made within seven days of the request, although efforts would be made to reach a decision in one to three days.

Neither during the entire trial of this case nor during post-trial submissions did the District (or plaintiffs) raise this argument or bring the general statutory provisions to the attention of the Court. The Court therefore issued its Memorandum Opinion and Order and corresponding Judgment based on the information contained in the forms utilized by the District, the District's regulations on the emergency shelter program, the statute governing the emergency shelter program, and the arguments of counsel. Thus, the District cannot be heard to argue at this late date about potential conflicts between the general fair hearing statute and the fair hearing time frames at issue in this case.

Nor does the Court believe the overall fair hearing statute necessarily conflicts with the provisions in the emergency shelter statute. The general fair hearing provisions set outer limits on the time frames for fair hearings, but do not appear to prohibit shorter time frames. The emergency shelter statute specifically authorizes the Mayor to promulgate regulations to implement the emergency shelter program, including hearings on decisions affecting the receipt of benefits. [D.C.Code § 3-206.3](#). Indeed, the Mayor has already utilized this authority and promulgated regulations which contain time frames *different* from those contained in the general fair hearing statute. [29 DCMR 2511-2512](#). Accordingly, the District must modify its time frames for fair hearings for emergency shelter, and restore its prior time frames for administrative reviews, in accordance with the Court's Memorandum Opinion and Order. In its supplemental submission, due September 6, 1996, the District must describe the specific measures it has taken to develop and implement the revised time frames, including regulatory changes if necessary. No extension of the date for the supplemental submission is envisioned.

No stay will be granted by this Court during the pendency of the District's appeal, due to the emergency nature of the benefits in question, as reflected in the Court's Memorandum Opinion and Order of February 23, 1996 and this Order. However, resolution of plaintiffs' request for attorneys' fees will await the final decision of the Court of Appeals on the pending appeal.

IT IS SO ORDERED.

D.D.C., 1996.

Washington Legal Clinic for Homeless, Inc. v. Barry
Not Reported in F.Supp., 1996 WL 422494 (D.D.C.)

END OF DOCUMENT