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**IT'S MORE THAN RAMPS:
HOUSING ACCESSIBILITY FOR
PEOPLE WITH DISABILITIES**

by **KIM BOROWICZ AND HILLARY COUSTAN**

INTRODUCTION

When many people think about “accessibility,” they think of ramps, automatic doors, and parking spaces. For people with cognitive and mental health disabilities¹, however, accessibility is more than physical structures. Indeed, many people with these types of disabilities have been excluded

from schools, recreation, and housing opportunities as a result of programmatic barriers to accessibility, such as excessive paperwork requirements, inflexible deadlines, and a general lack of support in navigating complicated bureaucracies. This article explores the role these barriers play within the context of the federal Housing Choice Voucher Program, in particular, and considers potential remedies under statutes designed to combat discrimination against people with disabilities.

MOVING PEOPLE WITH DISABILITIES FROM SEGREGATED SETTINGS INTO THE COMMUNITY

The U.S. Supreme Court held in 1999 that people with disabilities have the right, under the Americans with Disabilities Act (ADA), to live in the community, rather than be warehoused in institutions and nursing homes.² Yet, for many, affordable housing remains elusive.

The federal government implemented Supplemental Security Income (SSI), which is designed to provide stipends to people with disabilities and older adults for living expenses. However, SSI pays only \$674 per month to those who qualify.³ With such low income, a person on SSI has limited housing options. As outlined in a 2010 report by the National Council on Disability:

No State in the United States has an average-priced one-bedroom or studio apartment that would be affordable to someone on SSI. In fact, the average rental payment in the United States for a studio would require spending 100 percent of the monthly SSI payment and renting the average one-bedroom unit would require 112 percent of a monthly SSI payment. As a result, most of the 4.2 million people receiving SSI cannot afford housing in their communities unless they receive some form of housing subsidy.⁴

Vouchers provide people with disabilities with a housing subsidy that allows them to live in a regular apartment—and significantly, also allows them to receive services in their own home, rather than in nursing homes.⁵ The Section 8 Voucher program (now called the Housing Choice Voucher Program) was created in 1974 and is administered by local and State public housing authorities.⁶ Tenants make partial rental payments, usually one-third of their income, and the public housing authority (PHA) pays the remainder.⁷

The voucher holder can rent any apartment as long as it is approved by the public housing authority and the size and rent is within the limit set by the voucher.⁸ The voucher holder signs a lease with the landlord, and is therefore responsible for both lease-compliance and compliance with the voucher rules.⁹ The termination of a voucher is arguably more detrimental to a voucher holder than eviction because a voucher holder's low income makes it nearly impossible for him or her to find substitute housing.

The voucher program contrasts sharply with other forms of state-funded housing provided to people with cognitive and mental health disabilities, such as group homes, permanent supportive housing, institutions, hospitals, and nursing homes. These types of housing, with the exception of some forms of permanent supportive housing, are congregate settings that condition housing on accepting services, do not allow residents to live with their family or roommates of choice, do not provide residents with a choice of where to live, and segregate people with disabilities.¹⁰ State mental health and developmental disability agencies provide housing focused on services rather than choice.¹¹ A residence is simply not a home when it is a place where services are required.

Unlike these programs, a person with a voucher who may need services, such as counseling, medication management, and case management, can receive them through a Home and Community Based Services Waiver.¹²

BARRIERS TO ACCESSING THE HOUSING CHOICE VOUCHER PROGRAM

As we move from institutional placements to a more integrated model, the importance of the voucher program cannot be understated. Yet, the very program that facilitates this transition is failing to adequately serve people with disabilities.¹³ People with specifically cognitive and mental health disabilities face many barriers in the voucher program. Such individuals experience potential roadblocks at a number of different stages of the program, such as:

- 1) During the application process
- 2) In the waiting list and lottery process
- 3) During certification and annual recertification to qualify for the program
- 4) When responding to notices regarding their vouchers
- 5) When moving to another unit
- 6) When requesting a reasonable accommodation
- 7) When participating in an informal hearing

8) During the process of termination from the program.¹⁴

The barriers that can arise include excessive documentation requirements, confusing and complex rules and procedures, and inflexible deadlines.¹⁵ In addition, people with disabilities must sometimes make repeated requests for accommodations and provide a signed statement from a medical professional before an accommodation will be considered.¹⁶ People with cognitive and mental health disabilities often become overwhelmed by the bureaucracy of the voucher program, which can cost them their vouchers. These barriers persist despite the federal requirement that housing authorities “affirmatively further fair housing.”¹⁷

LEGAL REMEDIES FOR DISCRIMINATION IN THE VOUCHER PROGRAM

Given these barriers to participation in the voucher program, what legal remedies does a person with a cognitive or mental health disability have at his or her disposal? Three statutes protect people with disabilities from discrimination in this context. The Fair Housing Act (FHA) prohibits discrimination against people with disabilities by housing providers, including public housing authorities. Title II of the ADA deals specifically with discrimination by “public entities” such as state and local governments,¹⁸ while Section 504 of the Rehabilitation Act (Section 504) covers any program receiving federal financial assistance or conducted by any Executive agency.¹⁹

Because the voucher program is funded and operated by local public housing authorities in tandem with the U.S. Department of Housing and Urban Development (HUD), a claim of programmatic discrimination relating to the voucher program could arguably be brought under the ADA or Section 504; an individual claim can be made under the FHA as well.²⁰

The challenge, then, becomes defining the contours of such a claim. To establish a *prima facie* case of discrimination under Title II of the ADA or Section 504, a plaintiff must show that:

- (1) He or she has a disability within the meaning of the statutes;
- (2) He or she is “otherwise qualified”; and
- (3) He or she was excluded from, denied the benefit of, or subject to discrimination under a program or activity carried out by a public entity under

the ADA, or by a federal executive agency or recipient of federal funds under Section 504.²¹

A plaintiff must make similar showings under the FHA.²² However, the FHA does not require a plaintiff to prove he or she is “otherwise qualified,” as required by the ADA and Section 504.²³ After a plaintiff has established a prima facie case of discrimination, he or she may then propose reasonable modifications to the program to bring it into compliance with these laws; the burden then shifts to the defendant to implement those modifications, unless it can demonstrate that they would constitute a fundamental alteration of the policy or program at issue

Each of these elements requires some elucidation.

Defining “Disability”

The ADA, Section 504, and the FHA do not single out specific cognitive or mental health disabilities, such as autism or schizophrenia, for protection against discrimination. Rather, these laws take an individualized approach to the definition of who has a disability. To that end, these laws define disability in generalized terms: a physical or mental impairment that substantially limits one or more major life activities.²⁴

Under the ADA, as amended by the ADA Amendments Act of 2008 (ADAAA), major life activities include, but are not limited to, taking care of oneself, sleeping, speaking, learning, reading, concentrating, thinking, communicating, and working; further, functions of the brain are also included as a major bodily function that qualifies as a major life activity.²⁵ Significantly, the ADAAA provides that the definition of disability “shall be construed in favor of broad coverage of individuals” to the maximum extent permitted by the statute.²⁶

With this definition in mind, and Congress’ admonition to construe coverage broadly, it seems likely that myriad cognitive and mental health disabilities would qualify as “disabilities” under the ADA, Section 504, and the FHA. Indeed, the recently finalized Equal Employment Opportunity Commission (EEOC) regulations for the ADAAA state that autism, intellectual disability, major depressive disorder, bipolar disorder, post-traumatic stress disorder, and

schizophrenia all constitute impairments that presumptively substantially limit the major life activity of brain function.²⁷

Even absent the EEOC regulations, however, numerous major life activities besides brain function may be implicated by these disabilities. For example, autism spectrum disorders, Down's syndrome, and learning disabilities, depending on their severity, could substantially limit one's ability to take care of him or herself, learn, read, concentrate, think, communicate or work. Similarly, bipolar disorder, depression, and schizophrenia could be framed as substantially limiting the major life activities of sleeping, concentrating, communicating, and working, depending on the facts of an individual case.

"Otherwise Qualified"

Assuming that a plaintiff with one of the cognitive or mental health disabilities described above has standing to bring a claim against a public housing authority (under the ADA and Section 504), the next issue becomes whether he or she is a "qualified individual with a disability." A "qualified individual with a disability" is defined by Title II as:

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.²⁸

At first blush, it would seem that the eligibility criteria enumerated by HUD — income, familial status, citizenship, and criminal history — should suffice to prove eligibility for the voucher program.²⁹ As explained above, however, numerous barriers within the voucher program render people with cognitive or mental health disabilities ineligible for benefits in the first instance, or subject to termination once in the program. Such barriers are arguably better framed as part of the discrimination/reasonable accommodation inquiry. "Many of the issues that arise in the 'qualified' analysis, also arise in the context of the 'reasonable modifications' or 'undue burden' analysis."³⁰ The Supreme Court has described this as "two sides of a single coin."³¹

Exclusion from Participation or Denial of Benefits

The third requirement — that the plaintiff be excluded from participation or denied benefits in order to state a claim of discrimination — is typically the most contentious element of a plaintiff's prima facie case. Although it is widely understood that one of the primary goals of Title II and Section 504 is to enhance access to public programs and services, universal definitions of “participation” and “denial of benefits” remain elusive. Instead, as explained below, in each case a court must undertake a fact-intensive inquiry to determine whether a plaintiff has been denied meaningful access by the public entity in question.

In *Alexander v. Choate*, the Supreme Court set forth a rubric for analyzing Section 504 claims of the sort contemplated herein.³² In that case, a class of Medicaid recipients alleged that Tennessee's proposal to reduce the number of inpatient hospital days that state Medicaid would pay on behalf of Medicaid recipients violated Section 504.³³ According to the plaintiffs, the proposed reduction of inpatient coverage from 20 to 14 days, while neutral on its face, disproportionately disadvantaged people with disabilities.³⁴ The Supreme Court disagreed, however.

In rejecting the plaintiff's claim of discrimination, the Court framed its Section 504 inquiry in terms of “meaningful access”: “[A]n otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers.”³⁵ Applying that standard, the *Choate* court found that the proposed 14-day limitation did not deny the plaintiffs meaningful access to Tennessee Medicaid services, or exclude them from those services.³⁶ Among other things, the Court noted that Tennessee's program did not invoke criteria that had a particularly exclusionary effect on people with disabilities, nor did Tennessee deny coverage on the basis of any test, judgment, or trait that people with disabilities were less capable of meeting or less likely to have.³⁷

Significantly, the *Choate* court also rejected any suggestion that Tennessee was obligated to offer *more* than 14 days of coverage to people with disabilities:

At base, such a suggestion must rest on the notion that that the benefit provided through state Medicaid programs is the amorphous objective of “adequate health care.” But Medicaid programs do not guarantee that each

recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services, such as 14 days of inpatient coverage. . . . Section 504 does not require the State to alter this definition of the benefit being offered simply to meet the reality that the handicapped have greater medical needs.³⁸

Subsequent courts have elaborated on the *Choate* analysis. In *American Council for the Blind v. Paulson*, in which a class of plaintiffs alleged that the Treasury Department violated Section 504 by failing to issue paper currency that was readily distinguishable to people with visual impairments, the D.C. Circuit cited a “general pattern” in the meaningful access cases:

Where the plaintiffs identify an *obstacle that impedes* their access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit. By contrast, where the plaintiffs seek to expand the substantive scope of a program or benefit, they likely seek a fundamental alteration to the existing program or benefit and have not been denied meaningful access.³⁹

Thus, the meaningful access cases fall along a continuum of sorts. At one end are cases in which plaintiffs complain about barriers to participation that are merely incidental to the program at issue; on the other end are cases in which plaintiffs seek to change the nature of the benefit or program.⁴⁰ In every case, though, the parameters of the benefit or program in dispute are at the crux of the court’s analysis.

Accordingly, for a prospective plaintiff seeking to challenge the voucher program as discriminatory, a threshold issue involves defining the scope of the challenged benefit. In *Liberty Resources, Inc. v. Philadelphia Housing Authority*, a disability advocacy group alleged that Philadelphia’s voucher program discriminated against people with physical disabilities in violation of Title II as well as Section 504.⁴¹ The district court grappled with defining the scope of the benefit and services at issue. In that case, the plaintiff argued that the voucher program failed to provide enough accessible housing, and that it therefore denied people with physical disabilities meaningful access to the program and its benefits.

The plaintiff in *Liberty Resources* urged the court to define the scope of the benefit offered by the voucher program as providing affordable housing —

and, by extension, argued that because people with physical disabilities were being denied affordable housing, they were also being denied meaningful access to the voucher program. The court, however, refused to define the benefit so broadly (or, in the words of the *Choate* court, so amorphously),⁴² instead holding that the “benefits of the [voucher] program are a package of services that provide assistance to voucher holders in locating affordable housing.”⁴³

Among those services, the court held, were inspection of premises for compliance with quality standards, training for landlords, a service representative who may be contacted for questions, weekly landlord briefings, a list of known available units, monthly housing fairs, and various other services.⁴⁴ Relying on this narrower, more specific definition of the benefit at issue, the court in *Liberty Resources* concluded that voucher holders with physical disabilities had “successfully accessed” the variety of services offered by the voucher program and granted the defendant’s motion for summary judgment.

Assuming, for the sake of argument, a similar definition of the benefits of the voucher program in the case of a plaintiff claiming discrimination arising from the barriers facing people with cognitive and mental health disabilities, the next question would be whether that plaintiff has been denied meaningful access to those benefits.

As noted above, barriers such as excessive documentation requirements, inflexible deadlines, redundant paperwork requirements for reasonable accommodations, and a lack of support, collectively, impede access for people with cognitive and mental health disabilities to numerous benefits of the voucher program. Although the specifics of such a claim would need to be teased out in substantial detail, it seems likely that a claim of this sort could be framed to meet the test set forth in *Choate* and its progeny, *i.e.* that these barriers to participation in the voucher program are incidental to the program and do not seek to change the nature of the voucher program.

Reasonable Modifications/Fundamental Alteration

Whether and how these obstacles could be accommodated within the framework of the existing bureaucracy of public housing authorities’ voucher programs remain to be seen. The regulations provide limited guidance on how to accommodate people with cognitive and mental health disabilities.⁴⁵ Indeed, “Although Congress intended the term reasonable accommodation to provide

equality in all aspects of life for people with disabilities, it has been used primarily in the context of removing architectural barriers for people with physical disabilities.”⁴⁶

Nonetheless, some more general regulations can be interpreted as providing such protections. For example, under Title II of the ADA, PHAs must provide methods of “effective communication” to voucher holders who have disabilities.⁴⁷ In addition, the Section 504 regulations describing housing adjustments state that, “The [PHA] may not impose upon individuals with handicaps other policies, . . . , that have the effect of limiting the participation of tenants with handicaps in the [PHA’s] federally assisted housing program or activity in violation of this part.”⁴⁸

Moreover, guidance issued by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice, two federal agencies that enforce the FHA, states that an apartment building that has a policy of requiring renters to pay their rent in person must accommodate a tenant with a mental health disability that makes her afraid to leave her unit by allowing a friend to mail her rent check.⁴⁹

Ideally, housing providers would offer voucher holders with cognitive and mental health disabilities a support person to assist with navigating through the voucher process.⁵⁰ Extending deadlines is another reasonable accommodation.⁵¹ Other possible accommodations include providing note-takers at meetings or tape recording them, providing a scribe or reader to assist with written documents, and streamlining the voucher process.⁵² The process for requesting accommodations should also be centralized.

On the one hand, easing some of the administrative burdens and bureaucratic red tape described above seems like a modest change that would improve access for people with cognitive and mental health disabilities without substantively altering the benefits provided by the voucher program. On the other hand, a public housing authority could argue that the various requirements and deadlines are essential aspects of the voucher program, and that altering those protocols would be a fundamental alteration of the program.⁵³ Needless to say, the reasonable modification aspect of any hypothetical case would be a fact-specific undertaking.

CONCLUSION

Although much of the legal authority relating to accessibility focuses on ramps and other physical accommodations, disability rights laws are more than merely building codes. Abundant precedent and regulatory authority support the provision of less obvious accommodations to less obvious disabilities. Within the context of the Housing Choice Voucher Program, this would include reasonable accommodations that eliminate barriers to participation faced by people with mental health and cognitive disabilities, such as unreasonable deadlines and abundant paperwork.

NOTES

1 The terms cognitive and mental health disabilities are used by the authors to incorporate the disabilities defined as “mental impairments” in the ADA, FHA, and Section 504.

2 *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999).

3 SSI Social Security Administration, Federal Payment Amounts for 2011, *available at* <http://www.ssa.gov/oact/cola/SSI.html>.

4 NAT'L COUNCIL ON DISABILITY, *THE STATE OF HOUSING IN AMERICA IN THE 21ST CENTURY: A DISABILITY PERSPECTIVE* 31 (2010).

5 24 C.F.R. § 982.1.

6 42 U.S.C. § 1437f(o). The initial legislation providing low-income housing assistance was passed as section 8 of chapter 896 of the United States Housing Act of 1937, thus termed “Section 8.” 24 C.F.R. 982.2; 24 C.F.R. § 982.1(a)(1).

7 *Id.* § 982.1(a)(4)(ii).

8 *Id.* § 982.1(a)(2).

9 *Id.* § 982.1(b)(2).

10 *See generally*, Michael Allen, *Separate and Unequal: The Struggle of Tenants with Mental Illness to Maintain Housing* at 3 (National Clearinghouse for Legal Services, Inc. 1996) (“ . . . as long as MHAs [Mental Health Authorities] emphasize the administrative convenience of providing on-site mental health services, they will remain stuck on the group-home or congregate-living model, will not respond to consumer choice about housing, and will foster the kind of dependency in residents that undermines the goal of independent living.”).

11 *See generally*, Paul J. Carling, *Housing and Supports for Persons with Mental Illness: Emerging Approaches to Research and Practice*, 44 HOSP. & COMMUNITY PSYCHIATRY 439, 440 (1993) (“Historically, mental health agencies have viewed housing as a social welfare problem and have defined their role exclusively in terms of treatment. Public housing agencies, in turn, have contended that consumers need specialized residential programs and have viewed housing needs as a responsibility of mental health agencies. Thus housing needs have often been ignored.”).

12 42 U.S.C. § 1396n(c) (allows states to apply for a waiver of certain Medicaid requirements, that would otherwise require people to live in nursing homes or institutions, in order to provide long term care services in the community in their own home); Meghan K. Moore, *Housing Issue: Note: Piecing the Puzzle Together: Post-Olmstead Community-Based Alternatives for Homeless People*

with *Severe Mental Illness*, 16 GEO. J. POVERTY LAW & POL'Y 249, 265-266 (2009) (Assertive Community Treatment is a multi-disciplinary team of psychiatrists, nurses, social workers, and other rehabilitation specialists that works together to provide case management, medication management, counseling, assistance with shopping, cleaning, and other activities of daily living, and help with social skills.).

13 See generally, Michael Allen, *Increasing the Usability of Housing Choice Vouchers for People with Disabilities*, HOUSING LAW BULLETIN, available at <http://bazelon.org/LinkClick.aspx?fileticket=H7fNsTalv64%3d&tabid=245>.

14 E-mail from Meghan Carter, Attorney & Equal Justice Works Fellow, Legal Assistance Found. of Metro. Chi., to author (Feb. 16, 2011, 15:07 CST and March 11, 2011, 11:11 CST) (on file with author).

15 *Id.*

16 *Id.*

17 42 U.S.C. § 3608(d)-(e); Exec. Order No. 12892 (Jan. 17, 1994), available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/EXO12892.

18 42 U.S.C. § 12131.

19 29 U.S.C. § 794.

20 A case of employment discrimination against a public housing authority, in contrast, could be brought under Title I or Title II. See, e.g., *Bd. of Tr. of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).

21 *Am. Council for the Blind v. Paulson*, 525 F.3d 1256, 1266 (D.C. Cir. 2008). For the most part, claims under Title II of the ADA and Section 504 of the Rehabilitation Act are treated identically. See, e.g., *id.* at 1260 n.2 (“[T]he courts have tended to construe Section 504 in parimateria with Title II of the ADA” because the statutory provisions are similar in substance, and cases interpreting either are applicable and interchangeable.”) (internal citations and quotations omitted); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003).

22 42 U.S.C. § 3604(f); *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1134-1135 (D.C. 2005) (“[I]n *Giebeler v. M & B Associates*, 343 F.3d at 1148-1150, 1156-1157; the U.S. Court of Appeals for the Ninth Circuit considered both the burden of proof and the merits under ‘reasonable accommodation’ analysis applicable to the Fair Housing Act. The panel noted that courts construing that Act have drawn on case law interpreting the same requirement under the federal Rehabilitation Act (RA) and the Americans with Disabilities Act (ADA). The interpretive formulations under each, while conceivably differing in a way that could be outcome-determinative in some instances, are not significantly different from one another.”); *Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003) (To make out a claim of discrimination based on failure to reasonably accommodate, a plaintiff must demonstrate that (1) he has a disability as defined by the FHAA; (2) defendants knew or reasonably should have known of the plaintiff’s disability; (3) accommodation of the disability “may be necessary” to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4) defendants refused to make such accommodation.); *Colon-Jimenez v. GR Mgmt. Corp.*, 218 Fed. Appx. 2, 3 (1st Cir. P.R. 2007) (“In order to make out a prima facie case for failure to accommodate under the FHA, appellants bear the burden of establishing three things: that the requested accommodation is (1) reasonable and (2) necessary to (3) afford the handicapped person equal opportunity to use and enjoy the housing.”).

23 *Andover Hous. Auth. v. Shkolnik*, 443 Mass. 300, 820 N.E.2d 815, 823 (Mass. 2005) (“The term ‘qualified’ handicapped person is not used in the Fair Housing Act, 42 U.S.C. § 3604(f)(2) . . . However, it is used in § 504 of the Rehabilitation Act, 29 U.S.C. § 794, to which [the FHA is] analogous.”).

24 42 U.S.C. § 12102(1)(A); 29 U.S.C. § 705(20)(A)-(B); 42 U.S.C. § 3602(h)(1).

25 42 U.S.C. § 12102(2)(A)-(B). The ADAAA also amends Section 504 by inserting “any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)” in the definition section of 29 U.S.C. § 705(9).

26 42 U.S.C. § 12102(4)(A). Congress added this provision, among others, in response to Supreme Court precedent that construed “substantially limits” and “major life activities” narrowly, thus impeding plaintiffs’ ability to bring suit under the ADA. *See* 42 U.S.C. § 12101 note 2(a)(4) (“the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect.”).

27 29 C.F.R. § 1630.2(j)(3)(iii) (“For example, applying the principles set forth in paragraphs (j)(1)(i) through (ix) of this section, it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated. . .”).

28 42 U.S.C. § 12131.

29 *See, e.g.*, 42 U.S.C. § 1437f; 24 C.F.R. § 982.201; *see also* U.S. DEP’T OF HOUS. AND URBAN DEV., HOUSING CHOICE VOUCHER GUIDEBOOK 5-1, available at <http://www.hud.gov/offices/adm/hudclips/guidebooks/7420.10G/7420g05GUID.pdf>.

30 *Andover Hous. Auth. v. Shkolnik*, 443 Mass. 300, 311 (Mass. 2005) (“ . . . many of the issues that arise in the ‘qualified’ analysis, also arise in the context of the ‘reasonable modifications’ or ‘undue burden’ analysis. That is, if more than reasonable modifications are required of an institution in order to accommodate an individual, then that individual is not qualified for the program. In the public housing context, a ‘qualified’ handicapped individual is one who could meet the authority’s eligibility requirements for occupancy and who could meet the conditions of a tenancy, with a reasonable accommodation or modification in the authority’s rules, policies, practices, or services.”).

31 *Alexander v. Choate*, 469 U.S. 287, 300 n. 19 (1985).

32 *Id.*

33 *Id.* at 290-91.

34 *Id.*

35 *Id.* at 301.

36 *Id.* at 302.

37 *Id.* at 302.

38 *Alexander v. Choate*, 469 U.S. at 302.

39 *Am. Council for the Blind*, 525 F.3d at 1267 (emphasis added).

40 *Id.*; *see also Dopico v. Goldschmidt*, 687 F.2d 644, 653 (2d Cir. 1982).

41 528 F. Supp. 2d 553 (E.D. Pa. 2007).

42 *Alexander v. Choate*, 469 U.S. at 302.

43 *Id.* at 568.

44 *Id.*; *see also Taylor v. Hous. Auth. of New Haven*, 267 F.R.D. 36, 58 (D.Conn. 2010) (defining benefits of the HCV program as provision of a voucher, monthly assistance payments, and, upon request, assistance in negotiating a reasonable rent).

45 *See generally*, 24 C.F.R. § 8.28, the Section 504 regulations for the Housing Choice Voucher program, in which four of the six subsections focus on physical accessibility for those with mobility disabilities. The FHA regulations pursuant to 24 C.F.R. § 100.204(b) only provide two examples of reasonable accommodations: allowing service animals and reserved parking spaces. The ADA Title I regulations at 29 C.F.R. § 1630.2(o)(2)(ii) provide that: “Reasonable accommodation may include but is not limited to: (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifi-

cations of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.” Section 504 regulations regarding employment, 24 C.F.R. § 8.11(b), provide similar examples. ADA Title II regulation 23 C.F.R. § 35.104 states that “[q]ualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators” and an example of tasks performed by service animals includes “helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors,” but do not include, “the provision of emotional support, well-being, comfort, or companionship.” However, the FHA allows for emotional support animals. *U.S. v. Kenna Homes Coop. Corp.*, Civ. Action No. 2:04-0783 (S.D. W. Va. 2004), available at <http://www.justice.gov/crt/housing/documents/kennasettle.php>; *Bronk v. Ineichen*, 54 F.3d 425, 43 (7th Cir. Wis. 1995).

46 Arlene S. Kanter, *A Home of One's Own: The Fair Housing Amendments Act of 1988 and Housing Discrimination Against People with Mental Disabilities*, 43 Am. U.L. Rev. 925, 951 (1994).

47 28 C.F.R. § 35.160.

48 24 C.F.R. § 8.33

49 Joint Statement, U.S. Dep't of Hous. and Urban Dev. and U.S. Dep't of Justice, Reasonable Accommodations Under the Fair Housing Act, Washington, D.C. May 17, 2004, at pp. 11-12 (Questions 5 & 6), available at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

50 *Vance v. Hous. Opportunities Comm'n*, 332 F.Supp.2d 832, at 837, 843 (D. Md. 2004) (Holding that the plaintiff, who had a mental health disability, had a Due Process right to be provided guidance on how to contact a legal aid lawyer and allowing that lawyer to attend an informal hearing regarding termination from a subsidized housing program. The court did not decide on the plaintiff's request for a non-attorney support person to assist him at the hearing.).

51 24 C.F.R. § 8.28(4) (“[PHAs] shall take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers.”); See generally *Douglas v. Kriegsfeld Corp.* 884 A.2d 1109, 1127 (D. C. 2005) (landlord providing a voucher holder with extension of time to comply with housekeeping requirements is a reasonable accommodation under the FHA); *McGary v. City of Portland*, 386 F.3d 1259 (9th Cir. 2004) (extension of time to clean yard reasonable accommodation under the ADA and FHA); *Anast v. Commonwealth Apartments*, 956 F. Supp. 792, 801 (N.D. Ill. 1997) (finding that an individual with a mental health disability should have been granted an extension of time before eviction proceedings should be initiated even after judgment of possession entered); but see *Russell v. Cooley Dickinson Hosp., Inc.*, 437 Mass. 443, 455-456, 772 N.E.2d 1054 (2002) (indefinite requests for time extensions may be deemed unreasonable).

52 28 C.F.R. § 35.160; 24 C.F.R. § 8.28(1) (“[PHAs] shall in providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps.”); 24 C.F.R. § 8.11(b)(2) & 29 C.F.R. § 1630.2(o)(2)(ii) (reasonable accommodation may include the provision of readers or interpreters and other similar actions); Technical Assistance Collaborative, Section 8 Made Simple, 2d ed. (2003) at 57, available at http://www.tacinc.org/downloads/Sect8_2ndEd.pdf (“As a reasonable accommodation, people with disabilities can request changes in PHA recertification policies, such as: allowing more time for the recertification process, including rescheduling appointments; providing home visits to conduct recertifications; etc.”).

53 See generally *Alexander v. Choate*, 469 U.S. at 287