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To: Persons Interested in Mass. Coalition for the Homeless et al. v. Secretary of Human Services et al.
From: Barbara Sard
Re: Decision of Supreme Judicial Court, February 29, 1996
Date: 3/4/96

In its latest trip to the SJC, in which the plaintiffs were seeking to reverse the granting of summary judgment to the defendants by Judge Grabau in the Superior Court,[1] the *MCH* case raised two major issues: whether the trial court had properly relied on the SJC's decision in *Williams v. Secretary of EOHS* [2] to determine that the court was without any authority to grant plaintiffs' relief concerning the defendants' alleged failure to use Emergency Assistance shelter funds and other available resources in a manner which would better further the mandate of G.L. c. 118, §2 that aid shall enable families to "raise their children properly in their own homes"; and whether DTA's practice of coercing homeless families to search for and accept housing costing up to 99% of their income violated a host of state and federal laws which plaintiffs argued control DTA's administration of housing search obligations under the EA program.

In a 21 page decision issued Feb. 29, 1996, the SJC ruled for the defendants on the first issue of judicial authority to review agency action, and for the plaintiffs on the housing search/affordability issue. The case is now remanded to the Superior Court for further proceedings concerning DTA's housing search policies and practices.

On the *Williams* issue, Judge Greaney's decision, without dissent, appears to indicate the Court's determination to severely restrict the role of courts in reviewing discretionary decisions of executive agencies involving policy and use of appropriated funds. The Court's legal analysis was barren of any further analysis, but the Court implicitly rejected plaintiffs' invitation to narrow *Williams* to cases where statutes are so vague as to be void of any enforceable standard. Instead, the

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Judge Grabau ruled for plaintiffs on the claim that the Dept. of Transitional Assistance (DTA) was required to submit its annual report on the adequacy of the AFDC grant to enable families to "raise their children properly in their own homes" to the legislature and the plaintiff organizations (MCH and the Coalition for Basic Human Needs) by January 31st of each year.

414 Mass. 551 (1993).

Court reiterated the language of *Williams* and *McKnight* [3]that courts may only order agencies to do things they are specifically required to do by governing law. The Court also claimed, without explanation, that its decision in this case in 1987 was not inconsistent, with "a careful reading," with its later decisions in *Williams* and *McKnight* .

The Court also rejected plaintiffs' request that defendants be ordered to formulate a plan for better use of EA funds to assist families to live in more home-like settings. However, the language of this paragraph of the Court's decision, at pp. 14-15 of the slip opinion, *may* provide a handle for future cases. By distinguishing "plan" relief from "specific" relief, and applying the *Williams* analysis only to the latter, the Court appears to implicitly be saying that courts are not precluded from reviewing discretionary agency action to determine whether they have complied with their legal duties, and if not, ordering them to come up with a plan to comply. The corollary issue, then, is what standard to apply to reviewing the "plan" which the agency develops. Our explicit position, in briefs and at oral argument, was that the legal standard for "plan" review was the "arbitrary and capricious" standard; the defendants took the position that any plan they formulated was wholly unreviewable. While the Court doesn't telegraph that it is adopting an explicit standard, it denies plan relief on the basis that DTA was acting "in a diligent and reasonable manner" to satisfy its statutory obligations. The question for the future is what kind of teeth, if any, does this standard have?

On the victorious side, the Court reversed the grant of summary judgment to defendants on plaintiffs' claim that defendants' policy and practice of coercing homeless families to search for and accept housing costing up to 99% of their income violated the EA statute (duty to provide shelter to families without "feasible alternative housing" and to operate program "in the best interests" of recipients); the AFDC statute (enable parents to bring up their children *properly* in their own homes), as well as DTA's duty under state and federal law to operate its programs in a "fair, just [or objective] and equitable" manner that does not exclude individuals or groups on an arbitrary or unreasonable basis.[4] In reaching this conclusion, the Court rejected the trial court's conclusions that neither the EA statute, G.L. c. 18, §2(D), or the federal regulation, 45 CFR §233.10, were enforceable. It also rejected defendants' arguments that the AFDC statute, G.L. c. 118, §2 does not apply to the EA program, that administrative remedies and judicial review opportunities under c. 30A were grounds not to grant relief, that mere threats, absent actual formal terminations, were not actionable, and that deference must be granted to their

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Matter of McKnight, 406 Mass. 787, 792 (1990); *Williams* at 570.

The Court affirmed the grant of summary judgment to the Secretary of EOHHS on the housing search claim, on the grounds that these various laws only established duties on behalf of DTA, and not the Secretary.

While the final paragraph of the Court's decision on the housing search issue, at page 20 of the slip opinion, contains some potentially troubling language on the availability of injunctive versus declaratory relief, it does appear to shift the burden of proof to DTA to demonstrate that a "general" rather than objective [i.e., numerical] standard of what housing families must accept is capable of fair application.

The next step, if a resolution of the housing search issues cannot be agreed on by the parties, is to go back to Judge Grabau, to whom the case is still specially assigned, for further proceedings on the housing search claim. We will not know until after conferring with the Attorney General's office and possibly the court exactly what such further proceedings will consist of.

Special thanks to those of you who helped Judith Liben, Lisa Otero and myself in preparation of the case. We will contact potential witnesses and experts in a month or more, should the need arise, and will keep people informed of the outcome.