

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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J _____ S _____
Petitioner,

v.

PARTNER ARMS TRANSITIONAL
HOUSING PROGRAM
Respondent

Case No.: 2010-SHEL-00054

FINAL ORDER

I. Introduction

This Order concludes that the Homeless Services Reform Act, D.C. Official Code § 4-751.01 *et seq.*, (the “HSRA” or the “Act”) does not apply to the Partner Arms I Transitional Housing Program (“Partner Arms I”). As a result, I must dismiss the hearing request filed by Petitioner J_____ S_____.

II. Procedural Background

Ms. S_____ filed a hearing request on August 6, 2010. In her hearing request, she waived the right to an administrative review, but sought a hearing at the Office of Administrative Hearings to challenge her termination from Partner Arms I, a transitional housing facility operated by Transitional Housing Corporation (“THC”). I held a status conference on August 6. At the conference, THC’s Executive Director stated that Partner Arms I was willing to have Ms. S_____ return immediately. That eliminated the need for any further hearing to decide whether I should order the shelter to allow Ms. S_____ to return to the facility.

Ms. S_____, however, stated that she wished to pursue a separate claim that Partner Arms I had violated her rights under the HSRA. Partner Arms I argued that it is not subject to the HSRA because it does not receive funding from the District of Columbia Department of Human Services (“DHS”). In order to have a full record on that issue, I scheduled a hearing for August 18, 2010, to give both parties an opportunity to present evidence on the question whether Partner Arms I is subject to the HSRA.

Both parties appeared for the hearing on August 18. Ms. S_____ represented herself and Ruby Kittrell, case manager, represented Partner Arms I. I left the record open after the hearing to allow the parties an opportunity to file additional evidence and arguments about the sources of Partner Arms I’s funding, and its effect upon the jurisdictional issue. DHS also has filed a helpful *amicus* brief on that issue.

Based on the testimony of the witnesses, my evaluation of their credibility and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

III. Findings of Fact

THC operates Partner Arms I as a transitional housing program. In addition to providing apartments to its clients, THC provides additional supportive services to assist its clients in moving to appropriate permanent housing. THC rents an apartment building from a landlord, although the record does not reveal who the landlord is. Residents of Partner Arms I must pay 30% of their monthly income as rent to THC. THC, in turn, pays rent to the landlord. If the payments from its clients do not cover the monthly rent, THC uses other funds available to it to make up the shortfall.

THC requires its clients to pay a security deposit and the first month's rent before they move in. Usually, the clients do not have the funds available to meet that requirement, but there are a number of public and private programs that provide financial assistance to help clients pay those amounts. During the 12 month period from August 1, 2009 to July 31, 2010, six new residents who entered the Partner Arms I program, including Ms. S_____, received financial assistance to pay the first month's rent and/or the security deposit. Ms. S_____ received assistance from the Coalition for the Homeless, which received the funding for its program from Freddie Mac, a federally chartered mortgage assistance program. One other client also received assistance from the Coalition for the Homeless. The funding for that client came from Fannie Mae, another federally chartered institution. Of the remaining clients, two received assistance from Housing Counseling Services, through the District of Columbia's Emergency Rental Assistance Program ("ERAP"), which is funded by DHS. Partner Arms I received about \$1,300 in ERAP funds for those two clients. One client obtained assistance from the Superior Court's Crime Victim Compensation Fund, and one obtained assistance through a program sponsored by the District of Columbia Child and Family Services Agency.

THC does not receive any other funds from DHS or any of DHS's designees for the Partner Arms I program. THC's website identifies DHS as one of its financial supporters, but based on the testimony of THC's representatives at the August 6 and August 18 hearings, I find that DHS provides financial support for other THC programs, not for Partner Arms I.

IV. Conclusions of Law

The only issue before me is whether the Partner Arms I program is subject to the HSRA. If it is, then Ms. S_____ has the right to a hearing on her claim that Partner Arms I violated her rights under that Act. D.C. Official Code § 4-754.41(b)(3) . If Partner Arms I is not subject to the Act, then Ms. S_____ has no right to a hearing and her hearing request must be dismissed.

The Act applies to:

Each program within the Continuum of Care offered by the District of Columbia or by a provider receiving funding for the program from either the District of Columbia or the federal government, if such funds are administered, whether by grant, contract, or other means, by the Department of Human Services or its designee[.]

D.C. Official Code § 4-754.01(a)(1).

The “Continuum of Care” includes transitional housing facilities such as Partner Arms I. D.C. Official Code § 4-753.01(b)(4). Therefore, if Partner Arms I is “receiving” any government funding administered by the DHS or its designee, it is subject to the Act.

Ms. S_____ has suggested three possible source of funding that could bring the Partner Arms I program within the coverage of the Act. Her first claim is that she receives benefits from the Temporary Assistance for Needy Families (“TANF”) program administered by DHS and uses those funds to pay her monthly rent. TANF funds, however, are paid directly to the beneficiary and become the beneficiary’s property. Ms. S_____, therefore, is using her own money, not DHS’s, when she pays her rent. Her rent payments, therefore, do not bring Partner Arms within the coverage of the Act.

Ms. S_____’s second argument is based on the statement in THC’s website, which identified DHS as one of the sources of THC’s funding. As noted above, however, THC operates a number of different programs, and the evidence shows that DHS does not provide any funds for the Partner Arms I program. Because the Act applies only to specific programs that receive funding through DHS, THC’s receipt of funding for some other programs does not bring the Partner Arms I program within the scope of the Act.

The third possible basis for jurisdiction under the Act is THC’s receipt of funds from the District’s Emergency Rental Assistance Program, a DHS-funded program, to pay a client’s first month’s rent or security deposit. Unlike TANF benefits, ERAP funds are paid directly to a housing provider, and not to the beneficiary of the program. 29 DCMR 7505.3. Although Ms. S_____’s first month’s rent and security deposit were not paid with ERAP funds, THC received about \$1,300 in ERAP funds on behalf of two other clients during the previous year.

Thus, THC *has received* DHS funding for the Partner Arms I program, but the question presented is whether it is “*receiving funding*” for the program from DHS or its designee, as required by D.C. Official Code § 4-754.01(a)(1). While the question is close, I conclude that the ERAP funds are not sufficient to make Partner Arms I subject to the Act.

The statutory phrase “receiving funding” is not defined further in the HSRA. The Council’s use of the present participle “receiving” indicates that the DHS funding must be ongoing for a program to be covered by the HSRA. *See, e.g.*, Online English Grammar, <http://www.edufind.com/english/grammar/ING2.cfm> (visited October 13, 2010) (present participle used as part of the “continuous form of a verb”); <http://www.edufind.com/english/grammar/Tenses3.cfm> (visited October 13, 2010) (continuous form used to describe “an action

that is going on at this moment.”) Previous receipt of DHS funding, therefore, is not sufficient by itself to conclude that a program is “receiving funding” within the meaning of the HSRA. Instead, a program is presently “receiving” DHS funding if the funding is continuing, *i.e.*, the program has a regular, consistent source of funds administered by DHS or its designee. Otherwise, a one-time receipt of funds could subject a program to the Act without any time limitation. Alternatively, a facility could move into and out of coverage under the Act based on the exact timing of its receipt of individual payments from DHS or its designee. Requiring regular and consistent DHS funding provides a reliable standard for both programs and their clients to use in knowing their legal rights and obligations, while giving effect to the use of the term “receiving” in the statutory language.

To satisfy the Council’s “receiving” requirement, therefore, a program does not literally have to receive DHS funds on the day a hearing request is filed. The relevant inquiry is whether the program regularly and consistently receives such funds, even though it does not obtain the funds on a daily basis. It is important to emphasize that the amount of the funds that a program receives is not relevant. The HSRA does not have a “small amounts” exception. If a program satisfies the statutory requirement of “receiving funding,” the amount of that funding makes no difference.

Partner Arms I’s receipt of DHS funding is episodic and unpredictable. The record shows that there are many possible sources of initial assistance for clients who can not pay for the security deposit and first month’s rent, and there is no assurance that Partner Arms I will be

receiving DHS funding regularly. As a result, there is not the ongoing funding relationship with DHS envisioned by the Council's use of the word "receiving."¹

Because THC's occasional receipt of DHS funding for Partner Arms I does not satisfy the Act's requirement that it be "receiving" DHS funding, the Act does not apply to the Partner Arms I program. Ms. S_____, therefore, has no right to a hearing, and her hearing request must be dismissed.

V. Order

Based on the above findings of fact and conclusions of law, it is, this 14th day of October, 2010:

ORDERED, that Ms. S_____’s hearing request is **DISMISSED FOR LACK OF JURISDICTION**; and it is further

ORDERED, that any party may file a motion for reconsideration on or before October 29, 2010; and it is further

ORDERED, that any party may appeal this Order by following the instructions below.

_____/s/_____
John P. Dean
Principal Administrative Law Judge

¹ If Partner Arms I regularly received rental assistance funds only from DHS, or mostly from DHS, my conclusion might be different. In that circumstance, a regular expectation of receiving DHS funds might satisfy the statutory requirement that it be "receiving" those funds.