

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
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M. H.

Petitioner,

v.

COMMUNITY FOR CREATIVE NON-  
VIOLENCE

Respondent

Case No.: HS-P-07-200278

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**FINAL ORDER**

**I. Introduction**

The dispositive issue in this case is whether a client who receives a favorable administrative review decision from the Department of Human Services (“DHS”) pursuant to § 27 of the Homeless Services Reform Act of 2005 (the “HSRA” or the “Act”), D.C. Official Code § 4-751.42, is entitled to enforcement of that decision over the objection of the shelter that seeks to terminate its services to that client. Because I conclude that a client has that right, I will grant summary adjudication to Petitioner and will order his reinstatement to the shelter in accordance with the administrative review decision.

**II. Background**

As set forth in the parties’ briefs, the material facts are undisputed. Respondent Community for Creative Non-Violence (“CCNV”) operates a shelter for the homeless at 425 2<sup>nd</sup> Street, N.W. Petitioner, MH, was a resident of that shelter until March 23, 2007. On that date, CCNV issued him a notice terminating his shelter services, effective immediately. The notice

claimed that Mr. H had attacked another resident with a two-by-four, lacerating that resident's scalp, and resulting in that resident's hospitalization. According to CCNV, that attack demonstrated that Mr. H presented an imminent threat to the safety of others on the shelter's premises and justified immediate termination of shelter services to Mr. H.<sup>1</sup>

As required by law in all cases of immediate termination of services by a shelter, D.C. Official Code § 4-754.38(e), DHS reviewed the notice of termination within 24 hours. After that review, DHS concluded that the notice complied with the procedures specified in the Act for emergency terminations.<sup>2</sup> As a result, Mr. H was not entitled to a stay of the termination pending a full administrative hearing. D.C. Official Code § 4-754.38(e).

On April 12, 2007, Mr. H filed a request for an administrative hearing at the Office of Administrative Hearings ("OAH") to challenge his expulsion from the shelter. Before an administrative hearing at OAH could occur, DHS was required to conduct a separate administrative review of CCNV'S action. D.C. Official Code § 4-754.42(c). Mr. H, his attorney and representatives of the shelter appeared for the administrative review on April 26, 2007. At both parties' request, the administrative review was continued until May 10, 2007.

On June 6, 2007, the Administrative Review Officer issued her decision.<sup>3</sup> That decision determined that CCNV's notice of termination was defective, and further concluded that there

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<sup>1</sup> The March 23 Notice is attached to Mr. H's hearing request, filed April 12, 2007.

<sup>2</sup> DHS filed its finding with the Office of Administrative Hearings on March 29, 2007. Its review was an *ex parte* procedural review only, *i.e.*, it reviewed the notice and other documentation from the shelter and concluded that CCNV followed proper procedures and that CCNV's reason for the termination, on its face, complied with the statute.

<sup>3</sup> DHS filed the administrative decision in the record of this case on June 7, 2007.

was insufficient proof that Mr. H had attacked the other resident as alleged by CCNV. Administrative Review Decision at 5. The decision concluded as follows:

### **RECOMMENDATION**

That the decision of CCNV to terminate the appellant, [MH], from its shelter located at 425 2<sup>nd</sup> Street, N.W., is **DENIED**.

*Id.*

CCNV disagrees with the Administrative Review Officer's decision. Consequently, it has refused to permit Mr. H to return to the shelter. On June 13, 2007, Mr. H filed a request that OAH hold the hearing that he previously had requested, because CCNV was not complying with the administrative review decision. Mr. H's attorney subsequently filed a motion to amend the request for a hearing and to enforce the administrative review decision in lieu of a full hearing at OAH.

A hearing was scheduled for July 5, 2007, and then was continued twice, once on the motion of each party. A hearing was held on July 17, 2007, to consider the legal issues presented by this case, *i.e.*, whether CCNV is bound by the administrative review decision and, if so, whether OAH has jurisdiction to enforce that obligation against CCNV. Gregory Hallmark, Esq., and Brent Johnson, Esq., appeared on behalf of Mr. H. James Boles, Esq., appeared on behalf of CCNV. Sakina Thompson, Esq., appeared on behalf of DHS, as *amicus curiae*, in response to the invitation of this administrative court.

Mr. H's motion to amend his hearing request will be granted, as the amendment sets forth new information unavailable when he filed the original request. Because the issues presented are

purely legal and there are no disputed issues of material fact, I will treat Mr. H's motion to enforce the administrative review decision as a motion for summary adjudication pursuant to OAH Rule 2828.1, 1 DCMR 2828.1.<sup>4</sup> For the reasons set forth below, I have decided to grant that motion.

### **III. Conclusions of Law**

#### **A. The Discharge Provisions of the HSRA**

The HSRA, D.C. Official Code § 4-751.01 *et seq.*, was a comprehensive revision of the District's law concerning the provision of services to individuals and families who are homeless, or who are threatened with becoming homeless. The Act established a Continuum of Care to provide both housing and supportive services, such as health care, employment, child care, and treatment for alcohol and drug abuse, all with the goal of eliminating barriers faced by clients seeking to obtain or maintain permanent housing. D.C. Official Code §§ 4-751.01 (37), (38) and (39); § 4-753.01. The Act also establishes rights and responsibilities for both the clients of the Continuum of Care and the providers of services within the Continuum of Care. *See, e.g.*, D.C. Official Code §§ 4-754.11 through 4-754.39.

The Act applies to providers of services who receive federal or local government funding administered by DHS or its designee. D.C. Official Code § 4-745.01(a)(1). In a prior case involving CCNV, this administrative court ruled that CCNV is subject to the Act due to the governmental financial support it receives. *J.W. v. DHS*, OAH No. HS-P-05-200070 (Order

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<sup>4</sup> Of course, the parties hotly dispute whether Mr. H attacked another resident on March 23. That dispute, however, is not material to the legal issue I must decide here, *i.e.*, whether the administrative review decision is enforceable against CCNV.

Granting Hearing, January 5, 2006).<sup>5</sup> CCNV has not taken issue with that holding in this case or in other cases brought by residents of its shelter.

The Act contains detailed standards governing how a provider of shelter services, such as CCNV, may terminate those services to a client. It also establishes specific rights for a client who wishes to challenge any such decision. Ordinarily, a shelter seeking to expel a client must give that client 15 days advance oral and written notice of its intent to do so. D.C. Official Code § 4-754.33(c). Seven permissible grounds for termination are set forth in D.C. Official Code § 4-754.36. If the client requests a hearing at OAH within 15 days of receipt of a termination notice, the termination is stayed by operation of law, and the shelter may not discharge the client until completion of the hearing process. D.C. Official Code §§ 4-754.11(18); 4-754.41(d).

The Act provides an alternative mechanism for a shelter to expel a client if the client presents an “imminent threat to the health and safety” of either the client or someone else on the shelter’s premises. D.C. Official Code § 4-754.38(a).<sup>6</sup> In that narrow circumstance, a shelter need not provide 15 days advance notice of the termination. The expulsion may take effect immediately, and the client has no right to a stay pending the completion of the hearing process at OAH. The shelter, however, must notify DHS immediately, and DHS must issue a written determination within 24 hours stating whether the shelter’s action complies with § 4-754.38.<sup>7</sup> If DHS finds that the shelter did not comply with the proper procedures, the client must be

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<sup>5</sup> This Order will be published in the LEXIS District of Columbia Office of Administrative Hearings database.

<sup>6</sup> The phrase “imminent threat to the health and safety” is a defined term in the Act. It means “an act or credible threat of violence on the grounds of a shelter or supportive housing facility.” D.C. Official Code § 4-751.01(24).

<sup>7</sup> DHS’ usual procedure is to conduct an *ex parte* review of the documents provided by a shelter to determine if the shelter followed the proper procedures for emergency termination. *See* note 2 *supra*.

reinstated at the shelter pending the outcome of the hearing process at OAH. D.C. Official Code § 4-754.38(e). CCNV used this alternative to terminate services to Mr. H.

### **B. Hearing Rights Provided By the HSRA**

The HSRA provides that an administrative hearing (referred to in the statute as a “fair hearing”) is available to a “client or client representative” who wishes to challenge certain decisions. D.C. Official Code § 4-754.41(a). A client or representative may request a hearing to:

- (1) Appeal an administrative review decision made pursuant to § 4-754.42
- (2) Review any decision of a provider of services, other than shelter or supportive housing to:
  - (A) Transfer the client to another provider;
  - (B) Suspend provision of services to the client for a period longer than 10 days; or
  - (C) Terminate services to the client; or
- (3) Obtain any legally available and practicable remedy for any alleged violation of:
  - (A) The provider standards listed in §§ 4-754.21 – 4-754.25; or
  - (B) The client rights listed in §§ 4-754.11 and 4-754.12, including the denial of a request by an individual with a disability for a reasonable accommodation or modification of policies or practices.

D.C. Official Code § 4-754.41(b).

It should be noted that this language does not expressly grant a client a right to an administrative hearing to challenge a decision by a provider of shelter services to terminate those services. Subsection (b)(2) grants a right to review the termination of services by a provider *other than* a provider of shelter or supportive housing. Subsection (b)(3) allows a client to have

an administrative hearing to obtain a remedy if any provider of services, including a shelter, violates either the standards for providers established in §§ 4-754.21 through 4-754.25 or the client rights established in §§ 4-754.11 and 4-754.12. Mr. H, however, claimed that the allegations against him were false, a claim that does not involve a violation of any of those provisions. Instead, his claim is that CCNV violated the Act's provisions concerning emergency termination of shelter services to a client, which are found in D.C. Official Code § 4-754.38, a section not referenced in §4-754.41(b)(3).

Subsection (b)(1) does not appear to assist Mr. H, either. It permits a client to “[a]ppeal an administrative review decision made pursuant to § 4-754.42.” D.C. Official Code § 4-754.41(b)(2). The Act does not provide an independent ground for a client to seek an administrative review, however. Instead, DHS, as the Mayor’s designee, must “offer the client or client representative an opportunity for an administrative review by the Department of the decision that is the subject of the fair hearing request.” D.C. Official Code § 4-754.41(e); *see also* D.C. Official Code § 4-754.42(a) (administrative review provided for “the decision that is the subject of the fair hearing request”). At first glance, this appears circular: A client may have a hearing to appeal an administrative review decision, but an administrative review is available only for a decision that is the subject of a hearing request. Moreover, the administrative review “must be completed before the Office of Administrative Hearings shall grant a fair hearing to any client or client representative.” D.C. Official Code § 4-754.42(c). In any event, there is no clear statement that a client who has been terminated by a shelter, as opposed to a client who has been terminated by a provider of other services, has a right to an administrative hearing.

The solution is found in several other provisions of the Act. Read together, they leave no doubt that the Council intended that a client discharged from a shelter, no less than a client who

has been discharged from an employment training program or an alcohol treatment program, has the right to an administrative hearing to review the shelter's decision to terminate its services. For example, as discussed above, D.C. Official Code § 4-754.11(18) provides that, except for emergency terminations, a client who requests a fair hearing within 15 days of receiving a notice of termination of shelter or supportive housing services is entitled to receive those services pending a final decision "from the fair hearing proceedings." The fair hearing provision itself contains an express recognition of that right. D.C. Official Code § 4-754.41(d). Interestingly, *only* recipients of "shelter and supportive housing" – the very persons excluded from the hearing right granted by § 754.41(b)(2) – are given the right to a stay pending completion of the fair hearing proceedings. By providing for a stay of the termination of shelter services pending the outcome of fair hearing proceedings, the Act implicitly provides that such proceedings must be available in shelter termination cases. Otherwise, §§ 4-754.11(18) and 754.41(d) are a nullity, contrary to the principle that " 'each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous.' " *District of Columbia v. Morrissey*, 668 A.2d 792, 798 (D.C. 1995), quoting [\*Thomas v. District of Columbia Dep't of Employment Servs.\*, 547 A.2d 1034, 1037 \(D.C. 1988\)](#) (citations omitted).

The provisions concerning emergency terminations of shelter services lend further support to this conclusion. As noted above, CCNV relied upon the emergency termination provisions when it discharged Mr. H. If a shelter asserts that a resident presents an imminent threat, the shelter may expel the resident immediately. In those cases, the law provides that the resident does not have an absolute right to remain at the shelter until the case is decided. The language used, however, implies that a hearing is available: "No client transferred, suspended, or terminated pursuant to subsection (a) of this section shall have the right . . . to continue to

receive shelter or supportive housing services without change pending appeal pursuant to [§ 4-754.11\(18\)](#).” D.C. Official Code § 4-754.38(c). If there were no right to a hearing at all, one would expect the statute to say so expressly, instead of merely denying the right to a stay pending a hearing. Moreover, the statute requires DHS to review the case within 24 hours. If DHS finds that the emergency notice was issued improperly, it “shall reinstate the client’s access to the services received prior to the issuance of the order, *pending the outcome of a hearing pursuant to §§ 4-754.41 and 4-754.42.*” D.C. Official Code § 4-754.38(e) (emphasis added).

Thus, for both emergency and non-emergency terminations of shelter services, the Act anticipates that an administrative hearing is available to the client to challenge the termination. The situation in this case is comparable to that in *Paschall v. District of Columbia Dep’t of Health*, 871 A.2d 463 (D.C. 2005). The statute in that case – the Nursing Home and Community Residence Facility Residents’ Protection Act of 1985, D.C. Official Code § 44-1001.01 *et seq.* – regulates the discharge of patients from nursing homes. Like the HSRA, it requires advance notice for most discharges, establishes permissible grounds for a discharge, and provides for an administrative hearing at which a resident can challenge the facility’s discharge decision. The statute also provides that a timely request for an administrative hearing will stay the discharge, except for emergency cases. *See generally* D.C. Official Code §§44-1003.02 and 44-1003.03.

In *Paschall*, a facility had discharged a resident without giving the required advance notice, and he therefore could not request a hearing before the discharge occurred. 871 A.2d at 465. The statute contains an express right of action for a resident to seek an injunction from Superior Court against a facility that violates the statute, D.C. Official Code § 44-1004.01, but contains no express authority for an Administrative Law Judge to order the readmission of a resident who has been discharged without advance notice. Despite the absence of such express

authority, the Court of Appeals in *Paschall* concluded that there was a “strong case for concluding that the Act implicitly authorizes an ALJ to order the remedy of readmission.” 871 A.2d at 469.

There is a stronger case for concluding that the HSRA implicitly authorizes an administrative hearing for a shelter resident who receives a notice of termination of services. As discussed above, four separate sections of the HSRA presuppose that such a hearing right exists. Mr. H, therefore, had a right to a fair hearing pursuant to § 4-754.41 to challenge the termination of his shelter services by CCNV.

Pursuant to D.C. Official Code § 4-754.1(f)(1), the fair hearing at OAH is governed by the contested case provisions of the Administrative Procedure Act. D.C. Official Code § 4-754.41(f)(1). Those provisions include: 1) the right to submit oral and documentary evidence; 2) the right to cross-examine an adverse party’s witnesses; 3) a decision based upon a record that includes only the testimony and exhibits received at the hearing, along with any facts of which official notice was taken; and 4) written findings of fact and conclusions of law that are “supported by and in accordance with the reliable, probative, and substantial evidence.” D.C. Official Code § 2-509(b), (c), and (e). Thus, an OAH hearing in a shelter case is a *de novo* hearing, not a review of the record previously compiled elsewhere.

### **C. The Administrative Review Provisions of the HSRA**

Because Mr. H had a right to a fair hearing at OAH, the Act also requires that DHS afford him “an opportunity for an administrative review by [DHS] of the decision that is the subject of the fair hearing request.” D.C. Official Code § 4-754.41(e). The Act requires that the

administrative review be completed before a fair hearing is held at OAH. D.C. Official Code § 4-754.42(c).

Unlike the fair hearing at OAH, the administrative review is not required to be a contested case hearing. Instead, the Act provides that the purpose of the administrative review is to permit DHS to “to ascertain the legal validity of the decision that is the subject of the fair hearing request, and, if possible, achieve an informal resolution of the appeal.” D.C. Official Code § 4-754.42(a). To that end, the Act specifies the following procedures for the administrative review:

All administrative reviews shall be conducted in the following manner:

- (1) In accordance with the administrative review procedures described in [§ 4-210.07](#); and
- (2) In accordance with the following additional requirements:
  - (A) The client or client representative shall have the right to submit issues and comments in writing to the Department; and
  - (B) The client or the client representative shall have the right to review provider's records regarding the client, or the records of other related service providers regarding the client, prior to the administrative review proceeding;
  - (C) The administrative review shall be conducted by an employee of the Department;
  - (D) The administrative review decision shall be issued in writing, in a manner readily understood by the client, and shall include:

- (i) A clear and detailed statement of the factual basis supporting the administrative review decision;
- (ii) A clear and detailed statement of the actions proposed to be implemented, including any sanctions, probationary periods, or any denial, transfer, suspension, or termination of services to be imposed;
- (iii) A reference to the statute, regulation, Program Rule, or policy pursuant to which the administrative review decision is made;
- (iv) Notice that the client's request for a hearing shall be considered formally withdrawn upon submission of a signed statement confirming such withdrawal; and
- (v) A statement that if the client is not satisfied with the administrative review decision, the fair hearing shall be held.

D.C. Official Code § 4-754.42(d).

The administrative review in this case appears to have been conducted in accordance with these requirements. As noted, it resulted in a determination that CCNV's notice was improper and that the validity of the allegations against Mr. H had not been established. In a section entitled "Recommendation," the Administrative Review Officer stated that CCNV's decision to terminate Mr. H was "**DENIED.**" Because CCNV asserts that the decision is not binding upon it, it has refused to allow Mr. H to return to the shelter. The question presented here is whether the law allows it to do so.

**D. Is an Adverse Administrative Review Decision Binding on a Shelter?**

The language of the Act does not provide an express answer. Nowhere does the statute state what should happen if a shelter disagrees with an administrative review decision. Counsel for the parties and for DHS have articulated well-reasoned arguments on both sides of the issue.

While the issue is by no means certain, I conclude, for the following reasons, that Mr. H has the better of the argument.

The Act's silence concerning a shelter's rights in the event of an unfavorable administrative review stands in stark contrast to the Act's express provisions concerning a client's hearing rights. The Act grants only clients a right to a fair hearing, and states in two separate places that the client may proceed with a hearing at OAH if the administrative review is unfavorable to the client. D.C. Official Code §§ 4-754.41(b)(1); 4-754.42(d)(2)(D)(v). To be sure, the absence of express language authorizing additional rights for a shelter if it loses at the administrative review stage is not necessarily dispositive. As discussed above, it is possible that a hearing right can be implied in a statute, even if not expressly so stated. *See* pp. 9-10, *supra*. But the process of implying a remedy when a statute is silent should not be a means of importing a policy preference into a statute. Absent specific statutory language, an implied remedy should be found only when, as in *Paschall*, there is some basis in the statute itself for concluding that the Council intended such a remedy. 871 A.2d at 467-68.

The structure of the Act is a powerful indicator that the shelter has no right to any further administrative proceedings in the event of an unfavorable outcome at an administrative review. It is important to recognize that this case is before OAH only because CCNV has refused to comply with the administrative review decision. In most cases, however, such non-compliance is not an available option. Unlike this case, most shelter termination cases are not emergency terminations. *Compare* D.C. Official Code § 4-754.36 (seven possible grounds for non-emergency termination) *with* D.C. Official Code § 4-754.38(a) (one narrowly defined ground for emergency termination). Therefore, as noted above, in most cases a timely hearing request will stay the proposed termination pending the outcome of the administrative review and fair hearing.

If the client then receives a favorable administrative review decision, the shelter has no legal basis for failing to comply with that decision.<sup>8</sup> It can not expel the client and, absent further proceedings initiated by the client, the case is effectively terminated in the client's favor.

In the usual case, then, the shelter can not engage in the type of self-help that CCNV has used here. A client who prevails at an administrative review remains in the shelter, and nothing in the Act authorizes his or her discharge at that point. Of course, this case is an emergency termination, and is not the usual shelter discharge case. But there is nothing in the language or structure of the HSRA, either explicit or implicit, that even suggests that the administrative review in an emergency termination case should operate differently than the administrative review in a non-emergency case. Just as a favorable administrative review decision for the client in a non-emergency case can terminate the proceedings in the client's favor, the same result must occur in an emergency termination case.

This does not mean that a shelter is without any remedy if it disagrees with an administrative review decision. The administrative review decision can be a final decision, even though an administrative review is not a contested case. A party aggrieved by an agency's final decision in a matter that is not a contested case may obtain judicial review in the Superior Court. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 999 n.9 (D.C. 1994); *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 318 (D.C. 1988); *Capitol Hill Restoration Soc. v. Moore*, 410 A.2d 184,188 (D.C. 1979).

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<sup>8</sup> If the shelter prevails at the administrative review, it may not expel the client at that point because the client still has a right to a hearing at OAH. D.C. Official Code §§ 4-754.41(a)(1); 4-754.42(d)(d)(D)(v). *A fortiori*, if the shelter does not prevail at the administrative review, it has no right, express or implied, to expel the client.

Moreover, holding that an administrative review decision is binding upon the shelter is consistent with D.C. Official Code § 754.42(d)(1), which requires administrative reviews in shelter cases to be conducted in accordance with the administrative review procedures established in the Public Assistance Act, D.C. Official Code § 4-210.07. Those procedures apply to hearings requested by recipients of public assistance benefits, such as Food Stamps, Medicaid or Temporary Assistance to Needy Families (“TANF”), when DHS proposes to take adverse action against them. Section 4-210.07 provides that claimants may proceed with an administrative hearing if they are dissatisfied with the results of the administrative review. It also is silent about rights for anyone else to seek further review of an adverse decision. This makes sense, because DHS is both the party adverse to the claimant and the entity conducting the administrative review in those cases. Because DHS fulfills that dual function, it would not be expected to seek further review of its own decision. Rather, the claimant is the only logical party who would be seeking further review of an administrative review decision.<sup>9</sup> The Council’s use of the Public Assistance Act’s administrative review provision as a model is a further indication that the shelter client is the only party permitted any further administrative recourse in the event of an unfavorable administrative review.<sup>10</sup>

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<sup>9</sup> “[I]f the life of the law is not logic but experience,” *Neder v. United States*, 527 U.S. 1, 15 (1999) citing O. Holmes, *The Common Law* 1 (1881), the view stated in the text still prevails. OAH has been conducting hearings in Public Assistance Act cases since March 2004. D.C. Official Code § 2-1831.03(a)(2). During that period, DHS never has sought review of an administrative review decision in a petitioner’s favor. That experience confirms the logical understanding that DHS would not seek review of its own decisions.

<sup>10</sup> The practice concerning administrative reviews under prior law concerning shelters was the same in relevant respects. An optional administrative review was available to homeless families seeking review of adverse actions by DHS. The families, but not DHS, had a right to an administrative hearing in the event of an adverse decision at administrative review. 29 DCMR 2511, 2512.

CCNV contends that according finality to an administrative review decision is inconsistent with D.C. Official Code § 4-754.42(a), which states that one goal of an administrative review is “if possible, [to] achieve an informal resolution of the appeal.” While the term “informal resolution” can suggest a voluntary settlement agreement, it also has been used to describe the result of an administrative process that results in a final binding decision, but reached without the formal procedures of a contested case. *District of Columbia v. New York Life Ins. Co.*, 650 A.2d 671, 672 (D.C. 1994) (informal proceedings challenging real estate tax assessments before the former Board of Equalization and Review described as an “informal resolution.”) Moreover, while the phrase “if possible” connotes uncertainty, rather than finality, its use is nevertheless consistent with the result here. Because the HSRA unquestionably gives a shelter client the right to further proceedings if the administrative review is unfavorable, the administrative review will not achieve a final result in all cases. The Council’s use of “if possible” reflects its decision to give the client, but not the shelter, an opportunity for further review.

For the same reasons, the result can be harmonized with the Council’s requirement that an administrative review decision contain a statement of “the actions *proposed* to be implemented, including any sanctions, probationary periods, or any denial, transfer, suspension, or termination of services to be imposed.” D.C. Official Code § 4-754.42(d)(2)(D)(ii) (emphasis added). Because a shelter client has the right to a further *de novo* hearing, the administrative review decision’s actions are “proposed” as to the client. Thus, the words “informal resolution,” “if possible” and “proposed” do not outweigh the Act’s other provisions, discussed above, that preclude any implied right for a shelter to refuse compliance with an adverse administrative review decision.

CCNV argues that the Office of Administrative Hearings Establishment Act of 2001, D.C. Official Code § 2-1831.01 *et seq.*, (the “OAH Act”), the legislation that established OAH, forbids DHS from issuing a final enforceable order against it. It bases this argument primarily upon D.C. Official Code § 2-1831.03(f), which provides:

Except as provided in subsection (h) of this section, no agency of the District of Columbia to which this chapter applies shall adjudicate adjudicated cases under the jurisdiction of the Office of Administrative Hearings or employ hearing officers, either full- or part-time, for the purpose of adjudicating cases under the jurisdiction of the Office.<sup>11</sup>

CCNV contends that allowing DHS to issue a decision that binds a shelter would violate this provision, because such a decision would be a final adjudication of an “adjudicated case” within OAH’s exclusive jurisdiction.

“Adjudicated case” is a defined term in the OAH Act. It means:

a contested case or other administrative adjudicative proceeding before the Mayor or any agency that results in a final disposition by order and in which the legal rights, duties, or privileges of specific parties are required by any law or constitutional provision to be determined after an adjudicative hearing of any type. The term "adjudicated case" includes, without limitation, any required administrative adjudicative proceeding arising from a charge by an agency that a person committed an offense or infraction that is civil in nature.

D.C. Official Code § 2-1831.01(1)

The administrative review clearly is not a “contested case.” *See* pp. 11-12, *supra*. It is not necessary to decide whether the administrative review satisfies the alternative definition of

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<sup>11</sup> Subsection (h), referred to in the quoted section, allows an agency head to elect to decide cases that otherwise would be within OAH’s jurisdiction, provided that the agency head does so personally, without delegation to any subordinate employees. D.C. Official Code § 2-1831.03(h). It is inapplicable here, since the head of DHS did not make the administrative review decision.

an “adjudicated case” in § 2-1831.01(1), *i.e.*, a case in which “an adjudicative hearing of any type” occurs. In light of the specific delineation of responsibilities between OAH and DHS contained in §§ 4-754.41 and 4-754.42, (which were enacted in 2005, well after enactment of the OAH Act) there can be no doubt that the Council intended DHS, not OAH, to issue the administrative review decision. If there is any conflict between those specific provisions for hearings in shelter cases and the OAH Act’s general provisions applicable to all cases within OAH’s jurisdiction, the more specific statute, the HSRA, must control. *See, e.g., Speyer v. Barry*, 588 A.2d 1147, 1163-64 (D.C. 1991). Therefore, the “adjudicated case” definition in the OAH Act does not require a contrary result.

At the July 17<sup>th</sup> hearing, counsel for DHS also expressed several concerns about a holding that administrative review decisions could be binding against a shelter. DHS noted the provisions of the Administrative Procedure Act, requiring an agency to compile an evidentiary record, D.C. Official Code § 2-509(c), and to base its findings of fact upon “reliable probative and substantial evidence” in that record. D.C. Official Code § 2-509(e). DHS argued that the informal procedures at an administrative review do not satisfy those standards. Those standards, however, are applicable to contested case hearings, and the administrative review is not such a case.

DHS also noted that, if shelters are to be bound by an unfavorable result, they will be forced to bring all their witnesses and all documentary proof to the administrative review, contrary to the Council’s intent that the administrative review be a simple, informal process. Indeed, DHS noted that the informality of the process is emphasized by the absence of any requirement that the DHS employee conducting the review be an attorney. There is some force

to these arguments, as the result here may make the administrative review more like a formal hearing, even though not governed by the contested case provisions of the Administrative Procedure Act. But those policy arguments are not sufficient to overcome the Act's silence about further recourse for the shelter in the event of an unfavorable decision.

#### **E. OAH's Authority to Enforce the Administrative Review Decision in this Case**

The final question to be resolved is whether OAH has the authority to enforce the administrative review decision in the face of CCNV's non-compliance with that decision. In this particular case, I conclude that Mr. H's original hearing request, filed April 12, 2007, is sufficient to grant OAH authority to enforce that decision.

Mr. H's hearing request asserted that his discharge from CCNV's shelter was unlawful. His amended hearing request, filed July 3, 2007, asserts a new ground for holding that same discharge to be unlawful *i.e.*, that the administrative review decision upheld his position, but CCNV had not complied. Mr. H has not filed a new hearing request; instead, he has asserted a new ground in support of his original hearing request. That original request gave OAH jurisdiction in this matter, *see pp. 6-10 supra*, and I therefore have the authority to order an appropriate remedy. D.C. Official Code § 2-1831.09.

#### **F. Conclusion**

There is no doubt that CCNV strongly believes that Mr. H committed the attack that was the basis for the termination notice. There is also no doubt that CCNV believes that Mr. H

presents an unacceptable risk to others living and working at its shelter.<sup>12</sup> Pursuant to the HSRA, however, CCNV does not have the final say on those issues. For the reasons set forth above, the administrative review decision is binding upon CCNV, and Mr. H must be returned to the shelter, subject to all the rights and duties of shelter residents under the Act.

#### IV. Order

For the reasons stated above, it is, this \_\_\_\_ day of \_\_\_\_\_, 2007:

**ORDERED**, Mr. H's motion to amend his hearing request is **GRANTED**; and it is further

**ORDERED**, that Mr. H's motion to enforce the administrative review decision, treated as a motion for summary adjudication, is **GRANTED**; and it is further

**ORDERED**, that CCNV shall admit Mr. H to the first available bed in its shelter; and it is further

**ORDERED**, that nothing in this Order precludes CCNV from taking any lawful action pursuant to the HSRA in response to any further actions by Mr. H that may warrant such action; and it is further

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<sup>12</sup> CCNV has filed copies of certain statements describing recent interactions between Mr. H and its staff in support of its position. Because CCNV did not rely upon those incidents when it issued the March 23 termination notice, I do not consider them.

**ORDERED**, that the appeal rights of any party adversely affected by this Order are set forth below.

August 2, 2007

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/s/  
John P. Dean  
Principal Administrative Law Judge