

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2012-2901

ARISE FOR SOCIAL JUSTICE,
COALITION FOR SOCIAL JUSTICE,
MASSACHUSETTS COALITION FOR THE HOMELESS, and
NEIGHBOR TO NEIGHBOR-MASSACHUSETTS,

Plaintiffs,

v.

THE DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT and AARON GORNSTEIN, as he is
Undersecretary for Housing and Community Development,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. ARISE for Social Justice, the Coalition for Social Justice, the Massachusetts Coalition for the Homeless, and Neighbor to Neighbor-Massachusetts seek a temporary restraining order and/or a preliminary injunction, as well as permanent declaratory and injunctive relief, preventing the Department of Housing and Community Development (DHCD) from promulgating emergency regulations and revising its policies to implement restrictive new rules for determining when a family's health and safety are sufficiently at risk in the family's current housing situation to qualify the family for emergency shelter. Under the new regulations and policies only extreme forms and levels of harm will qualify a family for shelter. These new rules will deny emergency shelter to many families who desperately need a safe place to stay and who are eligible under current regulations.

2. The Fiscal Year 2013 (FY 2013) state budget, St. 2012, c. 139, § 2, item 7004-0101, which authorizes expenditures for emergency shelter for homeless families with children, unequivocally requires DHCD, “notwithstanding *any* general or special law to the contrary,” to give 60 days’ advance notice to the Legislature before promulgating *any* regulations or policies that would “alter eligibility” for emergency shelter “other than that which would benefit the clients.”

3. Notwithstanding this clear mandate for advance notice – *on or about August 2, 2012 and after only 15 days advance notice to the Legislature* – DHCD plans to promulgate emergency regulations and revise its policies to implement new restrictive rules for determining when health and safety risks in the family’s current housing situation qualify a family for emergency shelter. Attached as Exhibit A is a letter from DHCD to certain members and clerks of the Legislature informing them of proposed changes in “health and safety” regulations and policies.

4. These new “health and safety” rules and policies will “alter eligibility” for emergency shelter in ways that do not “benefit the clients” and are therefore subject to the 60-day advance notice requirement. DHCD’s promulgation of the new rules in violation of the 60-day advance notice mandate should therefore be declared illegal and enjoined.

5. These “health and safety” rules and policies should also be declared illegal and enjoined because they deny emergency shelter to homeless families who the Legislature said in the line item must be eligible for shelter, because they violate the statutory requirements that DHCD administer the emergency shelter program in a “fair, just and equitable manner” and promulgate rules and regulations “to ensure simplicity of administration, in the best interest of needy persons,” because there is no “emergency”

justifying adoption of the regulations without prior notice and opportunity for interested persons to be heard, and because they violate state and federal constitutional guarantees of equal protection and due process of law.

Jurisdiction

6. This Court has jurisdiction over this action pursuant to G.L. c. 30A, § 7, G.L. c. 214, § 4, G.L. c. 231A, and 42 U.S.C. § 1983.

The Parties

7. Plaintiff **ARISE for Social Justice (ARISE)** is a low-income membership rights organization based in Springfield, Massachusetts. Its members are poor, homeless, at-risk, working and unemployed people who are pushed to the side by society. The organization's core principle is that its members have a right to speak for themselves. Addressing homelessness is a central focus of the organization. ARISE brings this action on its own behalf and on behalf of its members who include homeless families with children.

8. Plaintiff **Coalition for Social Justice (CSJ)** is a membership organization based in southeastern Massachusetts that seeks to empower current and former welfare recipients and low income working people to address economic survival issues, build grassroots power, and hold elected officials accountable. CSJ brings this action on its own behalf and on behalf of its members who include homeless families with children.

9. Plaintiff **Massachusetts Coalition for the Homeless (MCH)** is a membership organization that operates statewide and is dedicated to ending and alleviating the effects of homelessness in the Commonwealth. MCH realizes its mission through legislative and public policy advocacy, public education, and direct services to families and individuals who are experiencing homelessness or at risk of homelessness.

MCH brings this action on its own behalf and on behalf of its members who are families with children experiencing homelessness.

10. Plaintiff **Neighbor to Neighbor – Massachusetts (N2N)** is a statewide membership organization of people working together to improve the quality of lives in our communities through education, issue organizing, policy advocacy, and holding public officials accountable. N2N brings this action on its own behalf and on behalf of its members who are homeless families with children.

11. Defendant **Department of Housing and Community Development (DHCD)** is the Commonwealth's chief housing agency. Since July 2009, DHCD also has had responsibility for administering the Emergency Assistance program. G.L. c. 23B, § 30. DHCD's office is located at 100 Cambridge Street, Boston, Massachusetts 02114.

12. Defendant **Aaron Gornstein** is the Undersecretary for Housing and Community Development within the Executive Office of Housing and Community Development, with responsibility over DHCD. He is sued in his official capacity.

Legal and Regulatory Background

13. The Emergency Assistance (EA) program provides emergency shelter and re-housing services to very low-income homeless families with children. To qualify for EA benefits, a family must have gross income at or below 115% of the federal poverty line and less than \$2500 in assets: only the very poorest families in the Commonwealth qualify for EA benefits. See 106 C.M.R. § 309.020(E), (F).

14. The EA program is administered by DHCD and authorized by G.L. c. 23B, § 30, as adopted by St. 2009, c. 4, § 37 and amended by St. 2009, c. 27, §§ 13-16. For FY 2013, EA is funded and further authorized by St. 2012, c. 139, § 2, items 7004-0101 and 7004-0103.

15. The regulations governing which homeless families are eligible for shelter, have long been codified at 106 C.M.R. § 309.000, *et seq.* and in other regulations incorporated through 106 C.M.R. § 309.021(A). The Legislature previously mandated that DHCD apply these regulations in administering the EA program, unless and until the agency lawfully amended them. St. 2009, c. 27, § 109.

16. The Fiscal Year 2013 (FY 2013) state budget, St. 2012, c. 139, § 2, item 7004-0101, authorizes expenditures for emergency shelter for homeless families with children. The line item broadly and clearly states: “provided further, that *notwithstanding any general or special law to the contrary*, 60 days before promulgating or amending *any* regulation, administrative practice or policy that would alter eligibility for, or the level of benefits under, this program, other than that which would benefit the clients, the department shall file with the house and senate committees on ways and means, the clerks of the senate and house of representatives, and the joint committee on children, families and persons with disabilities a written report setting forth justification for any such change including, but not limited to, any determination by the secretary of housing and economic development that available appropriations from the program will be insufficient to meet projected need” (emphasis added).

17. The EA line item for FY 13, St. 2012, c. 139, § 2, item 7004-0101, also provides that families eligible for emergency shelter “shall include” four categories of families including (i) certain families at risk of domestic violence, (ii) certain families homeless due to fire, flood or natural disaster, (iii) certain families subject to eviction from their most recent housing, and “(iv) families who are in a housing situation in which they are not the primary leaseholder or who are in a housing situation not meant for human habitation and where there is a substantial health and safety risk to the family

that is likely to result in significant harm should the family remain in such housing situation; provided further, that the health and safety risk shall be determined by the department of children and families through risk assessments; provided further, that no later than 15 days in advance of implementation of this item, the department of housing and community development shall provide to the house and senate clerks, the house and senate committees on ways and means, and the joint committee on housing, the written criteria to be used to determine if a substantial health and safety risk is likely to result in significant harm under clause (iv)....”

18. By letter dated July 17, 2012, DHCD notified the clerks of the House and Senate, the chairs of the House and Senate Committees on Ways and Means, and the chairs of the Joint Committee on Children, Families, and Persons with Disabilities that it was submitting proposed regulations and policy materials regarding “health and safety assessments” and that the regulations – which implement eligibility category (iv) in the line item – would be effective as emergency regulations in only 15 days, e.g. on August 2, 2012, provided the Legislature did not take any contrary action. That July 17, 2012 letter is attached as Exhibit A.

19. On information and belief, DHCD did not send notice of the proposed “health and safety” regulations and policies to the Joint Committee on Housing as required by the line item, although the chairs of the Joint Committee on Housing were e-mailed a copy.

20. The regulations that DHCD proposed on July 17 to implement on or about August 2, 2012, purportedly effectuating clause (iv) of the line item concerning families facing a risk to health and safety, provide at 106 C.M.R. 309.040(A)(1) and (6) that:

(1) A household must meet the eligibility criteria specified in this chapter, including, but not limited to, those households who are eligible because:

- (i) the household in [sic] a housing situation where the household members (I) do not include the primary lease holder or (II) the child(ren) of the household are in a housing situation not meant for human habitation, and where
- (III) there is a substantial health and safety risk to the child(ren) that is likely to result in significant harm should the child(ren) remain in such housing situation.

...

(6) For purposes of this chapter: (a) *Substantial health and safety risk that is likely to result in significant harm* shall mean, for purposes of 106 CMR 309.040 (A) (1) (iv):

(i) Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to felony or misdemeanor crimes of violence, other than domestic violence as defined in 106 CMR 309.040(A)(6), in the housing situation where the household resides, perpetrated by the primary tenant or a member of the primary tenant's household who is not a member of the applicant household that cannot be addressed through law enforcement intervention or other alternative dispute resolution measures and that are likely to cause significant direct physical, psychological, mental, or emotional harm to the children of the applicant household.

(ii) Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to mental health issues exhibited by the primary tenant and/or a member of primary tenant's household who is not a member of the applicant household that cannot be addressed through referral for mental health or medical treatment and that are likely to cause significant direct physical, psychological, mental, or emotional harm to the to the children of the applicant household.

(iii) Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to on-going substance abuse by the primary tenant and/or member of primary tenant household who is not a member of the applicant household that cannot be addressed through referral for substance abuse treatment and that that are likely to cause significant direct physical, psychological, mental, or emotional harm to the children of the applicant household.

(iv) (I) The presence in the housing situation where the children of the applicant household are sleeping of physical condition(s) that led to the

condemnation for safety violations of the housing situation without the fault of the members of the applicant household; or

(II) The presence in the housing situation where the children of the applicant household are sleeping of the following physical condition(s) that cannot be corrected by the property owner's remediation of the conditions before such conditions are likely to cause significant direct physical, psychological, mental, or emotional harm to the children of the applicant household:

- (A) Lack of a supply of hot and cold water.
- (B) Lack of heat from September 16 through June 14.
- (C) Lack of electricity, lighting, or water.
- (D) Lack of toilet and/or operable sewage or waste disposal system.
- (E) Unsanitary conditions in unit which is the results in any accumulation of garbage, rubbish, filth or other causes of sickness which may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease.

(b) housing situation shall mean, for purposes of 106 CMR 309.040(A)(1)(iv), the location where the children of the applicant household are sleeping overnight.

(c) housing situation not meant for human habitation shall mean, for purposes of 106 CMR 309.040(A)(1)(iv), a housing situation that is defined in 106 CMR 309.040(A)(6)(f)(iv)(II).

Proposed 106 C.M.R. § 309.040(A)(6), attached as Exhibit B, pp. 7-8.

21. By a separate letter dated July 17, DHCD also gave the Legislature 60 days' advance notice of proposed regulatory changes and subregulatory guidance purportedly to implement eligibility categories clauses (i) through (iii) in St. 2012, c. 139, § 2, item 7004-0101. That letter is attached as Exhibit C and the larger set of regulations accompanying it, which are scheduled to take effect on September 17, 2012, is attached as Exhibit D.

22. By email sent to certain legislators and a few others on Friday, July 27, 2012, DHCD stated that it intends to make certain changes to the proposed regulations in response to concerns raised by legislators. By email on Monday, July 30, DHCD

provided a copy of the regulations as proposed to be revised, which are attached as Exhibit E. The proposed revisions sent on July 30 modify the version of the regulations scheduled to take effect on September 17, 2012; no copy of a revised version of the “health and safety” only regulations to be implemented on August 2 has yet been provided, but counsel for DHCD says a revised version with the changes will be available on or about August 2 – the day the regulations are scheduled to take effect.

23. With respect to the “health and safety” provisions in 106 C.M.R. § 309.040(A)(1) and (6), only minor additional changes were made on July 30, and, as noted above, no separate set of the regulations to be implemented on August 2 with those changes has been provided as of this filing. But giving DHCD the benefit of the doubt that they intend to apply the regulations starting on August 2 as if they contain the minor July 30 revisions, the regulations to be implemented on August 2 would now read (to the best that plaintiffs and their counsel can determine):

(A) Who is Eligible for Temporary Emergency Shelter

- (1) A household must meet the eligibility criteria specified in this chapter including but not limited to those households who are eligible because:
 - (i) the household in [sic] a housing situation where the household members
 - (I) do not include the primary lease holder (which shall mean, for these purposes, a primary tenant, whether holding under a lease, a tenancy agreement, or tenancy-at-will arrangement) or
 - (II) the child(ren) of the household are in a housing situation not meant for human habitation,and where
 - (III) there is a substantial health and safety risk to the family that is likely to result in significant harm should the family remain in such housing situation.

(6) For purposes of this chapter:

(a) *Substantial health and safety risk that is likely to result in significant harm* shall mean, for purposes of 106 CMR 309.040 (A) (1) (iv):

(i) Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to either felony or misdemeanor crimes or violent physical conduct, other than domestic violence as defined in 106 CMR 309.040 (A) (6), in the housing situation where the household resides, perpetrated by the primary tenant or a member of the primary tenant's household who is not a member of the applicant household that cannot be addressed through law enforcement intervention or other alternative dispute resolution measures in a timely manner and that are likely to cause significant physical, psychological, mental, or emotional harm to the members of the applicant household. For purposes of this provision and (ii) and (iii) below, the repeated conduct of a regular guest is attributable to the primary tenant.

(ii) Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to mental health issues exhibited by the primary tenant and/or a member of primary tenant's household who is not a member of the applicant household that cannot be addressed through referral for mental health or medical treatment in a timely manner and that are likely to cause significant physical, psychological, mental, or emotional harm to the members of the applicant household.

(iii) Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to on-going substance abuse by the primary tenant and/or member of primary tenant household who is not a member of the applicant household that cannot be addressed through referral for substance abuse treatment in a timely manner and that that are likely to cause significant physical, psychological, mental, or emotional harm to the members of the applicant household.

(iv) (I) The presence in the housing situation where the children of the applicant household are sleeping of physical condition(s) that led to the condemnation for safety violations of the housing situation without the fault of the members of the applicant household; or

(II) The presence in the housing situation where the children of the applicant household are sleeping of the following physical condition(s) that cannot be corrected by the property owner's remediation of the conditions before such conditions are likely to cause significant direct physical, psychological, mental, or emotional harm to the members of the applicant household:

(A) Lack of a supply of hot and cold water, or inability to access the same for personal use.

(B) Lack of heat from September 16 through June 14.

(C) Lack of electricity, or inability to access the same for personal use, or lack of lighting, or inability to access the same for daytime use and to minimize the same for evening sleeping purposes.

(D) Lack of toilet and/or operable sewage or waste disposal system.

(E) Unsanitary conditions in the unit that result in an accumulation of garbage, rubbish, filth or other causes of sickness which may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease; or any such accumulation in the building that creates a food source or harborage for such pests, to the extent that such pests infest the unit; or

(III) The lack of a regular overnight sleeping situation as defined in 106 CMR 309.040 (A) (6) (g) (ii), if this has been persistent, as opposed to occasional, and cannot be remedied immediately by access to feasible alternative housing.

- (b) *housing situation* shall mean, for purposes of 106 CMR 309.040 (A) (1) (iv), either (i) a specific housing situation, being the location where the children of the applicant household are regularly sleeping overnight, or (ii) lack of a regular overnight sleeping situation. A regular overnight sleeping situation is one that is consistent and continually available, not intermittent or occurring for an individual instance.

- (c) *housing situation not meant for human habitation* shall mean, for purposes of 106 CMR 309.040 (A) (1) (iv), a housing situation that is defined in 106 CMR 309.040 (A) (6) (f) (iv) (II).

24. Even under the proposed regulations as they may be revised as of August 2, the only homeless families who will be considered to be subject to a “substantial health and safety risk . . . that is likely to result in significant harm” are families:

- who are at risk due to “[e]xposure to violent physical conduct ... perpetrated by the primary tenant and/or a member of the primary tenant’s household” (or “repeated conduct of a regular guest”)
- who are at risk due to “[e]xposure to mental health issues exhibited by the primary tenant or a member of the primary tenant’s household” (or “repeated conduct of a regular guest”),
- who are at risk due to “[e]xposure to on-going substance abuse by the primary tenant and/or member of the primary tenant household” (or “repeated conduct of a regular guest”),
- who lack a regular overnight sleeping situation or are living in housing that has been condemned or lacks water, heat, electricity, lighting or toilet and waste removal or has unsanitary conditions that result in an accumulation of garbage, filth or other cause of sickness.

Proposed 106 C.M.R. §§ 309.040(A)(6)(a)(i) - (iv); 309.040(A)(6)(c), as proposed to be revised on July 30, 2012.

25. Excluded by these convoluted and narrow definitions are those who are “subject to a substantial health and safety risk” due to exposure to violent or other harmful conduct by a neighbor or other person who is not a guest or member of the host’s household, those who are at risk due to theft or extortion of resources needed to pay for

daily living expenses, and those who are living in places where there are serious violations of the Sanitary Code other than a lack of water, utilities, toilet facilities or the narrowly defined types of unsanitary conditions. Hence, those forced to live in places with exposed wiring, no insulation, no locks on the doors, missing windows, rodents that bite the children and that are not present due to “accumulation of garbage, filth or other causes of sickness,” lead paint or other serious conditions are not eligible unless and until the property is condemned even though they are subject to a “substantial health and safety risk ... that is likely to result in significant harm should the family remain in such housing situation.” In contrast, current regulations at 106 C.M.R. § 309.040(A)(2) recognize that families who are who are staying in such places lack “feasible alternative housing” and therefore are sufficiently at risk to qualify for emergency shelter.

26. And even under the regulations as proposed to be revised, families who are exposed to violent conduct by members or guests of the host and families who do not have water, utilities or toilet facilities are not eligible unless the problem “cannot” be corrected by the landlord or law enforcement, whether or not the problem will in fact be corrected, thereby leaving children and families in unsafe situations.

27. In addition, under the regulations, even as proposed to be revised, someone who is a *tenant* in unsafe housing can *never* access shelter to protect their children because the regulations allow into shelter only a household that does not include someone with a tenancy or a household that is living in a place not meant for human habitation. 106 C.M.R. § 309.040(A)(1)(i)(I).

28. The proposed regulations thus “alter eligibility for . . . the program” in ways that patently “would [not] benefit the clients,” and therefore trigger the 60-day notice requirement in the line item.

29. St. 2012, c. 139, § 2, item 7004-0101 provides that “families that shall be eligible for assistance through a temporary emergency family shelter shall include: (i) families that are at risk of domestic abuse in their current housing situation or who are homeless because they fled domestic violence and have not had access to safe, permanent housing since leaving the housing situation in which they fled.”

30. The health and safety regulations DHCD proposes to implement on August 2 expressly exclude from the category of families subject to “violent conduct” who may be eligible for shelter those who are subject to “domestic violence.” 106 C.M.R. § 309.040(A)(6)(a)(i). At the same time, the separate category of families eligible based on domestic violence will not take effect until September 17, notwithstanding the express requirements in category (i) of the line item that families at risk of domestic violence must be eligible for shelter.

31. The proposed “health and safety” regulations contain cross-references to regulations that are proposed in the regulations for which DHCD has given 60 days’ notice, but the referenced regulations are not currently in effect and are not included in the proposed “health and safety” rules. For example, the “health and safety” regulations exclude those subject to “domestic violence as defined in 106 CMR 309.040(A)(6),” but the “health and safety” regulations do not contain a definition of domestic violence in proposed 106 C.M.R. § 309.040(A)(6) or anywhere else. Proposed 106 C.M.R. § 309.040(A)(6)(a)(i), Exhibit A. In addition, proposed 106 C.M.R. § 309.040(A)(6)(c) in the “health and safety” regulations define a “housing situation not meant for human habitation” as “a housing situation that is defined in 106 CMR 309.040(A)(6)(f)(iv)(II),” which also does not currently exist and will not exist as of August 2. Other cross-references in the proposed “health and safety” regulations are similarly lacking. DHCD’s

cover letter accompanying the proposed “health and safety” regulations states that the numbering in that document “will be in effect only until the approval of the full package . . . after 60-days Legislative review.” Exhibit A. In the meantime, critical elements of the proposed “health and safety” regulations are unintelligible.

Causes of Action

Count 1 – St. 2012, c. 139, § 2, item 7004-0101 – Advance Notice

32. The proposed implementation of the “health and safety” regulations on or about August 2, 2012 without the required 60 days’ advance notice to the Legislature violates the plain language of the EA line item in the FY 13 budget.

Count 2 – St. 2012, c. 139, § 2, item 7004-0101 – Exclusion of Eligible Families

33. Because they would deny emergency shelter to many “families who are in a housing situation where they are not the primary leaseholder or who are in a housing situation not meant for human habitation and where there is a substantial health and safety risk to the family that is likely to result in significant harm should the family remain in such housing situation,” the proposed “health and safety” regulations violate the plain language of the EA line item in the FY 13 budget.

34. Because they would deny emergency shelter to “families who are at risk of domestic abuse in their current housing situation or who are homeless because they fled domestic violence . . .,” the proposed “health and safety” regulations violate the plain language of the EA line item in the FY 13 budget.

Count 3 - G.L. c. 23B, § 30 – Fair, Just and Equitable

35. The implementation of “health and safety” criteria that will deny shelter to children and families who have no safe place to stay and are at risk of real harm violates

the statutory requirement that DHCD administer the emergency assistance program in a “fair, just and equitable manner.” G.L. c. 23B, § 30.

Count 4 – G.L. c. 23B, § 30(A) – Simplicity of Administration

36. The promulgation of “health and safety” rules that have numerous complicated exceptions and qualifications, make unintelligible cross-references, and will necessitate proofs that families will not be able to obtain violates the statutory requirement that DHCD “promulgate rules and regulations . . . to ensure simplicity of administration, in the best interest of needy families.” G.L. c. 23B, § 30(A).

Count 5 – G.L. c. 30A, §§ 2 and 3 – Prior Notice and Opportunity for Comment

37. The adoption of “health and safety” regulations without publication of notice of the proposed action and without an opportunity for interested persons, including the plaintiffs, to comment on the proposed action violates the state Administrative Procedure Act, G.L. c. 30A, §§ 2 and 3.

Count 6 – Equal Protection and Due Process of Law

38. The implementation of “health and safety” rules that arbitrarily deny emergency shelter to children and families who have no safe place to stay and are at imminent risk of harm is inconsistent with principles of due process of law and violates the families’ right to equal protection of the laws protected by Articles 1, 10 and 12 of the Massachusetts Declaration of Rights, the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983.

Wherefore, plaintiffs respectfully request that the Court:

1. Issue a short order of notice for August 1, 2012 or as soon thereafter as possible on plaintiffs’ request for a temporary restraining order and/or preliminary injunction and temporarily restrain and preliminarily enjoin implementation of the

proposed “health and safety” rules and other DHCD “health and safety” guidance until DHCD has given 60 days’ advance notice of the proposed rules to the Legislature and the proposed rules comply with the substantive requirements of the line item, the state emergency assistance statute, and the state and federal constitutions.

2. Declare that the proposed “health and safety” rules dated July 17, 2012 (whether or not revised as proposed on July 30) and other DHCD “health and safety guidance” issued or proposed without 60 days’ advance notice to the Legislature violate the line item requirement of 60 days’ advance notice, St. 2012, c. 139, § 2, 7004-0101, and are invalid.

3. Declare that the proposed “health and safety” rules and policies violate the line item, St. 2012, c. 139, § 2, 7004-0101, by denying shelter eligibility to many families “who are in a housing situation where they are not the primary leaseholder or who are in a housing situation not meant for human habitation and where there is a substantial health and safety risk to the family that is likely to result in significant harm should the family remain in such housing situation” and by denying shelter to families who are at risk of domestic abuse or who are homeless because they fled domestic abuse.

4. Declare that the “health and safety” rules and policies dated July 17, 2012 (whether or not revised as proposed on July 30) violate the requirements in G.L. c. 23B, § 30 that DHCD administer the emergency assistance program in a “fair, just and equitable” manner and promulgate rules and regulations to “ensure simplicity of administration.”

5. Declare that the planned adoption of the “health and safety” rules and policies without prior notice and opportunity for public comment violates G.L. c. 30A, §§ 2 and 3.

6. Declare that the “health and safety” rules and policies dated July 17, 2012 (whether or not revised as proposed on July 30) violate the state and federal constitutional guarantees of equal protection and due process of law.

7. Award plaintiffs their reasonable attorneys’ fees and costs; and

8. Provide such other and further relief as the Court deems just and proper.

Respectfully submitted on behalf of plaintiffs,

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