

Of Counsel:

LAWYERS FOR EQUAL JUSTICE

GAVIN K. THORNTON
SUSAN K. DORSEY
P.O. Box 4984
Kailua-Kona, Hawaii 96745
Telephone: (808) 322-3045
Facsimile: (808) 263-2591
Email: gavinthornton@verizon.net

ALSTON HUNT FLOYD & ING
Attorneys at Law
A Law Corporation

SHELBY ANNE FLOYD
PAUL ALSTON
65-1230 Mamalahoa Hwy, Suite C21
Kamuela, Hawaii 96743
Telephone: (808) 885-6762
Facsimile: (808) 885-8065
Email: sfloyd@ahfi.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MARA AMONE individually, and on)	Civil No.
behalf of all person similarly situated,)	
)	COMPLAINT; SUMMONS
Plaintiffs,)	CLASS ACTION
v.)	
)	
STEPHANIE AVEIRO, in her official)	
capacity as the Executive Director of)	
the Housing and Community)	

Development Corporation of Hawaii;)
HOUSING AND COMMUNITY)
DEVELOPMENT CORPORATION)
OF HAWAII, a duly organized and)
recognized agency of the State of)
Hawaii.)
)
Defendants.)
_____)

COMPLAINT

I. INTRODUCTION

1. The United States Housing Act requires that shelter costs for tenants residing in federally subsidized public housing projects do not exceed 30% of tenant income. 42 U.S.C. §1437a(1). Where tenants are directly responsible for the payment of utility service, the supporting federal regulations require public housing authorities (PHAs) who operate public housing programs to provide tenants with a utility allowance that approximates a reasonable consumption of utilities for an energy-conservative household of modest circumstance. 24 C.F.R. Subpart 965.501 et seq. When the utility allowance is calculated properly, the shelter costs for tenants who consume a reasonable amount of utilities or less do not exceed 30% of their income.

2. Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), and the supporting regulations at 24 C.F.R. Part 8 prohibit any program or activity receiving Federal financial assistance from discriminating against an otherwise qualified individual with a disability by denying the benefits of the program or activity, solely by reason of her or his disability. To ensure that disabled tenants are not deprived of the benefits they are entitled to under the U.S. Housing Act, the U.S. Department of Housing and Urban Development (HUD) has promulgated regulations requiring PHAs to establish criteria and procedures for granting relief to “elderly, ill, or disabled residents” whose special needs require them to consume utilities in excess of the amounts provided for in the standard utility allowances. 24 C.F.R. §965.508; see also U.S. DEP’T. OF HOUS. & URB. DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK, 172 (2003). PHAs are required to notify all tenants of the right to receive such relief, and the criteria and procedures that will be used to determine whether the tenants are eligible for adjustments. 24 C.F.R. §965.508. Furthermore, PHAs are required to approve an increase in the utility allowance for a family that includes a disabled person where necessary to comply with Section 504 of the Rehabilitation

Act and 24 C.F.R. Part 8. U.S. DEP'T. OF HOUS. & URB. DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK, 172 (2003); see also 24 C.F.R. §965.508.

3. The Housing and Community Development Corporation of Hawaii (HCDCH) is a PHA in the state of Hawaii and receives federal funds to operate public housing programs across the state.

4. In violation of 24 C.F.R. §965.508, HCDCH has failed to establish the required criteria or procedures for adjusting utility allowances for elderly, ill or disabled tenants with special needs that require them to consume excess utilities, and has also failed to notify tenants of the opportunity to request adjustments to the utility allowance.

5. As a result, in violation of the U.S. Housing Act, disabled tenants residing in HCDCH projects who are in need of increased utility allowances are charged more than 30% of their income for shelter costs and may be forced to forego medically necessary services because of the cost.

6. Additionally, HCDCH has violated Section 504 of the Rehabilitation Act and the supporting regulations at 24 C.F.R. Part 8, the Americans With Disabilities Act, and the Fair Housing Act, by

failing to provide disabled residents with the benefits afforded to non-disabled residents, namely shelter costs that do not exceed 30% of tenant income.

7. The Plaintiff class seeks declaratory and injunctive relief directing Defendants to comply with the U.S. Housing Act, Section 504 of the Rehabilitation Act, the Americans With Disabilities Act, the Fair Housing Act, 24 C.F.R. Part 8, and 24 C.F.R. §965.508 by: (1) promulgating criteria and procedures for adjusting utility allowances for disabled residents with special needs in accordance with the U.S. Housing Act; (2) notifying public housing residents of the availability of such adjustments; and (3) providing such adjustments where required under governing law.

II. JURISDICTION

8. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§1331 and 1343[a][3], which afford original jurisdiction of all civil actions arising from federal questions under the Constitution, laws or treaties of the United States.

9. Plaintiff brings this action against Defendants AVEIRO and HCDCH pursuant to 42 U.S.C. §1983 to challenge the

deprivation of her rights by Defendants' actions under color of state law.

10. Declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201-02.

11. Injunctive relief is authorized pursuant to Rule 65 of the Federal Rules of Civil Procedure. Plaintiff has no adequate remedy at law and will suffer irreparable injury.

12. Supplemental jurisdiction is conferred over nonfederal claims by 28 U.S.C. §1367.

III. PARTIES

13. Plaintiff MARA AMONE is a public housing tenant and a resident of the State of Hawaii. Plaintiff brings this action on her own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all others who are similarly situated.

14. Plaintiff represents a class of present and former disabled public housing tenants whose special needs require them to consume utilities in excess of the amounts provided for in the standard utility allowances they receive or should have received and whose rights have been violated by HCDCH as set forth herein.

15. The class is so numerous that joinder of all members is impracticable.

16. There are questions of fact and/or fact common to the class, as set forth below.

17. Plaintiff's claims are typical of the claims of the class as a whole.

18. Plaintiff will fairly and adequately represent the interests of the class. Plaintiff knows of no conflicts of interest among members of the class.

19. Plaintiff is represented by attorneys who are experienced class action litigators and will adequately represent the interests of the entire class.

20. A class action is appropriate in this case for one or more of the following reasons:

- a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not

parties to the adjudications or substantially impair or impede their ability to protect their interests.

- b. HCDCH has acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.
- c. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

21. Questions of law and fact common to the Plaintiff class include:

- a. Whether HCDCH failed to promulgate criteria and procedures for adjusting utility allowances for disabled residents with special needs in accordance with the U.S. Housing Act;
- b. Whether HCDCH failed to notify public housing residents of the availability of such adjustments;
- c. Whether HCDCH failed to provide such adjustments where required under governing law;

22. Defendant STEPHANIE AVEIRO is the Executive Director of HCDCH. She has full authority over HCDCH to see that HCDCH's policies and practices conform to the law. She is also responsible for the operation and administration of HCDCH. She is sued in her official capacity.

23. HCDCH is a duly organized and recognized agency of the State of Hawaii with the power to sue and be sued.

IV. FACTUAL ALLEGATIONS

24. The Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

25. Plaintiff MARA AMONE has been a HCDCH head of household and tenant for approximately 6 years.

26. AMONE resides in a one-bedroom apartment at the Ka Hale Kahaluu housing project in Kailua-Kona, Hawaii.

27. AMONE is disabled and suffers from severe asthma and congestive heart failure. Because of these illnesses, AMONE must use an oxygen machine while she sleeps. Additionally, she must use a nebulizer and an air conditioner.

28. Like the other tenants in one-bedroom units at Ka Hale Kahaluu, AMONE's electric utilities are not included in her rent and

she receives a utility allowance of \$41 per month which is deducted from her rent.

29. However, because AMONE is required to use the utility consuming medical equipment to cope with her disability, her utility bills are as high as \$170 per month; an amount which overshadows her \$124 rent bill. Considering her limited income of \$564 per month, AMONE's total shelter costs far exceed the 30% limit set by federal law, and she is left with few resources to cover her other living expenses.

30. To obtain permission from the management of her housing project to install an air conditioner, AMONE provided them with a doctor's note stating that the air conditioner was necessary because of her disability.

31. Even after being informed of AMONE's need for the air conditioner, she was not informed by management that an upward adjustment to her utility allowance was available where her special needs required consumption of utilities in excess of the allowance she was already being provided.

32. Most likely, AMONE was not informed of the availability of such an adjustment because HCDCH has never promulgated

criteria or procedures for adjusting utility allowances for AMONE or any other disabled tenants residing in HCDCH projects.

33. Nor did HCDCH notify AMONE or any other disabled tenants residing in HCDCH projects of the availability of an adjusted allowance upon their admission into public housing as required by federal law.

34. Furthermore, HCDCH has not provided any adjustments to the utility allowance for AMONE or any other disabled tenants residing in HCDCH projects whose special needs require them to consume excess utilities.

35. As a result, AMONE and other disabled tenants residing in HCDCH projects whose special needs require them to consume excess utilities, have been required to pay amounts for utility bills in excess of the utility allowance provided and thereby have to pay an amount for rent in excess of 30% of their income. Because of this extra cost, Plaintiffs may have been forced forego medically necessary services.

V. FIRST CLAIM FOR RELIEF: VIOLATION OF THE U.S. HOUSING ACT

36. The Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

37. The U.S. Housing Act requires that shelter costs for tenants residing in federally subsidized public housing projects do not exceed 30% of tenant income. 42 U.S.C. §1437a(1).

38. Where tenants are directly responsible for the payment of utility service, the supporting federal regulations require PHAs who operate public housing programs to provide tenants with a utility allowance that approximates a reasonable consumption of utilities for an energy-conservative household of modest circumstance. 24 C.F.R. Subpart 965.501 et seq.

39. The supporting regulations also require that, when a PHA adopts a utility allowances, it must also adopt criteria and procedures for granting adjustments to the utility allowance for elderly, ill, or disabled residents whose special needs required them to consume utilities in excess of the allowances. 24 C.F.R. §965.508.

40. The PHA must notify residents of the availability of such an adjustment and must grant an adjustment where necessary to make a reasonable accommodation. 24. C.F.R. § 965.508; see also

24 C.F.R. Part 8 and U.S. DEP'T. OF HOUS. & URB. DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK, 172 (2003).

41. Furthermore, 24 C.F.R. §8.4 prohibits a program that receives federal financial assistance from denying an otherwise qualified individual the benefits of the program, providing benefits that are not equal to those provided to others, or otherwise discriminating against the individual, solely on the basis of handicap. 24 C.F.R. §8.4(a), (b); see also 24 C.F.R. §8.33 (requiring recipients of federal financial assistance to modify its housing policies and practices “to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps”).

42. By failing to: (1) adopt criteria and procedures to grant adjustments to disabled residents whose special needs require them to consume utilities in excess of the allowances; (2) notify residents of the availability of such relief; and (3) grant such relief to residents, Defendants violated, and continue to be in violation of, 42 U.S.C. §1437a and the supporting federal regulations at 24 C.F.R. §965.508.

43. Additionally, by failing to provide adjustments in the utility allowance, disabled residents have been required to pay in excess of 30% of their income for shelter costs and have thus been deprived of the benefits of HCDCH's public housing program, or have been provided benefits not equal to those provided to others, solely on the basis of handicap. Such acts are in violation of 42 U.S.C. §1437a and the supporting federal regulations at 24 C.F.R. Part 8.

44. As a result of Defendants' actions, Plaintiff and the class she represents are entitled to declaratory and injunctive relief to enforce the U.S. Housing Act.

VI. SECOND CLAIM FOR RELIEF: VIOLATION OF SECTION 504 OF THE REHABILITATION ACT

45. The Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

46. Section 504 of the Rehabilitation Act provides in relevant part, "No otherwise qualified individual with a disability in the United States. . .shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under any program, service or activity receiving federal financial assistance." 29 U.S.C. §794.

47. By failing to promulgate criteria and procedures for making adjustments in the utility allowance for disabled residents, and by failing to provide such adjustments, disabled residents have been required to pay in excess of 30% of their income for shelter costs and have thus been deprived of the benefits of HCDCH's public housing program.

48. As a result of Defendants' actions, Plaintiff and the class she represents are entitled to declaratory and injunctive relief to enforce the Rehabilitation Act.

VII. THIRD CLAIM FOR RELIEF: VIOLATION OF THE ANNUAL CONTRIBUTIONS CONTRACT (ACC)

49. Pursuant to 42 U.S.C. §1437c, HCDCH has entered into an Annual Contributions Contract (hereinafter "ACC") with HUD that has been in full force and effect at all relevant times. Under the ACC, HUD makes annual contributions to subsidize the cost of operating and managing low-income public housing in the State of Hawaii. 42 U.S.C. §1437c, g.

50. In consideration for receiving financial assistance from HUD, HCDCH agreed in the ACC to comply with HUD requirements for the development and operations of public housing. 24 C.F.R. §964.7.

51. Public Housing tenants are the intended beneficiaries of the ACC between HUD and HCDCH.

52. Defendants have breached the ACC in the following ways: (1) by failing to promulgate criteria or procedures for adjusting utility allowances for elderly, ill or disabled tenants with special needs that require them to consume excess utilities; (2) by failing to notify tenants of the opportunity to request adjustments to the utility allowance; (3) by charging disabled HCDCH tenants in excess of 30% of their income for shelter costs; and (4) by failing to provide disabled residents with the benefits afforded to non-disabled residents.

53. As a result of Defendants' actions, Plaintiff and the class she represents are entitled to declaratory and injunctive relief to enforce the ACC and the U.S. Housing Act.

VIII. FOURTH CLAIM FOR RELIEF: VIOLATION OF THE FAIR HOUSING ACT

54. Pursuant to the Fair Housing Act, it is unlawful to discriminate against any person in the “terms, conditions, or privileges” of rental of a dwelling, or “in the provision of services or facilities in connection with such dwelling,” because of a handicap of that person. 42 U.S.C. §3604(f)(2).

55. Discrimination includes “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. §3604 (f)(3)(b).

56. By failing to promulgate criteria and procedures for making adjustments in the utility allowance for disabled residents, and by failing to provide such adjustments, disabled residents have been required to pay in excess of 30% of their income for shelter costs and have thus been deprived of an equal opportunity to use and enjoy the dwellings in HCDCH’s public housing program.

57. As a result of Defendants’ actions, Plaintiff and the class she represents are entitled to declaratory and injunctive relief to enforce the Fair Housing Act.

IX. FIFTH CLAIM FOR RELIEF: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

58. The Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

59. The Americans with Disabilities Act prohibits discrimination on the basis of a disability in any public entity. 42 U.S.C. §12132. Under the Act, a “disability” is defined to mean (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such impairment, or (c) being regarded as having such an impairment. 42 U.S.C. §12102. Plaintiffs are disabled under the Act. As outlined above, Plaintiffs have been discriminated against on the basis of their disability.

60. As a result of Defendants’ actions, Plaintiff and the class she represents are entitled to declaratory and injunctive relief to enforce the Americans with Disabilities Act.

X. SIXTH CLAIM FOR RELIEF: VIOLATION OF 42 U.S.C. §1983

61. The Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

62. Defendants, acting under color of state law, violated Plaintiffs’ rights under 42 U.S.C. §1983 by committing the acts and omissions set forth above in violation of the Plaintiffs’ rights secured

by federal statute, specifically violations of the U.S. Housing Act, 24 C.F.R. §965.508, Section 504 of the Rehabilitation Act, 24 C.F.R. Part 8, the Fair Housing Act, and the Americans with Disabilities Act.

63. As a result of Defendants' actions, Plaintiff and the class she represents are entitled to declaratory and injunctive relief to enforce the U.S. Housing Act, Section 504 of the Rehabilitation Act, the Fair Housing Act, and the Americans with Disabilities Act.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

1. Assume jurisdiction of this case.
2. Certify the Plaintiff class.
3. Require Defendants to identify all class members.
4. Declare that Defendants have violated the Plaintiffs' rights as set forth herein.
5. Enter preliminary and permanent injunctions requiring Defendants to comply with the U.S. Housing Act, Section 504 of the Rehabilitation Act, the Annual Contributions Contract, the Americans With Disabilities Act, the Fair Housing Act, 24 C.F.R. Part 8, and 24 C.F.R. § 965.508 by doing the following: (1)

promulgating criteria and procedures for adjusting utility allowances for disabled residents with special needs in accordance with the U.S. Housing Act; (2) notifying public housing residents of the availability of such adjustments; and (3) providing such adjustments were necessary to comply with federal law.

6. Award the Plaintiffs their costs and attorneys' fees.
7. Grant the Plaintiffs such other relief as may be just and proper.

DATED: Honolulu, Hawaii, .

PAUL ALSTON
ATTORNEY FOR PLAINTIFFS

United States District Court

DISTRICT OF HAWAII

MARA AMONE individually, and on behalf of all
person similarly situated

Plaintiffs,

v.

SUMMONS IN A CIVIL ACTION

STEPHANIE AVEIRO, in her official capacity as the
Executive Director of the Housing and Community
Development Corporation of Hawaii; Housing and
Community Development Corporation of Hawaii, a
duly organized and recognized agency of the State of
Hawaii.

CASE NUMBER:

TO: The Above-Named Defendant(s)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and
serve upon **PLAINTIFF'S ATTORNEYS**

SHELBY ANNE FLOYD, ESQ.
PAUL ALSTON
Alston Hunt Floyd & Ing
65-1230 Mamalahoa Hwy., Suite C21
Kamuela, Hawaii #i 96743

-or-

GAVIN K. THORNTON
SUSAN K. DORSEY
Lawyers for Equal Justice
P. O. Box 4984
Kailua-Kona, Hawaii 96745

an answer to the complaint which is herewith served upon you, within
days after service of this summons upon you, exclusive of the day of service. If you fail
to do so, judgment by default will be taken against you for the relief demanded in the
complaint.

CLERK DATE

BY DEPUTY CLERK DATE