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2009

Amended Complaint, Bernardi v. Lake County  
Housing Authority, Docket No. 1:09-cv-00628  
(Northern District of Illinois Mar. 11, 2009)

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PIA BERNARDI, by her Guardian and )  
Next Friend, GIOVANNA BERNARDI; )  
and GIOVANNA BERNARDI, )

Plaintiffs, )

vs. )

LAKE COUNTY HOUSING )  
AUTHORITY, a Municipal Corporation, )  
and DAVID NORTHERN, in his Official )  
Capacity as Executive Director of the Lake )  
County Housing Authority, )

Defendants. )

No.: 09-CV-628

Judge: Samuel Der-Yeghiayan

**JURY DEMANDED**

**AMENDED COMPLAINT**

Plaintiffs, PIA BERNARDI, a disabled individual, by her guardian and next friend, GIOVANNA BERNARDI, and GIOVANNA BERNARDI, by and through their attorneys, Edward A. Voci, Kelly J. Keating and the Senior Law Students of The John Marshall Law School Fair Housing Legal Clinic, and Lawrence W. Smith of Prairie State Legal Services, and complain as follows against Defendants LAKE COUNTY HOUSING AUTHORITY (“HOUSING AUTHORITY”) and DAVID NORTHERN (“NORTHERN”) in his official capacity as Executive Director of the HOUSING AUTHORITY.

**JURISDICTION AND VENUE**

1. These claims arise under 42 U.S.C. § 3601 et seq. of the Federal Fair Housing Act, section 504 of the Rehabilitation Act of 1973, 42 U.S.C. § 1983 based on the Equal Protection Clause of the Fourteenth Amendment and the Substantive Due Process Clause of the Fourteenth Amendment and 28 U.S.C § 2201 (Declaratory Judgment).

2. Federal jurisdiction is conferred on this Court under 42 U.S.C. § 3601 et seq., 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 22 U.S.C. § 2201.
3. Additionally, section 3613 of the Federal Fair Housing Act states, in pertinent part: “(a) An aggrieved person may commence a civil action in an appropriate United States District Court... (c) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) [at HUD] and without regard to the status of any such complaint [at HUD]...”
4. Venue is proper in the Northern District of Illinois, Eastern Division, as all Plaintiffs and all Defendants reside within the boundaries thereof.

### **PARTIES**

5. Plaintiff, PIA BERNARDI (“PIA”), is a senior citizen female with the disability of mental retardation that does not permit her to perform normal life functions. She is a participant in the federally funded “Section 8” Housing Choice Voucher Program administered by Defendants and funded by the U.S. Department of Housing and Urban Development (“HUD”). She resides in an apartment in Grayslake, Illinois leased from Robin and Bonita Miller.
6. GIOVANNA BERNARDI (“GIOVANNA”) is PIA’s sister and duly appointed legal guardian. She lives with PIA in the aforesaid apartment and cares for PIA within the meaning of 24 C.F.R. § 5.403 as a “live-in-aide.”<sup>1</sup>
7. Defendant HOUSING AUTHORITY is a political subdivision of the State of Illinois and an administrator of the “Section 8” Housing Choice Voucher Program for the U.S. Department of HUD. It maintains its offices and conducts its affairs in Lake County, Illinois. Within the

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<sup>1</sup> “...a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons; (2) is not obligated for the support of the persons; and (3) would not be living in the unit except to provide the necessary supportive services.”

HOUSING AUTHORITY'S range of responsibilities are payment of HUD funds to private landlords on behalf of "Section 8" participants, such as PIA, and the termination of "Section 8" Vouchers.

8. Defendant DAVID NORTHERN is the Executive Director of the Lake County Housing Authority and is responsible for the implementation of the policies, rules and regulations of the HOUSING AUTHORITY and for making final administrative decisions.

### **FACTS**

9. At all material times hereto, PIA is and has been disabled within the meaning of 20 C.F.R. § 404.1505, 42 U.S.C. § 3602 and the Rehabilitation Act of 1973.
10. PIA has been mentally disabled since age 3 when improper medical treatment in her native Italy caused her to lapse into a coma. After she emerged from the coma, she has not developed normally mentally or emotionally.
11. PIA cannot perform everyday tasks, such as dressing herself. Putting on clothes is a daily challenge for PIA because she cannot coordinate articles of clothing, put on a belt properly or tie her own shoes. When unsupervised, she will walk with untied laces, which has caused her to trip. The inability of PIA to clothe herself presents challenges with adverse weather conditions since, for example, PIA does not button up her coat even in cold temperatures. Rain, snow and ice frighten and confuse PIA, and she will refuse to leave the house unless GIOVANNA pulls the car right up to the door.
12. PIA cannot bathe herself completely without assistance. While PIA can wash her front, she needs assistance in shampooing her hair and washing her back, feet, legs and private area.
13. PIA also cannot cook meals for herself, do her own laundry, drive a car or manage her diabetes.

14. PIA is unable to adjust to emotional work stress or to get along with others outside her family. Various stimuli cause her to have crying spells and temper tantrums. PIA has an IQ of 59 and cannot read or write anything beyond a few letters and numbers. She is incapable of gainful employment.
15. GIOVANNA became PIA's duly appointed legal guardian of the person and the estate in 1991.
16. GIOVANNA provides the day-to-day care for PIA and consequently is prevented from engaging in full-time employment. She engages in sporadic employment to help make ends meet when volunteer temporary care for PIA can be arranged.
17. During August 2003, GIOVANNA, as guardian for PIA, applied for "Section 8" funding assistance for PIA.
18. All times material hereto, HOUSING AUTHORITY was legally responsible for administering the Housing Assistance Program in accordance with federal laws and regulations, including 24 C.F.R. § 5.403.
19. At the outset of the application process, GIOVANNA informed HOUSING AUTHORITY that PIA was disabled, unable to live without assistance and was under GIOVANNA's legal guardianship.
20. HOUSING AUTHORITY stated to GIOVANNA that PIA qualified for "Section 8," but that she, GIOVANNA, did not qualify for "Section 8." Consequently, only PIA was included in the "Preapplication."
21. In November or December 2004, PIA was approved for "Section 8" assistance by HOUSING AUTHORITY and was scheduled for an interview.

22. At the interview, HOUSING AUTHORITY observed and questioned PIA to determine her ability to live independently. HOUSING AUTHORITY stated to GIOVANNA that “it is obvious that you are a part of her.” HOUSING AUTHORITY inquired if GIOVANNA would live alone but for caring for PIA, and GIOVANNA answered in the affirmative. Consequently, GIOVANNA included herself in the “Personal Declaration” along with PIA as her “Guardian.”
23. HOUSING AUTHORITY then informed GIOVANNA that she and PIA qualified for a two-bedroom apartment and handed GIOVANNA a list of available two-bedroom apartments.
24. Robin and Bonita Miller’s apartment was on the list given to GIOVANNA by HOUSING AUTHORITY. GIOVANNA and PIA subsequently entered into their lease with the Millers for Apartment 221 at 10 Lake Street in Grayslake, IL, which began on or about June 15, 2005.
25. As part of the “Section 8” Housing Program, HOUSING AUTHORITY recertifies the qualifications of “Section 8” participants. During HOUSING AUTHORITY’s recertification of PIA’s eligibility, GIOVANNA volunteered information that she worked sporadically during 2005 and 2006.
26. On June 29, 2006, HOUSING AUTHORITY sent a letter to PIA stating that they were calculating GIOVANNA’s income into the amount of benefits PIA would be receiving. HOUSING AUTHORITY did this contrary to 24 C.F.R. § 5.609(c)(5) which states: “Annual income does not include the following:...(5) Income of a live-in-aide, as defined in § 5.403.”
27. Due to GIOVANNA’s voluntary acknowledgement of receiving income, the HOUSING AUTHORITY demanded repayment of the alleged overpayments. PIA requested a hearing during which she requested the HOUSING AUTHORITY to comply with 24 C.F.R. § 5.403

and 24 C.F.R. § 5.609(c)(5). Defendant NORTHERN presided over the hearing and on October 12, 2006 denied PIA's request for HOUSING AUTHORITY's compliance with 24 C.F.R. § 5.403 and 24 C.F.R. § 5.609(c)(5).

28. PIA filed a complaint and memorandum in support of her complaint in the Circuit Court of Lake County seeking relief under common law certiorari, the Federal Fair Housing Act and the Rehabilitation Act.
29. HOUSING AUTHORITY sought and obtained dismissal of the complaint arguing that the Illinois courts lacked jurisdiction over PIA's complaint because it was "...asking this court to rule on a complaint for alleged civil rights violation[s]...which may only be brought to HUD or to the Illinois Department of Human Rights." On October 24, 2007, the Honorable Judge Wallace B. Dunn dismissed PIA's complaint. PIA moved for reconsideration of the dismissal arguing in addition that housing discrimination under the Illinois Human Rights Act was actionable in Illinois courts.
30. Judge Dunn entered an Order on February 19, 2008 remanding the matter to HOUSING AUTHORITY for a hearing on the repayment plan issue and further providing in pertinent part as follows:
  - ...4. The Court finds and orders, further, that the hearing officer was not presented with the issue whether Plaintiff/Petitioner's sister is prospectively to be considered a live-in aide and, if so, the prospective effect of such a determination on the household and the annual income calculation, and therefore that issue is not before the Court for determination on the Plaintiff/Petitioner's Petition and no such finding or order is made in that regard.
  5. The hearing officer upon remand may consider, if requested, Plaintiff's need for a live-in-aide and the prospective application of Plaintiff's sister as her live-in-aide."
31. An order by an Illinois court remanding to an inferior tribunal for further hearing is not a final and appealable order. *Martin v. Cajda*, 238 Ill.App.3d 721 (2d Dist. 1992).

32. On remand Defendants offered re-payment plans to PIA and GIOVANNA that violated HUD's programmatic procedures. PIA entered into the least financially onerous repayment plan to avoid termination of her benefits and relied on a charitable contribution to make the initial payment.
33. Subsequent to Judge Dunn's Order, Plaintiffs' counsel at Prairie State Legal Services made numerous and repeated requests for reasonable accommodations that GIOVANNA be classified as a live-in-aide under 24 C.F.R. § 5.403, which would have excluded GIOVANNA's income as PIA's live-in-aide, which requests Defendants denied.
34. Furthermore, and also subsequent to Judge Dunn's Order, Plaintiffs' counsel at The John Marshall Law School Fair Housing Legal Clinic made additional requests that GIOVANNA be considered PIA's live-in-aide in compliance with the law, which requests Defendants denied.
35. A "live-in-aide" is defined by HOUSING AUTHORITY's Administrative Plan (at page 114), in lock-step with HUD regulations (24 C.F.R. § 5.403) quoted above at fn.1, as "...a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons; (2) is not obligated for the support of the persons; and (3) would not be living in the unit except to provide the necessary supportive services."
36. Pursuant to 24 C.F.R. § 5.609(c)(5), quoted above at ¶ 26, the income of the live-in caretaker should not be included in household income and should not affect the amount of "Section 8" funding PIA would receive. Defendants denied this reasonable accommodation and did not offer any alternatives to its decision.

37. On or about November 14, 2008, GIOVANNA and PIA filed a discrimination complaint with HUD.
38. On or about January 21, 2009, Defendants notified Plaintiffs' landlords that the contract between HOUSING AUTHORITY and the landlords would be terminated effective as of Saturday, January 31, 2009.
39. The termination of the contract will in effect terminate the lease between the landlords and PIA and GIOVANNA and cause Plaintiffs immediate and irreparable harm.
40. Without "Section 8" benefits GIOVANNA and PIA will be forced from their current apartment and PIA will need to be institutionalized because she cannot live without daily care and assistance, and PIA and GIOVANNA cannot afford to pay for a professional live-in-aide and to pay market rate rent.
41. After the Plaintiffs received notice from their landlords that PIA's housing assistance benefits would be terminated on January 31, 2009, but before filing their Complaint, Plaintiffs' counsel telephonically requested of Defendants yet another request for a reasonable accommodation and for Defendants to comply with 24 C.F.R. § 5.403 and 24 C.F.R. § 5.609(c)(5) which requests Defendants again denied.
42. On January 30, 2009, Plaintiffs filed their Complaint in the United States District Court for the Northern District of Illinois as well as an Emergency Motion for Temporary Restraining Order to prevent the termination of PIA's benefits. On or about February 2, 2009, the Honorable Judge Wayne R. Andersen granted the Temporary Restraining Order (TRO).
43. At the TRO hearing of February 2, 2009, Defendants relied on a "HUD pamphlet regulation," at T. 18-19, asserting that a person cannot be a live-in-aide if that person was a "household member" when the housing benefits start.

44. On or about February 10, 2009, Defendants filed a Memorandum in Opposition to the Extension of the TRO (docket 15). In that memorandum, at p. 5, Defendants quoted an attached brochure: “It is fairly clear that a pre-existing household member does not qualify as a live-in-aide.” Defendants also stated in the Memorandum, at pp. 5, 11-12, that because Plaintiffs entered the program as a family GIOVANNA was precluded from qualifying as a live-in-aide.
45. On or about February 20, 2009, Defendant NORTHERN filed a Declaration (docket 22-2) wherein, at ¶ 16, he discussed his decision dated October 12, 2006 denying PIA’s request for GIOVANNA to be classified as her live-in-aide. “The reason given was that ‘when the family applied for the program, Ms. Pia Bernardi and Giovanna Bernardi [were] listed as a family...’”
46. On or about February 25, 2009, during a hearing for the extension of the TRO, Defendants asserted, at T. 24, that because GIOVANNA was part of the “household” when she started the program she did not “fall within the definition of a live-in-aide.”
47. The allegations of ¶¶ 43-46 above establish that HOUSING AUTHORITY has a policy which dictates that “household members” and “family members” cannot serve as live-in-aides within the meaning of 24 CFR § 5.403 despite there being no provision in HUD regulations specifically excluding “household members” and “family members.”
48. Ironically, Defendants obtained the brochure referred to in ¶ 43 above from Prairie State Legal Services attorneys in 2006. Prairie State Legal Services offered the brochure in support of their argument that Defendants should have considered GIOVANNA as a live-in aide when PIA first applied for Section 8 benefits. Defendants, rather than correct their error committed during the intake of PIA’s application for benefits, latched on to and continue to

advance arbitrarily, unreasonably and capriciously an incorrect reading of the above-quoted HUD regulations. To further cover up and distract attention from their wrongdoing, Defendants have asserted to the Court that GIOVANNA has committed “fraud.”

49. HOUSING AUTHORITY’s arbitrary and capricious policy constitutes a continuing violation of the below-alleged violations of federal law.

### **CLAIMS**

#### **First Claim: Violation of the Federal Fair Housing Act**

Plaintiffs PIA and GIOVANNA re-state and re-allege Paragraphs 1 through 42 as if fully set forth herein.

50. The HOUSING AUTHORITY violated section 3604(f)(3)(b) of the Federal Fair Housing Act by failing to grant PIA and GIOVANNA’s requests for a reasonable accommodation for GIOVANNA to be classified as PIA’s live-in-aide under 24 C.F.R. § 5.403.

51. Granting such a request would neither result in undue financial or administrative burdens for HOUSING AUTHORITY.

52. Defendants’ actions will proximately cause immediate and irreparable harm to Plaintiffs and has proximately caused emotional, mental and economic injury to Plaintiffs.

#### **Second Claim: Continuing Violation of the Federal Fair Housing Act**

Plaintiffs PIA and GIOVANNA re-state and re-allege Paragraphs 1 through 49 as if fully set forth herein.

53. HOUSING AUTHORITY violated and continues to violate section 3604(f)(3)(b) of the Federal Fair Housing Act by maintaining an arbitrary and capricious policy of not permitting “household” and “family” members to be live-in-aides for disabled individuals in need.

54. HOUSING AUTHORITY has refused numerous requests, as set forth in the Facts, for the reasonable accommodation that GIOVANNA be PIA's live-in-aide in accordance with the Federal Fair Housing Act.
55. As a result of its arbitrary and capricious policy of denying such requests, HOUSING AUTHORITY has engaged in a continuing violation of the Fair Housing Act. *Iovinelli v. Pritchett*, 2008 U.S. Dist. LEXIS 52617 (N.D. Ill. 2008).
56. Granting such a request would neither result in undue financial or administrative burdens for HOUSING AUTHORITY.
57. The Defendants' continuing violation stemming from their discriminatory policy has caused irreparable harm to the Plaintiffs and has proximately caused emotional, mental and economic injury to Plaintiffs.
58. The Defendants' continuation of its arbitrary and capricious policy will proximately cause immediate and further irreparable harm to Plaintiffs.

**Third Claim: Violation of Section 3617 of the Federal Fair Housing Act**

Plaintiffs PIA and GIOVANNA re-state and re-allege Paragraphs 1 through 49 as if fully set forth herein.

59. The Defendants violated section 3617 of the Federal Fair Housing Act when they notified Plaintiffs' landlords, the Millers, that the contract between HOUSING AUTHORITY and the landlords would be terminated effective as of Saturday, January 31, 2009, in effect terminating the lease between the Plaintiffs and the Millers.
60. Defendants' termination of PIA's benefits was in retaliation of the Plaintiffs, PIA and GIOVANNA, filing a discrimination complaint with HUD in November 2008.

61. Defendants' actions will proximately cause immediate and irreparable harm to Plaintiffs and has proximately caused emotional, mental and economic injury to Plaintiffs.

**Fourth Claim: Violation of Section 504 of the Rehabilitation Act of 1973**

Plaintiffs PIA and GIOVANNA re-state and re-allege Paragraphs 1 through 42 as if fully set forth herein.

62. The HOUSING AUTHORITY violated section 504 of the Rehabilitation Act of 1973 by failing to grant PIA's requests for a reasonable accommodation for GIOVANNA to be classified as PIA's live-in-aide under 24 C.F.R. § 5.403.

63. Granting such a request would neither result in undue financial or administrative burdens for the HOUSING AUTHORITY.

64. Defendants' actions will proximately cause irreparable harm to Plaintiffs and have proximately caused emotional, mental and economic injury to Plaintiffs.

**Fifth Claim: Continuing Violation of Section 504 of the Rehabilitation Act of 1973**

Plaintiffs PIA and GIOVANNA re-state and re-allege Paragraphs 1 through 49 as if fully set forth herein.

65. The HOUSING AUTHORITY violated and continues to violate section 504 of the Rehabilitation Act of 1973 by maintaining a policy of not permitting "household" members to be live-in-aides for disabled individuals in need.

66. The Lake County Housing Authority has refused numerous requests, as set forth in the Facts, for the reasonable accommodation that GIOVANNA be PIA's live-in-aide in accordance with the Rehabilitation Act and public housing regulations.

67. As a result of its arbitrary and capricious policy of denying such requests, the HOUSING AUTHORITY has engaged in a continuing violation. *Iovinelli v. Pritchett*, 2008 U.S. Dist. LEXIS 52617 (N.D. Ill. 2008).
68. Granting such a request would neither result in undue financial or administrative burdens for the HOUSING AUTHORITY.
69. The Defendants' continuing violation stemming from their discriminatory policy has caused irreparable harm to the Plaintiffs and has proximately caused emotional, mental and economic injury to Plaintiffs.
70. The Defendants' continuation of HOUSING AUTHORITY's arbitrary and capricious policy will proximately cause immediate and further irreparable harm to Plaintiffs.

**Sixth Claim: Class-of-One Claim Equal Protection Violation of 42 U.S.C. § 1983**

Plaintiffs PIA and GIOVANNA re-state and re-allege Paragraphs 1 through 49 as if fully set forth herein.

71. A class-of-one action asserted under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 is recognized where a plaintiff alleges that (s)he has been intentionally treated differently from others similarly situated, and that there is no rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).
72. Defendants do not terminate people with disabilities from rental assistance who have professional caregivers, but will terminate caregivers who are household or family members, and thus, are intentionally treating Plaintiffs, GIOVANNA and PIA, differently than people in similar circumstances with no rational basis for the disparate treatment.

**Seventh Claim: Substantive Due Process Violation of 42 U.S.C. § 1983**

Plaintiffs PIA and GIOVANNA re-state and re-allege Paragraphs 1 through 49 as if fully set forth herein.

73. A 42 U.S.C. § 1983 claim is recognized when any person acting under color of any statute, ordinance or regulation, deprives any citizen of the United States of any rights, privileges, or immunities secured by the Constitution and laws.
74. The right to live with one's family is a right protected under substantive due process. *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977).
75. Defendants' arbitrary and capricious policy of denying household members to be live-in-aides, which ultimately led to the termination of PIA's housing assistance benefits, is a denial of PIA and GIOVANNA's respective right to live together as sisters and a family because without GIOVANNA's care, PIA will have to be institutionalized.

**RELIEF**

PLAINTIFFS request that:

- (A) The Court enter an Order declaring that Defendants HOUSING AUTHORITY and NORTHERN violated sections 3604 and 3617 of the Federal Fair Housing Act, section 504 of the Rehabilitation Act of 1973 and denied Plaintiffs equal protection and due process under 42 U.S.C. § 1983 as alleged above;
- (B) The Court enter an Order permanently enjoining the Defendants, their agents, employees, successors and assigns from terminating PIA's "Section 8" rental assistance based on acts committed up to the time of judgment;
- (C) The Court enter an Order directing Defendants permanently to abolish HOUSING AUTHORITY'S policy as alleged above;

- (D) The Court enter an Order directing Defendants HOUSING AUTHORITY and NORTHERN to apply 24 C.F.R. § 5.403 and 24 C.F.R. § 5.609(c)(5) to Plaintiffs;
- (E) The Court enter an Order directing Defendants to grant PIA a reasonable accommodation that classifies GIOVANNA as a live-in-aide under 24 C.F.R. § 5.403 and exempts GIOVANNA's income from "Section 8" rent calculations and disclosure from the date of PIA's application forward;
- (F) The Court enter an Order directing the Defendants to obtain fair housing training for its staff, establishing clear policies and procedures, reporting and monitoring;
- (G) The Court award Plaintiffs compensatory damages;
- (H) The Court award Plaintiffs punitive damages;
- (I) The Court award Plaintiffs their attorney fees and costs; and
- (J) The Court enter an Order granting any and all other relief as it deems equitable and just.

Submitted by Plaintiffs PIA BERNARDI and GIOVANNA BERNARDI,

*/s/ Edward A. Voci*

*/s/ Kelly J. Keating*

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