

# VERMONT LEGAL AID, INC.

## POVERTY LAW PROJECT

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July 23, 2019

## VERMONT POVERTY LAW FELLOWSHIP

Mental Health and Housing

### THIRD QUARTER REPORT

April 1, 2019 - July 15, 2019

#### 1. Introduction

Jill's fellowship focuses on housing-related problems experienced by low-income clients with mental health concerns, ranging from eviction and access to subsidized housing, to the lack of supportive services that enable people to remain successfully housed, to reentry challenges related to housing.

Tracking the experience of the previous fellows, Jill began her fellowship by speaking with a wide range of service providers involved at the intersection of mental health and housing, and hearing their concerns and recommendations for change. She also began representing individuals with a variety of legal problems which might become the focus of the fellowship.

This quarter, Jill spent the majority of her time working on cases that allowed her to more deeply explore a few recommended areas of inquiry: (a) cases involving the need for increased access to housing-focused community mental health supports, (b) cases involving disability discrimination in long-term care facilities, and (c) cases involving access to reasonable modifications of rules and procedures in the mental health/housing social service and legal systems.

During the third quarter, approximately 70% of Jill's time was spent on individual client casework; approximately 20% of her time was spent on legal and policy research and attending trainings; and approximately 10% of her time was spent communicating and meeting with stakeholders and partner agencies.

#### 2. Community Consultations, Trainings, and Events

This quarter, Jill has continued meeting or consulting with stakeholders at:

- Howard Center (Chittenden)
- Washington County Mental Health Services ("WCMHS;" Washington)
- Northwestern Counseling and Support Services ("NCSS;" Franklin)
- The Department of Mental Health ("DMH")
- The Vermont Coalition to End Homelessness
- The Chittenden County Homeless Alliance

Jill has participated in events including:

- Co-delivered training to the Howard Center Community Rehabilitation and Treatment (“CRT”) case manager team on supporting clients with psychiatric disabilities to be successful in their housing.
- Presented a Fellowship case snapshot at the Chittenden County Justice Fest.

Jill has attended trainings including:

- VLA new attorney trainings on various areas of civil legal services practice.
- VLA Staff College trainings (including on Popular Education methods, which Jill intends to implement when training designated agency CRT teams).

### 3. Legal Assistance & Representation

#### Statistics

During the third quarter, Jill worked as counsel or co-counsel for 15 clients, providing advice, advocacy, or representation in 21 cases, of which 13 were opened this quarter.

<b>Issue</b>	<b>No. of cases</b>
Eviction – Private Housing	4
Eviction – Subsidized Housing	2
Housing Access - Expungements	1
Benefits/Denial – Community Mental Health Services	6
Benefits/Denial – Residential Care Home Discharge	2
Benefits/Denial - Department of Children and Families EA/GA	2
Benefits/Denial - Housing Subsidy	4
<b>Total</b>	<b>21</b>

<b>County</b>	<b>No. of cases</b>
ADDISON	0
BENNINGTON	0
CALEDONIA	1
CHITTENDEN	4
ESSEX	0
FRANKLIN	9
GRAND ISLE	0
LAMOILLE	0
ORANGE	0
ORLEANS	1
RUTLAND	0
WASHINGTON	2
WINDHAM	2
WINDSOR	2
<b>Total</b>	<b>21</b>

**Case Snapshot**

Diane (pseudonym) is a person with co-occurring psychiatric and developmental disabilities who has been living in her project-based subsidized apartment building for over a decade. Her Public

Housing Authority (“PHA”) intended to terminate her for alleged lease violations resulting from disability-related noise making behavior and disability-related conflicts with neighbors and staff.

VLA’s Disability Law Project (“DLP”) initially agreed to represent Diane at an informal hearing at the housing authority to contest her termination. When that was unsuccessful, DLP referred the formal hearing case to Jill, as it represented a good example of the intersection of challenges faced by a client with a mental health disability and the potential devastating loss of a subsidized housing unit.

Jill, working with former Poverty Law Fellow, Jessica Radbord, found that Diane had been living in her first floor unit for many years without serious incident. However, at a time when Diane was experiencing a loss of support systems and other traumas in her life, Diane and her upstairs neighbor began making cross-complaints about what each perceived to be the other’s intentional interference with quiet enjoyment. Diane felt that her immediate upstairs neighbor was deliberately tracking Diane’s movements around the footprint of her unit, which was triggering Diane’s disability-related behaviors, including compulsive behaviors that harm her physical health, self-soothing in the form of loud rocking, sudden and loud disruptions in response to sensory triggers, intense fixation, and oppositional behavior.

The PHA compelled Diane to move to a vacant unit on the top floor of the building as a “reasonable accommodation,” without Diane’s input and without engaging in an “interactive dialogue” as required by fair housing laws. In so doing, the PHA moved Diane for noise-related issues into a unit directly above another tenant who silently meditates for several hours a day to moderate symptoms of his own disabilities. Before long, this downstairs neighbor began complaining to the PHA.

Diane’s public guardian at the time made multiple reasonable accommodation and modification requests to the PHA to give Diane an equal opportunity to use and enjoy her new unit. The accommodations requested included affordable soundproofing measures and disability education for all tenants, which the PHA denied. In late 2018, the court lifted Diane’s guardianship order. Around the same time, her staffing changed at her designated agency and they decreased her housing support services, leaving her with virtually no outside support. Then the PHA terminated her tenancy.

Jill and Jessica determined that Diane’s informal hearing lacked due process. The PHA’s termination notice lacked a date certain, which would make any eviction action dismissible in court, and lacked specificity that would allow Diane to prepare a proper defense. Contrary to HUD regulations, the hearing improperly included a hearing officer, was improperly adversarial, and lacked a written hearing summary letter which would allow Diane to properly prepare for a formal grievance hearing should she need to request one. Furthermore, during and after the informal hearing, the PHA continued its pattern of failing to engage in the required interactive dialogue, and summarily denied Diane’s requests as “unreasonable” without proposing alternatives, in violation of Diane’s fair housing rights.

Jill and Jessica prepared evidence to leverage Diane’s due process and fair housing claims and advocated with the PHA to postpone the formal hearing and engage in a meaningful, solutions-

focused interactive dialogue. Rather than working on simply getting the case dismissed, Jill and Jessica focused on collaborating with Diane, her service providers, and the PHA to come up with a meaningful solution that would make her tenancy a healthier and more sustainable one for all involved. In addition to researching sound testing, measurement, management, and proofing measures, Jill and Jessica worked closely with Diane's designated agency and other healthcare providers to help Diane identify a workable, increased treatment plan to show the PHA that problematic behaviors giving rise to alleged lease violations would be unlikely to reoccur in the future. All of this required creative strategies to accommodate Diane's disabilities in the course of representation, to ensure a productive and trusting attorney-client relationship.

The PHA would not negotiate prior to the hearing, and the hearing was hotly contested. Fortunately, the hearing officer took notice of VLA's due process and fair housing concerns, and of the reasonableness of VLA's accommodations requests and proposal for an interactive dialogue. Several weeks of negotiations with the PHA, the designated agency, and Diane culminated in a second formal hearing meeting. By the end, Jill and Jessica were able to reach a very reasonable settlement agreement with the PHA, allowing Diane a second chance to engage in treatment and become program compliant, as well as the chance to live in a unit reasonably modified to accommodate her disabilities.

Jill will stay with the case while the parties implement the settlement agreement, specifically to ensure that the designated agency follows through with its housing support commitments - housing supports to which Diane is entitled, and which she needs to stay safely and stably housed.

#### **4. Conclusions**

##### *Takeaways from this quarter*

As stated above, Jill spent this quarter focused on cases that involve (a) the need for increased access to housing-focused community mental health supports, (b) disability discrimination in long-term care facilities, and (c) access to reasonable rules and procedures modifications in the mental health/housing social service and legal systems.

##### *Community Mental Health as Housing Support*

Diane's case highlights the critical role designated agencies can and should play in providing housing supports for renters with disabilities. Through the relationships Jill is building with designated agencies by scheduling and delivering trainings, collaborating with clients' case managers, and consulting with case manager team leaders, Jill is finding that agencies are focusing more energy and resources on creative housing *search* rather than ongoing housing *support*. Many case managers Jill has encountered do tremendous work helping clients find apartments, but express a lack of confidence, competence, or capacity to (1) identify and request reasonable accommodations and modifications, and (2) honor their "client-centered approach" while also counseling clients to identify stable housing as a *mental health* case management goal, and (3) develop action plans on how to assist clients to access the *right* supports. Whereas Jill spent her first quarters considering Community Rehabilitation and Treatment ("CRT") enrollment due process as a potential fellowship focus, she's now more closely examining what

CRT enrollment actually means for clients who are having trouble staying housed. How can CRT do more to support clients to stay housed, and what legal strategies are available (or missing) to help make community mental health case management work better for people who are “hardest to house”? Jill is exploring avenues within the designated agencies’ existing procedures to increase access to housing supports, and is exploring a request for rulemaking on the CRT program.

### *Discrimination in Residential Care Settings*

Eligibility for residential-level care does not guarantee access to that care, let alone access to that form of housing. Tenants with mental disabilities living in residential care settings are just as susceptible to suffering a sudden or unjust loss of housing - including for discriminatory reasons - as those renting in the community setting. Vermont’s Landlord-Tenant protections do not apply in residential care settings, and Vermont’s Residential Care Home (“RCH”) regulations allow care homes to emergently discharge residents to homelessness with no due process owed if there is an “emergency need”. Under the regulations, homes can justify the emergency need by simply calling in first responders to effectuate a sudden discharge, which homes are reportedly doing in non-emergency situations to quickly discharge “problem residents” (residents experiencing symptoms of mental disabilities). Jill is exploring available remedies through litigating a contested Human Rights Commission discrimination complaint for Barbara, the client she highlighted in her Second Quarter Report. This is not an isolated issue, so Jill is also working with a team of advocates from across VLA’s projects to collect stories and research additional strategies to protect residential care home tenants with mental disabilities.

### *Access to Services and Justice*

Finally, through Jill’s casework, she’s reflecting on the ways in which the organizations serving Vermonters with intersecting housing and mental health challenges (the designated agencies, the Department of Children and Families, the courts, Vermont Legal Aid, etc.) meet their ADA obligations to reasonably accommodate people with disabilities. Several of Jill’s clients have expressed feeling like they are not given full and equal opportunity to access benefits and services and to navigate systems for reasons relating to their disabilities. Clients report representing themselves in court matters they did not understand, or being denied services for disability-related behaviors, where the people clients are interacting with could have done more to make meaningful access possible. Jill is collaborating with colleagues to tease out some best practices on working with clients with intersecting housing and mental disabilities. She is also advocating on matters collateral to her existing clients’ core housing and benefits cases, for those who express feeling excluded from a benefit, service, or proceeding because their disabilities were not reasonably accommodated in the process. In one example, Jill advocated for a ‘repair meeting’ between a client and her designated mental health agency, so the client could re-engage in necessary housing support services and avoid eviction or re-arrest. In another example, she represented a client seeking a reasonable modification of DCF’s emergency housing assistance program rules to prevent an unjust denial of benefits due to disability-related circumstances beyond the client’s control. Jill will continue exploring new areas of work, and also new *ways* of working, to promote better outcomes for clients with intersecting housing and mental health challenges.

### *Anticipated work for next quarter*

Jill received positive feedback from Howard's CRT team on the training she co-delivered on supporting tenants with mental disabilities to be successful in their housing. Since receiving training, Howard case managers are calling for general advice and referring clients for representation at increased rates. She will deliver an improved training to NCSS's CRT team in August, and is communicating with UVM Medical Center and WCMHS to schedule trainings for late summer/early fall. Jill has invited the Human Rights Commission to observe the August training for feedback and to collaborate on a fair housing and reasonable accommodations training for tenants which the HRC can formally offer in buildings with disability-related neighbor-neighbor issues.

Jill will continue exploring ways to increase clients' access to housing supports through community mental health services. She plans to continue intaking CRT denial and grievance cases, and to continue intaking housing termination or eviction cases for clients already engaged with CRT. Jill is also interested in co-counseling development disability services ("DDS") denial and grievance cases with VLA's DLP, to learn more about the due process afforded by the DDS system that could be replicated or improved upon in the CRT system (the mental health counterpart to DDS). Through this casework, soliciting case studies from VLA colleagues, and consultations with colleagues at DMH and Disability Rights Vermont, Jill can investigate requesting CRT rulemaking as a fellowship focus for her second year.

Jill also plans to continue investigating residential care issues relating to mental disabilities. She'll continue working with colleagues on discriminatory discharge litigation strategies, including *Olmstead* claims, and to contribute to the RCH regulations revisions scheduled for later this year. Building on anecdotal evidence, she has drafted a Public Records Request to allow VLA to assess the scope of discriminatory discharge problems statewide. She will also co-counsel a Medicaid Choices for Care appeal for an aging client with hoarding disorder who seeks access to assisted living, and will look for additional cases.

Jill will continue fact-finding on the scope of the problems she's identifying through her casework. She will continue to complement this factual research with continued legal research on the due process rights and remedies provided by the ADA and federal and state fair housing laws, as well as by DMH regulations and Vermont Medicaid.