

VERMONT LEGAL AID, INC.

POVERTY LAW PROJECT

264 NORTH WINOOSKI AVE.
BURLINGTON, VERMONT 05401
(802) 863-5620 (VOICE AND TTY)
FAX (802) 863-7152
(800) 747-5022

OFFICES:

BURLINGTON
RUTLAND
ST. JOHNSBURY

OFFICES:

MONTPELIER
SPRINGFIELD

July 22, 2019

VERMONT POVERTY LAW FELLOWSHIP Mental Health and Housing

SECOND QUARTER REPORT December 31, 2018 - March 31, 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 organizations and individuals involved at the intersection of mental health and housing, hearing their concerns and recommendations for change, and seeking suggestions for others she should contact. She also began representing individuals with a variety of legal problems which might become the focus of the fellowship. This approach—expanding contacts with stakeholders, exploring different legal problems and how best to solve them, and refining her understanding of the impact of mental health on the housing issues Vermonters face—will continue for the next few quarters. At that point, Jill will plan to identify one or more areas where the fellowship can have a sustained impact.

During the second quarter, approximately 30% of Jill's time was spent on individual client casework; approximately 40% of her time was spent on legal and policy research and attending trainings; and approximately 30% of her time was spent communicating and meeting with stakeholders and partner agencies.

2. Community Consultations

Focus Areas:

Legal System and Advocates

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

- Supreme Court of Vermont brown bag luncheon;

- Office of the Defender General (Chittenden);
- ACLU Vermont (Statewide);
- Each of Vermont Legal Aid’s practice groups as well as colleagues at Legal Services Vermont (formerly Legal Services Law Line).

Affordable Housing and Supportive Services

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

- Burlington Housing Authority Housing Retention Team (Chittenden);
- Pathways Vermont (Chittenden);
- Groundworks Collaborative (Windsor and Windham);
- Champlain Housing Trust (Chittenden, Franklin);
- Vermont Coalition of Runaway and Homeless Youth Programs (Balance of State).

Mental Health Service System

Jill has continued meeting or consulting with stakeholders at:

- Howard Center (Chittenden);
- Washington County Mental Health (Washington);
- Health Care and Rehabilitation Services of Vermont (Windham and Windsor);
- Vermont Care Partners (Statewide);
- NEK Council on Aging (Caledonia);
- UVM Health Network (Chittenden).

Participation in Trainings and Events:

Housing

Jill joined colleagues at another meeting of the HUD continuum of care for Chittenden County (the Chittenden County Homeless Alliance or “CCHA”) with leaders of local city, state, federal, and nonprofit housing and mental health providers and community action agencies. At this meeting, Jill and colleagues raised concerns they had been researching about the relatively-high move out rates that nonprofit affordable housing agencies reported in their annual Housing Access Reporting Tool (“HART”) reports mandated by the Vermont Agency of Commerce and Community Development. Jill and colleagues shared concerns that tenants facing housing issues for reasons relating to their mental health challenges are being encouraged to negotiate move out deals in lieu of seeking legal advice to defend against termination or eviction. Jill continues to monitor the issue.

Jill attended rent escrow clinic training at the Civil Division in Burlington. She also co-tabled at the Here to Help monthly community lunch for people experiencing homelessness, hosted by UVM Larner College of Medicine students.

Jill also served as subject matter mentor for a debate program at the Chittenden Regional Correctional Facility, during which incarcerated women debated the issue of whether the state

should provide universal supportive housing during reentry. The program gave Jill the chance to hear from incarcerated women directly about what mental health and housing related challenges they are facing or have faced during reentry, and what solutions could look like.

Mental Health

Jill participated in national webinars hosted by the federal Substance Abuse and Mental Health Services Administration (SAMHSA) about co-occurring substance use and mental health disorders, and creative reentry programs being implemented to support folks with mental health and housing challenges.

Judiciary

On invitation from Justice Robinson, Jill presented fellowship progress to, and solicited input and feedback from, a small group of Justices, staff attorneys, clerks, and interns at the Supreme Court of Vermont.

3. Legal Assistance & Representation

Statistics

During the second quarter, Jill worked as counsel or co-counsel for 17 clients, providing advice, advocacy, or representation in 18 cases, of which 12 were opened this quarter.

Issue	No. of cases
Eviction – Private Housing	2
Eviction/Denial – Subsidized Housing	2
Benefits/Denial – Community Mental Health Services	2
Benefits/Denial – Residential Care Home Discharge	1
Benefits/Denial - Social Security Benefits	1
Fair Housing Rights (non-eviction cases)	2
Rent Escrow/Tenant attorney-for-a-day program	1
Expungement attorney-for-a-day clinics	6
Collateral Consequences (Transit Access, etc.)	1
Total	18

County	No. of cases
ADDISON	0
BENNINGTON	0
CALEDONIA	1
CHITTENDEN	7
ESSEX	0
FRANKLIN	3
GRAND ISLE	0
LAMOILLE	0
ORANGE	0
ORLEANS	0
RUTLAND	0
WASHINGTON	2
WINDHAM	2
WINDSOR	3
Total	18

Case Snapshot

Barbara (pseudonym) is person with mental and physical disabilities living in a rural part of the state. She was referred to Jill for help with filing an HRC complaint after being discriminatorily discharged from a residential care home for reasons related to her psychiatric disabilities. Landlord/Tenant law does not apply to residential care home discharges, and VLA lacks the resources to regularly file housing discrimination complaints with the HRC or before the Civil Division.

Under licensing regulations, the residential care home was required to provide Barbara with the services and staffing necessary to meet her personal, psychosocial, and medical needs. However, because of Barbara’s psychiatric diagnosis, staff routinely accused her of lying about having medical health issues, and refused her access to care. For example, staff left her laying in soiled sheets after accusing her of lying about her immobility.

The home initiated discharge proceedings against Barbara, citing reasons relating to her mental disabilities. She requested a reasonable accommodation in the form of a second chance, as provided by fair housing laws. She was in the process of setting up an increased mental health service plan which would ameliorate the home’s concerns, and asked for time to begin treatment.

The home denied this request and terminated Barbara, putting her at immediate risk of discharge to homelessness or hospitalization. In so doing, the home failed to reasonably accommodate Barbara and violated her fair housing rights. It also failed to meet its regulatory obligation to take reasonable steps to provide for her residential care. It also ran afoul of the ADA integration mandate, which provides people with disabilities with the qualified right to receive community rather than institutional setting services and supports.

While Barbara's termination appeal was pending before the Human Services Board, the home orchestrated her discharge. Barbara uses a walker, and tripped onto a staff person during a routine medicine call. The staff person called the police, who issued a criminal summons. Barbara was emergency discharged from the home. If her mental health caseworker hadn't secured her the last available crisis bed, she would have been sent to the Emergency Department, even though she was not having a medical or psychiatric emergency. The home claims that Barbara's needs exceeded what it is licensed, able, or required to provide, but she has been successfully living in the community since her discharge, which is a lower setting of care than what the home provides.

Barbara's HRC complaint is pending investigation.

4. Conclusions

Takeaways from this quarter

As with previous fellows, Jill is exploring a variety of areas where the legal system touches a person experiencing mental health and housing challenges. She's seeking clients with mental disabilities who need help invoking defenses to housing subsidy terminations and evictions; clients who need help asserting their federal and state fair housing rights to have their disabilities reasonably accommodated by their housing providers; clients who need help asserting their due process rights to appeal wrongful denials or terminations of community mental health services by the state's designated providers; clients who cannot afford to pay rent because they are unable to work yet Social Security wrongly denied or terminated their disability benefits; and clients who cannot access affordable transit due to bans resulting from psychiatric crises.

As many diverse legal solutions as there are for people with intersecting mental health and housing challenges, there are even more issues that appear to have no immediate legal remedy. For example, many of Vermont's human services agencies simply do not have the expertise or capacity to treat certain serious mental illnesses that commonly give rise to housing instability and loss, especially for older folks - like hoarding disorders, which occur in an estimated 2 to 6 percent of the population and intensify with age. In another example, many of Vermont's affordable housing options, including those designed to facilitate supportive housing services for people with mental illness (like the project-based subsidized options offered by Cathedral Square in Chittenden County) are high density, downtown-setting apartment dwellings. This style of housing is inherently ill-suited to accommodate people who do not require restrictive care settings but whose psychiatric disabilities either make close-neighbor interactions challenging or make compliance with noise rules difficult or impossible to follow.

As Jill continues her casework, she'll be spending more time researching impact litigation and legislative strategies that addressed these kinds of issues and generated meaningful remedies for individuals in other states.

Anticipated work for next quarter

Jill will continue expanding her intake of a variety of legal cases by strengthening partnerships with mental health providers around the state. Rather than hosting intake and referral clinics, she is preparing to co-deliver housing and fair housing training for selected frontline community mental health workers at designated agencies and, hopefully, the psychiatric hospitals' social worker teams. This should increase referrals and improve housing search and retention outcomes for individuals.

She will also continue collaborating with partner agencies and VLA colleagues to further diversify her intake into new areas such as a denied furlough or probation grievance with the Prisoners' Rights Office, or an involuntary treatment defense case with the Mental Health Law Project. After successfully overturning a no-trespass warning that was preventing a client with psychiatric disabilities from accessing any means of transportation, she plans to explore with the VLA Health Care Advocate the possibility of appealing Medicaid-funded transit denials for people banned for reasons relating to their psychiatric disabilities.

Jill has also just joined a cross-section of VLA lawyers who are researching strategies and developing a project to better protect the housing, fair housing, and ADA rights of people with psychiatric disabilities living in long-term care settings.

Jill is continuing to selectively connect with affordable housing organizations, Department of Mental Health's Designated Agencies and Specialized Service Agencies, including Pathways Vermont, and coalition organizations like Vermont Care Partners. Through these connections, government contacts and, if necessary, Public Records Requests, Jill will continue fact-finding on the scope of the problems she's identified. She will complement this with continued research on the rights and remedies provided by the ADA and *Olmstead*, and the due process rights afforded to mental health service applicants and recipients through Medicaid.