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POVERTY LAW PROJECT

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VERMONT POVERTY LAW FELLOWSHIP

Mental Health and Housing

FIFTH QUARTER REPORT

October 21, 2019 – January 20, 2020

1. Introduction

Jill's fellowship focuses on housing-related problems experienced by low-income Vermonters with mental health concerns. Her fellowship has considered issues ranging from for-cause eviction and access to subsidized housing, to the lack of supportive services that enable people to become and remain stably housed.

Jill spent her first year representing individuals with a variety of legal problems which might become the focus of the fellowship, and consulting with a wide range of service providers to hear their concerns and recommendations for change. Over time, she narrowed her practice and research to a few key areas, including access to community mental health services, supportive housing, and long term residential care.

This quarter, Jill continued litigating fair housing and public accommodations claims for clients living in private, subsidized, and residential settings. She prioritized representing clients with psychiatric disabilities who are engaging with community mental health services, to learn more about the housing supports being offered by Vermont's designated mental health agencies.

To contextualize trends emerging in her cases, Jill completed research contrasting Vermont's mental health services legal framework with that of Vermont's intellectual and developmental disability services ("I/DDS") system. She also completed research contrasting the housing supports provided by select designated and specialized service mental health agencies.

During the fifth quarter, approximately 35% of Jill's time was spent on individual client casework; approximately 35% of her time was spent on legal and policy research and stakeholder consultations; and approximately 30% of her time was spent doing outreach and delivering trainings.

2. Community Consultations, Trainings, and Events

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

- Pathways Vermont (Statewide)
- Howard Center (Chittenden)
- Northwestern Counseling and Support Services ("NCSS;" Franklin)
- Northeast Kingdom Human Services ("NHKS;" Caledonia, Essex, Orleans)
- Disability Rights VT ("DRVT")
- Department of Disabilities, Aging, and Independent Living ("DAIL")
- Human Rights Commission ("HRC")

Jill presented fellowship findings and delivered trainings, including:

- Presenter at the annual Young Lawyers Division Midwinter Thaw conference
- Plenary co-presenter, and Vermont Law School Student Fellow mentor, at the Central Vermont American Inn of Court with Chief Justice Reiber
- Plenary presenter at the Guen Gifford Advocate Training (“GGAT”) conference
- Co-delivered a GGAT conference session on proactively requesting reasonable accommodations to stabilize tenancies
- Delivered a Youth Services Bureau (“YSB”) conference session on proactively requesting reasonable accommodations to stabilize tenancies
- Presenter on mental health and housing issues at SPEAK, a women’s public speaking program at Chittenden Regional Correctional Facility

Jill completed outreach, including:

- Presenter at Downs Rachlin Martin
- Justice Fest events in Rutland, Montpelier, and Burlington
- Vermont Law School Clinic reception
- Mobile Mexican Consulate in Middlebury
- Chittenden County Bar Association annual holiday mixer
- Young Lawyers Division annual Burlington holiday mixer

3. Legal Assistance & Representation

Statistics

During the fifth quarter, Jill worked as counsel or co-counsel for 11 clients, providing advice, advocacy, or representation in 16 cases, of which 4 were opened this quarter. Jill also offered advice to community advocates whose clients are facing loss of housing or rental assistance due to mental disability-related behavior, providing at least 4 in-depth case consultations.

Issue	No. of cases
Eviction – Subsidized Housing	5
Eviction – Private Housing	2
Benefits/Denial – Rental Assistance Programs	2
Benefits/Denial – Mental Health Programs	4
Fair Housing – Residential Care Home Discharge	1
Consultations – Disability-related eviction or termination	4
Total	16

County	No. of cases or consultations
ADDISON	1
BENNINGTON	0
CALEDONIA	1
CHITTENDEN	4
ESSEX	0
FRANKLIN	4
GRAND ISLE	0
LAMOILLE	0
ORANGE	0
ORLEANS	2
RUTLAND	1
WASHINGTON	1
WINDHAM	1
WINDSOR	1
Total	16

Case snapshot

Ross (pseudonym) is a renter with psychiatric disabilities living in a large apartment building in a dense part of town. Ross’s tenancy is subsidized by a supportive housing rental assistance program for people with mental disabilities who have experienced chronic homelessness.

His present living situation illustrates the tensions commonly faced by low-income renters with psychiatric disabilities. On one hand, downtown is a desirable living setting for Ross as he does not drive, and needs pedestrian access to social opportunities, health services, and daily needs. However, downtown is also a challenging living setting for Ross. Constant noise stimuli and interaction with neighbors trigger symptoms of Ross’s disabilities. Desperate for relief from noise and neighbor triggers, Ross often seeks help from his landlord, mental health agency, and law enforcement. His self-help strategies do not alleviate the triggers and only serve breed neighbor disputes, lease violations, and risk of arrest.

Ross believes he would be most successful and healthy in housing with more sound insulation, a private entrance, and fewer neighbors. However, most of Vermont’s affordable housing is not structured to

accommodate Ross's disabilities, and his choice of housing is further limited given his fraught renter history.

Ross's choice of affordable housing is about to be further limited, as his landlord has terminated him for cause. As a result, his rental assistance provider has also terminated him from the subsidy program, alleging serious and repeated violations of the program rules.

Ross called Vermont Legal Aid for help with saving his housing, and the case was directed to Jill. Jill completed factual investigation, during which Jill spoke with Ross, Ross's mental health agency, and his rental assistance provider. She also reviewed Ross's rental assistance program file and completed legal research. Jill determined that in both the eviction case and the termination case, Ross had grounds to defend against some of the allegations, and could request reasonable accommodations to receive a second chance at remediating the others.

However, for Ross, and for many renters with disabilities whose portable vouchers are at risk, defending against both the loss of housing and the loss of rental assistance may not be his most prudent choice. If Ross defended against the eviction and lost, the rental assistance rules would require his termination from the program. If Ross voluntarily moved out of his apartment and eliminated the risk being evicted, he could focus on defending against the present discretionary grounds upon which his rental assistance was being terminated. While the reality is that another soured landlord-tenant relationship in a small town will make Ross's next housing search very difficult, voluntarily moving at least gives Ross a better chance of maintaining his indispensable rental assistance for the future.

In sum, Ross has impossible choices to make to get himself out of this difficult housing situation, a situation that stems back to Ross not having had much of a choice in his living situation to begin with. Most of Jill's clients seeking legal help with defending the loss of their subsidized housing are in the same position.

Unfortunately, Ross and his mental health providers could not agree on strategy, so Jill could not offer full representation in his case. Jill's proposed strategy was to request reasonable accommodations of Ross's rental assistance provider in the form of a second chance at program compliance. This would require Ross to forgo litigating the allegations against him, and instead make some degree of admission that there have been lease violations. It would require Ross to forgo defending himself in the eviction and voluntarily terminate his lease—likely moving out quickly to homelessness. It would require the mental health agency that provides Ross with supportive housing services to throw its full support behind an increased treatment plan. The agency would have to attest that the increased care plan is designed to help Ross remediate tenancy issues, which would make his request for another chance “reasonable” under fair housing law. Ross would have to commit to following the plan. All of this would have to be designed, negotiated, and agreed upon under extremely tight procedural timeframes—all while Ross's mental health is decompensating under threatened loss of housing.

Jill provided Ross and his case manager (upon Ross's request) with phone and written advice on how to advocate for a second chance, if Ross ultimately chooses that strategy. This case is an example of the extremely difficult cases Jill is faced with every day in her fellowship, and illustrates the need for systematic changes in mental health support system for people like Ross.

4. Conclusions

Takeaways from this quarter

Ross's case typifies the majority of requests for Jill's legal help and consultation as the mental health and housing fellow. Like most of Jill's clients, Ross does not need or want institutional mental health care, and is not posing a danger to himself or others. However, his imminent loss of housing puts him at greater risk of mental health crisis and institutionalization, and will make it that much harder for Ross to become stably rehoused. For Ross and many of Jill's clients, the problem is that Vermont's affordable housing stock was not designed to accommodate Ross's disability-related housing needs and behaviors, and there aren't enough supportive services available to stabilize tenancies for all those in need.

Many mental health-related housing challenges have few legal remedies, and the human services organizations providing housing supports have limited capacity to help connect consumers to the limited remedies that exist. Evictions and terminations move faster than tenants are able to build relationships with care providers and show results from improved treatment plans. Moreover, searching for suitable rental housing in Vermont takes longer than rental assistance providers can put unused vouchers on hold. For consumers of supportive housing services, client satisfaction and housing retention rates vary widely depending on the person's diagnosis, their treatment plan, their housing situation, their stated housing goals, and which agency and community advocates they are working with.

Housing is a foundational form of mental healthcare, and Vermont's community mental health system is a major provider of housing supports. Vermont's Department of Mental Health ("DMH") Designated Agency ("DA") system provides most of its in-home support through Community Rehabilitation and Treatment ("CRT") - the most intensive community mental healthcare available to those with the highest need - through 1:1 case management, care coordination, and the administration of Housing Support Funds. Despite the availability of these resources, Jill has observed through casework and consultations that recipients of CRT and related services are nevertheless being terminated from rental assistance programs and supportive housing, and evicted to homelessness, for reasons that could have been mitigated or even prevented altogether with earlier housing interventions.

This quarter, Jill began researching the barriers impeding earlier 'upstream' interventions to proactively stabilize tenancies through reasonable accommodations. She looked to the home supports being provided by the I/DD system and select DMH Specialized Service Agencies ("SSA") as examples of alternative housing support systems that could be emulated or replicated in the DA mental health system.

For example, *Housing First* data worldwide evidences that providing permanent, supportive housing first (without requiring participants to demonstrate "readiness" for permanent housing after graduating from motel to shelter to transitional housing beforehand) creates better outcomes for individuals and the community at large. It increases residential stability, community safety, and access to healthcare, schooling, and employment. It decreases contact with hospitals, shelters, motel voucher programs, law enforcement, corrections, and the courts. These forms of deinstitutionalization and community integration don't just make dollars and cents. They're central tenets of advancing disability rights, and they're codified in the ADA and FHA. Nevertheless, Vermont is addressing the uptick in mental health-related ER visits primarily by building more psychiatric beds. Vermont actually has more locked beds today than it did in the days of the State Hospital.

In the course of Jill's fellowship consultations, disability rights advocates have not articulated to her a goal of ending all institutions, but rather a goal of pursuing community integration for people with mental disabilities whenever desired and appropriate, as well as special efforts to protect the rights of people receiving institutional or residential care for as long as they need it. In other words, advocates have articulated to Jill a goal of putting housing first, and institutions last.

Jill's research has raised the question of whether there are existing services or resources in Vermont, perhaps in the CRT program, that can be leveraged to give more tenants with disabilities earlier access to the reasonable accommodations they need to have equal opportunity to enjoy their housing.

Anticipated work for next quarter

Jill plans to reserve significant time next quarter to continue researching opportunities to leverage DMH resources to promote increased access to earlier housing stabilization supports. Jill will continue researching opportunities in the DMH system to decrease the need for her defensive legal work for tenants with mental disabilities facing for-cause evictions and terminations. This will involve investigating various supportive housing models and considering opportunities to expand access to services that increase supportive housing in Vermont.

She plans to continue consulting with key DMH program administrators, CRT administrators, Vermont Care Partners, legislators, and affordable housing leaders. Many affordable housing providers have identified mental healthcare gaps as the primary issue in Jill's fellowship, and many community mental healthcare providers have instead pointed to the lack of affordable housing as the primary issue. Jill has observed that challenges impacting both sectors are at issue, but that there are fewer advocates representing mental health consumers in their grievances and appeals than there are representing affordable housing tenants with theirs. Jill plans to continue researching the efficacy and outcomes of DMH's grievances and appeals process for CRT enrollees, and to contrast the consumer protections provided in the DMH Provider Manual with those provided in the I/DDS regulations.

Jill plans to continue reaching out to community mental health and case management agencies to offer training on supporting tenants with disabilities to proactively stabilize their tenancies through reasonable accommodations. Jill will investigate opportunities to increase the reach and impact of her capacity-building efforts. This may include updates to the Vermont Law Help website for self-advocates.

Jill plans to continue representing clients facing for-cause eviction and termination. Since she is based in northern Vermont, she will prioritize intaking clients from other areas in the state, particularly counties in which she has not yet worked.

Finally, Jill also plans to continue representing clients experiencing disability discrimination in the Long Term Care system, and to continue supporting VLA's systemic work to improve access to justice for this population.