

NORTHERN LAKES COMMUNITY MENTAL HEALTH

CONSUMER ADVOCACY COUNCIL

Housing Presentation

January 9, 2008

Guest Presenters: Chris Campbell, Legal Services and Laurel Isquith, Michigan Protection and Advocacy

A. Response to Advance CAC Questions by Laurel –

1) Who handles tenant rights in Michigan?

Response – Michigan Protection & Advocacy (MPA) was designated by the Governor to carry out federal P & A laws. Those laws say there must be an organization to protect vulnerable people with disabilities and enforce their right to live the same as anyone else. MPA goes into institutions, nursing homes, etc. to assist people when they are leaving and find placement for persons with a disability. They also work in juvenile facilities and do some work in prisons. Their focus is trying to ensure equality in treatment. Purpose is to prevent abuse and neglect from occurring in a facility where an individual cannot leave; assist people to get out of the facilities; and help them to find the support they need to stay out.

One of the big issues of course is housing. They have always assisted people if they have been denied or kicked out of housing merely because they had a disability. She noted that the Department of Community Health also provides funding to MPA to assist any CMH client facing eviction. They can provide some representation for people who have very good cases of discrimination, landlord fails to accommodate and are going to be evicted because of that. There are also other agencies out there that can assist them as well.

She noted if anyone has a question on their rights in housing call them. If people feel they are being discriminated against there would be a law against that. Sometimes being treated fairly is not the same as protection of the person's rights. Sometimes people are not satisfied with her suggestion and she would refer them to another agency or a place that is charged with investigation of complaints of discrimination for a second opinion.

They have eight people who just handle calls Monday – Friday. You will either talk to a person or that person will get back to you that day. Anyone can call and they take all calls and respond to questions. MPA focuses on people with a disability, but they do try to refer other people who do not have a disability out to the right place or answer their basic questions.

Laurel noted that there are a variety of laws that identifies individuals' rights with disabilities. The oldest law is Section 504 of the Rehabilitation Act - accommodation for individuals with disabilities in any program accepting federal funding. There is also the American Disabilities Act for any new builds or common areas of housing complexes (apartments/condos). The best one for housing issues is the Fair Housing Act. Anything that needs to be accessible should be and the landlord would need to make the modifications or allow the tenant to make them. Sometimes the landlord requires that the tenant make the restorations when they leave unless it is

unreasonable or unnecessary. There is also the Michigan Persons with Disability Civil Rights Act, that has financial guidelines and limits for what is considered a reasonable expense if the landlord is asked to do the modification. Complaints can be filed federally with HUD, Fair Housing Act Hotline and referenced the list, which was distributed. Other ways to find housing - go to the Center for Independent Living, Disability Networks and also check with community mental health. Laurel noted that many CMH agencies have housing coordinators who could assist people to find housing or make a referral. If a person is on a waiting list for subsidized housing and a person because of their disability (example: hospitalized) misses the notification you can request an accommodation to be placed back on their list. She noted most subsidized housing apartments have a three year waiting list.

Laurel noted that federal and state laws all say it is the right of a person with a disability and other people who are protected to rent or own property not have any barriers placed in their way because of their disability such as "I'll rent to you but you have to continue to see your mental health therapist". If a person becomes aware the landlord has a problem with them because of problems due to their disability (warnings or eviction notice), you can request a reasonable accommodation if there might be a solution. For example, if someone comes out of a facility there needs to be a lot of supports in place. The supports go away as the individual gets better. If the person starts to have problems again, there needs to be a way to gather the supports back up again as needed. The landlord must grant the accommodations unless they are unreasonable. Laurel suggested that this request for accommodation be put in writing and keep a copy for yourself. Have a team who may know what is best for you. The landlord must allow reasonable accommodations, unless it is an undue burden (meaning it would cost way too much). Laurel distributed some sample letters and tips. She explained you don't have to say what the disability is but will have to identify functionally what the problem is. The landlord could request proof that you have a disability.

2) What is the renter's role in avoiding or resolving disputes?

Response – Laurel noted that before a person rents a place they must make sure that they can afford the place. There are things that happen like losing a job. When you become aware of a problem you must notify the landlord as soon as possible. Address the problem before the landlord comes to you. If the landlord comes to you get a plan together and figure out how to resolve. Family members have visited and the individual may get kicked out because of the family member's behavior. Work with the landlord. Document issues as they happen. Send a nice letter in the form of a thank you letter, which looks like a thank you note documenting that you requested this and there is an agreement. Sometimes you can bring someone in to negotiate for conflict resolution. Need to get two parties to come to an agreement as long as both parties are happy with it. Must identify that you're requesting an accommodation. Referenced Michigan Department of Civil Rights and Fair Housing Centers in Michigan for assistance.

3) What are the most frequent problems that you encounter in regards to rental rights and what can be done to avoid it?

Response – People going into crisis and no one is addressing it. Those are the times that CMH is called or CMH calls them. What are we going to do? Some people are stuck in their apartment and have no ability to connect with another. Medication is not always the answer. Assistance may be all that would be needed to help take

care of the problem. Possibly get chore services to assist and maybe the case manager could assist to make arrangements.

4) What advice can you give to consumers from a tenant's rights perspective?

Response – Know what your rights are and if you don't know and you have a question call. You can be prepared if there is a crisis. Many people use a recovery model and use a crisis plan. The Plan must take into account what will happen with the apartment if you are not there. Identify giving someone that responsibility to take care of things.

Chris identified when you call Legal Services it identifies to call a toll free number. They are using a telephone intake service operating out of Detroit. You will speak directly with an attorney. If you call his office you won't talk to him. He will get the message and will call when he can. He noted that if you call you speak directly with an attorney and they really know what they are talking about. Laurel noted that when you call MPA you are not speaking with an attorney but will refer to as needed.

Chris reported that they use an intake process and will forward directly to them. They have to determine if the person is eligible for the resources. You have to be financially qualified unless you are elderly to receive services. Chris identified that they only handle civil cases not criminal cases. They have limitations on priorities and resources because they don't have enough money to help everyone. Sometimes they can't handle the case because of the subject they don't handle or all they can do is to give advice. In some cases they will step in and represent you in court if needed.

B. Response to Advance CAC Questions by Chris –

1) Who handles tenant rights in Michigan?

Response – Michigan Civil Rights Department is one possibility. Local building inspectors will sometimes be able to help out some if you have structural problems. Sometimes you can get the building inspector to inspect the area, write a report and put muscle on the landlord if needed. Depends on where you are. Some will assume that it is another tenant problem. Sometimes an attorney can help out. MPA is another place to call.

2) What are the rights of tenants?

Response – Chris noted that he will focus his discussion on the tenant behavior. Legal Services of Northern Michigan is almost always on the tenant's side – 99% of the time. That is the one thing that the tenant can control. Your rights are to have a residential rental property that is properly maintained and repaired to be sure it is fit for residential use. The heat must work in the winter, the roof must keep the water out when it is raining, the windows must be functioning, and the electrical system has to be safe. You are looking at basic structural integrity of the dwelling. The landlord is responsible for that. If it is a tenant fault or neglect that causes the problem it is the tenant's problem. For standard maintenance it is the landlord's obligation. The landlord must maintain and repair the dwelling.

Chris noted that someone commented earlier about the lack of low income housing in our community. He noted that low-income housing tends to mean trailers and even more old trailers. Commonly these are not maintained very well by the people that own them either. Which is a whole other problem.

Tenants rights is the right to quiet enjoyment which means that you're entitled to be left alone and it is your dwelling when you rent it. The landlord cannot come in the dwelling when they feel like it. You have rented a property and it is your property. You have a right to be there and have a right to determine who comes in the door and who doesn't. You have a right to what you do there. You have a right not to be disturbed by other tenants. You have a right not to be disturbed by the landlord or anyone acting on the landlord's behalf. There are some limits on that. Some leases say how many guests you may have and for how long. The landlord cannot say who can visit you. The landlord can't say I observed you had an overnight guest last night. The landlord cannot say I am coming in tomorrow morning to see if your bathroom is clean. The landlord has a right to make a reasonable inspection of the premises and ask when to set up. A landlord can enter immediately if it is an emergency. The landlord has to ask your permission to come in.

In the matter of lease terms – if you have a written lease you have a right to enforce the provisions in that lease. Most cases it gives the landlord rights. If it is a contract and is enforceable both ways you have the right if that is what it says. The law gives you a right not to have unlawful lease clauses in your lease. Michigan legislature says there are certain clauses that are intolerable and we are not going to allow them or enforce them called the Truth in Renting Act. It forbids certain things. The law gives you a right to limit your security deposit. The law says that anything you pay in addition to the first month's rent is considered to be the security deposit. The law says the maximum a landlord can charge is 1.5 months of rent. The maximum you can be charged to move in is 2.5 months of rent/security deposit. The landlord can charge you a non-refundable cleaning deposit. It must be up front and in writing, non-refundable security deposit. It must tell you that up front.

Tenants have a right to non-discrimination. You have a right to freedom from discrimination on the basis of race, sex, age, national origin, religion, etc. If you suspect that your being discriminated against in some lawful basis it is hard to prove. In many cases there are Fair Housing Centers and exist for primary purposes of conducting testing of claims of discrimination. If you have a problem encountering discrimination you can call their office (Grand Rapids or Detroit) and will have them do testing to see in fact the characteristic you are complaining about was a basis for discrimination.

Tenants have a right not to be evicted wrongfully and have a right to eviction by proper lawful procedures. They have to give written notice, the law requires. If you don't comply with the written notice then the landlord has to take you to court so you have a chance to present your legal position to the judge. The judge will make the determination whether the eviction is legal or not. After the judge makes that determination you can be evicted, but there is a restriction how it is conducted. In most cases you have ten days from the day of court for the judge to determine that you should be evicted. Unlawful evictions in the form of use of force, threats, violence, and introducing odors into the building are unlawful.

Tenants have the right to use some self-help remedies to get solutions to the problems. The remedy that works best to the landlord is money. The two most frequently used versions are rent withholding and repair and deduct. Rent withholding involves telling the landlord that there is a problem, that you have informed the landlord of the problem, the landlord hasn't corrected the problem in a

reasonable time, and you are not going to pay any more until it is fixed. This is something that you will want to do in writing. The landlord will probably take you to court to evict you of non-payment of rent. The judge would then hear your testimony about why you refused to pay rent. Your testimony would be that the landlord did not follow through and you are not bound to perform your duties as a result. Your duty is to pay rent. You can withhold in full or in part. Give the landlord a written notice that you are withholding the money. You will want to put the money somewhere so you will have it later. In most cases you will go to court. The ruling will depend on the judge. The other solution is repair and deduct. You could make that repair at your own expense and deduct from your rent. Provide the landlord a copy of the receipt and your check. If the landlord tries to evict you for not paying all of your rent he identified that Michigan law gives you the right not to be evicted for retaliatory reasons. The landlord cannot retaliate against you.

You have a right as a tenant to receive a security deposit checklist. The landlord is required to give you a checklist when you move in if the landlord charges a security deposit. If they don't then you don't have to give the checklist. There are limits on the use of security deposit. The law requires that the landlord give you a checklist within 14 days after moving in. You have 7 days to return that checklist. You should observe the rooms of the dwelling and identify the condition of the apartment. Make the checklist as detailed as possible. It was suggested that you take pictures before and after. Keep a copy of the checklist for your own records.

You have a right to be evicted for only good cause under certain circumstances. If you are living in a subsidized dwelling you have a right not to be evicted even if the end of your lease. There must be good cause for the eviction. The law defines the certain kinds of cause. The landlord has to identify the detail about the nature of the good cause. It is hard to enforce to note real cause. This is only for subsidized dwellings. Most people are month to month tenancies and the landlord could say they don't like you and say you're out of there. Kristy asked if there was a Section 8 voucher in the same dwelling over a long period of tenancy and that the voucher had lapsed. Chris noted it would no longer be subsidized.

3) What is the renter's role in avoiding or resolving disputes?

Response – Very similar to the tenant's rights. He noted it is common sense. Be polite. Cultivate friendly relationships with the landlord. Be a good tenant. Don't be late on payment of the lease. The better tenant you are the less problem you're going to have and the better your going to look if you have to go to court. Request repairs promptly and if an informal request doesn't work then follow up in writing. Make sure you keep a copy. Document your problems. Take pictures and would help if you have to go to court. Don't send photos to the landlord unless you keep copies. Witnesses or other people such as a friend, co-worker or neighbor someone that can verify. Use the checklist. The checklist exists to protect the tenant. Don't give the landlord the opportunity to blame things on you. The burden of proof is on you. You don't want to give the landlord reasons you ought to lose. Non-payment of rent will be the cause for eviction. The other area would be failure of the right to maintain the rental. Rent is a high priority.

Laurel identified that people with disabilities sometimes have trouble remembering to pay the rent or have difficulties writing the check. It can be a request for reasonable accommodations that a second person be notified but must be part of the agreement. Chris noted that tenants have a right not to be subject to enormous late

charges. He noted that almost no judge would enforce such a provision. The purpose of late payments is to compensate the landlord for their loss that they incurred because the individual did not pay on time. For the most part local judges don't allow more than \$30 a month for late charges. Laurel asked if they could use the reasonable accommodations if they did not get their disability check on time.

Chris noted another way to avoid problems is to read things. If it is in bold face and big type it is there because it is required to be there. The law imposes a requirement that it be in bold face larger than the rest of the document. Security deposit laws are a little complex and it is a long sequence. The law requires that the landlord must tell what the individual's duties are. It has to be in writing. If the landlord doesn't tell the tenant to do those things and if they don't then the tenant doesn't have to do them. Laurel identified to check the lease for an animal clause. Sometimes it is a service animal or an emotional support animal and you can request an accommodation for an animal. There are some circumstances where the landlord cannot charge if it is a service animal. Provided examples with incidents of animals.

Chris identified that individuals keep your receipts. Never hand over cash to a landlord unless you have known the landlord for a long time. Get a receipt or pay in some form where you keep as a receipt. He noted that checks are much better than a money order. Keep the slip you receive with a money order. You could get a receipt from your landlord when paying your rent.

4) What are the most frequent problems that you encounter in regards to rental rights and what can be done to avoid it?

Response – Non-payment of rent; failure to request needed repairs properly or promptly; landlord failure to prove good cause for subsidized housing; security deposit notices.

Laurel identified that someone had mentioned about the need for housing and what is being done. She noted it is a systemic thing and everyone has to work on it. Funding for low income housing usually requires that a number of the housing units area for low income people with a disability or barrier free. There are agencies that are not giving the required amount of housing units for low income with a disability. Sometimes while the money is there and there is a requirement it doesn't actually materialize in the community. You can keep an eye on that and can push the housing commission to create more housing if you can show the need.

Chris noted it is important to contact your senators and federal congressmen (Senators Levin and Stabenow). If they don't know what the problems are they won't be able to help. They must hear from individuals and tell people the issues.

C. Question and Answer:

1) Does this apply to those who have been in the military? Example given of a relative who can't afford the rent because he's become disabled. Does Indiana have any of these things where he can get help? Response – Laurel identified that the veterans' service has assistance for veterans. A reasonable accommodation under the Fair Housing Act would be to allow a person out of the lease if they can't enjoy the premises because of their disability. He needs to tap the state veterans service to pay the housing or to get an increase in disability payment. Fair Housing Law is

federal and there are also state laws. Contact the Protection and Advocacy in Indiana for more resources.

2) What are the rights of the other neighbors, say we are in subsidized housing and pretty much everyone is mentally ill and one neighbor is throwing things and yelling. The landlord is not doing anything about it. What rights do the neighbors have to enforce an eviction? Can a petition around the neighborhood be enough to enforce a landlord to do that? How can you get neighborhood watch enforced in the neighborhood?

Response – Chris identified it is nice to have an accommodating landlord. Some landlords are very intolerant. You do have the right to quiet enjoyment and usually means quiet in a legal sense. Not being harassed by the landlord. It also means that the place be reasonably quiet and not disturbed by the landlord or other tenant activity. Laurel referenced the toll free number for multi-family subsidized housing program. Chris noted a petition to the landlord might be a little more persuasive. Individual complaints the landlord might feel it is a minor problem. He suggested describing specific dates and times showing an example. He noted that if you followed up with rent withholding if necessary. Michigan law is very clear you can't be evicted in retaliation for exercising legal rights. It is a legal right to complain to the landlord about problems on the premises. The group may decide to withhold money and you get the landlords attention identifying the issues in writing. You would identify that you would continue to withhold rent until there is action. Remember to hold the money aside in case you have to pay later. There is also a requirement for subsidized units that you be evicted for good cause.

3) When the landlord evicts someone how much time does the tenant have?

Response - Chris the eviction process starts generally by non-payment of rent you get a 7-day notice pay up or get out. If you are being evicted for some other reason you get a 30-day notice that is the period over which you pay the rent (monthly). They don't even have to tell you why they are terminating you. If you don't voluntarily move out after any of these notices, the landlord would then take you to court. It would take about 10 days to file the complaint to the time you are scheduled to be in court. If you lose, the judge will give you 10 days to either move out and in a case of the 30 days notice that you have been terminated or if for non-payment the judge will give you 10 days to pay up or get out. If the judge agrees with you that you didn't owe all of the rent because the landlord didn't make the repairs. You would have 10 days to pay the lesser amount. At the end of the 10 days and if you haven't paid or got out then there would be an order of eviction and authorizes the landlord to physically carry your stuff out. Some judges may give you a little more time depending on the reason. He noted do not count on it. Laurel noted in subsidized housing if you can make a good claim for needing more time to locate housing they do have an obligation to accommodate you.

4) About making decisions and having everything set before making moves. It was suggested that psychiatric advance directives and all those issues will be taken into consideration such as housing, who pays the rent, etc. Response - Laurel noted that the law that created the ability to create psychiatric advance directives focuses on appointing someone to make medical decisions for that person. If you want to add you can have this person do all the other stuff. Chris noted another way to do the same thing is to have a durable power of attorney to appoint someone to act as your agent. A regular power of attorney remains in effect when you're fully competent and alive. It is ineffective when you become incompetent. The state created a durable power of attorney to remain in effect even if you are unconscious or disabled. You

can create for a very narrow range of services – pay a bill or give authority to make transactions, etc. It is the legal way to act on your behalf. If you're doing one for medical care purpose it might be better do a separate one for business matters. It should be done prior to something happening. Chris noted that everybody should have a durable power of attorney for medical.

5) This town is riddled with absent landlords that own buildings but pay management companies to collect rent and to know the laws. When it comes to following through on things and taking care of things there is no accountability. Issues identified were: the temperature of 48 degrees is not acceptable in the winter or not going to put up the noise anymore. The rent was paid on time and did all the right things but when she complained and wouldn't sign a new lease she was evicted. Stressed the importance of documentation. Response - Chris noted that Michigan law creates a presumption of retaliation and under certain circumstances – if a tenant who alleges a retaliatory termination of the tenancy shows within 90 days before the eviction proceedings if the tenant enforces to secure rights against the landlord by means of an official action to a court or other governmental agency and the official action has not resulted in dismissal or denial a presumption in favor of the defense of retaliatory termination arises. If you can show that you complained to a local building inspector and he wrote a letter saying that the proper temps are not being maintained in your apartment. If the landlord tried to evict you within three months it is an automatic presumption it is for retaliation purposes. The landlord would have to prove that there is some other reason. If it is longer than three months the presumption disappears. You can still offer that to the judge and identify any evidence. If the judge was convinced that was happening they could approve or deny. The burden is on you to prove that. Points out the necessity of documenting. Keeping a log, writing on your calendar, etc. Be specific which will likely convince the judge. Laurel noted a lot of people don't go to the eviction hearing. They should go because sometimes you can make a deal in the hall and avoid an eviction on the record, which makes it hard to get anything else. Not going guarantees that you will be evicted. Chris noted if you are unrepresented you would have 3 days to reconsider.

6) If there is a medication situation and are not competent and causing trouble they can call MPA and identify the details. Response - Chris noted to call Laurel and discuss reasonable accommodations. The actual eviction will happen in the local courts. You have a right to an appeal. It is hard to win on an appeal that you don't win in the first place.

7) Landlord told him he could not have any overnight visitors. Response – Chris responded it is not legal. If you have an overnight visitor for 364 days then the landlord would say you have an extra tenant. It would depend what the lease says. Not sure that kind of lease clause would be enforceable. You have a right to have visitors it is your business and not the landlords. Unless your visitors are causing problems or staying more than allotted two weeks. The other renters are not complaining.

8) Why does the landlord need to know that you have a disability? Response – Laurel noted if your going to request an accommodation, in order to call down the law you have to say you are qualified under that law and must say you have a disability. You don't have to say what it is, but you must identify how it affects you functionally. He wants to avoid saying "I have a mental illness." You say "I have a disability that requires a quieter environment. As an accommodation can you move

me to an apartment further away?" They may require further documentation from a professional. Chris noted that the doctor could write a letter that says that so and so is my patient and has a medical condition that requires a quieter environment

Brochures and pamphlets were distributed.

8/11/08