



# HDLI MESSENGER

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## WHAT'S HAPPENING AT HDLI?

HDLI's **SPRING CONFERENCE** entitled "**Current Disability, Accessibility and Reasonable Accommodations Issues Affecting PHA Applicants, Residents, and Employees**" was a hit! You can still order materials on the attached order form.

Materials for HDLI's last **EMPLOYMENT LAW TRAINING** are also available on the attached order form.

**ON-SITE CUSTOMIZED FAIR HOUSING TRAINING!** No traveling necessary! Contact HDLI at (202) 289-3400 for more details on fair housing training on-site at your agency. See attached flyer.

The newest edition of the **INDEX TO HUD REGULATIONS** through 12/31/04 is available for purchase! Order now!

## MUST YOU WAIVE PORTABILITY RESIDENCY RESTRICTIONS FOR THE DISABLED?

### *HDLI to File Amicus Brief Supporting Small, Rural PHA's Decision Not to Do So*

In the *Case Corner* section of the March 15, 2005 *Counsellor*, HDLI reported on the Minneapolis Court of Appeals' decision in *Hinneberg v. Big Stone County Hous. and Redev. Auth.*, A04-435, 2004 Minn. App. LEXIS 1465 (Dec. 28, 2004). That case involved Beth Hinneberg, a mentally disabled person living outside of the jurisdiction of the small, rural authority (PHA) that granted her a voucher. The PHA's portability policy included the HUD-sanctioned 12 month residency requirement. Hinneberg wanted to immediately port to where she was currently living so that she could live closer to her mental health specialists. She sought a waiver of the residency requirement as a reasonable accommodation for her mental disabilities, and produced letters from her medical providers in support of her request.

After the PHA denied her request due to her non-residency, Hinneberg requested and received an informal hearing, where the PHA's decision was affirmed. Hinneberg then sought *certiorari* review in the court of appeals, alleging violations of the Fair Housing Amendments Act (FHAA), Title II of the ADA, and the state human rights law. The court of appeals also affirmed, finding that the portability policy had been universally and uniformly applied to all non-residents and thus did not discriminate against Hinneberg on account of her disability, either intentionally or by impact. The court of appeals' decision was not, however, without legal error. First, it held that the PHA as only an administrator of the voucher program, was not a "direct provider" of housing and thus not subject to the FHAA. It also held that there must be discrimination before one is required to make

a reasonable accommodation. These holdings are, unfortunately, against the weight of authority.

The case is now pending in the Minnesota Supreme Court. The issues on appeal are 1) whether the FHAA applies to a Section 8 administrator; 2) whether the ADA requires the PHA to grant the waiver as a reasonable accommodation for Hinneberg's disability; and 3) whether the waiver constitutes a "fundamental alteration" to an "essential eligibility requirement" of the PHA's Section 8 program. The third issue could be a winning one for the PHA.

National and local tenant advocacy groups recently filed an *amicus* brief arguing that it was unlawful for the PHA not to initially determine whether Hinneberg was a qualified disabled person entitled to a reasonable accommodation. Their argument fails to consider the great administrative burden involved in individually analyzing the case of every person claiming to be disabled and seeking a waiver of the residency restriction.

Despite legal errors in the court of appeals' decision, it is important that it be affirmed. With increasingly tight budgets, PHAs of all sizes must retain the discretion to impose lawful residency requirements in their portability policies. This week, HDLI, along with the local and national divisions of NAHRO, will file an *amicus* brief urging affirmance of the court of appeals' decision. Space is limited to discuss the arguments here. Look for a copy of the brief in the *Legally Important* section of HDLI's website.