

## MEMORANDUM

TO: Regional Steering Committee on Housing and Homelessness

FROM: HomeBase

RE: Los Angeles Veterans' Class Action Lawsuit Against the VA

DATE: June 17, 2011

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On June 7, 2011, a group of legal organizations including the ACLU of Southern California filed a class action lawsuit, called Valentini v. Shinseki, on behalf of Los Angeles-area veterans with mental disabilities and/or brain injuries against the U.S. Department of Veterans Affairs and the VA Greater Los Angeles Healthcare System.

At issue is a sprawling 387-acre VA-owned campus in West L.A. that currently houses the West Los Angeles Medical Center & Community Living Center ("West L.A. Campus"). The complaint claims that the VA is: (1) discriminating against homeless veterans whose mental disability and/or brain injury renders them unable to obtain or maintain stable housing; and/or (2) breaching its fiduciary duty, under the original 1888 deed conveying the land to the federal government, to provide permanent housing for disabled veterans.

### **I. The Discrimination Claim**

The plaintiffs' discrimination claim, in a nutshell, is that: (1) the VA is aware that veterans with severe mental disabilities/brain injuries require permanent housing to consistently access necessary treatment and services; and (2) the VA, by failing to provide permanent supportive housing on its West L.A. Campus, is effectively excluding or barring these disabled veterans from accessing necessary treatment and services.<sup>1</sup>

Specifically, the plaintiffs argue that this constitutes intentional discrimination against individuals with severe mental disabilities and denial of meaningful access to entitled benefits in violation of Section 504 of the Rehabilitation Act, which states, "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

The plaintiffs' argument, if accepted by the court, could have far-reaching consequences. If successful, the suit would force the VA to provide L.A. area veterans with severe mental

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<sup>1</sup> The discrimination argument is complicated by the fact that the Greater L.A. Healthcare System is already operating PSH programs, and that the West L.A. Campus itself already has PSH programs for disabled veterans (plus, the West L.A. Campus is the location of the recently announced Project 60 program for chronically homeless veterans). The plaintiffs argue, however, that these facts are irrelevant because the VA-run PSH programs are not located on the campus (which makes accessing those services difficult for mentally disabled veterans), and the PSH programs on the campus are run by third-party providers, not the VA.

disabilities/brain injuries with PSH as a “reasonable accommodation”<sup>2</sup> and thereby set a precedent suggesting that PSH is a reasonable accommodation for *all* veterans with severe mental disabilities/brain injuries seeking treatment from the VA.

It’s unclear what such a ruling would mean for RSC members, but possible outcomes include: (1) a rule requiring VA medical providers to develop permanent supportive housing for severely mentally disabled veterans on or near their medical campus; and (2) if such a ruling is extended to all homeless individuals with severe mental disabilities, a similar requirement for other federal agencies such as HUD and SAMHSA.

## **II. The Breach of Fiduciary Duty Claim**

The complaint also claims that, because the land under the West L.A. Campus was donated for the express purpose of creating and maintaining housing for disabled veterans, the VA is breaching its fiduciary duty by using the land for purposes other than providing housing for disabled veterans. For example, the complaint points out that the VA has leased significant portions of the campus to commercial tenants like Enterprise Rent-A-Car and parking lots.

The fiduciary duty claim requires a bit of historical background. In 1865, Congress established the National Home for Disabled Volunteer Soldiers (“National Home”) to operate permanent “branch homes” for honorably discharged, disabled soldiers. The land on which the West L.A. Campus now sits was deeded to National Home in 1888 “for the purpose of such branch Home for Disabled Volunteer Soldiers to be thereon so located, established, constructed and permanently maintained.” When Congress consolidated National Home with other veteran programs in 1930 to create what is now called the VA, title to the Campus (and, according to the plaintiffs, the fiduciary duty created under the original deed) was transferred to the VA.

The fiduciary duty argument is probably of limited interest to RSC members, since it is specific to the land under the West L.A. Campus. However, if other VA properties in California were also conveyed to National Home under a similarly-worded deed, a ruling for the plaintiffs in this case could force the VA to use those properties to provide housing for disabled veterans as well.

## **DISCUSSION QUESTIONS**

- Are there VA-owned properties in your communities similar to the West L.A. Medical Center Campus—i.e., providing medical services for veterans but failing to provide PSH on or near the campus?
- Would a ruling in favor of the plaintiffs in this case help your work with veterans? Would requiring VA medical centers to also provide PSH on its campus cause the VA to reduce the number of VA medical centers in your area?
- Should RSC members take a position on this issue by, e.g., joining an amicus brief?

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<sup>2</sup> Under the Rehabilitation Act, if a disabled individual or class requires a reasonable program or policy modification to accommodate a disability (i.e., a “reasonable accommodation”), a federally funded entity is required to provide such an accommodation unless doing so would result in a fundamental alteration in the nature of the program or an undue hardship or burden.

