

PARENTS ALERT (March, 2024).

RE: COMPLAINT OF DISABILITY DISCRIMINATION.

KRISTEN CLARKE

U.S. Dept. of Justice, Civil Rights Division,
950 Pennsylvania Ave. NW Washington, D.C. 20530-0001

Dear Ms. Clarke,

I respectfully request your office as accommodation to my disability Electrohypersensitivity EHS, and to the disabilities of these similarly situated to compel the U.S. Dept. of Housing and Urban Development (HUD), the U.S. Dept. of Justice (DOJ), and the U.S. Dept. of Education to cease and desist from treating EHS different from other disabilities.

On March 31, 2017, HUD's Deputy Assistant Secretary for Enforcement and Programs issued a Memo stating in part:

"The Department has seen several cases around the country dealing with smart meters, radio frequency (RF) or electromagnetic frequency (EMF) issues. Cases typically concern persons who allege to have disabling sensitivity to RF or EMF fields."

"The Department of Energy and the Department of Justice have also received numerous complaints dealing with these issues and have informed FHEO that they will not open investigations under Section 504 on these allegations."

"After consultation with OGC-Fair Housing, it has been decided that, at this time, FHEO will not accept, as jurisdictional, allegations dealing with Smart Meters, RF and/or EMF issues. Should circumstances change in the future with respect to medical or legal opinions relating to these types of cases, the Department may reevaluate this position; but for now, FHEO Intake should not accept these types of allegations and any complaints already accepted should be closed accordingly."*

On February of 2023, the head of HUD Regional Office in Oregon North West Mr. Andrew Tarver confirmed that the HUD Memo is still in effect.

Treating Electrohypersensitivity EHS, different from other medical conditions denies the EHS disabled access to the benefits offered by public entities in violation of the Rehabilitation Act, of the Americans with Disabilities Act and of the Fair Housing Act.

In Alexander v. Choate, the U.S. Supreme Court acknowledged that to avoid disparate-impact discrimination (To avoid treating disabilities different), a federal grantee must make 'reasonable accommodations' in its program or benefit to 'otherwise qualified handicapped individuals' in order to assure them 'meaningful access to the benefit that the grantee offers'.

469 U.S. 287,301 (1985).

The Court in Choate found that a recipient of federal financial assistance cannot offer a qualified handicapped person an opportunity to participate in or benefit from aid, program or service that is not equal to that afforded to others. Id. 45 C.F.R. 84.4(b)(1)(ii).

HUD has admitted that like other disabilities, Environmental Illnesses (EIs), which include EHS, are qualified medical determinable physical disabilities that meet the jurisdictional requirements to receive the benefits offered by public entities.

In 1992, HUD's General Counsel recognized EIs as physical disabilities stating in part:

"if a person is disabled under the Social Security Act, a fortiori, he or she is handicapped under the Fair Housing Act."

Legal Opinion: GME-0009

The fact that Electrohypersensitivity EHS, is a medically determinable physical severe impairment and a disability that meets the jurisdictional requirements has been proven as a matter of law.

A Joint Statement of the U.S. Dept. of Housing and of the U.S. Dept. of Justice states in part:

"Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. See e.g., Cleveland v. Policy Management Systems Corp., 526 U.S. 795 (1999)"

Page 13, Note 10, May 17, 2004.

At several times the Social Security has found that EHS is a medically determinable severe physical impairment and disability under the Social Security Act.

Individuals that have been entitled to receive Social Security disability benefits based on their EHS include:

Anne Mills, Summary of EHS by Dr. Erica Mallery-Blythe (2014) page 4;

Berth Sturdivant, Back Yard Secret Exposed (2014);

And Arthur Firstenberg, Affidavit to Cellular Phone Taskforce v. FCC, U.S. Court of Appeals for the Second Circuit, Case No. 97-4328

+++ I have been homebound for more than 12 years with life-threatening EHS. My EHS has been recognized by federal and State agencies and by Courts as a physical medical condition and as a disability as detailed by the Statement of Physical Disabilities posted on the Case Law Documents of J. Mendoza at wirelesswatchblog.org

Under the Regulations of the Social Security Act, an impairment "must be established by objective medical evidence from an acceptable medical source." "After we establish that you have a medically determinable impairment(s), then we determine whether your impairment (s) is severe." 20 C.F.R. 404.1521 (Emphasis mine)

"Under the Commissioner's regulations, a severe impairment is 'any impairment or combination of impairments which significantly limit (a claimant's) physical or mental ability to do basic work activities.' 20 C.F.R. § 404.1520(c)." Martinez v. Kijakazi, 2022 U.S. Dist. LEXIS 177054, page 33.

"The ability to do basic work activities is defined as having 'the abilities and aptitudes necessary to do most jobs.' 20 C.F.R. § 404.1521 (b). These abilities and aptitudes include

- (1) physical functions as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) capacities for seeing, hearing and speaking;
- (3) understanding, carrying out and remembering simple instructions;
- (4) use of judgment;
- (5) responding appropriately to supervision, co-workers and usual work situations; and
- (6) dealing with changes in a routine setting. Id. § 404.1521(b)(1)(6); See Bowen v. Yuckert, 482 U.S. 137, 141, 107 S. Ct. 2287, 96 L. Ed. 119 (1987)." Stout v. Colvin, 2016 U.S. Dist. LEXIS 110479 page 5.

+++ Twice, the Social Security has found my EHS a medically determinable physical severe impairment that significantly limits my ability to perform basic work activities as detailed by the Statement of Physical Disabilities posted at <http://www.wirelesswatcgblog.org/wp-content/uploads/2022/03/Statement-of-Physical-Disabilities-1.pdf>

The Decisions of the Social Security finding EHS a medically determinable severe physical impairment, prove as a matter of fact and as a matter of law that EHS has met the jurisdictional requirements of disability under the Rehabilitation Act, under the ADA and under the FHA.

Under Section 504 of the Rehabilitation Act the term "disability" is defined as:

- A- A physical or mental impairment that substantially limits one or more major life activities of such individual;
- B- A record of such impairment; or
- C- Being regarded as having such an impairment.

29 U.S.C 705(9)(B).

"The language of Title II of the ADA generally tracks the language of Section 504 of the Rehabilitation Act and Title II of the ADA specifically provided that the remedies, procedures and rights available under Section 504 shall be the same as those available under Title II of the ADA. As such, jurisprudence interpreting either section is applicable to both."

Hainz v. Richards, 2017 F.3d. 795,799 (5th Cir. 2000), citing 42 U.S.C.. 12133.

The definition of disability under the FHA is essentially the same as the definition of disability under the Rehabilitation Act. 42 U.S.C. 3602h

Under the ADA, major life activities include, but are not limited to:

Caring for oneself; performing manual tasks; seeing; hearing; eating; sleeping; walking; standing; lifting; bending; speaking; breathing; learning; reading; concentrating; thinking; communicating; and working.

42 U.S.C. 12102(2)(A).

The Social Security determinations that EHS is a severe physical impairment that significantly limit the ability to perform basic work activities under 20 C.F.R. § 404.1521(b)(1-6) include major life activities under the Rehabilitation Act, the ADA and the FHA.

42 U.S.C. 12102(2)(A)

"A disability may 'substantially limit' a major life-activity when the individual in question suffers 'a significantⁱⁿ restriction' as to the condition, manner or duration under which (he) can perform (the) major life-activity, as compared to that of the average person in the general population." E.E.O.C. v. American Tool & Mold Inc, 21 Supp.3d 1268,74 (M.D. Fla. 2014). (Emphasis mine)

Then, the Social Security determinations that EHS significantly limit the ability to perform basic work activities prove as a matter of fact and as a matter of law that EHS has been found to be a physical disability under the Rehabilitation Act, the ADA and the FHA.

The Congressional mandate to HUD is to prevent disability discrimination in housing. The Congressional mandate for the DOJ is to enforce the ADA to prevent that public entities engage in disability discrimination. The Congressional mandate for the U.S. Dept. of Education is to enforce the Rehabilitation Act to prevent that public entities, including schools engage in disability discrimination against children and others. Then, disability discrimination against the EHS disabled is an abuse of power that defeats the Congressional mandate.

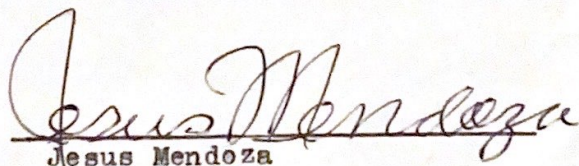
Furthermore, on many cases, survival for the EHS disabled depends on accommodations in housing, on emergency and other health care and on benefits offered by federal, State and local entities. Then, promoting, advocating and perpetuating discrimination against the EHS disabled is in violation of the EHS disabled Due Process right to life, liberty and property. See WeAreTheEvidence.org

For these reasons, I respectfully request your office to compel HUD to rescind and withdraw the illegal Memo, to compel the named agencies to cease and desist from their discrimination against the EHS disabled and to provide a copy of this Complaint to the respective oversight Congressional Committees.

Your prompt response to this matter can save immense pain and suffering and the lives of children and of other defenseless victims disabled by EHS.

Should you have questions or need more information, I will be happy to oblige.

Respectfully submitted,

 4 March 2024.
Jesus Mendoza

2202 E. 28th St. Mission, Texas 78574 Tel. (956) 583-7012