



December 18, 2012

Department of Equal Opportunity
New York City Housing Authority (NYCHA)
250 Broadway - 27th Floor
New York, NY 10007

Re: Request for Reasonable Accommodations/Modifications for [REDACTED]
Avenue, [REDACTED] Brooklyn, NY [REDACTED]

Dear NYCHA Department of Equal Opportunity:

Natural Resources Defense Council (NRDC) and the National Center for Law and Economic Justice (NCLEJ) are writing on behalf of NYCHA tenant [REDACTED] to request reasonable accommodations/modifications under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and the Fair Housing Amendments Act (FHAA). Ms. [REDACTED] is 6 years old and a minor. Her mother, Ms. [REDACTED] is also a tenant in the same apartment and the leaseholder. Ms. [REDACTED] has authorized NRDC and NCLEJ to make this request for accommodation on behalf of Ms. [REDACTED].

[REDACTED] suffers from asthma and as a result needs NYCHA to provide her an apartment free of mold and excessive moisture so that she can freely breathe the indoor air without exacerbating her asthma condition. Therefore, we request, on [REDACTED] behalf, that NYCHA immediately provide her with the reasonable accommodations and modifications of NYCHA mold remediation, work order management, and annual apartment inspection policies.

Disability

[REDACTED] has been diagnosed with asthma, which substantially limits her major life activities, including breathing and respiration, a major bodily function. A letter from Dr. [REDACTED] [REDACTED] doctor, is enclosed. [REDACTED] takes medication for her asthma to control her symptoms of wheezing and trouble breathing. [REDACTED] is an individual with a disability under the ADA, Section 504, and FHAA.

Mold and Excessive Moisture Conditions in [REDACTED] Apartment

On October 12, 2012, Microecologies, Inc. (Microecologies), certified industrial hygienists and environmental health investigators, conducted an environmental inspection and tests of [REDACTED] apartment. The Microecologies inspection (enclosed) found:

1. Observable heavy mold growth on the bathroom ceiling, walls, and around the bathtub;

2. The bathroom ceiling and walls and the area around the tub were wet;
3. A wall in [REDACTED] bedroom was wet; and
4. The positive moisture measurements in the bathroom indicate the moisture intrusion problems are ongoing.

[REDACTED] mother, Ms. [REDACTED] reported that there is a history of recurrent water damage and mold growth conditions on the bathroom's painted concrete ceiling, which the building re-painted in early 2011. The building maintenance workers opened the wall, reported that they repaired the pipe, and re-plastered the wall. However, the mold and excessive moisture conditions recorded in [REDACTED] apartment have persisted. No mold remediation work or known plumbing repair work has been performed by the building to address the problem during her occupancy of the apartment.

Link Between Mold and Moisture and Asthma

There is a well-established link between mold and excessive moisture and exacerbation of asthma symptoms in peer-reviewed scientific literature. *See Damp Indoor Spaces and Health* (IOM 2004); *Dampness and Mold* (World Health Organization 2009). NYCHA policy (GM-3735) acknowledges that mold can exacerbate health problems, particularly for people with serious respiratory disease. NYCHA's Tenant Handbook, *A Home to Be Proud Of*, acknowledges that "too much exposure to mold may cause or worsen conditions such as asthma, hay fever, or other allergies. The most common symptoms of overexposure are similar to reactions to plant pollen, such as coughing, congestion, runny nose, eye irritation, and aggravation of asthma." The Handbook states, "Mold and mildew can pose a health hazard for you and your family, so it is important to eliminate the problem as soon as possible."

As a Result of [REDACTED] Asthma, She Needs Mold and Excessive Moisture Eliminated From Her Apartment

In the opinion of [REDACTED] board-certified pediatrician, Dr. [REDACTED] mold in the apartment may have triggered her respiratory problems. In Dr. [REDACTED] professional opinion, as a result of [REDACTED] asthma, mold and excessive moisture need to be eliminated from her apartment.

Accommodations/Modifications Requested by [REDACTED]

On behalf of [REDACTED] we request the following reasonable accommodations and modifications in NYCHA policies, procedures, and practices for her asthma, so that mold and excess moisture, and their underlying causes, are effectively remediated and eliminated from the apartment, and [REDACTED] has an equal and meaningful opportunity to use, enjoy, and benefit from NYCHA housing:

1. Reasonably modify NYCHA Policy GM-3735 § V.A to effectively remediate current mold and moisture problems in the bathroom, using Technical Services Department's

Environmental Field Operations staff, after opening the walls and ceiling to identify the underlying cause of the problem. (Although NYCHA Policy GM-3735 § V.A requires the underlying cause of water infiltration causing mold to be addressed, it does not specifically require plumbing problems to be identified and addressed as the source of a mold problem, or require plumbing experts to play a role in diagnosing underlying problems causing mold and moisture.)

2. Reasonably modify NYCHA Policy GM-3735 § IV and § V by inspecting wall and ceiling cavities, once opened, for water damage and mold growth conditions, and repairing underlying leaks and other plumbing problems. (NYCHA Policy GM-3735 § V.A does not specifically require plumbing problems to be addressed as the source of a mold problem, or require plumbing experts to play a role in addressing underlying problems causing mold and moisture.)
3. Reasonably modify NYCHA Policy GM-3745 § V.D by repairing or replacing pipe insulation with an appropriate insulation material to fully remediate mold and moisture problems, and to encapsulate intact insulation containing mold growth with a water-based, anti-microbial fire-resistive vapor barrier. (NYCHA policy does not specifically require replacement or encapsulation of pipe insulation to address mold and moisture problems.)
4. Reasonably modify NYCHA Policy GM-3745 § V.D by vacuuming ceiling and wall cavity surfaces with water damage or mold with a HEPA vacuum. (NYCHA Policy GM-3735 § V.D.1 does not specifically require use of a HEPA vacuum.)
5. Reasonably modify NYCHA Policy GM-3735 § V.D.1 by wet-scraping plaster walls and concrete ceilings to remove paint and plaster to remove mold and wet areas where mold can grow. (NYCHA Policy GM-3735 § V.D.1 does not specifically require wet-scraping.)
6. Reasonably modify NYCHA Policy GM-3735 § V.D.1 by removing and replacing plastic/vinyl panels surrounding the bathtub, and having walls beneath these panels wet-scraped to remove paint and plaster with mold or wetness. (NYCHA Policy GM-3735 § V.D.1 does not specifically require removal and replacement of panels around bathtubs where wetness and/or mold exists.)
7. Reasonably modify NYCHA Policy GM-3735 § V.D.1 by promptly encapsulating surfaces with visible mold growth with a low toxicity-fungicity coating or temporarily covering these surfaces with a light-weight semi-rigid material that can be securely affixed to walls to form a temporary drop-ceiling, to limit further exposure to conditions if mold remediation is not undertaken right away. (NYCHA policy does not require steps to prevent further exposure to mold and moisture on an interim basis before work is performed.)
8. Reasonably modify NYCHA policy GM-3735 § D.2 in a number of respects to protect [REDACTED] and other tenants by removing furnishings and property from the work area,

erecting ceiling to floor isolation barriers, using a HEPA vacuum at the end of the project, protecting heating and air conditioning units within the work area, using HEPA exhaust ventilation within the isolation area, double-bagging debris removed from the area, and misting barriers while removing them. (NYCHA Policy recommends but does not require some of these steps.)

9. Reasonably modify NYCHA Standard Procedure 040:09:7 § IV.E, Table A, and Appendix A by treating the remediation and repair work in [REDACTED] apartment as a Priority Level 6. (NYCHA Standard Procedure 040:09:7 § IV.E does not contain a priority code for moisture remediation.)
10. Reasonably modify NYCHA Policy GM-3735 § V by conducting air quality testing in [REDACTED] apartment, particularly in the bathroom and southeast bedroom after the work described above is completed, and walls and ceilings are rebuilt and refinished, to ensure that problems have been fully addressed and eliminated. (NYCHA Policy GM-3735 does not require any air quality testing in NYCHA apartments with mold and moisture.)
11. Until [REDACTED] no longer lives in the apartment, reasonably modify NYCHA Standard Procedure 060:61:1 by conducting an annual inspection of the apartment, conducted jointly by a Maintenance Worker and Housing Assistant. (NYCHA procedure requires only 50% of NYCHA apartments to receive an annual inspection conducted jointly by a Maintenance Worker and Housing Assistant and does not specify which apartments will receive these inspections or require particular apartments to receive them.)
12. Until [REDACTED] no longer lives in the apartment, reasonably modify NYCHA Standard Procedure 040:09:3 Appendix A by visibly inspecting the apartment for condensation anywhere during all future annual inspections, other routine inspections, and whenever NYCHA responds to a mold or moisture related complaint or work order for the apartment. (Existing procedure requires annual inspections to inspect for condensation only near walls and windows.)
13. Until [REDACTED] no longer lives in the apartment, reasonably modify NYCHA Standard Procedure 040:09:3 Appendix A during future annual inspections, other routine inspections, and whenever NYCHA responds to a mold or moisture related complaint or work order for the apartment, by checking for visible moisture problems in areas with plumbing (kitchen and bathroom) and areas affected by mold and/or moisture problems in the past, and by taking moisture measurements with a moisture meter. (Existing NYCHA procedures do not require NYCHA to do any moisture testing to ensure the moisture problems have been eliminated in any apartments.)
14. Until [REDACTED] no longer lives in the apartment, provide the reasonable modifications requested in 1 through 10 above, whenever mold and/or moisture problems are identified in her apartment in the future by any means.

We request these reasonable accommodations and modifications on [REDACTED] behalf

under the ADA, Section 504, and FHAA. [REDACTED] needs these accommodations/modifications for her disability.

The October 12, 2012 Microecologies report contains additional information about the nature of the specific steps that should be taken to effectively remediate the mold and excessive moisture in [REDACTED] apartment and to address the underlying cause of the mold and excessive moisture. The report is incorporated into this request by reference.

Meeting to Discuss Type of Accommodations Needed Is Not Necessary

As we have already provided you with detailed information on the type of accommodations and modifications needed by [REDACTED] we do not believe that a meeting to discuss the type of accommodation needed, as described in NYCHA's reasonable accommodation policy (GM-3584), is necessary prior to providing the accommodations/modifications. Please proceed expeditiously to provide the accommodations, as [REDACTED] health is at stake.

Please notify us in writing within 10 business days whether NYCHA intends to grant or deny the requested accommodations/modifications, and if the request is granted, the time table for providing them.

If you have any questions, please feel free to contact Albert Huang at NRDC at 212-727-4534.

Sincerely,

/s/ Albert Huang
Albert Huang
Senior Attorney
Natural Resources Defense Council
40 West 20th Street, 11th Floor
New York, N.Y. 10011-4231
(212) 727-4534
ahuang@nrdc.org

/s/ Cary LaCheen
Cary LaCheen
Senior Attorney
National Center for Law and
Economic Justice
275 Seventh Avenue, Suite 1506
New York, N.Y. 10001-6708
(212) 633-6967, ext. 315
lacheen@nclj.org

cc:

Development Management Office
Van Dyke Houses
New York City Housing Authority
370 Blake Avenue
Brooklyn, N.Y. 11212

Chairman John B. Rhea
New York City Housing Authority
250 Broadway, 9th Floor
New York, New York 10007

New York City Housing Authority
Law Department
250 Broadway, 9th Floor
New York, New York 10007