

Housing Assistance Public Rental Housing Assistance Program (Hardship) Operation Guideline 2009 (No 1)

Notifiable Instrument NI2009- 468

made under the

Housing Assistance Act 2007 s21(1) Approved housing assistance programs—housing operation guidelines

1 Name of instrument

This instrument is the Housing Assistance Public Rental Housing Assistance Program (Hardship) Operation Guideline 2009 (No 1).

2 Commencement

This instrument commences on the day after its notification.

3 Revocation

Subject to section 21(1) of the *Housing Assistance Act 2007* and in accordance with the *Housing Assistance Public Rental Housing Assistance Program 2008 (No 1)* (“the Program”) I REVOKE the housing operation guideline concerning hardship notified on 22 May 2008 (N12008-171).

4 Operation Guideline

In accordance with section 21(1) of the *Housing Assistance Act 2007* I issue this housing operation guideline for the *Housing Assistance Public Rental Housing Assistance Program 2008 (No 1)* (“the Program”).

Purpose

To provide guidance to decision makers on the application of the hardship discretion.

The hardship discretion must only be applied where the specific circumstances of the case are sufficient to set aside the established intent of the Program in relation to satisfying the eligibility criteria in clause 9.

Relevant provision of the Program

Clause 10 – Hardship

1. Clause 10 specifies:

If the housing commissioner is satisfied that, relative to the circumstances of eligible applicants generally, an applicant is suffering severe hardship that cannot be alleviated by any other means, the housing commissioner may, in his or her absolute discretion, disregard any criteria mentioned in clause 9 (other than paragraph 9(1)(d)) in deciding whether the applicant is eligible for assistance.

2. Paragraph 9(1)(d) is about the minimum age to qualify for assistance (16 years of age). Although this criterion may not be disregarded, any of the other eligibility criteria can be disregarded in appropriate circumstances.
3. A decision to disregard one or more eligibility criteria is at the housing commissioner's absolute discretion. This is because the eligibility criteria are part of the fundamental structure of the program. Ordinarily an applicant must satisfy all of the eligibility criteria to be eligible for assistance.

What is severe hardship?

4. Severe hardship is where circumstances cause an applicant to be deprived of the necessities of life, such as food, shelter, safety and essential medical treatment. Such circumstances might include:
 - (a) where an applicant has a demonstrated need to come to the ACT because it is the closest place with the required/needed medical services which are of an urgent and continuing nature and which are not available in the town of previous residence;
 - (b) where an applicant is over the income barrier but has a profound physical disability requiring an extensively modified dwelling that would not be available on the private rental market and the applicant does not have the financial capacity to purchase a suitable dwelling; or
 - (c) where an applicant is part owner of a property but has had to flee the family home due to severe domestic violence.

The above scenarios are examples, are not exhaustive, and are not intended to limit the range of circumstances that might potentially be characterised as giving rise to severe hardship.

Does the applicant have any other means available to them

5. The applicant must be able to establish that they do not have other means available to them, e.g. they cannot be accommodated with family/friends or they do not have a lump sum payment pending which would enable them to purchase a property.

Relative need

6. When exercising the hardship discretion the decision maker must have regard to the relative need of the individual applicant compared to the needs of eligible applicants generally.

The hardship discretion is applied in determining the applicant's eligibility only (clause 9); it does not apply to the 'needs category' given to an applicant.

Decision-making process

7. Each application must be considered on its merits in an impartial and unbiased manner. In essence, the onus is on the applicant to demonstrate that their circumstances place them in a greater degree of hardship than those of other applicants generally.
8. In any case where the discretion is exercised in favour of the applicant, the decision-maker should indicate why he or she is satisfied that the applicant is suffering severe hardship relative to the circumstances of eligible applicants generally.
9. The reasons for the decision should be documented and reference made to the relevant eligibility requirements against which the hardship criterion has been considered.
10. Where it is decided not to exercise the discretion, the reasons should be included in the response to the applicant.
11. Officers should exercise judgement about whether it is necessary to consider the use of the hardship discretion in individual cases. If the circumstances of the case clearly appear more critical than those of other applicants generally, consideration should be given to exercising the discretion. In many cases it may be necessary to seek further information about the applicant's circumstances.

General provisions

Further information

12. If the applicant provides additional information which may further establish their need to be considered as an eligible applicant, the application can be reassessed.

False or misleading information

13. Under the Program an applicant is not eligible for assistance if the application is false or misleading in any material way or if an applicant has arranged his or her financial affairs to obtain assistance under the Program.

Review

14. A decision made under clause 10 of the Program is not a reviewable decision in terms of clause 30 of the Program. In particular, such a decision is not subject to review by the ACT Civil and Administrative Tribunal.
15. *Any reference to "Housing ACT" in an operation guideline is a reference to Housing ACT being a section of the Department of Disability, Housing and Community Services representing the housing commissioner.*

Dated this 21 September 2009

Martin Hehir
Commissioner for Social Housing