



Systematic Literature Review of Research on Discrimination in Rental Housing on the Basis of Mental Disabilities

Study of Rental Housing Discrimination on the Basis of Mental Disabilities:
Short Paper 1



SYSTEMATIC LITERATURE REVIEW OF RESEARCH ON DISCRIMINATION IN RENTAL HOUSING ON THE BASIS OF MENTAL DISABILITIES

STUDY OF RENTAL HOUSING DISCRIMINATION ON THE BASIS OF MENTAL DISABILITIES: SHORT PAPER 1

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U.S. Department of Housing and Urban Development

Office of Policy Development and Research

Submitted by

M. Davis and Company, Inc.

August 2017

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Abstract

This paper reviews recent academic literature and published reports on the design, methodologies, and findings from rental housing discrimination testing pertaining to people with mental disability (MD). The current state of the research suggests both challenges and opportunities related to testing for housing discrimination against people with MD. First, our knowledge about discrimination against people with MD is limited because most of the testing completed by fair housing groups and as part of controlled research has not focused on this population. The discrimination found in the private rental market still indicates further investigation is needed. Past research also demonstrates that people with MD can effectively participate as testers with the right level of support. Second, because MD is for the most part “invisible,” testing requires specific

considerations on how disability is revealed, especially because the evidence suggests that an individual will not typically reveal his or her MD in the housing search process. Third, given the wide usage of the Internet to find rental housing, e-mail testing for discrimination against people with MD is warranted. E-mail testing can also enable researchers to investigate with some precision “subtle” forms of discrimination that may make a person with MD more or less comfortable in the search process. Fourth, recent legal cases provide some insights on how housing providers respond to reasonable accommodation requests and specifically to requests for assistance animals. The paper concludes with recommendations for fair housing testing based on the current state of the art and identifies areas in which future research and study are needed.

Fair Housing and People With Mental Disabilities

The federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) as amended in 1988 prohibits discrimination in the sale, rental, and financing of housing or other housing-related transactions on the basis of seven protected classes: (1) race, (2) color, (3) religion, (4) national origin, (5) sex, (6) familial status, and (7) disability. Housing providers are prohibited from considering these protected characteristics as the basis for rejecting or refusing to negotiate with individuals seeking housing or housing-related services or from misrepresenting or limiting housing opportunities based on protected characteristics. In addition to having the basic protections of the law against housing discrimination for all protected classes, people with disabilities have three additional protections: (1) multifamily housing with four or more units, built for first occupancy after March 13, 1991, must meet specific, if relatively modest, accessibility design and construction requirements that enable a person using a wheelchair to access and use covered units and common areas; (2) housing providers must make reasonable accommodation to their rules, policies, practices, and services necessary for people with disabilities to equally enjoy the property; and (3) housing providers must allow residents, at the residents' expense, to make reasonable modifications to physical structures necessary for people with disabilities to use and enjoy the property. Finally, in 1999, the U.S. Supreme Court ruled in *Olmstead v. L.C.* that unjustified segregation of people with disabilities constitutes discrimination in violation of Title II of the Americans with Disabilities Act (ADA). Although the beneficiaries of this case are all people with disabilities, it has had significant impact on people with mental disability (MD)¹ living in restrictive and segregated housing, including nursing homes and institutions (for example, see DOJ, 2014).

For the past several years, housing discrimination complaints on the basis of disability have grown, making it the most common basis for housing discrimination complaints to both the U.S. Department of Housing and Urban Development (HUD) and the Fair Housing Assistance Program (FHAP) (National Fair Housing Alliance, 2013). In fiscal year 2012, 55.6 percent of all complaints submitted to HUD and 48.1 percent of those

submitted to FHAP were based on disability. Complaints specifically about the failure of housing providers to make reasonable accommodation for people with disabilities made up 26 percent of the total complaints HUD received in 2011 and more than one-half of the total disability complaints (HUD, 2011a). The National Fair Housing Alliance (2013) suggests several reasons for this trend, including blatant refusals by property owners to make a reasonable accommodation, making it easy for a person with a disability to detect discrimination, and the establishment of an office within HUD dedicated to disability issues, which has made it easier for people to file a complaint.

The purpose of this literature review is to collect and assess existing materials to better understand the prevalence and types of housing discrimination based on MD; to develop approaches to help pilot a fair housing testing protocol; and, specifically, to document the following.

- The size and scope of the population with MD.
- Challenges and experiences of people with MD in attaining and retaining housing.
- Measurement of housing discrimination on the basis of MD.
- Key differences, if any, among the housing search processes for people with psychiatric disability (PD) and people with intellectual or developmental disability (I/DD).
- The extent to which people with disabilities use different means to search for rental housing, with attention to the use of the Internet, newspapers, and other sources.
- Recent and key MD housing discrimination legal cases.

A systematic review of research and investigations relevant to housing discrimination experienced by people with MD was completed using the following search criteria.²

- MD (as defined for this research) as it relates to housing needs and the search process.
- Housing discrimination/discriminatory practices, both in the housing search process and in maintaining housing.

¹ *Mental disability* is defined as “(1) having a mental or psychological disorder or condition that limits a major life activity, including working; (2) any other mental or psychological disorder or condition that requires special education or related services; (3) having a record or history of a mental or psychological disorder or condition which is known to the employer or other entity covered by this part; or (4) being regarded or treated by the employer as having, or having had, any mental condition that makes achievement of a major life activity difficult” (*Foster v. City of Oakland*, 2009 U.S. Dist. LEXIS 70094).

² The search included these electronic databases and websites: Cumulative Index to Nursing and Allied Health Literature (CINAHL), PsycInfo, the National Rehabilitation Information Center (NARIC) RehabData database, the Clearinghouse for Home and Community Based Services (HCBS), Lexis/Nexis, and Google/Google Scholar. In addition, reference lists of articles and reports were reviewed to capture literature not found in the web-based search.

- Housing discrimination complaints.
- Housing policy in relation to people with disabilities.
- Housing legal rights (Fair Housing Amendments Act [FHAA] of 1988, Section 504 of the Rehabilitation Act of 1973, Olmstead Decision).
- Testing for housing discrimination, including in-person testing, telephone testing, e-mail testing, and other alternatives.

Based on the primary criteria, a list of 128 documents was generated.³ A secondary filtering process excluded items that were non-research based or nongovernment reports, were not specific enough to MD, or were focused on a different aspect of discrimination. This process resulted in 91 articles that are summarized in this paper, organized by the themes outlined in the previous section, beginning with data on the national disability population.

³ The review included books, articles in peer-reviewed journals, and published reports. Although we did not restrict our search by publication year, we did focus on post-2000 publications.

People With Mental Disabilities: Size and Scope of the U.S. Population

In the United States, the meaning of the term mental disability has shifted over time (Manderscheid et al., 2010). For purposes of this literature review, MD is defined as the presence of PD, I/DD, or both. I/DD may be indicated by below-average intellectual functioning and functional issues that affect one or more activities of daily living. PD involves a range of psychiatric disabilities that result in a disruption of a person's thinking, feelings, moods, or ability to relate to others, affecting everyday functions.

Like the many definitions of MD, many estimates have been made for the number of people in the United States with MD. According to the U.S. Census Survey of Income and Program Participation, in 2010, about 6.3 percent of the U.S. population, or approximately 15.2 million people, age 15 and older had difficulty with cognitive, mental, or emotional functioning (Brault, 2012). This population includes PD and I/DD. Using a broader definition and different methodology, however, the Substance Abuse and Mental Health Services Administration (SAMHSA) estimated a much larger number of people who have experienced some form of PD in a year: 44.5 million adults age 18 or older.⁴ This estimate is nearly 20 percent of the adult U.S. population. Of this total, about 10.4 million adults (4.6 percent of the U.S. population) have serious mental illness (SMI) nationwide (SAMHSA, 2011).⁵ Regarding I/DD, between 4.6 and 7.7 million people fall into this category based on the assumption that the I/DD population is between 1.5 and 2.5 percent of the U.S. population (Braddock et al., 2013; Morstad, 2012).⁶

The majority of people with I/DD, regardless of age, live with their family or a family member (72 percent); the remaining people live in either residential settings (13 percent) or on their

own in the private market (16 percent) (Braddock et al., 2013). An emerging issue for the I/DD population is the issue of adult children living with aging parents, who will themselves likely need care and become less able to care for their adult children, resulting in an increased risk for nursing home or restrictive living placement (Braddock et al., 2013). For people with PD, it is estimated that about three-fourths of the adults with SMI live in independent housing with no onsite services (Newman and Goldman, 2008), including about 330,000 people with PD living in board-and-care homes (SAMHSA, 2006).

Excluded from the above counts are people who are homeless or in prison. The National Alliance to End Homelessness (NAEH) estimates that “[a]t any given point in time, 45 percent of homeless people report indicators of mental health problems during the past year” (NAEH, 2013). The 2013 Point-In-Time homeless count data from HUD, estimates that 20 percent (124,000) of all homeless people are severely mentally ill, and about 44 percent of them were unsheltered at the time of the count. In addition, the 2006 U.S. Department of Justice (DOJ), Bureau of Justice found that more than one-half of all prison and jail inmates had a mental health issue (Glaze and James, 2006). In 2012, about 1.57 million people were prisoners under federal or state jurisdiction in the United States (Carson and Golinelli, 2013), suggesting that 785,000 prisoners have mental health issues. A higher rate is estimated for youth in juvenile justice systems in which at least 70 percent have one or more mental disorders and at least 20 percent experience significant functional impairment from SMI (Skowrya and Coccozza, 2007).

⁴ SAMHSA defines *mental illness* as the presence of mental, behavioral, or emotional disorder based on the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV, 4th Edition).

⁵ This SAMHSA estimate is based on data collected from a survey of 92,233 adults age 18 or older from the combined 2008 and 2009 National Surveys on Drug Use and Health and 68,936 adults age 18 or older for estimates of any mental illness.

⁶ A range cited by both Arc of USA and the American Association on Intellectual and Developmental Disabilities.

Challenges in Attaining and Retaining Housing

Despite fair housing laws, people with MD experience discrimination that can prevent or restrict access to housing (Kanter, 1993). Although research on discrimination experienced in the housing search process is limited, it confirms some prejudice against and discrimination toward people with MD. The research includes a small body of evidence of differential treatment in structured testing and self-reported data from people with MD. For example, Corrigan et al. (2003) found that about one-third of the discrimination reported by people with SMI was housing related. This experience of discrimination may include standard procedures that are applied to all prospective tenants, such as background checks and other screening requirements, which although not formal discrimination, it may make the person feel uncomfortable (Corrigan et al., 2006).

When compared with what we know from research on discrimination based on race, we know very little about what people with MD experience in the housing search process and can only infer from other broader empirical studies on discrimination against this group. This broader set of studies includes research on “stigma” and “prejudice” toward people with MD. Research on stigma, which traces back to Goffman (1963), has evolved to include the myriad ways being identified as having MD can stigmatize a person (for example, see Link and Phelan 2014).⁷ In the broad sense, stigma refers to “a ‘label’—a social designation—that is linked to a negative stereotype” or “to the propensity to exclude or otherwise discriminate against the designated person” (Link and Phelan, 2014: 78). In general, disability has not been immune to stereotypes. A large body of research (Corrigan et al., 2000; MacDonald-Wilson et al., 2011; Pearson et al., 2003; Piner and Kahle, 1984; Socall and Holtgraves, 1992; Weiner, Perry, and Magnuson, 1988), however, documents how perceptions of PD make it the “least preferred” disability in our society when compared with physical or sensory disabilities, such as hearing or mobility impairments. One belief is that “unlike physical disabilities, people with mental illness are perceived to be in control of their illness and responsible for causing it” (Weiner, Perry, and Magnuson, 1988). As a result, some people may not believe that a person with MD needs help or that special treatment is deserved (Corrigan and Penn, 1999; Socall and Holtgraves, 1992; Weiner, Perry, and Magnuson, 1988).

“Public stigma” also can affect housing providers’ perceptions and act as a barrier to the ability of people with PD to rent and

maintain independent housing, including a fear of violence and aggressive behavior and that a tenant with MD may frighten away other renters (Corrigan, Markowitz, and Watson, 2004; Dovidio, Major, and Crocker, 2000; Newman and Goldman, 2009; Page, 1977, 1983, 1995;). These stigmatizing views can also affect the mental health profession (Corrigan and Penn, 1999), shaping the views and actions of people who work directly with clients in the housing search process. For example, Piat et al. (2008) found that, although most consumers wanted a housing situation with more autonomy, some case managers preferred they move into housing with more support.

In addition to discrimination, previous research also suggests the cost of housing and access to services likely affects the ability of people with MD to attain and retain independent rental housing in the community. Kanter (1993) and Newman and Goldman (2008) documented how affordability creates challenges for people with MD seeking independent housing options in the private market. National data show two out of three renter households with any type of disability have very low incomes and are one and one-half times more likely to pay at least one-half their income for rent when compared with very low income renters *without* disabilities (HUD, 2011b). For people with MD, this housing affordability gap may be compounded by their reliance on Social Security Disability Insurance (SSDI), which, in many states, pays about the same amount per month as the Fair Market Rent HUD identifies for a studio or one-bedroom unit (Cooper, O’Hara, and Zovistoski, 2011). Further complicating the ability of people with MD to secure and remain in private rental housing is access to support services and other means to live independently. Several states are facing many challenges trying to create “real choice” for people with MD to live in affordable, accessible, and integrated housing (National Council on Disability, 2010).

Finally, research is limited on the intersectionality with other protected classes that might affect attainment of housing for people with MD. One study found that the quality of housing for people with MD was different when comparing gender and race; the quality was lower for African-American people when compared with White people and lower for men when compared with women (Uehara, 1995). Along with income restrictions, these other characteristics that can further limit housing options are important to keep in mind when developing testing protocols.

⁷ We recognize that a recent trend of thought suggests that the term *stigma* is itself stigmatizing and needs to be suspended from use (see Russinova et al., 2011). In this paper, we respect that concern; however, in reporting the research on stigma, we will use the term because it is what the researchers studied.

Fair Housing Testing for Discrimination Against People With Mental Disabilities

Fair housing testing measures whether people are unlawfully discriminated against during the housing search process. The primary approach is paired testing, which requires at least two testers paired to portray prospective renters or owners, each having similar profiles with the exception of the characteristic being tested (Housing Discrimination Law Project of Vermont Legal Aid, 2012; Pratt et al., 2005). Paired testing is a method frequently used to identify discrimination by a specific provider that violates the FHAA. It also can be used to estimate the prevalence of such behavior toward different protected classes by documenting differential treatment using a quasi-experimental research design. Both uses are important in the effort to reduce discrimination against people with MD.

Fair housing testing has been used since the 1970s to systematically determine if there is differential treatment among specific populations (Turner et al., 2013). For people with disabilities, this includes direct discrimination, evidence of unequal treatment, or not permitting reasonable modification or reasonable accommodation (Pratt et al., 2005). The individual with the characteristic being tested is referred to as the “protected” tester and the other person in the pair is the “control” tester. The key to testing is to test on only one prohibited characteristic to assure the test results are unambiguous (Fair Housing Institute, 2006; Housing Discrimination Law Project of Vermont Legal Aid, 2012). In general, the matching characteristics of the pair include similar education, socioeconomic class (via type of work, if employed), overall appearance (for example, clothing), household size, and income, although income may be set slightly higher to favor the protected tester (Pratt et al., 2005).

Some of the earliest data using a paired testing approach to examine the treatment of people with MD were reported by Page (1977), who found that “persons identifying themselves as mental patients were refused rooms for rent significantly more often than were persons using no mental illness identification” (Page, 1977: 85). May et al. (1992) similarly found discrimination against people with mental illness (MI) when using a proxy to call about an apartment on behalf of someone leaving an independent living program. *Discrimination Against People With Disabilities: Barriers at Every Step* (Turner et al., 2005) was the first study to use systematic testing on a large scale for people with disabilities, specifically for people who use wheelchairs and people who are deaf. The results verified that paired testing was a feasible and effective tool to “capture

both differential treatment discrimination *and* refusal to make reasonable accommodation or permit reasonable modification, and the paired research testing methodology can be adapted for a wide variety of disabilities and housing circumstances” (Turner et al., 2005: 53).

The tests completed for the 2005 Pilot Disability Discrimination Study (DDS) were designed to examine the testing process itself. The paired testing methodology explored a limited number of both in-person tests by individual adults with MD (PD and I/DD) and telephone tests by nondisabled people calling on behalf of people with MD. The DDS exploratory testing concluded that it is feasible for people with MD to conduct in-person testing, although it is challenging to recruit people with MD who can handle the role of a tester, and some individuals may need extra support and assistance. Also, tests in which the person with MD was accompanied by a nondisabled “friend” proved to be credible and effective, but significantly raised the cost of testing. Furthermore, testers with MD may be more effective if they conduct tests relatively infrequently, making it preferable to extend the testing over a relatively long period of time or to recruit a large pool of testers if that is not feasible. The DDS also proved that it was possible to use a proxy in the paired testing process.

In a recent study, Kaye (2012) conducted a two-prong study to examine the reaction to a pair of rental applications, one from a person without a PD and one with a PD. The applicant with the PD also was randomly assigned participation in support services: wraparound psychiatric care or no services. The applications were equivalent, with the exception of the disability being revealed. The findings suggest that “a person with a PD is less likely to be rented an apartment, and less likely to be perceived as competent or warm than another applicant who did not reveal a PD” (Kaye, 2012: 17). Furthermore, the research showed that an applicant receiving psychiatric care with a doctor is less likely to be accepted when compared with the applicant receiving wraparound services that include a case manager’s visiting once a week, suggesting that degrees of acceptance need to be considered when looking at discrimination.

Employing paired testing to detect housing discrimination on the basis of MD presents several challenges. The first challenge is ensuring that the testing process can properly isolate MD when measuring disparate treatment, which means making sure pairs align along other protected class characteristics when

paired up. The second challenge is that consideration must be given to the influence of the income level of testers, because a key barrier in housing attainment for many people with MD is affordability. The third challenge is that it is important to consider the source(s) of income (SOI). Many people with MD rely on some type of cash assistance for income, such as Supplemental Security Income (SSI) or SSDI, or a housing choice voucher to afford rent. Evidence reveals some property owners discriminate based on these SOI (for example, see Lehe, 2008). Although HUD requires its grantees to comply with state and local laws protecting individuals from being

denied housing based on SOI, it is not protected in all private rental housing markets in the United States. Including these sources in the profile could muddle results.

An additional challenge for detecting discrimination is that, given the prevalence of stigma, people with MD often mask their disability to avoid discrimination (Wahl, 1999), thereby making it difficult to know if any discrimination that may have occurred was a result of the disabling condition. All of these circumstances warrant testing to better understand how and when housing providers might discriminate against people with MD.

Revealing Disability: What and When To Disclose?

Much of our understanding about differential treatment revealed in testing is through the experiences of other protected classes with a visible characteristic such as race, ethnicity, or gender. Corrigan and Penn (1999) distinguish between a visible characteristic (for example, skin color) and an invisible characteristic (for example, a person with MI not displaying psychotic symptoms). They further differentiate, stating that “[p]ersons with severe mental illness may represent individuals who are both discredited (that is, they may manifest psychotic symptoms in public) and ‘discreditable’ (that is, if in remission, they may be able to hide their mental illness from others)” (Corrigan and Penn, 1999: 772). Depending on the individual, both may be present but may not present in every case. Based on testing procedures described in the previous sections, the revealing of the characteristic (that is, MD) that may be the source of discriminatory behavior must be as unambiguous as possible (that is, it is clear that the person has MD). This revealing may be accomplished by the individual’s acknowledging the presence of a disability directly (for example, saying “I have a mental disability”) or indirectly (for example, presenting his or her rental history), asking for a reasonable accommodation, or presenting a combination of both.

When an individual with MD is a protected class tester, the disability must be revealed in such a way that it cannot be discredited even if the person does not “manifest symptoms.” The question then is when to reveal and how? The DDS exploratory testing grappled with how the protected class tester could reveal the presence of a disability. It was generally agreed that, although most people in this group would not disclose their disability to a housing provider, it would be credible to do so if the tester had to explain why he or she had no recent rental history. For purposes of this particular study, people with PD disclosed that their lack of rental history was because of time spent in a mental health treatment facility and people with I/DD disclosed that their lack of rental history was because of time spent living in a group home. The control tester had either been a student living in a dorm or had lived abroad. In all cases, the protected class tester stated that he or she had MD when describing his or her lack of a recent rental history.

Because data on testing for discrimination against people with MD in the rental housing market are limited, recent research on discrimination during the search for employment offers additional guidance on how and when to reveal disability during testing and on how different MD might be received.

MacDonald-Wilson et al. (2011: 192) define disclosure as “revealing information about one’s diagnostic label, mental health condition, or psychiatric disability.” They identify seven different types or reasons for disclosure.

1. Full—revealed so no one is excluded from knowing.
2. Selective—revealed to people whom the person trusts.
3. Strategically timed—revealed after building trust over time (may or may not be full disclosure).
4. Targeted—revealed as condition of employment.
5. Nondisclosure—revealed to no one; hid it from all.
6. Inadvertent—revealed instead of being “found out.”
7. Forced—revealed when something came up that required it (for example, hospitalization).

Revealing a disability during a job interview has parallels to the housing search process; that is, some may reveal the presence of a disability right at the start of the process, while others may hide their disability and continue to do so after moving into a unit. The research suggests that who discloses and when is likely to be determined by disability-related characteristics, including the severity, type, and visibility of the disability and also the stage of recovery (MacDonald-Wilson et al., 2011).

Dalgin and Bellini (2008) investigated what impact disclosure of an invisible disability (physical or psychiatric) would have within the employment interview process and whether disclosure affected the likelihood of the candidate being offered a job. Each candidate had a resumé depicting a strongly qualified candidate for an accounting position, but with a 9-month gap in employment. The person with no disability offered that she was taking care of her mother who had a serious illness during that time. The candidates with disabilities all replied that they had been ill and needed to take some time off to deal with their health concerns. Disclosure of the specific nature of the health concern (that is, disability) then occurred later when voluntarily shared by the candidate either in a short or long response (that is, more or less detail). Dalgin and Bellini concluded from this measure that extensive information on disability does not change the outcome, because the response was not different in the shorter version of disclosure. This approach assured that the employer knew the applicant had MD early in the interview process and then later received some additional information about that disability. Because the tester volunteered the additional

information pertaining to the disability, the tester controlled when that additional information was revealed. The timing and means of disclosure could also work for housing testing.

These studies raise questions about using a reasonable accommodation request to reveal the presence of a disability. Common accommodations requested can include assistance animals, variance of the rental due date to accommodate receipt of disability income, request for a live-in aid, waiver of minimum income or credit requirements, acceptance of rent from a third party payer, or agreement to communicate through a caseworker or family member. Kaye (2012: 31) suggests an additional reasonable accommodation request to reveal a psychiatric disorder by having “two applicants requesting that they

can break lease with no penalty, but one is asking in case of psychiatric hospitalization and the other is asking in case of military deployment.” This same research also suggests that “disclosure of a PD through a written accommodation request accompanying an application can cause a housing applicant to be negatively stereotyped as less capable than an applicant without a PD, despite similar qualifications” (Kaye, 2012: 16) and that the disclosure can increase the likelihood of discrimination. Finally, another possibility might be to frame reasonable accommodation and disclosure in terms of a positive psychological function (for example, assistance animals help people with MD develop a sense of well-being and hope) instead of the absence of disease (Manderscheid et al., 2010).

Searching for Rental Housing

Research specifically on how people with MD search for housing is limited. A recent survey of people with MI in Ohio found that 29 percent searched on their own, 28 percent had help from a case manager, and 26 percent had help from a relative or friend (National Alliance on Mental Illness—Ohio, 2010). These data suggest that many people with PD are likely to rely on others to help locate housing. This type of assistance is also presumed in guides developed to help people with MD search for housing (for example, see Citizens' Housing and Planning Association, n.d.). Many of these guides were developed to assist people moving out of nursing homes and other restrictive living arrangements into the community and to provide guidance for advocates trying to secure this housing for their population (for example, see Herb, Miller, and O'Hara, n.d.).

Online sources, such as craigslist, Rent.com, and Apartment-guide.com, are used to facilitate the search process. In addition, most states now offer their own free statewide housing locator systems on line to help lower income consumers search for housing in the private market.⁸ Many have ways to search for accessible features and enable the prospective tenant to indicate that he or she is looking for a subsidized unit. All these online search engines rely on housing providers to list their units and to provide accurate information. A key limitation to this mode of searching is that people need access to the Internet, and poor and minority communities continue to lag behind in connectivity. Still, as people with disabilities have more opportunities

to connect, the Internet is becoming a growing, viable means to search for housing.⁹ Furthermore, this outlet enables a potential renter to investigate housing options anonymously, which can be helpful for people who do not want to reveal a disability or who, because of their MD, find it difficult to search for housing in person or by using the telephone.

Although many people search on line, most people within the general population who recently moved into a rental unit said they found their current apartment through word of mouth (34 percent) followed by a sign outside of a building (11 percent) and craigslist (11 percent) (HUD, 2013).¹⁰ Although these data suggest that “traditional” modes of finding rental housing are still dominant, they do not necessarily mean that housing providers do not use multiple outlets to advertise their units—especially in slower markets.¹¹ In other words, a unit found via word of mouth may have been advertised on craigslist (which is free) and through other sources that housing providers are encouraged to use to market units. These data have implications for testing. First, it is important to recognize that it is not possible (or at least not financially feasible) to produce a random sample of word-of-mouth knowledge and posted signs to identify housing providers and units to test. Second, although many consumers do not find housing via the Internet, most housing providers appear to use this method to list units, making it a viable source of listings to randomly sample to test for housing discrimination that may be preventing people with MD from accessing housing.

⁸ Forty-five states currently have such systems.

⁹ The Internet unfortunately is also becoming the source for new addictions—gambling, gaming, and shopping, among other things—with research now linking Internet use to depression and other mental illness (for example, see Rosen, 2012).

¹⁰ Note that, given the challenges of determining if a person has a disability, in the American Housing Survey (AHS), these data were not further manipulated to produce cross-tabulations by disability, which would include all people with disabilities and not just people with MD.

¹¹ Until recently, the AHS had not collected these data, so it is not possible to determine with a single data point in which direction any of these three methods will move in the future.

E-mail Testing

Although the DDS provided specific guidance for testing for discrimination against people with disabilities using both in-person and telephone testing methods, it did not include e-mail testing. Research suggests that increasing numbers of consumers consult the Internet to search for housing (Horrigan, 2008; Wagner, 2008). The Internet represents a new frontier—a means to reduce the ability to discriminate but also new ways to do so.¹² For a person with MD, e-mail communication is an opportunity to connect with a property owner to inquire about a rental unit in a manner that is not face to face and potentially is more comfortable.

As a relatively new housing search method, the research on using e-mail to test for discrimination is still evolving and has not been tried yet with people with MD. A recently completed testing study for HUD on same-sex couples confirms, however, that e-mail is a legitimate method to test for discrimination (Friedman et al., 2013). A study in Sweden by Ahmed and Hammarstedt (2009) concluded the same. Both studies provide insights for e-mail testing for discrimination against people with MD. Regarding protocol, both employed “normal” procedures (that is, the same as in telephone and in-person paired testing) and made sure parity was used in all aspects but the prohibited characteristic, which, in this case, was sexual orientation. In addition, it is important to conduct the test “completely within the rules and regulations of the platform [being] used to avoid adverse reactions from participants or platform authorities” (Ahmed and Hammarstedt, 2009: 590). Evidence of differential treatment was based on differences in responses to the inquiry. The 2013 same-sex couples study (Freidman et al. (2013) documented the following for each pair of responses to quantitatively prove discrimination.

- Whether each prospective renter received a response.
- Whether he or she received more than one response.
- Whether he or she was told the advertised unit is available.
- Whether he or she was invited to inspect the unit.
- Whether he or she was advised to call the housing provider.
- Whether he or she was asked to provide additional information regarding his or her quality as an applicant (for example, his or her credit score or income).
- Whether he or she was reminded about qualifications he or she must possess to rent the unit.
- Whether he or she was given a reason for the unit’s not being available (if the unit was not available).
- Whether he or she was sent an ambiguous sign of availability (for example, “The unit is technically available, but an application has been filled out and we’re pretty sure it’s going to go through”).
- Whether he or she was encouraged to look at a different unit owned by the same landlord (for example, “This unit actually isn’t available, but I have another unit in the same building you might be interested in”).

Since passage of the Fair Housing Act, researchers involved in paired testing studies have observed that discrimination has become subtle, and it is rare to have a “smoking gun” of proof (Hanson, Hawley, and Taylor, 2011). More likely, individual renters will feel discomfort during an exchange with a property owner. Without knowing what was (or was not) asked of another applicant and what information was provided, however, the applicant will have no obvious indication of potential discrimination (Foreman and Moran-Gates, 2008). E-mail testing, however, provides written data directly from a housing provider that can then be used to more accurately assess the “subtle” nature and extent of discrimination (Hanson, Hawley, and Taylor, 2011; Housing Discrimination Law Project of Vermont Legal Aid, 2012). Charles (1999; cited in Hanson, Hawley, and Taylor, 2011: 1051) described subtle discrimination as “unequal treatment between groups that occurs but is difficult to quantify, and may not always be identifiable through common measures such as price differences.” Subtle discrimination is assumed to be used to discourage someone in a protected class from pursuing a particular housing option (Hanson, Hawley, and Taylor, 2011). It can also include “favorable” treatment. For example, recent testing in Vermont involving in-person testing of people with disabilities, including MD, found that 27 percent of the control testers were positively favored but neither protected nor control testers experienced outright discrimination (Housing Discrimination Law Project of Vermont Legal Aid, 2012). Research on discrimination against people with MD seeking employment also suggests qualitative differences exist that, while they are

¹² *Chicago Lawyers’ Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc.* Seventh Circuit, March 14, 2008, No. 07-1101.

not legal discrimination, they are clearly a form of interpersonal mistreatment (Bendick, Jackson, and Reinoso, 1994; Bendick et al., 1991; Russinova, et al., 2011).

In a study of potential housing discrimination against people based on race using e-mail testing, Hanson, Hawley, and Taylor (2011: 281) describe positive favorable treatment by a housing provider along several dimensions “including if landlords describe the unit in a positive way, if they mentioned other available units, if they invited further contact, and if they used generally friendly language.” They also found evidence of “negative favoritism” that included asking the prospective tenant (protected class tester) for more information about employment and background than the control tester but also providing more information about things that might discourage renting the units, such as fees and building rules (Hanson, Hawley, and Taylor, 2011). This research also suggests that another dimension to consider is burying the housing seeker “in a gauntlet of screening processes” (Foreman and Moran-Gates, 2008: 2), including conducting background checks, requiring more information, and suggesting extra fees may be charged.

Finding subtle differences requires careful coding of the language in the correspondence using key words. Hanson, Hawley, and Taylor (2011) used an approach that was similar to the one Ahmed and Hammarstedt (2009) used to review of 3,153 correspondences between housing providers and a paired set of e-mail inquiries from African-American and White people to units advertised on craigslist in 11 large markets; they concluded that—

... landlords practice subtle discrimination in the rental housing market through the use of language associated with describing and viewing a unit, inviting further correspondence, making a formal greeting, and using polite language when replying to e-mail inquiries from a white name more often than to an African American name, they also send longer e-mails and respond quicker to white names. (Hanson, Hawley, and Taylor, 2011: 276)

These findings suggest that careful construction of e-mail correspondences and systematic analysis of responses to e-mail testing for discrimination against people with disabilities may yield further information about subtle discrimination in the rental housing market.

Legal Rulings

The courts have further clarified fair housing policy based on legal cases involving the private rental market rights of people with MD. The main issues the courts have ruled on include the right to have assistance animals, the right to have privacy, and the right to request and receive reasonable accommodation.¹³ The role of assistance animals is a particularly difficult issue for housing advocates, landlords, and tenants, in part because of the vagueness of the courts, but also because of different interpretations of *ADA v. FHAA*. The U.S. courts, under the Fair Housing Act (not necessarily the ADA) have maintained that assistance animals are a reasonable accommodation and they do not have to be trained or certified in any official capacity. The courts, DOJ, and HUD have not issued clear and definitive definitions or guidance for assistance animals, which contributes to the ambiguity in enforcement (Ligatti, 2010).

Courts generally have ruled that landlords are required to maintain the privacy of their tenants (that is, not disclose the presence of MD) over any other responsibility, including the safety of other tenants. This requirement has previously created a tension in the courts over protecting the civil rights of people with MD and a housing provider's responsibilities regarding the safety of other tenants, as evidenced in *Samson v. Saginaw Professional Building, Inc.* In this case, the property owner of a commercial building that rented office space to a state mental health clinic was sued by a person who worked in another office after being attacked by a patient receiving outpatient psychiatric treatment at the clinic. The court's opinion was that this event was "foreseeable," and the court found the landlord liable (White, 2001). The sole dissenting opinion, however, was that "in requiring landlords to treat with suspicion persons who formerly suffered MI even after mental health officials have certified them ready to resume life in the community, this Court undermines this salutary and humanitarian advance, and perpetuates the isolation of the mentally ill" (White, 2001: 792). This dissenting opinion was later upheld in *Gill v. New York City Housing Authority*, which found that "1) the housing authority was under no duty to investigate the assailant's mental condition; 2) the authority had no duty to perform a detailed check into the assailant's mental condition, treatment, or medication; 3) the authority was not responsible for all acts of violence which occurred on the premises; and 4) the

assailant's attack was unforeseeable" (White, 2001: 794). This position generally is reflected in U.S. court rulings dealing with fair housing, which values renters' right to privacy, including people with MD in private and public housing (White, 2001).

Although these rulings for the most part have helped to empower tenants with MD seeking rental housing in the private market, they do not necessarily illuminate how people with disabilities fulfill their right to receive reasonable accommodation. The FHAA's guidelines for reasonable accommodation are difficult to generalize. Over the years, each individual ruling depends on the unique situation presented by the individual case, making "bright line" rules difficult to establish. The courts have set up some consistent rules, however, which are applicable to most situations. For example, the courts have consistently ruled that individuals seeking reasonable accommodation must propose the reasonable accommodation. Landlords must prove whether the request is "reasonable" and landlords must also prove that they attempted to institute any accommodations possible before terminating a tenant's lease and eviction (Dolak, 2003). In a proactive effort, HUD and DOJ released a joint statement a decade ago that reminded housing providers that refusing to make reasonable accommodation in rules, policies, practices, or services when such accommodation affords a person with a disability the equal opportunity to use and enjoy a dwelling unit was a violation of the Fair Housing Act (DOJ, 2004). Although the reasonable accommodation provision and funding are dependent on the individual with the disability, the HUD-DOJ statement provided some examples of common accommodation requests, including assigning a parking space close to an entrance for a person with a mobility limitation, providing different means for paying rent (for example, via mail instead of in person), and waiving "no pet" policies to allow assistance animals in the unit. Also, the statement reminds housing providers that a resident cannot be charged for the provision of a reasonable accommodation.

Finally, although the courts have consistently protected the rights of people with MD to privacy and accommodation in the private market place, as these cases attest, uniform precedents have not been established. Each new lawsuit presents new challenges and unforeseeable outcomes that may impact future fair housing testing.

¹³ HUD uses the term *assistance animals*, which includes emotional support animals. According to HUD's Notice on Service Animals and Assistance Animals for Persons with Disabilities in Housing and HUD-Funded Programs, an assistance animal is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability or that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.

Conclusion

This literature review focused on reviewing recent academic literature and published reports on rental housing discrimination testing design, methodologies, and findings related to people with MD. The following paragraphs summarize key findings and specific insights from the literature.

Measuring Discrimination

Contemporary empirical studies of discrimination against people with MD focus on issues of stigma and stereotypes. Much of this literature indicates that different types of MD are perceived and treated differently, ranging from subtle to blatant forms of discrimination, particularly toward people with SMI and psychiatric disorders. Although not directly tied to the housing search process, this research helps inform how prejudice and discrimination might be demonstrated by actors in the housing search process. The research also suggests that prejudice against people with SMI, which may be particularly acute, should be taken into consideration when creating a profile for a protected class tester with MD. During paired testing, the protected class tester can speak to the functional aspects of the disability, such as needing support with remembering or managing his or her housing, rather than naming the MD or providing a specific diagnosis. Paired testing research can also help document experiences people with MD may encounter in the search process that may not be formal discrimination, but nonetheless may make the individual feel uncomfortable enough to pursue filing a complaint. These experiences can include standard procedures that may be applied to all prospective tenants, such as background checks and other screening requirements, and additional areas of inquiry that may be specific to a person with MD, such as asking for details about his or her disability or medical care.

Testing

The Barriers at Every Step report confirms that individuals with MD can successfully serve as testers (Turner et al., 2005). Findings from this research effort also provide insights on how to reduce potential harm that the stress associated with the testing could cause to people with MD, and the report includes the following recommendations: (1) testers should take a break in between tests, (2) researchers should recruit a large pool of testers to reduce the number of field tests per tester, and (3) a second person (posed as a friend or companion) should

accompany to help the tester remember questions or information. This final suggestion also corresponds with how people with MD actually search for housing, typically doing so with a companion, family member, or support person. E-mail testing, which is a new and relatively uncharted form of housing discrimination testing, provides an opportunity to learn about discrimination in terms of differential treatment, and it also presents an opportunity to document more subtle forms of discrimination via specific language in correspondence from housing providers.

Revealing Disability

Much of the literature on paired testing research in the area of housing discrimination on the basis of MD focuses on how and when to reveal the tester's disability to the housing provider, which is contrary to what most people with MD typically do or are taught to do when seeking housing. The literature provides some guidance on what might be effective in a testing environment, including having the protected class tester state the presence of MD, MI, or mental health issue. In addition, earlier research demonstrates that providing information about the functional aspects of the disability, such as difficulty with remembering things or lacking a previous rental history because of time spent living in a nursing home, may also be an effective way to reveal a disability, although it is not necessarily known if this disclosure alone will unequivocally reveal the presence of a disability. Therefore, a triple disclosure (MD coupled with functional issues coupled with previous living situation/rental history) may be an effective way to disclose a disability that is otherwise difficult and abstract to communicate during testing.

Less is known about the effectiveness of revealing a disability by requesting a reasonable accommodation, because this approach can complicate the interpretation of outcomes if the housing provider associates the request with significant modifications or additional costs. Given the current state of case law and the wide range of reasonable accommodation requests possible, more research is needed on how requests for reasonable accommodation can be used to test for discrimination but also to reveal the presence of a disability. Given fair housing complaints filed by people with disabilities about responses to reasonable accommodation requests, housing providers may not understand fair housing law and the ADA provisions, particularly as they relate to the allowance of assistance animals. Additional

areas for further study include testing that explores intersecting discriminatory behaviors when a housing seeker presents with attributes in addition to the presence of a disability, such as being a recipient of cash assistance (for example, SSDI or SSI) and the utilization of a housing choice voucher. These all

suggest the need for larger scale paired testing discrimination tests with people with MD, including both people with PD and people with I/DD, to build the evidence, particularly related to private market rental housing.

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