

Rental Housing Discrimination on the Basis of Mental Disabilities in North Dakota



This study was completed with support from the Consensus Council

The mission of the High Plains Fair Housing Center is to strengthen communities and to ensure equal access to fair housing in the region through training, education, enforcement, and advocacy. Fair housing is a right protected by federal and state laws. Fair housing means you may freely choose a place to live without regard to your race, color, religion, sex, national origin, disability, or presence of children in your family. North Dakota further prevents discrimination because of your age (over 40), marital status, or because you are on public assistance.

Executive Summary

In 1988, the Fair Housing Act was amended to include disability protections. **Congress** recognized that individuals with disabilities "have been denied housing because of misperceptions, ignorance, and outright prejudice." The decision to add disability discrimination to the Fair Housing Act was seen as "a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with disability from the American mainstream. The right to be free from housing discrimination was considered "essential to the goal of independent living."

High Plains operates the only housing discrimination complaint line in North Dakota. In the last few years, we noticed an increase in calls from people that were in the process of being evicted or were evicted as a result of behaviors that were directly related to their disabilities in particular mental illness. Many of these clients ultimately became homeless which meant that there was an incredible amount resources that were required to get people rehoused. In response to these concerns, High Plains applied for funding from the Consensus Council to complete a series of housing discrimination testing based on mental disabilities.

We knew that we were not able to replicate the experiences of people already housed and exhibiting symptoms that may lead to eviction, but our testing program could replicate the barriers that exist when people are seeking rental housing. We began by doing a survey and some one on one meetings to identify the issues. Barriers identified included—

- Intrusive requests to disclose personal and disability-related information.
- The denial of proper requests for reasonable accommodations. A lack of understanding about what types of reasonable accommodations needed;
- Steering toward specific housing, buildings, or units.

Based on this information, we designed two test scenarios one that requested two reasonable accommodations; a reminder to pay rent and a waiver of credit history requirements and 2) A reasonable accommodation for an emotional support animal.

In both tests, the protected tester established that they were seeking a rental unit for a person with a disability at the beginning of the test and at the end of the test they requested the accommodations. This allowed for two points of data collection. The first part of the test allowed a comparison for a person with a disability and without (control tester), the second part of the test allowed for how receptive a property manager is to a reasonable accommodation.

The results comparing the protected tester and control tester (before the reasonable accommodation requests). This includes both test scenarios (a total of 66 test parts)

Overall, 23% of protected testers experienced steering to less desirable units or buildings with a lower rent even though the tester provided guidance on what the person with the MD could afford.

Overall, 16% of the protected testers were told that they did not have availability in the buildings that they inquired about, whereas the matched control testers were told there was availability.

Overall, 5% of the protected testers were asked intrusive questions.

In person tests, showed a 25% preference for a control tester.

Group 1 (18 tests)

In 40 % of the tests, companies that did not have auto pay said that they were unable to provide a reminder of when rent was due.

In 60% of the tests, companies would not waive their requirement for a credit score (requiring co-signers, extra deposits, higher rent, etc.)

Group 2 (15 tests)

In 40% of the tests, the testers were given overly restrictive requirements when the tester inquired about an emotional support animal. Restrictive requirements included: providing DNA and a picture of the animal, verification letters written only by doctors or only by North Dakotan doctors, filling out an addendum, and the company sending forms to the tenant's doctor."

Based on the results of this series of tests, it is clear discrimination in the rental housing market toward persons with mental disabilities exists.

High Plains used the results of this study to understand where we should focus our future investigations and to provide us with information about properties and communities where there may be more egregious violations of the Fair Housing Act. These results can help us to direct our outreach efforts such as paid and free media, training opportunities, billboards, PSAs and direct mailings so consumers know their rights they are more likely to file complaints. Any successful complaints can lead to more people feeling confident to exercise their rights under the fair housing act. Finally, it informs housing providers their responsibilities are under the FHA. The more knowledgeable people are about their responsibilities the less likely they are to violate the law.

During the global pandemic, when mental health experts worry about the pandemic's effect on people's mental health. It is important for people, now more than ever, to understand their rights and how to use them.

High Plains Fair Housing Center assists people across North Dakota who are experiencing discrimination in their housing transactions or living environments. Our intake specialists work directly with clients to obtain the housing they need or remedy the situation they are already in through landlord mediation or by assisting them through the administrative complaint process. Over the last few years, 60-70% of High Plains' fair housing intakes calls were to report issues of discrimination based on disability. In 2018 and 2019, High Plains began to notice an increase in calls from people who were in the process of being evicted or were evicted as a direct result of behaviors related to their disabilities, in particular mental illness. Many of these clients became homeless. In response to these concerns, High Plains applied for funding from the Consensus Council to complete a series of housing discrimination testing based on mental disabilities, in particular mental illness. High Plains' project was modeled after a similar nationwide study, Rental Housing Discrimination on the Basis of Mental Disabilities: Results of Pilot Testing (Joy Hammel, 2017).

From our tests, we hoped to get a better understanding of what it is like in North Dakota for persons with mental disabilities (MD) and their advocates when they seek rental housing. This series of tests is not intended to be a scientific study; rather, it is an objective snapshot of experiences that persons with mental health disabilities experience when they try to access housing.

In 2016, an estimated 17% of adults aged 18 and older in North Dakota (about 99,199 people) met the criteria for any mental illness. A total of 4.0% of North Dakota adults aged 18 or over (about 23,454 people) in 2016 had a serious mental illness (SMI) in the past year (ND Behavioral Health Systems Study, 2018 pg. 15).

The 1999 U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 led to an increasing number of individuals with mental disabilities moving from nursing homes and other institutional and segregated settings into community-based settings. This means that access to housing for persons with mental health disabilities is an important policy issue.

Background

The Fair Housing Act (FHA) prohibits discrimination in the sale, rental, and financing of housing and in other housing-related transactions on the basis race, color, religion, national origin, sex, familial status, and disability. In North Dakota we have additional protections for age, marital status and receipt of public assistance. Housing providers are prohibited from considering these protected characteristics when negotiating the sale or rental of housing. Forms of

discrimination include refusal to negotiate, denying the availability of housing, steering or offering differing terms or conditions in housing transactions.

Persons with disabilities have three affirmative protections under the Fair Housing Act: (1) housing providers must make reasonable accommodations to their rules, policies, practices, and services necessary for people with disabilities to equally enjoy the property; (2) housing providers must allow residents with disabilities, at the residents' expense, to make reasonable modifications to physical structures necessary in order for them to use and enjoy the property; and (3) multi-family buildings built after 1991 should be accessible, as described in the Fair Housing Act design manual.

(<https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>)

Based on our complaint intake line, individuals with MD face many barriers when they seek housing and when they are within their housing, as their needs change. Misperceptions based on unsubstantiated facts may drive decision-making by housing providers.

Complaints based on disability make up the largest number of housing discrimination complaints filed nationwide, and North Dakota is no different. The majority of complaints filed at the North Dakota Department of Labor and Human Rights are people with MD. Most often, discrimination based on disability is seen in the refusal to grant reasonable accommodations and the misperception that a person with a disability is unable to live independently.

Fair Housing Testing

Fair housing testing (or secret shopping in the housing context) is a tool used by fair housing centers that measures the quality and quantity of information given to potential renters or home buyers by a housing provider in a housing transaction. In a rental test scenario, a test coordinator will identify two testers, one from a protected class and one from a control. The testers will be similar in all ways but the protected class. Test coordinators will often make the protected tester more desirable by giving him or her slightly better income. Based on the test scenario developed by the test coordinator, testers separately contact and visit the site of a housing provider and inquire about the availability of housing. They ask a series of questions about the unit, its amenities and other attributes. Afterwards, the testers objectively record everything that happened during the test —the terms and conditions of the lease, available units shown, price quoted for an available apartment, how the tester was greeted and treated, etc. The test coordinator then compares the testers' objective reports to determine whether a difference in treatment based on the protected class occurred.

Testing is legal and has been upheld by the Supreme Court as the only truly objective way to determine whether discrimination is occurring. The scope of the fair housing investigation determines the type of test used. In this series of fair housing tests, we used matched-pair testing, which allowed for us to determine if there were differences in treatment between the control tester and the protected class tester.

The matched characteristics of the testers in this audit included race, age, employment, number in the household, rental history and income. The single variable that differed between matched testers was mental health status – one tester’s profile included a history of mental illness while the control tester’s profile did not.

In the past, discrimination was much more obvious, and while blatant incidents do occur, they occur less frequently. Today, fair housing experts often say that people discriminate with a smile and a handshake. That is why testing is an important way to identify discrimination. Examples of subtler discrimination include offering a person with mental illness fewer units to view, higher deposits or fees, less favorable rent terms or units, untruths, incomplete information, and subtle discouragement. Individuals who are given misleading or inaccurate information about the availability of housing may never know that they have been treated unlawfully because they have no way of comparing their treatment to anyone else's.

Overview of the Testing Design and Process

Tests were completed in six selected rental markets (Fargo, Devils Lake, Grand Forks, Williston, Jamestown, Bismarck/Mandan, Minot) using matched-pair testing via telephone and in-person visits. The main goal of this work is to determine what barriers persons with mental disabilities experience when trying to locate housing.

The testing was completed over a period of a year.

Telephone Testing Design

The telephone testing process involved people without disabilities serving either as the control tester or as the protected tester in the role of a proxy.

The proxy tester established early in the call that they were viewing an apartment for a family member with a MD. A diagnosis of the disability was not disclosed, only the symptoms of the disability that needed an accommodation. This allowed for the initial interactions such as units available, costs associated etc. to be identified and compared.

Later in the call the tester would make a request for a reasonable accommodation related to the stated disability on behalf of the person with a MD. In one test scenario, the reasonable

accommodation requests were (1) a request that the housing provider give the tenant a reminder to pay rent and (2) a request for an accommodation to the tenancy requirements since the person with the MD does not have an extensive credit history. In the other scenario (3), the request was that the tenant be allowed to have an assistance animal in the unit.

Procedures and Scripts for Tester Telephone Calls

Properties tested were chosen by the testing coordinator using a randomization program. The testing coordinator assigned the properties to the control and protected testers and provided the testers with their income, education, race, and a list of questions to ask. This information was located on a rental assignment form. The order of telephone calls to the housing provider by the protected tester and the control tester was randomized, and the calls occurred within one day of each other. The timing strategy was designed to decrease the chance that the unit was rented in the period between the two calls.

Reasonable Accommodation Requests

The reasonable accommodation requests occurred towards the end of the inquires. This allowed the test coordinator to analyze if there were any difference in the units available, costs of the units, location of the units and the terms and conditions associated with the available units. It also allowed the test coordinator to determine if the reasonable accommodation requests would be granted easily. Reasonable accommodation requests were designed to reflect the types of accommodations commonly requested by people with MD as part of the search for rental housing.

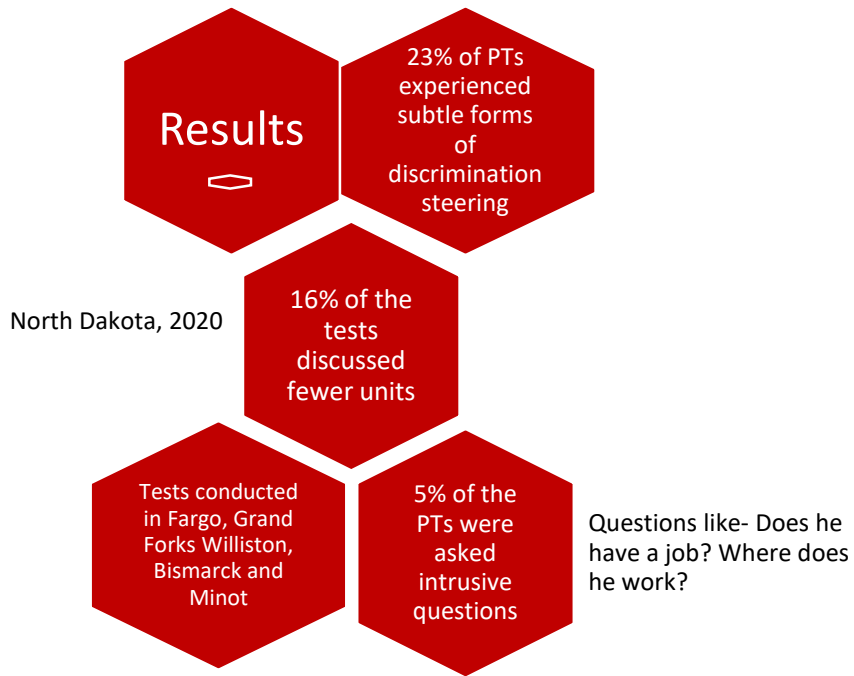
FINDINGS

Comparing Treatment Disability Versus No Disability

Overall, 23% of protected testers experienced steering to less desirable units or buildings with a lower rent even though the tester provided guidance on what the person with the MD could afford.

Overall, 16% of the protected testers were told that they did not have availability in the buildings that they inquired about, whereas the matched control testers were told there was availability.

Overall, 5% of the protected testers were asked intrusive questions.



Comparing Responsiveness to Reasonable Accommodations Requests

Scenario 1: Reasonable Accommodation (Credit Score, Reminder)

Telephone matched-pair tests were completed in Fargo/West Fargo, Grand Forks, Williston, Bismarck/Mandan, and Minot. There were 18 matched-pair tests (36 test parts).

Reasonable Accommodation Request #1

- Request for a reminder from the housing provider by telephone or in person to the person with the MD that rent was due, as they have difficulty remembering responsibilities.

Most of the companies had auto-pay options so they the request of having a reminder as a reasonable accommodation was not a good indicator of discrimination. However, of the smaller companies that did not have the auto-pay option, two of the five (40%) said that they were unable to provide a reminder of when rent was due, and one company said that that would be a determination made by the owner.

- Waiver of credit scores (because the person with the MD did not have an extensive credit history).

In the initial request for the waiver of the credit score, the protected testers were told 60% of the time that they would not waive their requirement for a credit score (requiring co-signers, extra deposits, higher rent, etc.) The lack of credit history and good credit score is a direct result of the person's disability and not making a reasonable accommodation to the credit history policy maybe an indication of discrimination.

Scenario 2: Reasonable Accommodation (Emotional Support Animal)

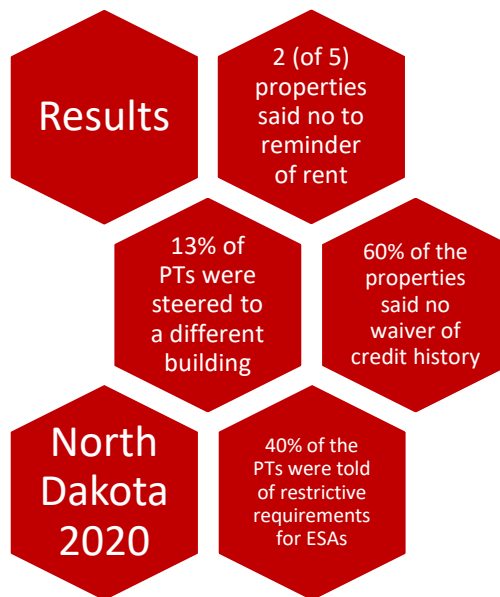
In North Dakota, like the nation, reports of discrimination related to emotional support animals is the most reported complaint we receive. In part, the emergence of online therapy pet "registries" have created the perception that many people falsely claim emotional support animals to avoid fees associated with pets HUD has tried to clarify the rules surrounding ESAs, with their document, Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act¹ As in the earlier test, testers revealed that they had an emotional support animal early in the call, and the statement was clear and

¹ HUD<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

unambiguous. The control tester was matched in all characteristics except for the need for an accommodation to pet policies.

Telephone matched-pair tests were completed in Fargo/West Fargo, Jamestown, Bismarck/Mandan, and Minot. There were 15 matched-pair tests (30 test parts).

In 40% of the tests, the testers were given overly restrictive requirements when the tester inquired about an emotional support animal. Restrictive requirements included: providing DNA and a picture of the animal, verification letters written only by doctors or only by North Dakotan doctors, filling out an addendum, and the company sending forms to the tenant's doctor."

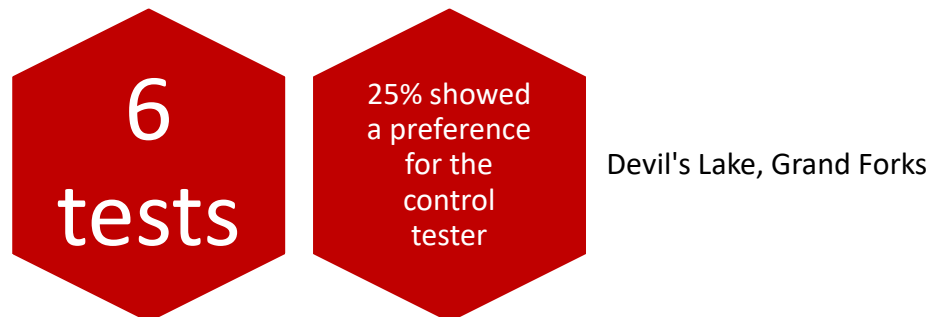


In-Person Testing Design

Because of the size and scope of the study, most of the tests were completed over the telephone; however, the test coordinator chose two markets to do in-person tests. The in-person testing design, like the telephone testing, included the use of proxies viewing the apartment on behalf of a family member with a disability. Control testers viewed the units on their own behalf.

The tests were designed to determine if the protected (by proxy) tester was treated differently. Some areas of analysis included units shown, terms and conditions provided and whether the reasonable accommodation requests were accepted. As in the telephone tests, the disability was disclosed very early in the transaction, the matched testers were matched in all areas except for the tested characteristic (MD versus no MD), and the protected tester had a slightly better job.

Six in-person tests (12 test parts) were completed in Devils Lake and Grand Forks. Of the tests completed, 25% of the tests showed a preference for the control testers. Preferences included a control tester being shown more units and generally being more “welcomed” than the protected tester. In one instance, the protected tester reported feeling “discouraged” about the property.



Surveys and Advocacy Group Responses

High Plains FHC sent a survey to non-profit agencies, advocates, housing authorities, legal assistance agencies and local and state governments to determine the extent to which their clients experienced discrimination and what they or their clients did if they suspected discrimination.

In total 85 people responded to the survey.

