

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**COMMUNITY HOUSING OF MAINE )  
AND JOHN DOE, )  
)  
                                  **PLAINTIFFS** )**

**v.** )

**CIVIL No. 99-381-P-H**

**MEL MARTINEZ, SECRETARY, UNITED )  
STATES DEPARTMENT OF HOUSING & )  
URBAN DEVELOPMENT AND UNITED )  
STATES DEPARTMENT OF )  
HOUSING & URBAN )  
DEVELOPMENT, )  
)  
                                  **DEFENDANTS** )**

**ORDER ON DEFENDANTS' MOTION TO DISMISS AND  
PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT**

This is a dispute over whether the United States Department of Housing & Urban Development (“HUD”) permits the funding of group homes for children who are wards of the State and, if not, whether the policy is illegal. The plaintiffs are a 7-year-old ward of the State and a nonprofit corporation that develops housing units for people with disabilities, including children who are wards of the State. The plaintiffs have moved for declaratory judgment and the defendants have moved to dismiss. Both pending motions are **DENIED**.

I remain unable to ascertain the Secretary’s position in this matter. The last memorandum filed on his behalf states that “it is true that at some point in time, there was some confusion within HUD concerning the use of HOME funds to

provide housing assistance for ‘wards of the state.’” Reply in Support of Defs.’ Mot. to Dismiss at 2. The memorandum then goes on to assert that “the only final agency action” in that respect has been the issuance of a waiver to permit funding for the plaintiffs’ group home projects involving children who are wards of the State, *id.*, and that in truth HUD does not take the position ascribed to it (the position that children who are wards of the State are automatically ineligible for HUD funding). The Secretary’s memorandum refers to an undated letter from HUD’s deputy general counsel filed in this Court on November 13, 2000.<sup>1</sup> But HUD is apparently unwilling to confirm that the position taken in the deputy counsel’s letter is indeed the position of HUD. Specifically, the plaintiffs’ lawyer has asserted to the Court and the defendants’ lawyer that the plaintiffs would dismiss their case if the position taken in the deputy counsel’s letter is in fact an authoritative adoption of that position by the Secretary and is communicated in good faith to responsible state and federal officials, but HUD has apparently declined to do so. I am left, therefore, with the uncomfortable feeling that all is not as it appears from the most recent letter, and that it may have been written only to avoid this particular lawsuit and, specifically, to avoid my earlier direction that someone from HUD appear who could state definitely HUD’s position. The

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<sup>1</sup>The memorandum also refers to a document by agency counsel that repudiates the proposition that wards of the State are ineligible for HOME funding in the Administrative Record at p. 51. In fact, there is no such document at that page, and I have been unable to locate it elsewhere in the Administrative Record.

controversy clearly is not moot and Maine State Housing Authority is not an indispensable party.

Accordingly, the Clerk's Office shall proceed to schedule an evidentiary hearing on this matter. At the hearing, HUD shall produce someone who has the authority to inform the Court on the record explicitly what HUD's position is.

**So ORDERED.**

**DATED THIS 8TH DAY OF FEBRUARY, 2001.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**

U.S. District Court  
District of Maine (Portland)  
CIVIL DOCKET FOR CASE #: 99-CV-381

COMMUNITY HOUSING OF MAINE  
plaintiff

ROBERT M. HAYES, ESQ.  
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JOHN DOE  
plaintiff

ROBERT M. HAYES, ESQ.  
(See above)

v.

HOUSING & URBAN DEVELOPMENT,  
US DEPT. OF  
defendant

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HALSEY B. FRANK, ESQ.  
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SECRETARY, US DEPT OF HOUSING  
AND URBAN DEVELOPMENT  
defendant

DAVID R. COLLINS, ESQ.  
HALSEY B. FRANK, ESQ.  
(See above)