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SJC-13513

ROSANNA GARCIA<sup>1</sup> & others<sup>2</sup> vs. EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES.

Suffolk. September 9, 2024. - November 21, 2024.

Present: Budd, C.J., Gaziano, Kafker, Georges,  
& Wolohojian, JJ.

Housing and Livable Communities. Department of Housing and Community Development. Statute, Construction. Practice, Civil, Summary judgment, Class action.

Civil action commenced in the Superior Court Department on December 9, 2016.

After review by this court, 480 Mass. 736 (2018), the case was heard by Douglas H. Wilkins, J., on motions for summary judgment.

The Supreme Judicial Court granted an application for direct appellate review.

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<sup>1</sup> Individually and on behalf of all others similarly situated.

<sup>2</sup> Naikis Cepeda, Dawn Didion, and Jasmin Rivera, individually and on behalf of all others similarly situated; and Jocelin Gruilart, intervener.

Ilana B. Gelfman (Laura Massie also present) for the plaintiffs.

Kimberly Parr, Assistant Attorney General (James A. Sweeney also present) for the defendant.

Edwina Clarke & Christopher J.C. Herbert, for Massachusetts Coalition for the Homeless & others, amici curiae, submitted a brief.

Amy Copperman, Jeannine Casselman, & Kate Gannon, for MLPB & another, amici curiae, submitted a brief.

WOLOHOJIAN, J. Before us is a single question of statutory interpretation: whether the Legislature's directive that the Executive Office of Housing and Livable Communities (HLC) "shall immediately provide shelter for up to 30 days to families who appear to be eligible for shelter based on statements provided by the family and any other information in the possession of the executive office," St. 2023, c. 28, § 2, line item 7004-0101 (immediate placement proviso), permits HLC to require third-party verification of certain information as a precondition to such immediate temporary emergency shelter. We conclude that it does not. The plain language of the immediate placement proviso provides that a family must receive immediate temporary placement where it appears that the family meets the eligibility requirements for shelter, and that the appearance of eligibility may be established at the time of initial application by statements from family members and by information already in the agency's possession. Third-party verification of eligibility

criteria is not required at the time of initial application.<sup>3</sup> We therefore reverse the judgment of the Superior Court to the extent it provides otherwise.<sup>4</sup>

Background.<sup>5</sup> In 1983, the Legislature passed "An Act Further Regulating Assistance to Certain Needy Persons." St. 1983, c. 450. Among other things, the act expanded the benefits then offered through the Commonwealth's public assistance program (popularly known as the "emergency assistance program") for needy families with children and pregnant women without children to include "temporary shelter as necessary to alleviate homelessness." St. 1983, c. 450, § 1, amending G. L.

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<sup>3</sup> This case concerns whether third-party verification may be required at the outset of the emergency housing placement process; it does not implicate verification requirements at later points. As a result, our conclusion here does not prevent HLC from later in the process requiring third-party verifications for further shelter. See G. L. c. 23B, § 30 (B) (e) (tasking HLC with "verification of all elements of eligibility" without time restriction).

<sup>4</sup> We acknowledge the submissions from amici curiae Massachusetts Coalition for the Homeless, Family Promise North Shore Boston, Women's Lunch Place, and Rosie's Place; and MLPB and the Health Law Clinic at Suffolk University Law School.

<sup>5</sup> The factual background is drawn from the stipulated facts upon which the parties based their cross motions for summary judgment. See Boston Globe Media Partners, LLC v. Department of Pub. Health, 482 Mass. 427, 429, 431 (2019) (reciting facts "taken from the parties' stipulated facts and exhibits" on appeal from ruling on cross motions for summary judgment, which was "based on the parties' stipulated facts and exhibits").

c. 18, § 2. Temporary shelter obtained through this program is known as "emergency assistance shelter."

HLC is responsible for administering the program, subject to appropriation.<sup>6</sup> G. L. c. 23B, § 30. "The Legislature appropriates funds for the program through two budgetary line items, one of which contains a number of provisos . . . ."

Garcia v. Department of Hous. & Community Dev., 480 Mass. 736, 740 (2018). One such proviso, the immediate placement proviso, is at issue in this case:

"notwithstanding any general or special law to the contrary, [HLC] shall immediately provide shelter for up to 30 days to families who appear to be eligible for shelter based on statements provided by the family and any other information in the possession of [HLC] but who need additional time to obtain any third-party verifications reasonably required by [HLC]."

St. 2023, c. 28, § 2, line item 7004-0101. Applicants who receive shelter under the immediate placement proviso are known as "presumptively eligible." The Legislature has included the

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<sup>6</sup> When the 1983 act was passed, the Department of Transitional Assistance (formerly known as the Department of Public Welfare) was responsible for administering the emergency assistance program. In 2009, the Legislature transferred administration of the emergency assistance program -- including emergency assistance shelter -- from the Department of Transitional Assistance to the Department of Housing and Community Development (DHCD), effective July 1, 2009. St. 2009, c. 4, §§ 34-37, 83. Effective May 30, 2023, responsibility for the program was transferred to HLC, see G. L. c. 23B, § 1; St. 2023, c. 7, §§ 102, 120-121, where it currently remains.

immediate placement proviso in the budget using identical or substantially identical language each year since 2005.<sup>7</sup>

Beginning in 2012, HLC and its predecessor, the Department of Housing and Community Development (DHCD) (collectively, agencies), have required that groups applying for emergency assistance shelter must establish at the time of initial application that they are a family, and that they do so by providing third-party verification of each family member's identity and relationship to one another.<sup>8</sup> In addition, the

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<sup>7</sup> See St. 2023, c. 28, § 2, line item 7004-0101; St. 2022, c. 126, § 2, line item 7004-0101; St. 2021, c. 24, § 2, line item 7004-0101; St. 2020, c. 227, § 2, line item 7004-0101; St. 2019, c. 41, § 2, line item 7004-0101; St. 2018, c. 154, § 2, line item 7004-0101; St. 2017, c. 47, § 2, line item 7004-0101; St. 2016, c. 133, § 2, line item 7004-0101; St. 2015, c. 46, § 2, line item 7004-0101; St. 2014, c. 165, § 2, line item 7004-0101; St. 2013, c. 38, § 2, line item 7004-0101; St. 2012, c. 139, § 2, line item 7004-0101; St. 2011, c. 68, § 2, line item 7004-0101; St. 2010, c. 131, § 2, line item 7004-0101; St. 2009, c. 27, § 2, line item 7004-0101; St. 2008, c. 182, § 2, line item 4403-2120; St. 2007, c. 61, § 2, line item 4403-2120; St. 2006, c. 139, § 2, line item 4403-2120; St. 2005, c. 45, § 2, line item 4403-2120.

<sup>8</sup> On September 17, 2012, DHCD issued Housing Stabilization Notice 2012-08, which provided:

"individuals who are members of the family must, during the intake process, provide reliable information of the identity of each member of the family and the relationship among the family members. Because these basic verifications also provide the relevant information about the family's residence, Massachusetts residency is an element of basic verification of identity."

agencies have required third-party verification that at least one adult member of the family is a Massachusetts resident.<sup>9</sup> Not all families possess such third-party verification when they make their initial application for emergency assistance shelter. On occasion, the agencies have nonetheless been able to verify the information through other means and have accordingly provided the family with emergency assistance shelter. At other times, the agencies have not been able to do so, with the result that the family has been deemed ineligible and denied emergency assistance shelter.

The underlying class action suit was commenced in 2016, asserting various causes of action (described in the margin) based on the agencies' administration of the housing assistance

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To similar effect, also in 2012, DHCD issued a regulation that

"all members of the [emergency assistance] household shall be residents of the Commonwealth of Massachusetts and shall demonstrate residency as an element of basic verification of identity. A household must demonstrate qualification as an [emergency assistance] household . . . by providing basic verification of [(1)] identity and [(2)] relationship before it can appear eligible for placement pursuant to [regulations implementing the immediate placement proviso]."

760 Code Mass. Regs. § 67.02(1)(c) (2012).

<sup>9</sup> Previously, DHCD required that each member of the group provide third-party verification of Massachusetts residency.

program.<sup>10</sup> See Garcia, 480 Mass. at 743. Ultimately, after extensive litigation, including an interlocutory appeal to this court, the parties reached a partial settlement that resolved all issues except "whether verifications of identity, familial relationship, and Massachusetts residency may be required for an applicant to be presumptively eligible for [e]mergency [a]ssistance shelter."<sup>11</sup> The parties presented that issue for resolution through cross motions for summary judgment on stipulated facts. While reserving their right to present extrinsic evidence should the judge determine it necessary to

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<sup>10</sup> The plaintiffs asserted five claims: (1) violation of St. 2016, c. 133, § 2, line item 7004-0101, by failing to immediately place families that were eligible or apparently eligible; (2) violation of St. 2016, c. 133, § 2, line item 7004-0101, by failing to place families "as close as possible" to their home communities, failing to transfer families to placements under twenty miles from their home communities "at the earliest possible date," and failing to use "best efforts" to "ensure that children can continue in school in the community in which they previously lived"; (3) violation of the Americans with Disabilities Act, as well as "related state and federal laws," by failing to provide shelter units that accommodate people with disabilities; (4) violation of Title VIII of the Civil Rights Act of 1964, 42 U.S.C. § 3604(f), as well as the Fair Housing Act and associated provisions, 42 U.S.C. §§ 3608(e)(5), 12705, 1437; and (5) violation of G. L. c. 23B, § 30, by failing to administer the emergency assistance program "in a manner that is 'fair, just and equitable.'"

<sup>11</sup> Under the partial settlement, DHCD agreed to revise its list of acceptable third-party verifications, and to help applicants gather verifications by consulting its own data systems and by attempting to contact at least two third-party resources that the applicant identifies as likely to have relevant information.

interpret the statute, the parties took the position below -- as they do here on appeal -- that the statute could be interpreted on its face without resort to extrinsic evidence of the agencies' historic practices and understanding.<sup>12</sup>

The judge concluded that the immediate placement proviso did not permit the agencies to require third-party verification of Massachusetts residency. However, the judge accepted HLC's argument that the word "families" could be read separately from the phrase "who appear to be eligible," and concluded that the agencies were permitted to require third-party verification (a) that an applicant group is a "family," (b) of its members' relationships to each other, and (c) of an applicant's identity, as part of verifying family status, except if the applicant is a pregnant woman. A declaratory judgment entered consistent with the judge's rulings, and it is from that judgment that the cross appeals before us now stem. We review a ruling on cross motions for summary judgment de novo. See Federal Nat'l Mtge. Ass'n v. Hendricks, 463 Mass. 635, 637 (2012).

Discussion. As noted at the outset, the question is whether the immediate placement proviso permits HLC to require families to provide, at the time of initial application, third-

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<sup>12</sup> We agree with the judge's conclusion that extrinsic evidence is not necessary to interpret the statutory language at issue here.



party verification of certain information to establish their eligibility for emergency assistance shelter. This is a question of statutory interpretation because, although the immediate placement proviso is located in a budgetary line item, it has the force of law. See Garcia, 480 Mass. at 740.

"[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated" (citation omitted).

Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006). "[W]here the language of a statute is plain and unambiguous, it is conclusive as to legislative intent." Hartnett v. Contributory Retirement Appeal Bd., 494 Mass. 612, 616 (2024), quoting Six Bros., Inc. v. Brookline, 493 Mass. 616, 622 (2024).

We begin with a close reading of the proviso's language, see Matter of the Estate of Mason, 493 Mass. 148, 151 (2023), which, as a matter of convenience, we repeat here:

"notwithstanding any general or special law to the contrary, [HLC] shall immediately provide shelter for up to 30 days to families who appear to be eligible for shelter based on statements provided by the family and any other information in the possession of [HLC] but who need additional time to obtain any third-party verifications reasonably required by [HLC],"

St. 2023, c. 28, § 2, line item 7004-0101.<sup>13</sup> The proviso instructs that HLC "shall immediately provide shelter," and the Legislature's use of the word "shall" reflects the imposition of a nondiscretionary, mandatory obligation. See Emma v. Massachusetts Parole Bd., 488 Mass. 449, 454 (2021) ("'shall' indicates the absence of discretion"); Hashimi v. Kalil, 388 Mass. 607, 609 (1983) ("'shall' is ordinarily interpreted as having a mandatory or imperative obligation"). By joining the word "shall" with the word "immediately," the Legislature coupled the mandatory nature of the obligation to its temporal execution; the obligation to provide emergency assistance shelter is to be carried out without delay. See Webster's Third New International Dictionary 1129 (2002) ("immediately" means "without interval of time" or "without delay").

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<sup>13</sup> The introductory clause of the proviso establishes the relationship between the proviso and other laws, and makes clear that, in the event of conflict, the provisions of the proviso are to prevail. See Mathewson v. Contributory Retirement Appeal Bd., 335 Mass. 610, 614 (1957) ("The words, 'Notwithstanding the provisions of any general or special law to the contrary,' announce that an indefinite number of unidentified statutory provisions, if inconsistent, are repealed to the extent necessary to make [the statute] effective"). As neither party contends that the immediate placement proviso conflicts with any other law, we need not, and do not, consider the matter.

The next phrase of the proviso identifies which families are entitled to immediate emergency assistance shelter.<sup>14</sup> In making this identification, the Legislature eschewed language of definitive certainty. Instead, families need only "appear" to be eligible for shelter, and the phrase "families who appear to be eligible" describes families that seem -- but may not actually be -- eligible to participate in the emergency housing program. See Merriam-Webster's Collegiate Dictionary 60 (11th ed. 2020) ("appear" means "to have an outward aspect" or "seem"); Webster's Third New International Dictionary 103 (2002) ("appear" means "to be taken as: look, seem").

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<sup>14</sup> The parties agree that "family" usually means "household," see Merriam-Webster's Collegiate Dictionary 452 (11th ed. 2020) ("family" is "a group of individuals living under one roof" or "household"); see also Webster's Third New International Dictionary 821 (2002) (same), and that the term as used in the immediate placement proviso encompasses pregnant women without children, see G. L. c. 23B, § 30. HLC contends, however, that "families" as used in the immediate placement proviso does not carry its common meaning of "household." Rather, HLC argues, the Legislature used "families" as shorthand for the population that is the subject of the enabling statute, G. L. c. 23B, § 30, and is therefore limited to "families with children and pregnant wom[e]n with no other children." G. L. c. 23B, § 30. We disagree. Where a statute contains some definitions but does not define the word at issue, "[i]t is particularly appropriate . . . to interpret the word according to its common usage." Commonwealth v. Palmer, 464 Mass. 773, 778 n.6 (2013). Here, neither the budget line item nor the enabling statute defines the term "families," despite that the statute defines other terms. See G. L. c. 23B, § 30. We therefore afford "families" its common meaning: "household." See Commonwealth v. Zucchini, 493 Mass. 747, 749 n.6 (2024) ("words in a statute are presumed to mean what they say").

A family's appearance of eligibility is to be "based on statements provided by the family and any other information in the possession of [HLC]." St. 2023, c. 28, § 2, line item 7004-0101. The immediate placement proviso says nothing about using or requiring third-party verification to establish a family's appearance of eligibility, and that omission is presumed to be deliberate because "the expression of one thing in a statute is an implied exclusion of other things not included in the statute." Skawski v. Greenfield Investors Prop. Dev. LLC, 473 Mass. 580, 588 (2016), quoting Bank of Am., N.A. v. Rosa, 466 Mass. 613, 619 (2013). This presumption is entirely consistent with the proviso's final phrase, which acknowledges that families applying for emergency assistance shelter may "need additional time to obtain . . . third-party verifications" of eligibility criteria. See St. 2023, c. 28, § 2, line item 7004-0101.

Our close reading of the plain language of the immediate placement proviso leads us to conclude that the Legislature did not intend to require that families provide third-party verification of eligibility at the time of initial application for emergency assistance shelter. Instead, the plain language imposes a mandatory obligation to provide short-term, temporary shelter without delay to families who appear -- but may not

actually be -- eligible, based solely on their own statements and on information in HLC's possession.

Although we need not look beyond the plain language of the immediate placement proviso, we note that our construction of the statutory language is consistent with the beneficial purpose of the statutory scheme administering the emergency assistance program. See Commonwealth v. Millican, 449 Mass. 298, 305 (2007), quoting Sterilite Corp. v. Continental Cas. Co., 397 Mass. 837, 839 (1986) ("Although we have concluded that the words of the statute are not ambiguous, 'we should not accept the literal meaning of the words of a statute without regard for that statute's purpose and history'"). The emergency assistance program attempts to address the various needs for shelter that may be caused when families find themselves in dire circumstances whether because of, for example, domestic violence, natural disaster, fire, or other unexpected catastrophic events. See G. L. c. 23B, § 30 (program provides "for the prevention of homelessness, temporary shelter as necessary to alleviate homelessness when [a] family has no feasible alternative housing available"). Our interpretation of the immediate placement proviso avoids erecting barriers to effectuating the Legislature's intent to prevent homelessness and to provide emergency, short-term, temporary shelter as necessary. See id. To read the immediate placement proviso

otherwise would require families to produce forms of verification they may not have available to them at a time of crisis and would run counter to the statutory scheme's beneficial purpose to provide immediate short-term, temporary shelter to those in need.

HLC argues that the word "families," by virtue of its placement at the outset of the proviso, should be read independently from the dependent adjectival clause that comes after it. It follows, according to HLC, that an applicant group must establish as a threshold matter that it is a family, and that third-party verification of its family status can be required. Ordinary principles of grammar defeat this argument. See Commonwealth v. LeBlanc, 475 Mass. 820, 822 (2016), citing Rowley v. Massachusetts Elec. Co., 438 Mass. 798, 802 (2003) (court applies "standard rules of grammar when interpreting statutory language"). The word "families" does not stand alone, but rather is followed immediately without separation by a restrictive dependent adjectival clause. See Clark v. Beverly Health & Rehabilitation Servs., Inc., 440 Mass. 270, 274 (2003) (clause beginning with "who" is "a clause that modifies the" preceding nouns). A dependent adjectival clause that follows a noun modifies that noun, and the absence of a comma between the noun ("families") and the dependent clause ("who appear to be eligible") makes the subsequent clause essential to defining the

preceding noun. See The Chicago Manual of Style §§ 5.225, 6.27, at 296, 376 (17th ed. 2017).<sup>15</sup>

Finally, we acknowledge the competing policy arguments advanced by both sides. On the one hand, HLC points to the safety concerns of bringing adults and children into close proximity in congregate shelters, and argues that requiring third-party verification of identity and family relationship before providing shelter helps to alleviate those concerns. On the other hand, the plaintiffs argue that requiring a form of verification that people in crisis may well not possess when they initially seek short-term, temporary shelter deprives them of the protection the Legislature intended them to receive when they were at their most vulnerable. Both sets of policy concerns have sound reasons to recommend them. However, it is not our task to choose between them because the plain language of the immediate placement proviso is unambiguous and is

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<sup>15</sup> We are also unpersuaded by HLC's argument that the Legislature's inaction in the face of the agencies' position and practice since 2012 of requiring certain third-party verifications at the time of intake can be construed as acquiescence to HLC's interpretation of the immediate placement proviso. Where, as here, a statute's plain language is unambiguous, there is no reason to infer approval of HLC's interpretation from Legislative inaction, nor do we defer to HLC's interpretation. See Sutton v. Jordan's Furniture, Inc., 493 Mass. 728, 739 (2024), quoting Sullivan v. Sleepy's LLC, 482 Mass. 227, 232 n.11 (2019) ("no deference is given to an agency's interpretation of a statute if it is 'contrary to plain language of the statute and its underlying purpose'").

accordingly determinative of the Legislature's intent. See Boston Hous. Auth. v. National Conference of Firemen & Oilers, Local 3, 458 Mass. 155, 164 (2010), superseded by statute on other grounds ("policy benefits . . . cannot trump the intent of the Legislature, as unambiguously expressed in [a statute]").

Conclusion. Under the plain meaning of the immediate placement proviso, HLC cannot require families seeking emergency assistance shelter placement to provide third-party verifications at the time of initial application. We accordingly reverse the judgment of the Superior Court insofar as it allows HLC to require third-party verifications before providing shelter under the immediate placement proviso. The judgment is otherwise affirmed.

So ordered.