



Office of Temporary and Disability Assistance

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Administrative Directive

Section 1

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| Transmittal: | 19-ADM-01 |
| To: | Social Services District Commissioners |
| Issuing Division/Office: | Employment and Income Support Programs |
| Date: | January 9, 2019 |
| Subject: | Changes to Conciliation and Sanction Procedures for Noncompliance with Temporary Assistance Employment Requirements in New York City |
| Suggested Distribution: | Employment Coordinators Temporary Assistance Directors SNAP Directors WMS Coordinators |
| Contact Person(s): | OTDA Employment Services Advisor or Employment and Advancement Services Policy Bureau at: (518) 486-6106 |
| Attachments: | |
| Attachment Available Online: | <input type="checkbox"/> |

Filing References

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|-------------------------------------|--------------------|--|-----------------------------------|---|---------------------------------|
| 09-ADM-14 09-ADM-20 14-ADM-06 | | 385.2 385.3 385.6 385.7 385.11 385.12 | Section 341-a Section 342-a | TA and SNAP Employment Policy Manual Sections 385.2, 385.3, 385.6, 385.7, 385.11 and 385.12 | Chapter 562 of the Laws of 2015 |

Section 2

I. Summary

This Administrative Directive (ADM) is to inform social services districts (districts) of changes to the Temporary Assistance (TA) conciliation and sanction procedures in New York City (NYC) resulting from amendments to the Social Services Law (SSL) made by Chapter 562 of the Laws of 2015. Chapter 562 of the Laws of 2015 amended the SSL to add sections 341-a and 342-a to establish re-engagement/conciliation and sanction procedures for NYC, including changes to the TA sanction periods when a TA applicant or recipient in NYC refuses or fails to comply with a TA work requirement.

These changes do not change the existing TA conciliation or sanction procedures that apply in districts outside of NYC as set forth in sections 341 and 342 of the SSL.

II. Purpose

The purpose of this ADM is to provide instruction to the NYC Human Resources Administration (HRA) on the TA re-engagement/conciliation and sanction procedures required by sections 341-a and 342-a of the SSL. The changes outlined in this ADM do not apply to the conciliation or sanction procedures in districts outside of NYC. HRA must implement these changes effective January 15, 2019.

III. Background

Districts must engage all non-exempt adult TA recipients in work activities as soon as practical. Districts are also required to complete an employment assessment on **all** adult TA recipients in households with dependent children consistent with 18 NYCRR §385.6 and non-exempt adult TA recipients in households without dependent children consistent with 18 NYCRR §385.7.

Districts are required to offer conciliation when a TA applicant or recipient fails to comply with TA and/or SNAP work requirements (other than applicant assessment, applicant job search and applicant voluntary job quit/reduction in earning capacity) assigned by the district. The TA conciliation and sanction procedures in NYC must be changed to be consistent with SSL § 341-a and 342-a as described below.

IV. Program Implications

The amendments to the SSL made by Chapter 562 of the Laws of 2015 require HRA to implement changes to the TA conciliation and sanction procedures that are used when a TA applicant or recipient refuses or fails to comply with a work requirement assigned by HRA. These revised procedures must include a review of an individual's case before issuing a re-engagement/conciliation notice; use of a new re-engagement/conciliation notice (LDSS-5087 NYC) consistent with the requirements of SSL §341-a; support of an individual's ability to continue participation in work activities during the re-engagement/conciliation process; and modification to the TA sanction progression for **all** TA households to eliminate durational sanction periods. All TA employment sanctions that are imposed when a TA applicant or recipient willfully and without good cause refuses or fails to comply with a mandatory appointment or work activity assigned by HRA are non-durational and will continue until the individual demonstrates compliance with work requirements as described below or documents that he/she is exempt from TA work requirements consistent with 18 NYCRR § 385.2.

The statutory amendments do not change the SNAP conciliation or sanction procedures that are outlined in policy directive ([14 ADM-06](#)) and Office regulations (18 NYCRR § 385.11 and 385.12).

V. Required Action

HRA must offer re-engagement/conciliation when a TA applicant or recipient fails to comply with TA and/or SNAP work requirements (other than applicant assessment, applicant job search and applicant voluntary job quit/reduction in earning capacity) assigned by HRA. TA sanctions must be imposed in those instances where an individual willfully and without good cause refuses or fails to comply, and fails to satisfactorily demonstrate compliance with his/her work activity as assigned by HRA to avoid the TA sanction.

Re-engagement/Conciliation Procedures:

The re-engagement/conciliation process in NYC must include the following:

Case Record Review: A review of the case record must be completed before HRA may issue a re-engagement/conciliation notice. If HRA determines, based on the information available at the time of the case review, that the individual had good cause, was exempt at the time of the noncompliance (other than failure to comply with the completion of an employment assessment) or that any necessary supportive service or accommodation for a disability was not available at the time of noncompliance, the re-engagement/conciliation process must be terminated, no re-engagement/conciliation notice should be sent, and the sanction process should be ended. If non-exempt, HRA should provide the necessary supportive service or accommodation and re-engage the individual in work activities consistent with the individual's employment assessment and any documented work limitations. If the individual was exempt from work requirements, HRA should determine the individual's current exempt/non-exempt status and if still exempt determine if engagement in any treatment, medical care or rehabilitation is appropriate.

Issuance of Re-engagement/Conciliation Notice: If HRA determines, based on the information available at the time of the case review, that the individual was not exempt, and that any necessary supportive services (e.g., childcare, transportation and accommodations for a disability) were available at the time of noncompliance, the re-engagement/conciliation notice must be issued by HRA to inform the individual of the opportunity to avoid a TA sanction and a pro-rata reduction or discontinuance in TA benefits by demonstrating compliance with the assigned work activity, by documenting that he/she is exempt from work activities, or by showing good cause for the failure to comply.

The re-engagement/conciliation notice must:

- Identify the specific act or acts of noncompliance (failure or refusal to comply or participate) that has/have taken place;
- inform the individual of the right to avoid the pro-rata reduction in TA benefits through re-engagement (demonstrating compliance with assigned work requirements, by documenting an exemption consistent with 18 NYCRR §385.2 or by otherwise demonstrating that the noncompliance was not willful or with good cause);
- indicate that HRA has reviewed the case record and based on the information available determined that the individual is not exempt from work requirements and that the necessary supportive services and accommodations for a disability were available at the time of the noncompliance;
- explain what would constitute good cause and provide examples of acceptable forms of documentation that may be provided to HRA to warrant an exemption or excused absence, (e.g., medical note, letter from the court, etc.); and,
- indicate that the individual has 10 calendar days to appear at the conciliation appointment to explain why he/she did not participate in the assigned work requirement.

For individuals who participate in the conciliation appointment HRA must evaluate good cause and whether the noncompliance was willful. The individual is responsible for notifying HRA of the reasons for refusing or failing to comply with a work requirement and for providing documentation to support any claim of good cause, or exemption from work requirements. Since the determination of good cause may be based upon the credible explanation provided by

the client, with or without supporting documentation, good cause may be granted without documentation in some circumstances and should be noted in the case record.

There shall be no finding of willful and without good cause based on the refusal or failure to comply with a single appointment or work requirement if the individual is otherwise participating in work activities as assigned by HRA. If it is determined that the individual did not have good cause and that his/her actions to not comply with work requirements were willful, HRA must inform the individual of the ability to avoid the TA sanction by demonstrating compliance with an assigned work activity for a minimum of five business days but no more than 10 business days. Demonstrating compliance means that the individual engages in the assigned work activity and fully participates as assigned by HRA for at least five business days. If the individual indicates an agreement to comply, HRA must immediately re-engage the individual in work activities. Engagement in the assigned work activity for five business days, as assigned by HRA, will demonstrate that the individual is willing to comply with TA and SNAP work requirements and permit the individual to avoid a work-related sanction. If the individual participates as assigned for at least five business days, no sanction should be imposed.

Note: Individuals should not be terminated from a work activity during the re-engagement/conciliation process, unless HRA determines that the work activity is no longer consistent with the individual's employment assessment or any documented work limitations, or the activity is no longer available. This will help ensure that an individual has the ability to immediately re-engage during the re-engagement/conciliation process.

For individuals who do not respond to the re-engagement/conciliation notice within the 10-day time limit, HRA must determine, based on the information available to the district, whether the alleged refusal or failure to comply was willful and without good cause without the individual's input. If the individual is otherwise participating in work activities as assigned by HRA, there shall be no finding of willfulness without good cause based on a single missed appointment or infraction.

The re-engagement/conciliation process for the specific act of noncompliance cited in the re-engagement/conciliation notice must end once HRA confirms that the individual demonstrated compliance by appearing at the assigned work activity and participating for a minimum of five business days. The individual would thereafter be expected to continue to participate as assigned. Any subsequent act of noncompliance with assigned work requirements would be considered a separate instance of noncompliance and must be addressed through a separate re-engagement/conciliation and sanction process. TA applicants and recipients who do not respond to the re-engagement/conciliation notice, refuse or do not demonstrate compliance as assigned by HRA for a minimum of five business days may be subject to a non-durational TA and/or a durational SNAP sanction.

NYC TA Sanction Procedures

TA employment sanctions in NYC were temporarily suspended effective December 22, 2015 pending the required time to develop and implement the procedural, notice and system changes to the TA conciliation and sanction procedures in NYC as required by sections 341-a and 342-a of the SSL. The temporary suspension of TA employment sanctions will end on January 15, 2019. The new TA sanction process shall be implemented prospectively.

HRA must implement the amended re-engagement/conciliation and sanction procedures effective January 15, 2019. Individuals that are not participating in required work activities at that time should be re-engaged in activities consistent with HRA procedures. TA applicants and recipients who do not comply with assigned work requirements as of January 15, 2019 will be subject to the re-engagement/conciliation and sanction procedures outlined in this ADM.

TA applicants and recipients who do not respond to the re-engagement/conciliation notice, refuse or do not demonstrate compliance as assigned by HRA for a minimum of five business days may be subject to a non-durational TA and/or durational SNAP sanction in those instances where the worker determines that the individual willfully and without good cause refused or failed to comply with an assigned work requirement.

Sanction Periods for TA Employment Sanctions

The changes made in Chapter 562 of the Laws of 2015 eliminated durational sanction periods for all TA employment sanctions in NYC imposed consistent with section 342-a of the SSL. A timely and adequate notice of intent to inform the household of the TA employment sanction and pro-rata reduction or discontinuance in TA benefits must be issued consistent with the notice requirements described in SSL §342-a. HRA should continue to use the Client Notices System (CNS) to issue the notice of intent to impose a TA employment sanction. The TA employment sanction language generated through CNS has been modified consistent the requirements of SSL §342-a.

Demonstrating Compliance with TA Work Requirements

TA applicants and recipients in NYC who are sanctioned for noncompliance with assigned work requirements may end the TA sanction by demonstrating compliance by participating in an assigned work activity for a minimum of five business days. Demonstrating compliance means that the individual engages in the assigned work activity and fully participates as assigned by HRA for a minimum of five business days. An individual's TA (and SNAP) employment sanction will also end if the individual is determined by HRA to be exempt from work requirements consistent with 18 NYCRR §385.2 for TA and 18 NYCRR §385.3 for SNAP. With respect to SNAP benefits, a SNAP recipient, who was also sanctioned for noncompliance with SNAP work requirements, must serve the balance of the SNAP durational sanction period and demonstrate compliance with work requirements unless the individual documents that he/she is exempt from SNAP work requirements and is otherwise eligible for SNAP benefits.

Note: Individuals must be otherwise eligible for TA benefits and must comply with all other program requirements. In those instances where the TA sanction results in closure of the Safety Net Assistance case, if the client does not demonstrate full compliance until after the 30-day period following case closure, then, pursuant to 18 NYCRR 350.4(a), a new application must be filed and the individual must serve the 45-day wait before he/she is eligible for benefits. If, however, the client demonstrates full compliance within the 30 days following case closure, a new application is not required and benefits must be restored without the imposition of a new 45 day waiting period. In instances where a new application is not required, 18 NYCRR 351.8(b) and (c) are not applicable.

Under existing policy, as described in [09-ADM-20](#), once a sanctioned individual has demonstrated compliance, TA benefits should be restored retroactive to the date the individual indicated a willingness to comply (but no earlier than the expiration of the minimum duration period). Absent minimum TA sanction periods in NYC, the individual's benefits would be restored back to the date he/she indicated the willingness to comply.

Option to End TA Sanction Notice

SSL §342-a also requires that an "option to end sanction" notice is issued to all TA case types in sanction status for 30 or more days. This notice reminds a household in NYC that a sanctioned individual may immediately end his/her TA employment sanction through compliance or by documenting that he/she has become exempt from TA work requirements.

VI. Systems Implications

WMS Reason Codes

HRA should continue to enter the most appropriate WMS reason code when imposing a TA employment sanction. Even though all TA employment sanctions in NYC are now non-durational, it is important to continue to accurately report an individual's sanction progression. The following WMS reason codes are valid for imposing a TA employment sanction, depending on the type of infraction, size of the TA household and the number of times an individual has been sanctioned for noncompliance with TA work requirements.

TA Household = 1

| TA Employment Sanction Only-Failure to comply with an Assigned Work Requirement (No SNAP sanction imposed) | |
|--|---|
| WX1 | First sanction for noncompliance with TA work requirements. |
| WX2 | Second sanction for noncompliance with TA work requirements. |
| WX3 | Third and any subsequent sanction for noncompliance with TA work requirements. |
| N41 | Recipient Voluntary Quit (First Sanction) |
| N42 | Recipient Voluntary Quit (Second Sanction) |
| N43 | Recipient Voluntary Quit (Third and any subsequent sanction for recipient voluntary quit) |

| TA Employment Sanction (SNAP sanction concurrently imposed) | |
|---|---|
| WX4 | First sanction for noncompliance with TA work requirements. |
| WX5 | Second sanction for noncompliance with TA work requirements. |
| WX6 | Third and any subsequent sanction for noncompliance with TA work requirements. |
| N45 | Recipient Voluntary Quit (First Sanction) |
| N46 | Recipient Voluntary Quit (Second Sanction) |
| N47 | Recipient Voluntary Quit (Third and any subsequent sanction for recipient voluntary quit) |

TA Household >1

| TA Employment Sanction Only-Failure to Comply with an Assigned Work Requirement | |
|---|---|
| WE1 | First sanction for noncompliance with TA work requirements. |
| WE2 | Second sanction for noncompliance with TA work requirements. |
| WE3 | Third and any subsequent sanction for noncompliance with TA work requirements. |
| N41 | Recipient Voluntary Quit (First Sanction) |
| N42 | Recipient Voluntary Quit (Second Sanction) |
| N43 | Recipient Voluntary Quit (Third and any subsequent sanction for recipient voluntary quit) |

Note: SNAP sanctions are imposed on WMS using a SNAP reason code based on the number of times an individual has been sanctioned for noncompliance with SNAP work requirements excluding any SNAP sanctions initiated between August 3, 2009 and December 14, 2012 (see [14 ADM-06](#) for additional information).

Revised Conciliation Notice

The Office of Temporary and Disability Assistance (OTDA) has developed a re-engagement/conciliation notice ([LDSS-5087 NYC](#)) for use in NYC consistent with the requirements outlined in SSL §341-a. An electronic version of the re-engagement/conciliation notice has been provided to HRA.

Revised Notice of Intent

The TA employment sanction language that is generated through CNS has been modified consistent with the requirements outlined in SSL §342-a. HRA must ensure that any local form notice is consistent with sanction language issued through CNS.

Revised Option to End Sanction Notice

The Option to End Sanction Notice for NYC has been modified consistent with the requirements outlined in SSL §342-a. OTDA will issue the Option to End Sanction Notice to all households in NYC that include an individual in TA sanction status for at least 30 days. The notice will be sent to the case address that is maintained on WMS and will remind the household of the opportunity for the sanctioned individual to immediately end his/her TA sanction by demonstrating compliance with TA work requirements as described in this ADM.

VII. Effective Date

HRA must implement changes to the conciliation and sanction procedures as outlined in this ADM no later than January 15, 2019.

Issued By

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