

Office of Administrative Hearings (OAH) Procedures Transmittal	Transmittal 15-02
Distribution:	Date: December 7, 2015
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Rest of State Hearing Officers <input checked="" type="checkbox"/>	Subject: Instructions Regarding 15 ADM-06T
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On September 15, 2015, the Office of Temporary and Disability Assistance issued an Administrative Directive (ADM), [15 ADM-06](#), clarifying rules on when a household is considered homeless and without available alternative housing. On November 4, 2015, the Office of Temporary and Disability Assistance issued 15 ADM-06T, which delayed implementation of 15 ADM-06 between November 4, 2015, and December 15, 2015. For purposes of this transmittal, 15 ADM-06 will be used for both versions of the ADM.

[15 ADM-06](#) replaces 96 ADM-20 and 05 ADM-7, and clarifies parts of [94 ADM-20](#).

[94 ADM-20](#) held that a statement by those seeking temporary housing assistance from the district needed more evidence to obtain assistance than a primary tenant stating, “this person cannot live here,” or words to that effect.

Under [15 ADM-06](#), the following standards and processes will be in effect:

To show that housing is unavailable, the burden is on the applicant for temporary housing assistance to claim that housing is not available. Appellants can support such a claim with verbal statements, written evidence, and/or statements from a non-legally responsible primary tenant who does not want the appellant residing with the tenant. While a statement by an appellant that a housing resource is unavailable would not be conclusive, if the statement is found credible and the district produces no contrary evidence, the appellant’s burden can be met.

A non-legally responsible primary tenant may provide an explanation as to why the non-legally responsible primary tenant does not want the appellant residing with the non-legally responsible primary tenant but it is not necessary and Hearing Officers should not inquire into this *sua sponte*.

Once the appellant claims that housing is not available, the burden shifts to the district to show it conducted an investigation into housing availability for the appellant, and that housing is actually available. Often, an investigation includes interviews with prior primary tenants with whom the appellants resided. The absence of such an investigation can be construed as evidence to be considered in conjunction with the appellants’ statements or submitted evidence about housing unavailability. The fair hearing decision must consider and discuss any information provided in the evidence submitted by the district and the appellant. The Hearing Officer must consider the district’s investigation as evidence and give it appropriate weight. When the appellant fails to state any claim that housing is unavailable, the Office of Administrative Hearings may find housing is available depending on the facts elicited during the hearing. When appropriate, the

fact the district did not conduct its investigation can be the additional piece of evidence needed along with the appellant's statement or other facts regarding unavailability allowing the Office of Administrative Hearings to find housing is unavailable for the appellant.

When a primary tenant states housing is available and the appellant is welcome to reside with the primary tenant, housing is generally considered available. However, overcrowding and other reasons are still a basis for the Office of Administrative Hearings to find housing unavailable in accordance with 94 ADM-20.

In sum, a statement of unavailability, without further evidence, is not sufficient to establish the unavailability of a housing resource. Districts must investigate the claim. A housing resource should not be considered available if it is found, after the investigation, that the primary tenant, who is not a legally responsible relative of the applicant, declines or is unable to allow the applicant to return to the residence.

Possible sentences to include in decisions reflecting the policy clarifications presented in 15 ADM-06 are:

The Agency's evidence, including its investigation and interview with the Primary Tenant of the Recommended Housing Option, supports the Appellant's contention that the Recommended Housing Option is unavailable to the Appellant.

or

The Agency's evidence, including its investigation and interview with the Primary Tenant of the Recommended Housing Option, fails to rebut the Appellant's credible contention that the Recommended Housing Option is unavailable to the Appellant.

or

The Appellant failed to show the Recommended Housing Option was unavailable. Accordingly, the Recommended Housing Option is available and the Appellant is not eligible for temporary housing assistance.

or

Although the Appellant expressed credible evidence that the Recommended Housing Option was unavailable, the Agency's investigation was complete and identified Recommended Housing Options. The Appellant failed to successfully rebut the Agency's investigative finding. Accordingly, Recommended Housing Options are available and the Appellant is not eligible for temporary housing assistance.

If you have any questions regarding this transmittal, please contact James Ryan, III at (518) 486.5479 or via e-mail at James.RyanIII@otda.ny.gov.



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