

<b>Office of Administrative Hearings (OAH) Procedures Transmittal</b>		<b>Transmittal:</b> 16-11
<b>Distribution:</b>		<b>Date:</b> November 7, 2016
<b>Albany OAH Staff</b> <input checked="" type="checkbox"/>	<b>Rest of State Hearing Officers</b> <input checked="" type="checkbox"/>	<b>Page:</b> 1 of 3
	<b>Supervising Hearing Officers</b> <input checked="" type="checkbox"/>	<b>Subject:</b>  Instructions Regarding 16 ADM-11
<b>NYC OAH Staff</b> <input checked="" type="checkbox"/>	<b>NYC Hearing Officers</b> <input checked="" type="checkbox"/>	
	<b>Supervising Hearing Officers</b> <input checked="" type="checkbox"/>	
<b>Rest of State Social Service Districts</b> <input checked="" type="checkbox"/>		
<b>NYC Agencies</b> <input checked="" type="checkbox"/>		

The Office of Temporary and Disability Assistance issued an Administrative Directive (ADM), 16 ADM-11, effective Monday, November 7, 2016, clarifying rules on when a household is considered homeless and without available housing.

16 ADM-11 replaces [15 ADM-06](#) and 15 ADM-06T and clarifies parts of [94 ADM-20](#).

Under 16 ADM-11, the following standards and processes will be in effect:

Upon application for temporary housing, the Agency must conduct an assessment prior to determining eligibility and then determine if the applicant has an available housing resource. If the applicant has an available housing resource, he or she may not be eligible to receive temporary housing assistance. This resource must be actually available to make the applicant ineligible.

“Assessment is the evaluation of an individual's or family's housing and housing-related temporary assistance and care needs including, but not limited to, the availability of housing, the need for THA [Temporary Housing Assistance], employment and educational needs; the need for protective services for adults, child preventive services or children, the ability to live independently, and, the need for treatment of physical and mental health impairments, including substance abuse.” The Agency cannot determine eligibility without conducting an assessment.

When determining whether a housing resource is available or unavailable, Hearing Officers should fully develop the record and use the following as a guide:

“A housing resource is defined as available when it is within the control or ability of the applicant/re-applicant to live at the residence or when the applicant has permission from the owner, tenant, landlord or other party responsible for the resident to live there. Applicants for temporary housing assistance claiming they do not have control or permission must support those claims with clear, convincing and credible evidence.” “The fact that a client has resided in a location/with a friend, family, etc. in the past does not necessarily mean that it is currently an available housing resource.”

“Refusal by a primary tenant or leaseholder to seek permission where clear, convincing and credible evidence exists that such permission [for the applicant/re-applicant to reside with the primary tenant] would be granted does not make the housing resource unavailable.” The refusal to seek permission does not make it available. The Hearing Officer must evaluate the evidence and decide whether the housing is actually available.

“[A] housing resource should not be considered available if after an investigation it is found that the primary tenant, who is not a legally responsible relative of the applicant provides a reasonable justification to decline to allow the applicant to return to the residence.”

A reasonable justification to decline allowing the applicant to return to the residence makes the housing option unavailable. An unreasonable justification or a lack of justification does not make the housing option available. Deciding whether the housing resource is available rests on whether availability is, “within the control or ability of the applicant/re-applicant to live at the residence or when the applicant has permission from the owner, tenant, landlord or other party responsible for the resident to live there.”

A “reasonable justification shall be determined on a totality of factors which may include the relationship of the primary tenant to the applicant, the length of stay of the applicant at the residence, the reason for the primary tenant declining permission to return to the residence, and any potential hardships in permitting the applicant to return to the residence.”

While a statement by an appellant that a housing resource is unavailable would not be conclusive, if the statement is found credible, the appellant’s burden can be met. Appellants can support a claim of unavailability with verbal statements, written evidence, and/or statements from a primary tenant. An uncontroverted hearsay statement is enough for the appellant to evidence a housing option is not available. Once the appellant evidences the housing option is not available, the Agency may present evidence that the housing option is available. The Agency may be required to do additional investigation.

An investigation often 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 Agency and the appellant. The Hearing Officer must consider the Agency’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 a primary tenant states housing is available and the appellant is welcome to reside with the primary tenant, housing is generally considered available absent overcrowding and other reasons to find housing unavailable in accordance with 94 ADM-20.

Possible sentences to include in decisions reflecting the policy clarifications presented in 16 ADM-11 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 rebut the Agency's investigative finding successfully. 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](mailto:James.RyanIII@otda.ny.gov).

A handwritten signature in black ink, appearing to read "Samuel L. Spitzberg". The signature is fluid and cursive, with the first name "Samuel" and last name "Spitzberg" clearly legible.

Samuel L. Spitzberg, Director,  
Office of Administrative Hearings