Administrative Directive

Section 1

Transmittal:	15-ADM-06
To:	Local District Commissioners
Issuing Division/Office:	Center for Employment and Economic Supports (CEES)
Date:	September 15, 2015
Subject:	Temporary Housing Assistance: Consolidation and Clarification of Policy
Suggested Distribution:	Temporary Assistance Staff Housing Staff Staff Development Coordinators Directors of Services Agency Attorneys Fair Hearing Staff Employment Coordinators
Contact Person(s):	Temporary Assistance Bureau at (518) 474-9344 Bureau of Shelter Services at (518) 486-7738 Welfare To Work Technical Advisors at (518) 486-6106 Medicaid Contacts: Local District Liaison Upstate (518) 474-8887; New York City Liaison (212) 417-4500
Attachments:	Attachment A – Service and Bi-Weekly Plan/Independent Living Plan For Families Attachment B – Tier II Family Shelters and Temporary Housing Service and Bi- Weekly Plan/Independent Living Plan For Families Instruction Sheet C51 Attachment C – Budget Examples
Attachment Available Online:	☒

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05 ADM-3 02 ADM-2 97 ADM-23 96 ADM-20 94 ADM-20 94 ADM-11 90 ADM-9 89 ADM-2	96 ADM-20 05 ADM-7	18 NYCRR 350.4 352.30 352.35 372.4 18 NYCRR Part 491 Part 900	SSL 131 SSL 131-a SSL 131-u SSL 131-v SSL 133 Title 9-B	TASB Chapter 27, Sections B, D and E.	

88 ADM-50 88 ADM-4 86 ADM-37 86 ADM-23 86 ADM-7 03 INF-10 02 INF-42 02 INF-27 01 INF-12		18 NYCRR 385.2, 385.4, 385.6, 385.7, 385.9 385.12			

Section 2

I. Summary

This Administrative Directive replaces 96 ADM-20 and 05 ADM-7, and updates parts of 94 ADM-20. The impetus for this revised directive is the need to clarify temporary housing assistance policy including when a referral to services must be made and the effect of such a referral on other required social services district (SSD) case actions. For the purposes of this release, "services" include protective services for adults, protective services for children and preventive services for children. Certain clarifications also are made concerning mental and physical impairments, available housing resources, use of the Independent Living Plan (ILP) and application of income to the cost of the shelter.

II. Purpose

The purpose of this directive is to advise SSDs of changes and clarifications to the requirements found in 96 ADM-20, 05 ADM-7 and parts of 94 ADM-20. This release:

- clarifies that mental and physical health assessments must be conducted and if indicated, a referral to a qualified professional must be made for an evaluation of mental and or physical impairment. The effect of mental/physical impairment(s) on the ability of an individual/family to comply with an ILP must be considered in the development of the ILP;

- clarifies the use of the ILP as a case management tool, and the necessity to tailor the plan to the individual needs of the individual/family to promote self-sufficiency;

- provides guidance on reapplication procedures for individuals and families who have been denied THA within 30 days of their current application; and

- provides instruction concerning how to determine the availability of a housing resource;

  - ✓ clarifies the effect of various sanctions on an individual's or family's eligibility for temporary housing assistance (THA);
  - ✓ clarifies when a referral for services must be made and the effect of that referral on an individual's or family's eligibility for THA;
  - ✓ conforms the release to the requirements found in 18 NYCRR 352.35;
  - ✓ describes the eligibility requirements with which a homeless individual or family must comply in order to receive THA;
  - ✓ clarifies that individuals or families directed to pay a portion of their income or resources for the cost of temporary housing will, if they fail to do so, be ineligible for THA;
  - ✓ clarifies that the type of sanction imposed will determine whether or not the family can continue to reside in the THA unit and,
  - ✓ clarifies the requirement that prior to denying or discontinuing THA, the SSD must evaluate the need for protective services for adults, preventive services for children and/or protective services for children and, if necessary, make a referral; and clarifies

that when indicated, appropriate mental and physical health evaluations must be considered.

III. Background

94 ADM-20 “Preventing Homelessness and Providing Assistance to Homeless Persons,” repealed 83 ADM-7 Emergency Housing for Homeless Persons. It provides guidance on programs and assistance to prevent homelessness; the provision of temporary housing assistance (THA) for the homeless; responsibilities of homeless persons and additional issues, including fair hearing rights; referrals to protective services for adults; family and children’s services and employment issues of the homeless. Sections of the ADM were revised in Dec. 1996, to make it consistent with the implementation of 18 NYCRR 352.35 and 96 ADM-20.

96 ADM-20 “Responsibilities of Homeless Individuals and Families,” was issued to implement 18 NYCRR 352.35 and to address the concern of limited temporary housing resources being used by individuals and families who refuse or fail to take appropriate action that would enable them to move toward acquiring permanent, temporary or other appropriate housing. Additional information and direction was provided in 02 ADM-2 “Meeting the Emergency/Immediate Needs of Temporary Assistance Applicants/Recipients,” and in 05 ADM-07 “Review of Reapplications for Temporary Housing Assistance”. Since the release of 96 ADM-20, federal and State welfare reform statutes were enacted, regulations amended and issues requiring modification and clarification raised. **This release cancels 96 ADM-20 and 05 ADM-7, and supersedes parts of 94 ADM-20**.

IV. Program Implications

If information in this directive conflicts with any information provided in previous transmittals of OTDA, this directive supersedes such other information. Temporary housing assistance will be provided only to persons who do not have other available resources, and who meet and comply with the requirements set forth in this directive.

As a condition of eligibility for THA, individuals and families must comply with the requirements of 18 NYCRR 352.35 as stated in this directive. The SSD must provide, deny or discontinue THA in accordance with this directive.

V. Required Action

A. DEFINITIONS

ASSESSMENT

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; employment and educational needs; the need for protective services for adults, child preventive services or child protective services; the ability to live independently; and the need for treatment of physical and mental health impairments, including substance abuse.

AVAILABLE HOUSING RESOURCE

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 the applicant has permission from the owner,

tenant, landlord or other party responsible for the resident to live there. A housing resource may not be considered available if it requires a primary tenant or leaseholder to seek permission from a lessor for the residency of the applicant, and the primary tenant refuses to seek such permission.

INDEPENDENT LIVING PLAN (ILP)

The ILP is a tailored, **individualized** plan developed and/or revised by an SSD and/or its designee, with the cooperation of the individual or family, which sets forth a specific strategy for meeting such individual's or family's housing-related temporary assistance and care needs as identified in the assessment, and for obtaining housing other than temporary housing. Additionally, it establishes such individual's or family's responsibilities during receipt of THA, and specifies the conditions upon which THA will be provided. An ILP also must specify the temporary housing facility, if any, to which the individual or family has been or will be referred, any requirements of such facility, and the expected duration of the individual's or family's receipt of THA.

TEMPORARY HOUSING

Temporary housing includes shelters for homeless families regulated by 18 NYCRR 900, room or room and board arrangements provided to a homeless individual or family on a temporary basis and operated by a not-for-profit organization where payment is authorized by 18 NYCRR 352.8(b), hotel/motel facilities authorized by 18 NYCRR 352.3(e), and shelters for adults authorized by 18 NYCRR 491.

For policies related to residential programs for victims of domestic violence, please refer to 94 ADM-11, "Domestic Violence Eligibility and Payment for Residential Services for Victims," and OTDA 02 INF-27/OCFS 02 INF-06, "Domestic Violence Frequently Asked Questions on Reimbursement, General and Programmatic Issues."

TEMPORARY HOUSING ASSISTANCE (THA)

Temporary housing assistance is provided temporarily to an eligible homeless individual or family to meet an immediate need for shelter. Since THA is a TA benefit, TA eligibility and financial requirements must be applied to determine both eligibility and grant amount. The SSD must determine the correct standard of need and apply income in accordance with TA eligibility and budgeting requirements.

B. ASSESSMENT

1. Responsibility of the Social Services District:

   The SSD must conduct an assessment, as defined above, whenever an individual or family applies for THA. Because the assessment includes determination of the individual's or family's need and eligibility for THA, the SSD should conduct the assessment at the time that THA is requested or as soon as possible thereafter. The LDSS-4002 "Action Taken on Your Request for Assistance to Meet an Immediate Need or A Special Allowance," must be provided on the day that the individual or family requests help with the immediate housing need. If the individual or family is provided with a pre-investigation grant until the assessment of eligibility for THA is completed, the initial LDSS-4002 should specify that and the duration of the pre-investigation grant. Then, once the assessment and the determination of eligibility for THA are completed, a second LDSS-4002 must be issued to inform the individual or family of the determination of eligibility for THA.

The assessment is an evaluation by the SSD of the individual's or family's housing and housing-related temporary assistance and care needs, including but not limited to, the exploration of such things as the availability of alternative temporary or permanent housing in the community, employment and educational needs, the need for protective services for adults, preventive services for children and/or protective services for children, the ability to live independently and the need for treatment of physical and mental health impairments, including substance abuse.

Assessment and planning activities should be coordinated with SSD child welfare staff in instances in which a family has an existing or pending child welfare services case (protective services for children, preventive services or foster care), and with SSD Adult Protective Services staff in instances in which an individual has an existing or pending Adult Protective Services case. Planning activities should also be conducted in conjunction with the SSD's employment unit to ensure coordination between an individual's employability plan and his or her ILP. Districts should also reevaluate the individual's/families' needs for supportive services or adjustments to the employability plan, which may be needed in order to ensure that the individual or family can continue to work or participate in employment activities while receiving THA. For example, a recipient may require alternative transportation in order to get to work or to an employment activity while the family is residing in temporary housing.

Once the SSD has identified an individual's or family's housing-related needs, it must evaluate whether the needs are a contributing factor to the homelessness, and whether addressing the needs would assist the individual or family to alleviate the homeless situation. For example, the SSD would evaluate whether a deficit of independent living skills, a mental or physical impairment or substance abuse contributes directly to the individual's or family's need for THA.

The SSD must record the results of the assessment in the applicant's or recipient's case record, and must be particularly attentive to identifying mental and physical impairments and documenting actions taken, when appropriate, to addressing mental and physical impairments that impede the individual's or family's ability to attain or retain housing.

2. Responsibility of Individuals and Families Applying for or Receiving THA:

When an individual or family applies for or receives THA, they must cooperate in the completion of an assessment conducted by the SSD and any assessment conducted by the facility through an agreement or contract between the SSD and the facility as described under the ILP section of this directive. To enable the SSD to determine eligibility for THA, this means that the applicant/recipient, to the extent capable, must cooperate in securing requested documentation for such things as income, resources, unavailability of alternate housing, and physical or mental incapacity, collateral sources of documentation if necessary, etc.

When physical or mental impairment is claimed to contribute to the client's need for THA, or if the SSD suspects this might be the case, the SSD may require the applicant to participate in an evaluation conducted by an appropriate qualified professional to determine if a physical or mental impairment is present. The worker conducting the assessment should determine if the individual has recently participated in an evaluation of mental or physical health for employment or other purposes.

18 NYCRR 351.5(a) provides that if the applicant/recipient has previously verified necessary information which is not subject to change and the SSD possesses the information of such verification in its files, the applicant/recipient is not required to resubmit the information. When the applicant/recipient establishes that he or she has

made reasonable efforts or appears to be unable to take appropriate steps to obtain information or verification from a third party (other than a required filing unit member or household member whose income must count) and the third party fails or refuses to provide the information or verification or proposes to charge a fee, the SSD must pay the fee and/or must assist the applicant/recipient in obtaining the information/verification from the third party or by other necessary means.

An applicant/recipient is eligible for a pre-investigation grant so long as the applicant/recipient has provided documentation and information to which he or she has access, cooperates with the SSD to obtain information to which he or she does not have access without assistance, and has not been otherwise been determined ineligible for THA.

When a person fails to cooperate in completing the assessment, and the failure is not due to a verified or suspected mental or physical impairment, the SSD must deny THA. SSD staff must be mindful that an applicant/recipient's claim that noncompliance is due to a mental or physical impairment must never be dismissed outright but rather must be given serious consideration and investigated further, referring the client to a qualified professional if appropriate. Mental or physical impairment is discussed further in section IV. F. The individual or family may immediately reapply for THA and, if compliant and found otherwise eligible, must be provided THA.

C. INDEPENDENT LIVING PLAN (ILP)

1. Responsibility of SSD:

For individuals and families not residing in 18 NYCRR Part 900 regulated family shelters, SSDs or their designees must develop, with the eligible individual or family, ILPs for eligible persons **if** the SSD has determined that such a plan will assist the individual or family to obtain housing other than temporary housing. Residents and staff of all Part 900 family shelters must develop ILPs, sometimes referred to as a written services plan, within 10 days of admission to the facility. Although SSDs remain responsible for appropriateness and content of ILPs, they may delegate the responsibility for the development of the ILP to a designee, i.e., a THA provider or other provider.

When SSDs are determining whether an ILP would assist the individual or family to obtain housing other than temporary housing, SSDs must consider the specific circumstances of the individual or family. The types of circumstances that must be considered in determining whether an individual or family should have an ILP include, but are not limited to: a determination that substance abuse is occurring; a history of eviction or destruction of housing; a requirement to participate in court-mandated activities relating to child abuse/neglect or reunification of the family; a history of treatment for mental or physical impairment; a current issue relating to domestic violence; or, whether the individual or family has ever managed their own permanent housing. In addition, SSDs must consider the number of times the individual or family has been homeless in the past, the length of time of homelessness, and the average length of stay in temporary housing in the SSD.
In developing ILPs, SSDs must consider the differing characteristics and service needs of families and of single adults. For example, a homeless single adult may have past incidences of chronic drug and alcohol abuse. This should be taken into account when developing an ILP that is tailored to the individual.

Taking into consideration the distinct characteristics and service needs of individuals and families, SSDs must be consistent in requiring ILPs, so that individuals and families in similar circumstances are treated similarly. Districts must be consistent with regard to

program participation and other requirements included as components of ILPs, so that individuals and families in similar circumstances are subject to similar requirements. An ILP will not be necessary for every such individual or family to obtain permanent housing. When an ILP is appropriate, it must be designed and used as a case management tool to assist the individual or family to alleviate the need for THA and, therefore, each ILP must be tailored to the specific needs and circumstances of the particular individual or family.

When the SSD has determined that an ILP is appropriate, and in all cases for families residing in 18 NYCRR Part 900 regulated family shelters, the SSD or its designee must develop the ILP based upon the assessment. The ILP represents the strategy for obtaining housing other than that provided through THA. The ILP sets forth the individual's or family's responsibilities while receiving THA, and specifies the conditions upon which THA will be provided. The ILP also must identify the place, if any, to which the individual or family has been or will be referred by the local district or its designee, any requirements of such facility, and the timeframe the SSD or its designee expects the individual or family will receive THA. A model ILP is included as Attachment A, “Service and Bi-Weekly Plan/Independent Living Plan for Families,” Attachments A and B (instructions for completing the form) were developed specifically for families residing in Part 900 regulated family shelters but could be modified meet the needs of individuals and families in other shelters.

District employees or designees charged with the development of ILPs should coordinate with the employment unit, when appropriate, to ensure that provisions found in the ILP and the employability plan are consistent.

The ILP must be individualized and specifically tailored to the particular circumstances of the individual or family. The ILP must describe the specific tasks the individual or family must complete in order to leave temporary housing and enter permanent or other appropriate housing. It must also set forth the individual’s or family’s responsibilities while receiving THA and specify the conditions upon which THA will be provided. Other appropriate housing includes, but is not limited to, reunification with family, unsupervised and supervised Single Room Occupancy units (SROs), residential drug treatment, community residences and family-type homes for adults.

Activities that are included in the ILP must relate directly to the individual or family ending their dependence on THA. Some examples of provisions that might be included in an ILP are:

- participating in budget counseling for those with a history of non-payment of rent;
- making an appropriate number of housing search contacts per week;
- participating in mental health evaluations or programs for those whose mental health impairments interfere with their securing and retaining permanent housing; and,
- applying income, as determined by the SSD, to the cost of the temporary shelter.

If the SSD has an agreement or contract with a temporary housing provider, individuals and families who are referred to such a provider may also be assessed by its staff. This assessment may result in the development or revision of an ILP. However, the THA provider cannot make or change THA eligibility determinations. The ILP is not a static document. Revisions may occur at any time due to such things as changes in supportive services available to address a housing-related need, a change in the circumstances of the individual or family, as necessary for the individual or family to obtain permanent housing, or as the individual or family reaches milestones and goals

and new ones are set. For families residing in 18 NYCRR Part 900 regulated shelters, the ILP must be reviewed with the family at least every two weeks. As noted above, the requirements placed in the ILP and employability plans should not conflict.

Some examples of situations when an ILP may need to be revised include:

- domestic violence is identified as occurring;
- an individual or family member exhibits mental health concerns that contribute to the individual's or family's need for THA;
- a service program is no longer available or one becomes available;
- adults and/or children join the family already in temporary housing;
- a person's employability plan has been revised;
- a person or family has become eligible for a rent supplement; or,
- a person's income changes.

The SSD or its designee must consult with the individual or family in the initial development of the ILP, and any subsequent revisions to it. It is important for the SSD to work closely with the recipients in the development of ILPs to assure relevance, clarity, understanding and cooperation. The SSD must inform the individual or family of the expectations that the SSD, designee and/or THA provider has for the individual or family while in receipt of THA. An individual or family does not have a right to unilaterally change the ILP or to refuse to accept the ILP or a portion of it but the SSD should work with the individual or family to address concerns with respect to the ILP in effect. When the ILP is initially developed or reissued, the SSD or its designee must provide the individual or family with a copy of their ILP. In Part 900 regulated shelters, the provider must meet with the family at least every two weeks to assess and document the family's progress in meeting the self-sufficiency goals contained in the ILP.

An individual or family does not have the right to a fair hearing to challenge the contents of the ILP. However, the individual or family may challenge the discontinuance of THA in a fair hearing for failure to comply with ILP requirements. In addition, the individual or family may maintain at a fair hearing that the elements of their ILP**,** with which they did not comply, are not directly related to their need for THA and, therefore, failure to comply with those elements should not subject them to discontinuance of THA.

When an individual or family unreasonably fails to cooperate in developing, carrying out or completing an ILP and the failure is not due to a verified or suspected mental or physical impairment of the individual or family member, the SSD must discontinue THA. The first time the individual's or family's THA is discontinued for unreasonably failing to cooperate in developing, carrying out or completing an ILP, the individual or family may immediately reapply for THA. Subsequent unreasonable failures to comply with the ILP on the part of a recipient of THA disqualifies the individual or family from receiving THA until the failure ceases or for 30 days, whichever period is longer.

When an individual or family unreasonably fails to comply with the independent living plan requirements, the social services district must discontinue temporary housing assistance.

It is important that the SSD be mindful of mental and physical impairments that could have been the basis of the failure to comply and, if appropriate, refer the recipient for an evaluation by an appropriate qualified professional (e.g. a professional qualified to conduct health evaluations). SSD staff must be mindful that an applicant/recipient's claim that noncompliance is due to a mental or physical impairment must never be dismissed outright but rather must be given serious consideration and investigated

further, referring the client to a qualified professional if appropriate. The acceptability of an assertion of noncompliance for good cause must be based on individual circumstances. Examples of acceptable reasons may include, but are not limited to:

- failure to attend a budgeting class due to the verified illness of a child;
- failure to go to a counseling session due to lack of transportation or funds for transportation;
- failure to attend an appointment with a caseworker due to a lack of notification of the appointment time and place; or,
- failure to conduct a housing search due to verified illness.

2. Responsibility of Individual or Family:

When an individual or family receives THA and the SSD determines that an ILP is appropriate, or the ILP is developed for a family residing in a Part 900 shelter, the individual or family must cooperate in developing, carrying out and completing an ILP. This means that they must meet with the SSD and other appropriate staff to participate in the process of establishing and/or revising their ILP.

An individual or family must comply with the requirements of the ILP. Generally all ILPs will include such requirements as meeting periodically with caseworkers or examiners, looking for permanent housing, addressing issues which are barriers to attaining and/or retaining housing, refraining from violent and/or disruptive behavior and complying with the rules of the THA provider. Individuals and families may have additional requirements that apply, such as attending budgeting or parenting classes, if it has been determined that such activities would assist the individual or family to end their dependence upon THA.

D. HOUSING

1. Responsibility of Social Services District:

Unless ineligible for Emergency Assistance to Families (EAF), an EAF allowance must be provided to eligible homeless families in danger of becoming homeless, under 18 NYCRR 372.4, for transportation and/or babysitting expenses necessary to permit parents to search for housing.

When an individual or family fails to comply with the THA requirements and appears unable to comply, the SSD must determine if the noncompliance is due to a physical or mental impairment. If the SSD determines that the noncompliance is not due to a physical or mental impairment, the SSD must discontinue THA until the failure ceases or for 30 days, whichever period is longer.

It is important that the SSD be mindful of mental and physical impairments that could have been or contributed to the basis of the failure to comply and, if appropriate, refer the recipient for an evaluation by the appropriate qualified professional.

2. Available Housing Resource

In determining eligibility for THA, the SSD must determine if the applicant has an available housing resource. This resource must be actually available. 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. When the SSD determines that the client may have an available housing resource, and the client indicates the resource

is not actually available, the resource must be fully investigated to determine its availability. A full investigation may include a field investigation with interviews of the primary tenant/home owner and the availability/unavailability of the housing should be documented in the case record.

An available resource in one instance, for example returning to live with a family member, may not be available in seemingly similar circumstances. Each case must be investigated separately. For example, an applicant for THA who leaves a friend or relative's residence may be determined to have an available housing resource, if after an investigation the SSD determines the applicant has permission of the friend or relative to return to the residence. However, 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, declines to allow the applicant to return to the residence.

A housing resource may not be considered available if it requires a tenant to seek permission from a landlord for the residency of the client, and the primary tenant who is not a legally responsible relative refuses to seek such permission. Additionally, a housing resource cannot be considered available if the residency of the client would violate lease provisions or otherwise be considered illegal, even if the client had previously resided in such circumstances.

3. Responsibility of Individual or Family:

An individual or family must actively seek housing other than temporary housing, as required by the SSD. In addition, an individual or family must not unreasonably refuse or fail to accept any appropriate housing offered by the SSD including, but not limited to, permanent housing, reunification with family or relocation to other appropriate residential facilities (e.g., a substance abuse residential treatment). Some examples of reasonable refusals include: a verified medical condition which would be adversely affected by the housing or remoteness of the housing in relation to necessary medical services or employment when not accessible by public transportation or other available means of transportation.

E. BEHAVIOR

1. Responsibility of SSD:

When an individual or family engages in acts that endanger a person's health or safety, **or** that substantially and repeatedly interfere with the orderly operation of the temporary housing facility, the SSD must determine if a physical or mental impairment exists which causes noncompliance. If the SSD determines that a physical or mental impairment is not the cause of noncompliance, the SSD must discontinue THA until the failure ceases, or for 30 days, whichever period is longer. When the SSD determines that a physical or mental impairment is the cause of non-compliance, the SSD must consider appropriate action, such as relocation to an alternative placement, referral to services, etc.

SSD staff must be mindful that an applicant/recipient's claim that noncompliance is due to a mental or physical impairment must never be dismissed outright but rather must be given serious consideration and investigated further.

It is important that the SSD, if appropriate, refer the recipient for an evaluation by appropriate qualified professional(s).

2. Responsibility of Individual or Family:

A person must not commit an act that endangers the health or safety of him or herself or others. Acts of violence, the use or display of weapons or selling of drugs are examples of such behavior. An act that endangers health or safety does not have to be repeated to result in the discontinuance of THA.

A person must not interfere with the orderly operation of the temporary housing facility. Repeated violation of the rules of the temporary housing facility may constitute substantial interference in the orderly operation of the facility resulting in the discontinuance of THA.

F. PHYSICAL OR MENTAL IMPAIRMENT

1. Responsibility of LDSS:

At the time of application, SSDs are responsible for evaluating an individual's or family's housing-related temporary assistance and care needs, including the need for treatment of physical and mental health impairments. Such assessments provide the SSD with an opportunity to identify mental or physical impairments which may result in behavior or actions that interfere with the individual's or family's ability to comply with THA requirements, or the ability to access and maintain housing other than temporary housing. Such assessment also provides the SSD with the opportunity to make appropriate referrals to mental health treatment and/or other appropriate programs.

Districts also are responsible for evaluating whether a person has a mental or physical impairment when a person fails to comply with the requirements for receiving THA**,** and when this failure will result in a discontinuance of THA. THA may not be denied or discontinued when the non-compliance is due to a physical or mental impairment. When such a physical or mental impairment appears to be present and interfering with the ability to comply with THA requirements, the SSD must refer the individual(s) for an evaluation by an appropriate professional. When an individual states that he or she has a physical or mental impairment that interferes with his or her compliance with requirements for receiving THA, he or she must provide documentation of this impairment. If he or she does not have such documentation and cannot obtain it with or without the assistance of the SSD, the SSD may also refer the individual to an appropriate qualified professional for an evaluation and/or for such documentation. The SSD should work with the individual to facilitate cooperation.

SSD staff must be mindful that an applicant/recipient’s claim that noncompliance is due to a mental or physical impairment must never be dismissed outright but rather must be given serious consideration and investigated further, referring the client to a qualified professional if appropriate.
Some examples of behavior or conditions that may indicate mental impairment include: severe anxiety/nervousness; acting out/hallucinations; disorientation/confusion; inappropriate responses/reactions; non-responsiveness; mood/depression; agitated, disruptive or hostile behavior; and, poor concentration or attention span. Additional indicators of mental impairment may include: multiple/extended hospitalizations; periodic confinement in a mental institution; history of treatment in a mental health clinic or by a private therapist; and high prescription medication usage.

Some examples of conditions that may indicate physical impairment include: when the individual has restricted mobility/inability to walk without aid; amputation/paralysis of limbs; uncoordinated body movements/palsy; memory loss/blackout; poor vision/blindness/inability to read print; and poor hearing/deafness.

G. OTHER TEMPORARY ASSISTANCE (TA) REQUIREMENTS

In addition to meeting all THA requirements outlined above, individuals and families applying for or receiving THA must comply with all other applicable TA requirements.

Failure to comply with these other TA requirements will result in a financial penalty against the individual's TA grant, including THA and, depending upon the type of sanction, may render the entire case ineligible for TA, including THA. **The sanction for violation of one of these requirements is the appropriate TA penalty established in law or regulation for failure to comply with that particular requirement as described in more detail below.**

These TA requirements include, but are not limited to, the following:

- participation in employment and training programs, in accordance with 18 NYCRR Part 385. For individuals who are determined to be non-exempt from such programs, this includes looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services, as assigned by the SSD. The penalty for failure to comply with these requirements willfully and without good cause is a pro rata reduction in the family's TA benefit, including THA. The first non-compliance for a household with dependent children results in the penalty until compliance with TA work requirements. Subsequent failures to comply results in durational sanctions pursuant to 18 NYCRR 385.12, in addition to the requirement that the recipient demonstrate compliance with employment requirements;
- participation in the child support enforcement program as required in sections 18 NYCRR 351.2(e) (2), 369.2(b) and 370.2(c)(9). The penalty for failure to comply with these requirements is a 25% reduction in the family's TA standard of need until compliance;
- application for SSI as required in sections 369.2(h) and 370.2(b)(5). The penalty for failure to comply with this requirement is the removal of that individual (incremental sanction) from the family's TA grant (if the individual refuses to apply for himself/herself or for another member of the TA household);
- location and utilization of resources as required in section 351.2(e). These resources include, but are not limited to, individual or family financial assets, income from employment, pensions, work-related benefits, health insurance, small business, real and personal property, securities, cash on hand, bank accounts, insurance, trust funds, estate settlements, service members' benefits, in-kind income, contributions from relatives and friends, support orders, eligibility for or receipt of benefits, services and social resources available through family relationships and community programs. The penalty for failure to comply with this requirement is the ineligibility of the entire case.

If any of these requirements are included in an individual's or family's ILP, the penalty for failure to comply with one of these requirements will be the one authorized in the law/regulation that establishes the requirement, not the sanction for failure to comply with the ILP.

For example:

- Failure to comply with employment or substance abuse treatment requirements results in a pro-rata benefit reduction, not a discontinuance of assistance (unless it is a single person case);

- Failure to apply for a benefit or resource, other than Supplemental Security Income, will result in a discontinuance of assistance.

Note that when non-compliance with TA rules results in an individual sanction rather than case ineligibility, THA is not discontinued solely because of the sanction. The sanction may result in a reduction of TA available to meet the THA expense. Failure to meet the full cost of the THA accommodation can result in the loss of temporary housing.

Please see Attachment C: Budget Examples for more details.

H. APPLICATION OF INCOME AND RESOURCES

1. Income

When a person has available income, either earned or unearned, the SSD must budget the income in accordance with 05 ADM-3 to reduce the need for TA, including the need for THA. The budgeting methodology is the ordinary TA monthly budgeting methodology. As a result of budgeting income, some of the individual's or family's income may have to be used to pay for some or all of the cost of temporary housing. Please note that the poverty level test is not applicable to applicants for or recipients of THA. However, when the individual or family member has earned income, only income below 100% of the federal poverty limit will qualify for the earned income disregards (see 97 ADM-23 for more information on the relationship between the earned income disregards and the poverty level).

When a person has income that must be applied to the cost of care, the SSD must inform the person in writing how much their household must pay per month, as well as when, how and where to make the payments. If the person is paid weekly or bi-weekly, the SSD may ask the person to make his or her payment on a weekly or bi-weekly basis. This information must be provided as soon as the SSD determines the amount of income that must be applied to the cost of the temporary housing.

In some cases, this income would be sufficient to make the individual or family ineligible for TA if they were residing in the community. However, when establishing the standard of need and applying the Gross Income Test for a homeless individual or family, the SSD must use the **actual cost** of the temporary housing **and either**:

- the appropriate personal needs allowance for families in non-Tier II homeless shelters (if three meals a day are provided) and any appropriate additional needs allowance (such as a pregnancy allowance); or,
- the basic allowance, home energy allowance, supplemental home energy allowance, any applicable restaurant allowance (if the person is unable to prepare meals in the unit or less than 3 meals a day are provided), and any appropriate additional needs allowance.

Thus, such individuals or families may be eligible for TA when in temporary housing.

When a homeless individual or family has income and is in temporary housing for less than a full calendar month, a per diem TA deficit must be calculated. This is done by dividing the monthly TA deficit by the number of days in the particular month and multiplying the result by the number of days the individual or family was in the temporary housing. For example, a homeless person is in a motel for 15 days in June and the monthly TA deficit is $600. The deficit to be met by the SSD is $20 per day or $300 for

those 15 days. The remainder of the cost of the temporary housing for those 15 days must be met by the homeless person.

Please note that there may be situations where an individual or family will be homeless for a very short time and is applying for a one-time emergency payment. An example would be a situation in which someone was evicted, has found other permanent housing but is unable to move in for three days and they have no income or resources available to pay for the temporary housing for those three days but will have income in the near future. In such a short-term situation, the income would not be budgeted since there is no available income to be budgeted for those three days. Another situation in which income would not be budgeted is if the person or family becomes homeless toward the end of the month and has no available income or resources for the remainder of that month. However, if they were still receiving THA the following month, the income would have to be budgeted. Districts must inform applicants of this upfront, as described in the second paragraph under H.1, so that they can plan to put the money toward their temporary housing costs.

The SSD must deny or discontinue an individual's or family's THA, if it determines that the individual or family is required to apply but is not applying available income to the cost of THA.

If the application of income is incorporated into the individual's or family's ILP, then the SSD must apply the penalty for failure to comply with the application of income, not the penalties for non-compliance with the ILP. There are no disqualification periods in OTDA regulations for not applying income. The individual or family could immediately reapply and agree to comply with paying their share of the cost of the shelter. **In such situations, compliance means agreement to pay future costs.** However, when an individual or family has previously failed to apply their income to the cost of the shelter, has come into compliance by agreeing to pay future costs, but subsequently fails to do so, the individual or family must actually demonstrate compliance in the second instance of failure. They would not be eligible for THA until they demonstrated compliance by actually paying their share of the shelter cost.

2. <u>Resources</u>

A homeless individual or family may have resources that are available to meet the costs of temporary housing. These resources must be used to reduce the need for THA. For example, the individual may have $500 in a bank account. This must be applied toward the cost of the temporary housing. See example #8 in attachment C.

Responsibilities of SSD:

The SSD must notify the individual or family in writing that they must use the available resource to meet the costs of temporary housing, how much they must pay, when they must pay it and where they must pay it. This information must be provided as soon as the SSD determines the amount of the resource that must be applied to the cost of the shelter.

The SSD must deny or discontinue an individual's or family's THA, if it determines that the individual or family is required to apply, but is not applying, available resources to the cost of THA.

If the payment of income or the application of resources is incorporated into the individual's or family's ILP, the applicable penalties would be those for not applying the income or using the resources to reduce the need for THA; not the penalties for non-

compliance with the ILP. There are no disqualification periods for failure to apply resources. The individual or family could immediately reapply and agree to comply by actually applying their resources towards the cost of the shelter if the resource is still available. The individual or family remains ineligible for THA as long as they have the income or resource and refuse to apply it towards their cost of the shelter.

Responsibilities of the Homeless Individual or Family:

The homeless individual or family must cooperate with the SSD's efforts to determine available income and resources, and must apply for and use any available income and resources that will reduce or eliminate the need for THA.

Also, to the extent to which income/resources are determined by the SSD to be available, recipients of THA must pay their share to the THA provider unless another arrangement is made.

I. NOTIFICATION REQUIREMENTS

Applicants for and recipients of THA are informed of their responsibilities regarding THA in the LDSS-4148A "What You Should Know About Your Rights and Responsibilities" that must be provided with the application package and at the face-to-face recertification.

J. DOCUMENTATION

Districts are responsible for documenting the assessment, the ILP and revisions to it, and any instances of unreasonable failure to comply with the ILP and other requirements governing the provision of THA as well as any reasons offered for non-compliance. In addition, SSDs must document any referrals for evaluation of physical or mental impairments, as well as the results of the evaluations. When SSDs have designated a provider to develop and revise ILPs, the SSDs must require the provider to maintain appropriate documentation of the ILP, referrals, results and dates of evaluations and any instances of failure to comply and reasons accepted for non-compliance with the ILP or other requirements for receiving THA. Districts must also document any referrals made, and the determinations that resulted from those referrals to protective services for adults, preventive services for children and protective services for children. Documentation must be maintained in the individual's or family's case record. For all families residing in 18 NYCRR Part 900 regulated family shelters, the documentation requirements outlined in 18 NYCRR 900.10 must be followed.

K. DENYING OR DISCONTINUING TEMPORARY HOUSING ASSISTANCE

1. Physical or Mental Limitations

If the individual or family appears to be unable to comply with the requirements of receipt of THA, including the assessment or the ILP, because of a physical or mental impairment, THA may not be denied or discontinued until a determination is made by an appropriate professional that a mental or physical impairment is not the cause for non-compliance. If the individual or family alleges that a physical or mental impairment is the reason for non-compliance, and the SSD believes that impairment prevents the individual from complying, THA may not be denied or discontinued until a determination is made by an appropriate qualified professional that a mental or physical impairment is not the cause for non-compliance. THA may not be denied or discontinued while this determination is being made.

SSD staff must be mindful that an applicant/recipient's claim that noncompliance is due to a mental or physical impairment must never be dismissed outright but rather must be given serious consideration and investigated further, referring the client to a qualified professional if appropriate.

2. Available Housing Resource

The SSD must deny THA when it has determined the applicant has a housing resource. However, that resource must be actually available. 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. When an SSD determines that the client has an available housing resource, and the client indicates the resource is not actually available, the resource must be fully investigated to determine its availability. A full investigation may ~~i~~nclude a field investigation including interviews of the primary tenant/home owner.

An available resource in one instance, for example returning to live with a family member, may not be available in seemingly similar circumstances. Each case must be investigated separately. For example, an applicant for THA who leaves a friend or relative's residence may be determined to have an available housing resource, if after investigation, the SSD determines the applicant has permission of the friend or relative to return to the residence. However, a housing resource should not be considered available if after investigation, it is found that the primary tenant declines to allow the applicant to return to the residence.

A housing resource may not be considered available if it requires a tenant to seek permission from a landlord for the residency of the client, and the tenant refuses to seek such permission. Additionally, a housing resource cannot be considered available if the residency of the client would violate lease provisions or otherwise be considered unlawful, even if the client had previously resided in such circumstances.

3. Referral to Services

The SSD also must evaluate and determine the individual's or family's need for protective services for adults, preventive services for children and/or protective services for children prior to issuing a Notice of Denial or Discontinuance when the client fails to comply with the assessment, fails to cooperate in developing, carrying out and completing an ILP, fails to actively search for housing other than temporary housing, engages in acts that endanger the client or others, or fails to comply with any TA requirement for which the penalty imposed would result in the loss of THA. In relation to protective services for adults and/or preventive services for children, the determination of eligibility must be made by the SSD in accordance with the applicable eligibility standards for such programs. If there is reasonable cause to suspect that a child has been abused or maltreated based on information provided by the parent, guardian, custodian, other person legally responsible for the child or the child, a report must be made to the New York Statewide Central Register of Child Abuse and Maltreatment (SCR), pursuant to the standards set forth in sections 413 and 415 of the Social Services Law. If the SSD determines that such services may be needed, it must make a formal referral to the appropriate protective services for adults, preventive services for children and/or protective services for children entity within the SSD. Temporary housing assistance cannot be denied or discontinued until the determination of the need for such services has been made. Once this determination has been made, the Notice of Denial or Discontinuance of THA for failure to comply with the assessment or to cooperate in developing, carrying out and completing an ILP, or to actively search for

housing other than temporary housing or for engaging in acts that endanger oneself or others can be issued.

It is important that the SSD be mindful of mental and physical impairments that could have been the basis of the failure to comply and, if appropriate, refer the recipient for an evaluation by the appropriate qualified care professional. SSD staff must be mindful that an applicant/recipient's claim that noncompliance is due to a mental or physical impairment must never be dismissed outright but rather must be given serious consideration and investigated further.

4. Notice Requirements

a. Notice Requirements for Applicants of TA

Only adequate notice is required for applicants of TA. Timely notice is not required because an individual who is in immediate need and conditionally eligible for THA prior to a completed eligibility determination is considered an applicant. Any THA issued to the household pending a full eligibility determination is considered a pre-investigative grant. A pre-investigation grant is a grant of assistance to meet an immediate need for a specific essential item when an immediate need is determined to exist, but financial eligibility has not been fully established by the completed verification and documentation process. Until the final determination of ongoing eligibility is made and while the application for recurring assistance is still under investigation, individuals in receipt of a pre-investigation grant are considered TA applicants. For more information see TASB Chapter 5 section J.

b. Notice Requirements for Recipients of TA:

(1) Whenever an instance of non-compliance is established, appropriate timely and adequate notice, including conference and fair hearing rights must be provided to the individual or family.

This is true even when it is a first instance of non-compliance with the ILP and the individual or family member has immediately complied. Because the next instance will be for a durational period, the individual or family has the right to challenge the SSD's decision finding an initial instance of non-compliance. The notice must include the language, "If you do not challenge this decision, and if you are sanctioned again during your shelter stay, you will lose your THA for 30 days or more."

(2) Appropriate timely and adequate notice of TA reduction or discontinuance must be provided. In addition, when the individual or family must pay a portion of their income to the THA provider, the notice must specifically state what amount the individual or family must pay, when they must pay and where they must pay. This notice must be a manual notice until CNS can accommodate this information. For this purpose, it is not sufficient to say in the notice that the individual or family will receive $XX of temporary assistance and what the SSD will pay toward the individual's or family's shelter cost. The individual or family may not know the actual cost of their THA. Since failure to pay the appropriate amount of income for the cost of the THA will result in ineligibility for THA, it is vital that the individual or family know exactly how much they must pay, when and where to pay and, if necessary, the method of payment (for example, cash, check, money order). Social services districts are strongly encouraged to inform

the shelter provider of the amount of the recipient's monthly contribution toward the shelter cost. This will put the shelter on notice that the SSD will not be paying the entire cost of the shelter and that the recipient is responsible for part of the cost.

L. REAPPLICATION PROCEDURES FOR CASES DENIED THA

This section of this directive clarifies those instances when a district must conclude that a person who has applied for temporary housing assistance and was found ineligible within the last 30 days because of the availability of a housing resource, is nonetheless in immediate need at the time of a subsequent application, and consequently must be provided with temporary housing assistance. This directive also clarifies the circumstances under which a district may conclude that a person who has applied for THA and been found ineligible within the last 30 days is now in immediate need and may be eligible to receive THA during the investigation of his or her application for emergency assistance.

In no instance may an individual or family who previously applied for THA be denied the right to reapply for THA or other forms of TA. There are instances where upon reapplication the SSD may make a prompt determination of ineligibility for THA but in those instances an application still must be accepted, processed by the SSD and appropriate notice issued. Pursuant to 18 NYCRR 350.4(b), when an application has been denied, reapplication within 30 days does not require the submission of a new application.

If a re-applicant who has applied within the past 30 days and has been found ineligible for THA applies again, an immediate need is present and a pre-investigation grant must be made when:

(a) the re-applicant asserts new facts establishing that the re-applicant is a victim of domestic violence and the alleged perpetrator of the violence lives in the same residence the re-applicant did immediately prior to submitting the application or is aware of the re-applicant's current address and presents a clear and ongoing threat to the re-applicant; or

(b) the re-applicant asserts new facts establishing that the re-applicant or the primary tenant has been evicted from the residence where the re-applicant lived immediately prior to submitting the application; or

(c) the re-applicant asserts new facts establishing that the re-applicant's child(ren) is/are a victim of child abuse and the alleged perpetrator of the abuse lives in the same residence the re-applicant did immediately prior to submitting the application or has access to the re-applicant's household;

(d) the re-applicant asserts any other material change since the previous application creating an immediate need for housing; or

(e) the re-applicant establishes that the previous determination of ineligibility was made incorrectly, and that the re-applicant continues to be in immediate need.

In such circumstances, an immediate need is demonstrated and the SSD must make a pre-investigation grant pending the determination of eligibility for THA. In addition, immediate needs requiring a pre-investigation grant of assistance may exist in other circumstances. In all circumstances, the SSD must consider the threat to the health and safety of the re-applicant or family, the sufficiency of available information concerning

the re-applicant's eligibility for THA, and material change(s) that may have taken place since the time of the previous application.

This policy seeks to balance the needs of persons found ineligible for and reapplying for shelter with the needs of all THA applicants who should obtain a prompt determination of THA eligibility and/or placement into shelter. It is expected that SSDs will administer this directive with judgment and discretion, and that the districts will determine that an immediate need exists in circumstances other than those presented herein, on a case-by-case basis.

VI. Supplemental Nutrition Assistance Program Implications

As is current Supplemental Nutrition Assistance Program (SNAP) policy, whenever a TA case is subject to an adverse action for non-compliance with a TA requirement, the income source code "40 PA grant reduction" should be input in the SNAP budget section. However, if a TA case is discontinued due to excess income as a result of the loss of THA needs in the budget, then the SNAP household would still be entitled to receive Transitional Benefits Alternative (TBA) SNAP benefits.

VII. Medical Assistance Implications

THA eligibility is determined using the TA Standard of Need. Therefore, persons eligible for THA are generally financially eligible for Medicaid.

If an individual or family is eligible for the THA shelter payment to be claimed as EAF for the on-going Safety Net Assistance case, the individual is financially eligible for Medicaid.

If a person also applied for Medicaid as well as THA and the THA application is denied, a separate Medicaid determination should be made as is appropriate to the denial or closing reason.

Individuals or families eligible for EAF only as a one-time payment are not eligible for Medicaid on the TA case. If such applicants have also applied for Medicaid, a separate determination must be made.

The sanctions imposed due to an individual's failure to comply with the requirements of an ILP or the TA employment requirements do not apply to Medicaid.

Social services districts should refer to Administrative Directive 94 ADM-20 for instructions on processing Medicaid-only cases for homeless individuals. Questions concerning Medicaid applicants should be directed to your SSD representative as noted on the first page of this directive.

VIII. Systems implications.

There are no systems implications.

IX. Effective Date

This Directive is effective immediately.

Issued By
Name: Phyllis Morris
Title: Deputy Commissioner
Division/Office: **Center for Employment and Economic Supports**