



# Office of Temporary and Disability Assistance

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## Informational Letter

### Section 1

<b>Transmittal:</b>	21-INF-04
<b>To:</b>	Social Services District Commissioners
<b>Issuing Division/Office:</b>	Employment and Income Support Programs
<b>Date:</b>	April 19, 2021
<b>Subject:</b>	Stewart v. Roberts: Instructions for Implementation
<b>Suggested Distribution:</b>	Commissioners of Social Services, Temporary Assistance Directors, Staff Development Coordinators, Fair Hearing Staff, DSS Attorneys, Resource and Recovery Staff
<b>Contact Person(s):</b>	Temporary Assistance Bureau at 518-474-9344 or <a href="mailto:otda.sm.cees.tabureau@otda.ny.gov">otda.sm.cees.tabureau@otda.ny.gov</a>
<b>Attachments:</b>	<a href="#">Attachment 1 - Stewart Opt-in Notice</a> <a href="#">Attachment 2 - Stewart Reporting Requirements Document</a>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
20-ADM-08		352.23	SSL 106-b		GIS 20 TA/DC044
16-ADM-09		352.29	SSL 131-a		GIS 16 TA/DC031
00-ADM-5		352.31	SSL 131-n		GIS 08 TA/DC029
14-INF-6			Chapter 54 of the		
06-INF-21			Laws of 2016		
05-INF-12					
03-INF-25					
01-INF-11					
96-INF-02					

### Section 2

#### I. Purpose

The purpose of this Informational Letter is to advise social services districts (districts) of the next steps they must take to comply with a Judgment in the *Stewart v. Roberts* class action litigation. The *Stewart* Judgment certified a class and ordered the potential for retroactive Public Assistance, also known as Temporary Assistance (TA), payments (hereafter “retroactive relief”) to be issued to identified class members for the established class certification period of July 20, 2015 - May 11, 2020. At this time, the Office of Temporary and Disability Assistance (OTDA) does not have further information to provide regarding relief payments. This INF addresses the process districts must

undertake to identify class members. Instructions regarding how to calculate retroactive relief will be provided at a later date.

## II. Background

As a result of the initial decision in *Stewart v. Roberts*, effective May 11, 2020, a vehicle which is not an exempt resource as defined in Social Services Law (SSL) § 131-n(1)(a) and 18 NYCRR 352.23(b), and in which the owner has minimal or no equity interest, is not an “available” resource which would disqualify the applicant or recipient from the receipt of TA. “Minimal equity” means that the equity value of the vehicle and the applicant’s other countable ia

All applicants and recipients of TA in New York State who received, applied for, or will apply for TA benefits between July 20, 2015 and May 11, 2020, and who, within the applicable time frame and at the time of the application or recertification:

- a. Owned a motor vehicle that had a fair market value exceeding the applicable resource levels set forth in Social Services Law §131-n within the applicable time frame, and
- b. Had a loan, note or other encumbrance on the motor vehicle which resulted in the applicant or recipient having no equity or minimal equity in such motor vehicle, within the applicable time frame, and
- c. Were denied TA or had their TA benefits discontinued as a result of the ownership of such motor vehicle within the applicable time frame.

In order to identify *Stewart* class members, OTDA and districts must perform an opt-in procedure. To comply with the Court-ordered opt-in procedure, OTDA will send a notice to all adults (age 18 and older) and minor heads of household who were denied or discontinued TA due to excess resources from July 20, 2015 through May 11, 2020. As is explained more below, recipients of this notice are entitled to an interview by the district to determine whether they are class members.

This means that some individuals who were previously determined ineligible for TA, due to ownership of a vehicle with a Fair Market Value (FMV) over a specified level, may now be eligible for retroactive relief, provided that the vehicle’s equity value and the applicant’s other countable resources are less than the statutory resource limit. Additional instructions regarding how to calculate retroactive relief will be provided at a later date.

### CLASS MEMBER TERMS

The following terms will be used throughout this guidance and, as such, are defined here:

*Potential Class Members* - individuals identified as applicants or recipients who had their TA denied or discontinued due to excess resources between July 20, 2015 and May 11, 2020.

*Putative Class Members* – potential class members who, between July 20, 2015 and May 11, 2020, applied for and were denied TA, or had their TA discontinued for the reason that they or someone in their household owned a motor vehicle with a FMV over the exempt vehicle resource limit. The vehicle resource exemption limits in effect during this period were as follows:

Before May 16, 2016: Up to \$4,650 FMV if the vehicle was NOT used to seek or retain employment, or to travel to and from work activities; and up to \$9,300 FMV (or such other higher dollar value as the district elected to adopt) if the vehicle was used to seek or retain employment, or to travel to and from work activities.

May 16, 2016 – March 31, 2017: Up to \$10,000 FMV (or such other higher dollar value as the district elected to adopt) for the first vehicle owned. Effective May 16, 2016, whether or not a vehicle was used to seek or retain employment or to travel to and from work activities was no longer a consideration for this policy.

April 1, 2017 – March 31, 2018: Up to \$11,000 FMV (or such other higher dollar value as the district elected to adopt) for the first vehicle owned.

April 1, 2018 – May 11, 2020: Up to \$12,000 FMV (or such other higher dollar value as the district elected to adopt) for the first vehicle owned.

Additional details regarding vehicles resource limits can be found in [20 GIS TA/DC044](#) and [20-ADM-08](#).

*Class Members* – putative class members who are 1) determined otherwise eligible for TA for at least one month within the period of July 20, 2015 – May 11, 2020, 2) who were denied because they, or someone in their household, owned a vehicle with a FMV over the exempt vehicle resource limit as described above, and 3) such vehicle had no or minimal equity value, and when combined with the household’s other countable resources was less than the TA resource limit.

### III. Program Implications

#### OPT-IN NOTICES

In order to comply with the Judgment, OTDA is distributing lists of potential class members to each district, via email. OTDA will be sending to individuals on these lists an opt-in notice, which is also attached to this INF, on or around June 3, 2021. The opt-in notice informs these potential class members that if they had their TA denied or discontinued due to ownership of a vehicle during a certain period, they are entitled to an interview at *any* district to determine if they are class members. Once a potential class member contacts the district, the district must schedule an interview within **30 days** from the date the potential class member contacts the district. An interview for this purpose is not the same as a TA eligibility interview. Therefore, it may be completed over the telephone unless an individual specifically requests an in-person interview. The purpose of the interview will be to determine class membership, and all persons interviewed for this purpose must receive a notice of Determination of Class Membership. OTDA is developing a Determination of Class Membership notice which will be made available in close proximity to the time when the opt-in notices are mailed to potential class members.

The court decision did not establish a cut-off date by which a potential class member must contact the district. Therefore, it is imperative that districts retain the lists being sent to them by OTDA so that they may confirm if an individual contacting the district is, in fact, a potential class member.

The return address of the opt-in notices will be the district in which the individual was denied or discontinued. For opt-in notices that are returned to the district as undeliverable, the district must, within **30 days** of the receipt of the undeliverable opt-in notice, undertake a manual review of those potential class members’ case files to determine whether they are putative class members. For any putative class members identified in this manner, the district must make a note in their case file, and, if a new mailing address is identified (including by way of a new address identified on the returned mail), the district must send another opt-in notice advising such individuals of their option to contact the district for an interview. The district must use the opt-in notice attached to this INF and must include a district specific phone number and email address to be used for scheduling purposes, as this is a requirement of the Judgment.

#### CLASS MEMBER IDENTIFICATION

The Judgment requires that any potential class member who contacts the district must be given the opportunity to have an interview. However, only putative class members (those denied for excess vehicle resources) who can verify that they were otherwise eligible for TA for at least one month during the class certification period and whose vehicle had a loan, note, or other encumbrance on it

which resulted in no equity or minimal equity value during that time period will be considered class members. Therefore, it is prudent for the district to review the case file initially upon contact with the individual to determine if they are a putative class member before undergoing further investigation to determine if they are class members.

Once the district determines the individual to be a putative class member, the district must review the relevant TA case file to determine if at any time the putative class member had been a recipient of TA, Supplemental Nutrition Assistance Program (SNAP) or Medicaid (MA) during the class certification period. The district must utilize any relevant information regarding indebtedness on the vehicle or any other relevant TA eligibility information that is already in the putative class member's TA, SNAP, or MA file(s) for purposes of promptly determining whether the individual is a class member.

If the putative class member's TA, SNAP, or MA case record contains any evidence (including, but not limited to, references to debt or loan documents in any part of the case record, district case notes, applications, or recertification paperwork), that their vehicle was subject to a debt during the period of July 20, 2015 – May 11, 2020, the district must, prior to the interview, evaluate the equity value of the vehicle at the time of initial application, discontinuance, or period of overpayment. The equity value is determined by using the Kelly Blue Book FMV (which should have been documented in the case record at the time of the denial/discontinuance) and subtracting the amount owed on the vehicle.

This preliminary review is intended to help the district assess what further documentation they will need to discuss with and request from the putative class member during the interview.

When the putative class member has their interview, the district must advise them of the type of documents that are still needed and which must be provided to show proof of indebtedness and TA eligibility, including, but not limited to, loan documents on the vehicle that was the subject of the TA denial or discontinuance.

For putative class members who *are not currently receiving TA and who wish to apply*, the district must determine current TA eligibility, as well as retroactive TA eligibility for at least one month within the class certification period (July 20, 2015 – May 11, 2020) in order to for them to be identified as a class member. The putative class member must complete the LDSS-2921 "Statewide Application for Certain Benefits and Services" or electronic equivalent. The putative class member must be advised to provide documents that prove current TA eligibility as well as documentation to prove TA eligibility for at least one month within the class certification period. It is important to note that at the time retroactive relief payments can be made, they must only be made on an active TA case.

When a putative class member is *not currently eligible for TA*, but is found to have had TA eligibility for at least one month within the class certification period, the district must document in the TA case file that the individual is a class member. This information must be documented in the event that the class member becomes eligible for TA in the future.

For putative class members who *are currently receiving TA*, the district must determine retroactive TA eligibility for at least one month within the class certification period in order for them to be identified as class members.

If a determination of eligibility as a class member is not possible using only the information already available in the case record, the district must provide the putative class member with the LDSS-2642 Documentation Requirements form and an explanation of the documents that must be submitted for an eligibility determination to be made. Per the court decision, the district must give the individual **60 days** to submit such documentation.

The district must keep in mind:

- If the putative class member has previously verified necessary information which is not subject to change and the district possesses documentation of such verification in its files, the putative class member must not be required to resubmit verification of such information; and
- When the putative class member has made reasonable efforts to obtain information from a third party, and the third party fails or refuses to provide the information or verification or seeks to impose a charge or fee for providing the information to the applicant/recipient (A/R), the district must pay such fee or must assist the A/R in obtaining the information or verification from the third party or by other means.

Districts must terminate any prior TA overpayments discovered during the usual course of business, including during the interview to determine class membership or review of the case record, when such overpayment(s) were or are based solely on a vehicle with a FMV over the vehicle resource limit in SSL § 131-n(1)(a), and there is evidence in the recipient's file that the recipient had minimal or no equity interest in the vehicle. Additional details regarding the treatment of these overpayments may be found in [20-ADM-08](#).

If the putative class member no longer resides in the district that issued the denial or discontinuance, they must be allowed to request that the interview take place in the district in which they currently reside, and the district of residence must act as a liaison to the district that issued the denial or discontinuance. Similar to how courtesy interviews are conducted for TA purposes, the where found district (where the person is residing and requesting to have their interview) will be responsible for conducting the interview in these situations and communicating the contents of the interview with the responsible district. The district that issued the initial denial or discontinuance will be required to request further documentation from the individual as needed, document the case file as appropriate, issue the Determination of Class Membership notice, and track the individual on their reporting requirements spreadsheet.

The district must provide each potential or putative class member who had their status as a class member evaluated, as directed in this INF, with a Determination of Class Membership notice **within 30 days** of their interview or submission of requested documents (whichever is later), advising them of the determination.

## REPORTING REQUIREMENTS

Per the Judgment, districts must provide quarterly reports to OTDA for 36 months using the attached spreadsheet, with the initial report due to OTDA on August 11, 2021, and the final report due May 11, 2024. Districts must input all potential class members from their district lists on the attached spreadsheet and report the following information to OTDA:

- Potential class member's name and TA case number;
- For each potential class member, the date of initial denial or discontinuance of TA;
- Whether or not the opt-in notice was returned as undeliverable;
- Whether or not the potential class member contacted the district;
- Date the potential class member contacted any district (if applicable);
- Date of interview (if applicable);
- The district where the courtesy interview was held (if applicable);
- Whether or not the potential class member was determined to be a putative class member (if applicable);
- Date they were determined to be a putative class member;
- Whether or not the putative class member was determined to be a class member;
- Whether or not the class member is currently eligible for TA;

OTDA must submit these reports to the plaintiffs' counsel on the attached spreadsheet so it is imperative that OTDA receives these reports timely. These quarterly reports must be sent to OTDA via the TA shared mailbox at: [otda.sm.cees.tabureau@otda.ny.gov](mailto:otda.sm.cees.tabureau@otda.ny.gov). Once instructions regarding how to calculate retroactive relief are provided at a later date, districts will also be required to start reporting on the following items, which are marked with an asterisk on the attached reporting document:

- For each class member, the date retroactive TA eligibility was determined, if one occurs;
- For each class member, whether or not they are eligible for retroactive TA;
- For each class member, the amount of retroactive relief owed;
- The time period of retroactive relief owed; and
- The date retroactive relief was issued.

#### **IV. Systems Implications**

A new payment type and notice are being created but are not yet available. Further guidance will be issued at such time when instructions regarding the calculation of retroactive relief are released.

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#### **Issued By:**

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**Title:** Executive Deputy Commissioner

**Division/Office:** Office of Temporary and Disability Assistance