



# Office of Temporary and Disability Assistance

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## Administrative Directive Memorandum

### Section 1

<b>Transmittal:</b>	22-ADM-02
<b>To:</b>	Social Services District Commissioners
<b>Issuing Division/Office:</b>	Employment and Income Support Programs
<b>Date:</b>	March 28, 2022
<b>Subject:</b>	Determining Willfulness and Good Cause for Noncompliance with Employment Requirements
<b>Suggested Distribution:</b>	Employment Coordinators, Temporary Assistance Directors, Supplemental Nutrition Assistance Program Directors, Staff Development Coordinators, Employment Staff, Agency Attorneys, Fair Hearing Staff
<b>Contact Person(s):</b>	Employment and Advancement Services (EAS) Bureau Employment Services Advisor or EAS Bureau at: (518) 486-6106

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
19-ADM-01 06-INF-11 02-INF-36 98-ADM-03	85-ADM-17	351.6 351.26 385.2 385.11 385.12	SSL 131 SSL 332 SSL 335-b SSL 341 SSL 341-a SSL 342 SSL 342-a	Employment Policy Manual Sections 2, 11, 12, 15, and 17	GIS 05 TA/DC 032  Chapter 562 of the Laws of 2015

### Section 2

#### I. Summary

This administrative directive (ADM) is to provide policy clarification on the willful and without good cause standard that must be used when determining whether or not an employment sanction should be imposed when a Temporary Assistance (TA) recipient refuses or fails to comply with employment requirements as assigned by the social services districts (districts).

This ADM also informs districts that as of the effective date of this ADM, the willful and without good cause standard must also be used to determine whether an exempt, but potentially employable TA applicant or recipient is ineligible for TA benefits for noncompliance with reasonable medical care, rehabilitation or treatment consistent with section 131 of the SSL and when a Supplemental Nutrition Assistance Program (SNAP) recipient has refused or failed to comply with employment requirements assigned by the district and has not demonstrated compliance to avoid the SNAP

sanction as described in [14-ADM-06](#) (Supplemental Nutrition Assistance Program (SNAP) Conciliation with Option to Avoid a SNAP Work Sanction Through Demonstrated Compliance). Examples are also provided to help districts determine when a recipient's refusal or failure to comply with employment requirements meets the standard of being willful and without good cause.

## II. Purpose

The purpose of this directive is to provide clarification on the willful and without good cause standard that must be used when determining whether an employment sanction should be imposed when a TA or SNAP recipient refuses or fails to comply with employment requirements as assigned by the district. This ADM also advises districts that the willful and without good cause must also be used to determine whether an exempt, but potentially employable TA applicant or recipient is ineligible for TA benefits for noncompliance with reasonable medical care, rehabilitation or treatment consistent with section 131 of the SSL.

## III. Background

Districts were previously notified by [GIS 05 TA/DC032](#) that a TA employment sanction can only be imposed when the district has determined that a recipient of TA willfully and without good cause refused or failed to comply with employment requirements as assigned by the district. Use of the willful and without good cause standard for the purpose of determining when a TA employment sanction must be imposed is required by Sections 341 and 341-a of the SSL, 18 NYCRR 385.11 and decisions issued by the New York State Appellate Division (*Earl v. Turner*, *Dost v. Wing*).

Section 131 of the SSL also requires the use of the willful and without good cause standard when determining whether an exempt, but potentially employable TA applicant or recipient is ineligible for TA benefits for noncompliance with reasonable medical care, rehabilitation or treatment. Work-limited individuals may also be required to comply with reasonable medical care, rehabilitation or treatment that is determined necessary to help the individual maintain or improve their ability to work or participate in work-related activities. A work-limited individual who fails to comply with reasonable medical care, rehabilitation or treatment must be offered conciliation, as described below and shall be subject to an employment sanction if the refusal or failure to comply is determined by the district to be willful and without good cause, in accordance with 18 NYCRR § 385.12.

Additionally, OTDA adopted regulatory changes which require a district to determine that a recipient's refusal or failure to comply with a SNAP employment requirement as assigned by the district was both willful and without good cause before imposing a SNAP employment sanction. This change was adopted to provide a consistent standard for TA and SNAP program determinations as to when an employment sanction is warranted.

Examples are also provided to help districts determine when a recipient's refusal or failure to comply with employment requirements meets the standard of being willful and without good cause.

## IV. Program Implications

Consistent with the Social Services Law, decisions issued by New York State Appellate Division and the adopted regulatory changes and corresponding State policy, this directive clarifies that:

- A sanction for noncompliance with either TA or SNAP employment requirements shall be imposed only when the recipient's failure or refusal to comply is determined to be both willful and without good cause (with certain exceptions described in this directive); and,
- A denial or reduction/discontinuance of TA benefits for an exempt TA applicant or recipient whom the district has determined has the potential to improve their ability to work shall be

imposed only when the refusal or failure to accept referral to or participate in reasonable medical care, rehabilitation or treatment is determined to be both willful and without good cause.

## V. Required Action

Districts must continue to engage all nonexempt TA adult applicants and recipients in work activities as soon as practical and ensure that applicants and recipients who are exempt from work requirements, but who have the potential to improve their ability to work, as determined by a medical professional, participate in reasonable medical care, rehabilitation or treatment. Districts should also continue to assist SNAP recipients with employment services and at a minimum must offer job search assistance to all SNAP recipients who are subject to SNAP work requirements.

### A. Temporary Assistance and SNAP Employment Requirements

#### 1. Employment Requirements

Section 336 of the Social Services Law requires nonexempt applicants and recipients of TA, including those individuals who are concurrently receiving SNAP benefits, to participate in work activities, up to 40 hours per week consistent with the individual's employment assessment and employment plan. SNAP applicants and recipients who participate in assigned work activities for 30 or more hours per week, but less than the number of hours required by the district (not to exceed 40 hours per week), would only be subject to a TA employment sanction. Federal SNAP E&T regulations [see 7 CFR §273.7(e)(4)(ii)] limit the number of hours that an individual may be required to participate in work activities combined with hours of paid employment to 30 hours per week (no more than 120 hours per month). Individuals are not subject to a SNAP employment sanction if they work and/or participate in work activities as assigned by the district for at least 30 hours per week (totaling 120 hours per month). Individuals may also continue to volunteer to participate in work activities for more than 30 hours per week.

Individuals with documented physical or mental health impairments may only be assigned to work activities consistent with the individual's limitations. Additionally, the maximum hours that an individual may be assigned to work experience cannot exceed the number of hours determined by dividing the household's TA grant plus SNAP benefit by the higher of the federal or State minimum wage (see [21-INF-10](#) for additional information regarding the State's minimum wage rates).

Districts are required to ensure that individuals assigned to work activities are supervised and are expected to monitor compliance with assigned work activities, including the number of hours that the individual participates in such activities.

#### 2. Conciliation Requirements

Districts must continue to offer conciliation for recipient noncompliance with TA and SNAP employment requirements in accordance with 18 NYCRR § 385.11 (conciliation must also be offered when a non-exempt TA applicant refuses or fails to comply with an assigned employment requirement other than applicant job search, applicant assessment or a TA applicant voluntarily quits their job or reduces their earning capacity as described in 18 NYCRR § 385.13) and impose the respective consequence if it is determined that the recipient (or TA applicant as described above) willfully and without good cause failed/refused to comply with TA/SNAP employment requirements.

Districts must review their conciliation process to ensure that individuals are given the opportunity to provide an explanation and submit supporting documentation for the period of noncompliance (where requested) relative to any claim of good cause and that any

information available to the district is taken into consideration when determining whether or not the individual's conduct was willful and without good cause. Districts should also ensure that the information discussed during the conciliation is recorded in the case record.

#### Additional Considerations

A SNAP recipient can avoid the SNAP employment sanction during the conciliation process by demonstrating compliance with SNAP employment requirements as assigned by the district (see [14-ADM-06](#) for additional information).

Recipients in a city with one million or more residents may also avoid a TA employment sanction during the conciliation process by reengaging in work activities for a minimum of five (5) business days (see [19-ADM-01](#) for additional information).

### B. Requirement to Participate in Reasonable Medical Care, Rehabilitation or Treatment

#### 1. Requirement

Districts are expected to monitor compliance with and progress in reasonable medical care, rehabilitation or treatment that is expected to improve a TA applicants or recipient's ability to work, as determined by a medical professional and to take timely action when an exempt, but potentially employable, TA applicant or recipient refuses or fails to comply with reasonable medical care, rehabilitation or treatment as assigned by the district.

#### 2. Noncompliance

Conciliation is not required if an exempt TA applicant or recipient refuses or fails to accept a referral to or participate in reasonable medical care, rehabilitation or treatment. However, districts are required by Section 131 of the Social Services Law to determine that an individual willfully and without good cause refused or failed to accept referral to or participate in reasonable medical care, rehabilitation or treatment before determining the individual is ineligible for TA in accordance with 18 NYCRR § 385.12. Such determinations must be based on a review of the information available to the district. The individual is responsible for providing the district with documentation to substantiate any good cause claim for noncompliance with required reasonable medical care, rehabilitation or treatment, as required by the district. Examples of willful and without good cause noncompliance are included in subsection C of Section V of this directive.

Good cause must be granted in those instances where an individual is unable to comply with reasonable medical care, rehabilitation or treatment because of their physical or mental impairment. In such instances, the district must grant good cause and should provide reasonable measures that the district has determined are necessary to enable the individual to comply with the requirement to participate in reasonable medical care, rehabilitation or treatment.

Note: TA applicants and recipients who claim to be unable to work or have limitations on their ability to participate in work activities may be required to provide documentation or participate in an evaluation of their ability to work in accordance with 18 NYCRR §385.2. Failure to participate in the employability/disability determination process without good cause, as required by State regulations, may result in TA case closure in accordance with 18 NYCRR §351. Districts are not required to determine that noncompliance with the requirement to participate in efforts to document a claimed exemption was willful before taking negative action because this requirement is not subject to the willful standard. SNAP applicants and recipients who are exempt from participation in SNAP employment requirements, consistent with 18 NYCRR § 385.3, cannot be required to participate in

reasonable medical care, rehabilitation or treatment as a SNAP requirement. SNAP recipients who claim, but do not provide documentation of a claimed exemption from SNAP work requirements must be assigned appropriate SNAP employability and ABAWD codes and remain subject to SNAP employment and ABAWD requirements, as applicable.

## C. Determinations of Willfulness and Good Cause

### 1. Willfulness

The term “willfulness” for the purpose of imposing an employment sanction is determined on a case-by-case basis taking into consideration whether the individual, intentionally, knowingly, or deliberately refused or failed to comply with TA or SNAP employment requirements.

### 2. Good Cause

Good cause exists when there are circumstances which are clearly beyond the individual’s control that prevents the individual from complying with the assigned employment requirement or reasonable medical care, rehabilitation or treatment, as described above. When that individual notifies the district and furnishes documentation, as may be required by the district, to support any claimed good cause reason for the act or period of noncompliance, the district must record that information in the case record. Examples of good cause reasons for the act or period of noncompliance include, but are not limited to:

- Job interview or working at the time of the employment appointment or assigned work activity,
- Illness of the individual,
- Jury duty,
- Illness of another household member requiring the presence of the individual who is subject to the work requirement to be in the home to provide care or service,
- Death in the family,
- Physical or mental incapacity that prevents compliance,
- A household emergency, or
- The individual has made a diligent effort to secure childcare and the district has determined that adequate childcare for a child under the age of 13 is not available.

Individuals are responsible for notifying the district timely and for providing documentation for the period of noncompliance (upon request) to substantiate a claim of good cause. Where requested by the district, the individual must make reasonable attempts to obtain documentation and is required to notify the district timely of any reasons that may impact their ability to provide documentation required by the district. The district must review the information provided and determine whether the information supports a finding of good cause. Individuals who claim a physical or mental health incapacity may also be required to participate in an independent evaluation in accordance with 18 NYCRR §385.2. Examples of suitable documentation to support good cause for the period of noncompliance may include, but are not limited to:

- Letter from employer,
- Letter from the individual’s health care practitioner,
- Letter from a household member’s health care practitioner,
- Letter from the court,
- Copy of jury notice, or
- Letter from the school where the individual’s child attends.



### 3. Determination

In districts outside of New York City, a notice of intent (NOI) should be issued if the recipient does not respond to the conciliation notice and there is no information otherwise provided to the district to indicate that they did not willfully and without good cause fail to comply with the respective TA or SNAP employment requirement (see information provided above regarding the ability to avoid a SNAP employment sanction during the conciliation process, if the individual demonstrates compliance as assigned by the district). Regardless of whether the individual appears for conciliation, the district may have sufficient information available to make a determination that the noncompliance was willful and without good cause. For example, deliberate refusal or failure to comply with employment requirements would be considered willful and without good cause. In other cases, the determination may require further evaluation of the circumstances.

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

TA applicants and recipients who reside in New York City and who do not respond to the re-engagement/conciliation notice, refuse to or do not demonstrate compliance as assigned by HRA for a minimum of 5 business days may be subject to a non-durational TA and/or durational SNAP sanction in those instances where the worker determines that the individual intentionally and without good cause refused or failed to comply with an assigned work requirement.

OTDA has developed the following examples to assist districts in determining whether or not an individual's noncompliance with employment requirements was willful and without good cause.

#### Example #1

A nonexempt Family Assistance recipient was assigned to participate in a vocational training program from 9 am to 3 pm daily for a three-month period beginning July 6<sup>th</sup>. On July 19<sup>th</sup> and 20<sup>th</sup>, the individual did not report to the training program, which was reported by the provider to the district. A conciliation notice was sent to inform the individual of the opportunity to request conciliation within 10 days to explain the reason for the noncompliance. The individual requested conciliation in the required timeframe. During the conciliation conference, the individual indicated that they understood they were expected to participate in the training program and had not attended for the two days because they went to visit a friend over the weekend and decided to stay a few extra days. The individual indicated that the visit was not for any emergency situation. In this instance, the worker correctly determined that the individual's failure to participate in the training program was

willful and without good cause, as the individual intentionally chose to not participate for a reason that did not constitute good cause.

#### Example #2

A Safety Net Assistance (SNA) recipient without dependent children residing in a district outside of New York City was determined to be nonexempt from TA work requirements. The individual complied with their employment assessment and was assigned to participate in a vocational education program starting on September 1<sup>st</sup>. The individual was provided an assignment letter that reminded the individual of their responsibility to comply with employment activities and of the consequences if they willfully and without good cause, refused or failed to comply with the assigned work activity.

On September 3, the provider notified the worker that the individual did not appear for the assignment. The worker generated a conciliation notice providing the individual 10 days to request conciliation. The individual did not respond to the conciliation notice within the required time frame. Absent contrary information in the case record or otherwise known to the district, it is appropriate for the worker to determine that the individual's failure to comply with the employment requirement was both willful and without good cause. The worker issued a timely notice to inform the individual of the intent to discontinue their TA benefits for 90 days (1<sup>st</sup> employment sanction for households without dependent children in a district that does not include a city of one million or more residents) and until they demonstrate that they are willing to comply with employment requirements because their refusal or failure to comply with the assigned work activity was determined to be willful and without good cause.

#### Example #3

A nonexempt Family Assistance (FA) recipient was referred to a work experience assignment to begin on September 8<sup>th</sup>. On September 8<sup>th</sup>, the individual notified their worker that they missed the first day because they missed the bus and did not have other transportation on that day, but states that they will report the next day to participate in the assignment. The individual was advised to report to the worksite the next business day. The worker enters a note in the case record. Future instances of noncompliance would need to be evaluated to determine whether or not the individual's noncompliance with assigned work requirements was willful and without good cause.

Note: It is important that the circumstances of each instance of noncompliance, including the information discussed during the conciliation be recorded in the case record. This information may be needed to establish that the noncompliance was willful and without good cause. For example, if the individual in Example #3 above repeatedly missed the bus that is needed to get to a work assignment on time, that may be considered willful noncompliance. While the individual is responsible to provide documentation to support their claim of good cause, as requested, the district will be required to explain the district's decision to impose an employment sanction in the event of a fair hearing.

#### Example #4

An exempt SNA recipient fails to comply with reasonable medical care, that is determined necessary to help them improve their ability to work or participate in work related activities. The individual states that they missed these appointments because the appointments were scheduled in the morning and their medication makes it difficult for them to attend early appointments. The individual is counseled that if their medication makes morning appointments difficult, they should schedule their appointments in the afternoon. The individual agreed that afternoon appointments are an option and that they will let their caseworker know if they are unable to schedule appointments in the afternoon. The worker

documented this information in the individual's case record. The individual subsequently missed medical appointments which they continued to schedule in the early morning after being counseled to establish afternoon appointments. The worker reviewed the case record and correctly determined that the individual's conduct was willful and without good cause. The worker documented the reason for the noncompliance in the case record.

#### Example #5

A nonexempt FA/SNAP recipient does not report to the work experience site assigned by the district. The worker generated a conciliation notice and sent the notice to the individual to offer conciliation. The individual responded to the conciliation notice in the required time frame and informed the district that they did not appear at the worksite because they decided that they did not want to engage in work activities as assigned by the district and felt they could job search independently without the district's involvement. The worker discussed the noncompliance with the individual and determined that the individual willfully and without good cause failed to comply with the assigned work activity. The worker offered a SNAP employment activity assignment to demonstrate compliance to avoid a SNAP sanction which the individual declined. The worker noted the information in the case record to document the individual's conduct was willful and without good cause and that the individual failed to demonstrate program compliance to avoid a SNAP sanction.

#### Example #6

A SNA recipient whom the district has determined to be exempt, but has the potential to improve their ability to work, fails to comply with a referral to physical therapy which their health care practitioner has indicated is needed to improve their ability to work. Sending a conciliation notice is not required in those instances when an exempt individual fails to comply with reasonable medical care, rehabilitation or treatment. However, the worker must review the information available to determine whether the individual's noncompliance was willful and without good cause. The worker reviewed the information available and noted that the individual had reported that necessary transportation needed for the individual to attend physical therapy was not available on the day of the appointment because of severe weather. The worker determined that the individual's conduct was not willful and without good cause. The worker documented the reason for the noncompliance in the case record and contacted the individual to reschedule the appointment to a time when transportation was available.

#### Example # 7

A nonexempt FA recipient whom the district has determined has work-limitations due to documented medical conditions schedules medical appointments during their hours of work engagement and exceeds their allowable excused hours. The district has confirmed that the individuals' medical provider has office hours including late afternoons and weekends and the individual was counseled that their engagement hours have been assigned part-time with a predetermined schedule to accommodate their regular medical appointments during non-engagement hours. The following week the individual again misses hours of work-related activities due to non-emergency medical appointments. The worker issues a conciliation notice to which the individual responded that they attended routine medical appointments each day. The individual confirms that they have scheduled the appointment during hours they were expected to be at a work assignment and did not request appointments for days they did not have work assignments. The worker reviewed the case record and determined that the individual's conduct was willful and without good cause because the scheduling of the non-emergency medical appointments during required hours of participation was within the individual's control. The worker documented the reason for the noncompliance in the case record.



## Example # 8

A nonexempt SNA recipient failed to comply with outpatient substance abuse treatment that the district has determined may help them improve or maintain the ability to work or participate in work-related activities. The individual responded to the conciliation notice and stated that they skipped their treatment appointment as they do not want to engage in treatment, but still needs receive TA to be able to pay their rent. The individual was reminded that they must comply with the treatment program to be eligible for TA. The individual was referred back to the substance abuse treatment program and the worker documented the information in the case record. The individual failed again to comply with the substance abuse treatment appointment and was sent a conciliation notice. The individual did not respond to the conciliation notice within the required timeframe. The worker reviewed the case record and correctly determined that the individual's conduct was willful and without good cause. The worker documented the reason for the noncompliance in the case record.

### D. Willful Standard Does Not Apply for Certain Employment Requirements

The willful standard does not apply for the following acts of noncompliance:

- Failure to comply with applicant assessment;
- Failure to comply with applicant job search requirements;
- Applicant voluntarily job quit or reduction in earning capacity for the purpose of qualifying for initial or increased TA;
- Failure to provide medical documentation or comply with an independent employability evaluation in accordance with 18 NYCRR §385.2, and
- Failure to provide documentation to support a non-medical exemption from work requirements claimed by the individual.

Note: Districts are still required to evaluate any claim of good cause consistent with 18 NYCRR 351.26 and 385.11.

Failure to comply with applicant assessment and applicant job search without good cause results in denial (without the necessity of offering conciliation) of the TA application for the household. A TA applicant whom the district determines voluntarily quits a job or reduces their earning capacity, without good cause, for the purpose of qualifying for initial or increased TA is ineligible for TA for 90 days from the date of such quit or reduction in earning capacity. The district must still determine eligibility for TA for other members of the household. Failure to participate in the employability/disability determination process or document a claimed exemption (medical or non-medical) from the requirement to participate in work activities without good cause as required by State regulations may result in TA case closure in accordance with 18 NYCRR §351.

## VI. Effective Date

Immediately.

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### Issued By:

**Name:** Valerie T. Figueroa

**Title:** Deputy Commissioner

**Division/Office:** Employment and Income Support Programs/Office of Temporary and Disability Assistance