

# Section 385.2 - Participation and Exemptions for Applicants and for Recipients of Public Assistance

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## Part A - The Regulations

### a) General participation requirements.

All applicants for and recipients of public assistance must participate in public assistance work activities assigned by the social services official in accordance with the requirements of this Part. Such applicants and recipients who fail to comply without good cause with the requirements of this Part shall be subject to the provisions of section 385.12 of this Part.

### b) Exemptions from the requirement to participate in work activities.

An applicant for or recipient of public assistance is exempt from participation in public assistance work activities pursuant to the requirements of this Part if he/she is determined by the social services official to be:

- 1) ill or injured to the extent that he/she is unable to engage in work activities for up to three months, as verified by medical evidence;
- 2) 60 years of age or older;
- 3) under the age of 16 or under the age of 19 and attending full-time a secondary, vocational or technical school;
- 4) disabled or incapacitated in accordance with the provisions of subdivision (d) of this section;
- 5) needed in the home because another member of the household requires his/her presence due to a verified mental or physical impairment, and the social services official has determined that no other member of the household is appropriate to provide such care. For the purposes of this paragraph, the term "verified" shall mean that a licensed physician or certified psychologist has made the determination that such an impairment exists and that the household member is in need of care;
- 6) pregnant, beginning 30 days prior to the medically verified date of the delivery of the child;
- 7) the parent or other caretaker relative in a one parent household of a child under 12 months of age who is personally providing care for such a child. This exemption must last for no longer than 12 months for any parent or caretaker relative's life.
  - i) The exemption shall last no longer than three months for any one child unless the social services official makes a determination to extend the exemption for the child for up to the total 12 month maximum for the life of such parent or caretaker relative.
  - ii) To the extent that the total of 12 months of exemption have not been exhausted by such parent or caretaker, the social services official shall apply the exemption to the parent or caretaker in the case of a child under three months of age, but shall

determine whether to apply such exemption in the case of a child more than three months of age.

c) Documentation of exemption.

- 1) If an applicant for or recipient of public assistance claims that he/she should be exempt from work activities pursuant to subdivision (b) of this section for reasons other than a medical limitation on his/her ability to work, the social services official shall notify the individual verbally or in writing of the opportunity to provide to the social services official, within 10 calendar days of such notification, such evidence as the social services official deems necessary in order for the social services official to determine whether the applicant or recipient should be exempt from work activities. An applicant or recipient who claims that he/she should be exempt from work activities for reasons other than a medical limitation and who fails to provide documentation that he/she should be exempt will be deemed to have failed to meet the eligibility requirements for assistance pursuant to Part 351 of this Title. Failure of such documentation to substantiate the claimed exemption shall not itself cause the individual to be ineligible for public assistance.
- 2) A recipient of public assistance who previously has been determined to be exempt from work activities pursuant to subdivision (b) of this section for reason(s) other than a medical limitation on his/her ability to work, and who claims that he/she should remain exempt, must provide such evidence as the social services official deems necessary in order for the social services official to determine whether the recipient should continue to be exempt from work activities. A recipient who fails to provide such evidence shall be deemed to have failed to meet the requirements for continued eligibility pursuant to Part 351 of this Title. A recipient may not be required to repeatedly produce a document already in the social services district's files regarding a condition which the social services official determine is not subject to change.

d) Disability and work limitation provisions.

- 1) A social services official must, at application and recertification, or whenever he/she has reason to believe that an applicant for or recipient of public assistance might have a physical or mental impairment, inquire whether such individual has any medical condition which would limit his/her ability to participate in work activities.
- 2) Should the applicant or recipient declare that he/she has a mental or physical impairment, the social services official:
  - i) shall notify the individual verbally or in writing of the opportunity to present to the social services official, within 10 calendar days of such notification, any medical documentation, including but not limited to, drug prescriptions and reports of the individual's treating health care practitioner (hereinafter referred to as the individual's practitioner). Such documentation must contain a specific diagnosis resulting from

any medically appropriate tests and specify any work limitation of the individual;  
and/or

- ii) may refer the individual to a health care practitioner certified by the New York State Office of Disability Determinations (hereinafter referred to as the district's practitioner) for a determination of the individual's medical condition;
  - (a) If the social services official refers an individual to the district's practitioner prior to such individual submitting documentation from the individual's practitioner, the individual shall make his/her best efforts to bring the documentation to the examination by the district's practitioner, so that it may be reviewed as a part of the examination;
  - (b) In such instances, any documentation available from the individual's practitioner must be submitted to the district's practitioner no later than four days after the examination, provided that in no instance shall such time period exceed 10 calendar days from the notification set forth in subparagraph (i) of this paragraph, or the district's practitioner will not be required to consider it as a part of the evidence used to determine the individual's medical condition.
- 3) In evaluating an individual's claim of a physical or mental impairment, the social services official shall have sole discretion in determining whether any documentation provided by the individual or the individual's practitioner is sufficient evidence of the claimed or declared impairment.
- 4) In evaluating the initial claim of a mental or physical impairment made by an applicant, or the continuing claim of a medical impairment made by a recipient who has been previously determined exempt from participation in work activities, the social services official may require the individual to cooperate with measures to verify such claim and/or to submit documentation as described in subparagraph (2)(i) of this subdivision as a condition of eligibility for public assistance and SNAP in accordance with the requirements of Parts 351 and 387 of this Title. Failure of such documentation to substantiate the claimed impairment shall not itself cause the individual to be ineligible for public assistance.
- 5) In evaluating the ongoing claim of a mental or physical impairment made by an individual who has been determined by the social services official not to be exempt after a determination made in accordance with the requirements of this section, the social services official may require the individual to provide additional documentation from the individual's practitioner. Such individual remains nonexempt until and unless a different determination is made by the social services official.
- 6)
  - i) In the absence of any claim of mental or physical impairment on the part of the individual, if the social services official suspects that such individual has a mental or physical impairment, the social services official shall refer the individual to the social

services district's health care practitioner for an examination and determination of his/her medical condition.

- ii) The social services official shall notify the individual of an opportunity to present any medical documentation available from the individual's practitioner at the time of the examination, or in any event no later than four days from the date of that examination if the individual wishes such documentation to be considered by the district's practitioner in the determination of the individual's medical condition.
- 7) At the time that the social services official or the district's practitioner makes a determination of an individual's medical condition, the social services official shall notify the applicant or recipient in writing of such determination and of the right to request a fair hearing to contest such determination within 10 days of such notification.
- i) If the individual requests a fair hearing within the 10-day period, the social services official shall not assign the individual to work activities pending the fair hearing determination, except that the social services official may, during the pendency of a determination pursuant to this section assign an individual, with the agreement of such individual, to a limited work assignment which would be consistent with any limitations associated with the mental or physical impairments alleged by the individual.
  - ii) Notwithstanding any requirement of Part 358 of this Title, an individual shall not have the right to a fair hearing to contest such determination if he/ she requests a fair hearing after the 10-day period specified in subparagraph (i) of this paragraph.
- 8)
- i) At any time after an applicant or recipient alleges that he/she has a mental or physical impairment which would limit his/her assignment to work activities, or render him/her exempt from assignment to work activities and the social services official has reason to believe that the individual misrepresented that he/she suffered from such an impairment, the social services official shall notify the individual in writing of a potential sanction, the duration of which is consistent with the provisions of section 385.12(d)(1) of this Part.
  - ii) The social services official shall effect such sanction if:
    - (a) he/she determines, based upon clear medical evidence, that there is no medical basis for the individual's claim that he/she is unable to participate in work activities based upon a physical or medical impairment; and
    - (b) he/she determines that the individual intentionally misrepresented his/her medical condition.
- 9) If the social services official refers an applicant or recipient to the social services district's practitioner for an examination as a result of a mental or physical impairment claim by

the applicant or recipient, in accordance with the provisions of this section, the examiner shall:

- i) review and consider all records or information timely provided by the individual or his/her treating health care practitioner that are pertinent to the claimed medical condition;
  - ii) provide to the social services official in writing a specific diagnosis as evidenced by medically appropriate tests or evaluations in determination of the individual's claimed condition;
  - iii) indicate to the social services official and the individual in writing, a medical opinion which specifies whether the medical condition alleged by the individual is present or absent; the social services official shall be responsible for ensuring that the applicant or recipient does receive such written medical opinion;
  - iv) report to the social services official the presence of any condition other than that which was alleged by the individual, but which was discovered in the course of the examination, which may interfere with the individual's ability to fully engage in work activities;
  - v) determine whether the individual is:
    - (a) disabled and exempt from participation from work activities assigned in accordance with the provisions of this Part; provided, however, that such determination shall specify the duration of time for which the disability shall prevent the social services official from making an assignment to work activities;
    - (b) work limited, having specific identified limitations affecting the type of work activity to which the individual may be assigned; provided, however, that such determination shall specify the duration of time for which such work limitations shall apply to such individual;
    - (c) neither disabled nor work limited.
  - vi) provide a written determination, when issuing an opinion that differs from that of the individual's treating health care practitioner, that specifies the reason for disagreement with the determination and present evidence that supports the examiner's opinion.
- 10) The social services official shall not assign to work activities any individual for whom a medical determination is pending, either as the result of a request by an applicant or recipient or direction of the social services official, until such a determination is rendered pursuant to the requirements of this section unless the individual agrees to a limited work assignment consistent with the individual's alleged medical condition.
- 11) Notwithstanding any other requirement of this section, an individual who is eligible to receive comprehensive health services through a special needs plan as set forth in

paragraph (m) or (n) of subdivision one of section 364-j of the Social Services Law and the regulations promulgated thereunder, regardless of whether such a plan is operating in the social services district in which the individual resides, shall be considered to be either disabled or work limited, as determined by the social services official.

12) Notwithstanding paragraphs (l) through (11) of this subdivision, an individual whom the social services official suspects as having, or who indicates that he/she has an impairment that is due to alcohol or substance abuse, shall be subject to the requirements of section 351.2(i) of this Title.

13)

- i) An individual shall be deemed to be work limited if the social services official determines that, in accordance with the provisions of this section for determining disabilities, such individual has mental or physical impairments which would limit his/her ability to engage in work activities in accordance to the requirements of this Part.
- ii) In the case of an individual who is work limited, the social services official shall assign such individual to work activities only if the assignment:
  - (a) is consistent with the individual's treatment plan when such plan is prescribed by the individual's practitioner and/or the social services district's practitioner;
  - (b) where no treatment plan exists, that the assignment is consistent with the individual's mental and physical limitations; and
  - (c) is determined to be appropriate by the social services official who is satisfied that such individual is able to perform the work assigned and that such assignment will assist the individual's transition to self-sufficiency.

14) The social services official shall, when assigning a recipient who is work limited to work activities pursuant to section 385.9 of this Part, inform in writing the individual responsible for supervising such activities of any limitations of the recipient.

#### e) Restoration to self-sufficiency.

An individual who has been determined to be exempt from participation in work activities in accordance with the requirements of this Part due to being disabled pursuant to this section, who in the judgment of the social services official has the potential to be restored to self-sufficiency through rehabilitation, may be required, when determined appropriate by the social services official, to:

- 1) provide information from the individual's practitioner or submit to an examination by the social services district's practitioner in order to determine whether or not the individual can recover from a mental or physical impairment;

- 2) accept medical care provided by the social services official or made available through other agencies to assist the individual in recovering from a mental or physical impairment and in restoring the individual to self-sufficiency;
- 3) accept referral to and enrollment in a program of vocational rehabilitation, training and other essential rehabilitation designed to restore an individual to self-sufficiency;
- 4) give evidence, as requested by the social services official, that he/she is participating in a program assigned by the social services official in accordance with the provisions of this subdivision.

f) Engaged-in-work requirement.

- 1) For the purposes of this subdivision, the term engaged-in-work shall be defined by the social services official. Such definition shall be included in the social services district's local plan prepared pursuant to the requirements of section 385.10 of this Part.
- 2) The social services official shall ensure that each parent or caretaker of a dependent child, when such parent or caretaker is receiving public assistance funded through the Federal Temporary Assistance to Needy Families Program, is engaged-in-work as soon as practicable, but no later than 24 months (whether or not consecutive) from initial receipt of assistance. For the purposes of this paragraph, the initial receipt of assistance for individuals who were receiving such assistance on or before December 2, 1996 shall be December 2, 1996.
- 3) The social services official shall ensure that each parent or caretaker of a dependent child, when such parent or caretaker is receiving public assistance which is not funded through the federal temporary assistance to needy families program, and each adult member of a household without dependent children who is receiving public assistance, is engaged-in-work as soon as is practicable. Individuals exempt pursuant to subdivision (d) of this section should not be considered by the social services official when complying with the requirements of this paragraph.

## Part B - Department Policy

### Overview

All applicants for and recipients of Temporary Assistance (TA) must comply with employment requirements and social services districts should help support an individual's progression to economic stability by providing appropriate services. While all recipients have employment responsibilities, the type of assignment a district may require, and the consequences of noncompliance differ depending on the district's determination that the individual is either exempt or non-exempt from work activity assignments. This determination is made based upon an evaluation of the individual's abilities and barriers. Additionally, the work

activity that will most benefit an individual differs depending on the individual's skills, abilities, and limitations.

Office of Temporary and Disability Assistance policy discussed in this section includes:

- The exempt/non-exempt determination, exemptions from TA work activity assignments, reviewing exempt status, and notifying individuals of their exempt status;
- Identifying barriers to participation;
- Federal disabilities rights laws and TA employment requirements including equal access and reasonable accommodations;
- The relationship between exempt/nonexempt status and work participation rates;
- The "disability review procedure," which is the procedure for determining whether or not an individual has any health-related limitations, and waiver of accommodations;
- Categories of health-related exempt/non-exempt status;
- Employment requirements for each exempt/non-exempt status;
- Consequences of noncompliance with an employment requirement including the grievance procedure and good cause determination;
- Consequences for failure or refusal to cooperate with efforts to obtain medical documentation; and
- The timeframes by which all individuals must be "engaged in work."

### The Exempt/Non-exempt Determination

The exempt/non-exempt determination is the district's determination of the extent to which a TA recipient can participate in work activities. The determination is based upon an evaluation of the

individual's physical abilities and mental health, as well as other factors that may affect the individual's ability to work. Work activities are those activities listed in 18 NYCRR 385.9, including work experience, job search and job skills training. In certain circumstances, the social services district may also require an individual to participate in other work-related activities, such as treatment, to help move them toward self-sufficiency.

The primary exempt/non-exempt categories affect the types of employment-related activities that may be required and the corresponding penalties for noncompliance. Individuals who are incapable, even with accommodation, of participating in work activities or who are excused from participation because of their age or caretaker status are deemed to be exempt. Within the primary exempt/non-exempt categories are individuals with a range of abilities. Certain individuals may have limitations on their ability to work while still being subject to work requirements. For example, an individual who is determined to be work limited due to certain health related barriers is required to participate in work activities which are consistent with the individual's documented limitations and is subject to the non-exempt penalties. Also, individuals who are exempt from participation in work activities may be able to participate in rehabilitation activities. Individuals with impairments must not be assumed to be exempt and districts should evaluate each individual's ability to participate in work activities or rehabilitation services through the disability review procedure.

## Review of Exempt Status

Districts must determine whether or not an individual is exempt or non-exempt from work activities before making an employment assignment. Districts must review an individual's exempt/non-exempt status at application, recertification, or whenever there is reason to believe the status may have changed. Districts may also choose to review an individual's exempt/non-exempt status during assessment as described in 18 NYCRR 385.6 and 18 NYCRR 385.7. Any time the district is making a determination of whether or not an applicant or recipient suffers from physical or mental health limitations that may affect their ability to participate in work activities, it must follow the disability review procedure specified in 18 NYCRR 385.2 (d) and discussed below.

## Exemptions from Work Requirements

Referenced in: 18 NYCRR 385.2 and SSL § 332

An individual is exempt from the requirement to participate in TA work activities if they are:

- ill or injured for up to three months, as verified by medical evidence;
- sixty years of age or older;
- under sixteen years of age, or under the age of nineteen and attending full time secondary, vocational or technical school;

- disabled or incapacitated and unable to work in accordance with the disability review procedure;
- needed in the home full-time to care for a disabled household member;
- pregnant, beginning 30 days prior to the medically verified due date; or
- parent or caretaker of a child under three months of age. (Note: An individual may be exempted for this reason for a lifetime total of 12 months. The district may choose to extend the exemption beyond three months for one child up to the 12-month maximum.)

## Client Notification

TA applicants and recipients are notified through *Book 1: What You Should Know About Your Rights and Responsibilities* (LDSS-4148A) of the factors that may exempt them from work requirements. Districts are required to distribute the booklets to clients at application and recertification. Districts must also verbally discuss the exemptions (e.g., at orientation and during assessment) to ensure that those with difficulty reading and/or comprehending the written material are adequately informed.

When explaining exemptions, districts should inform individuals of the following:

- A disability will not disqualify the individual from receiving TA benefits.
- Disclosure of a disability is voluntary unless the individual has demonstrated an inability to fully participate in work activities (more information on voluntary disclosure is provided below in Exemptions to Voluntary Disclosure).
- Health-related information about the individual will be kept confidential.
- Accommodations and services which are available to individuals with identified disabilities.
- The different types of barriers that exist (e.g., physical disabilities, mental health issues, learning disabilities, caretaker of ill household members).
- Any work activity assignments will be made consistent with the individual's documented limitations, if any.

These notifications have been incorporated into the "Rights and Responsibilities" booklet (LDSS 4148A.) A stand-alone model notice is also available for district use (see Section Fifteen.)

## Identifying Barriers

When making the exempt/non-exempt determination, districts evaluate an individual's specific abilities and barriers pertaining to any claimed medical exemption to determine the most appropriate employment assignment. To make the correct exempt/non-exempt determination, it is necessary to identify factors, including an individual's specific abilities and barriers, that could

limit participation. It is important to note that the presence of a barrier does not automatically mean that an individual is exempt. Districts must evaluate the extent to which an individual's barrier(s) affects participation in employment activities.

Workers may be able to identify possible barriers to participation through the use of screening, assessments, or case management. Some barriers are not readily apparent and may become more evident over time. For example, as a worker gets to know an individual through case management contacts, the worker may begin to suspect possible unidentified barriers impeding the individual's progress. The worker could then address the suspected barrier with the individual and discuss identifying the disability/limitation so it can be appropriately accommodated.

Individuals who claim to be work limited or exempt from work requirements must comply with the disability review procedure to have any limitations accommodated. Individuals may not be required to disclose a disability and may choose to participate in employment activities without accommodation. Districts may choose to offer screening and have trained staff administer validated screening tools to specifically identify individual barriers to work. For example, the Washington State screening tool for learning disabilities identifies those individuals who are likely to be learning disabled. The Modified Mini Screen (MMS) Mental Health Screening Tool is also available to help districts determine when it is appropriate to make a mental health evaluation referral. Further information about the MMS is available in 15-ADM-04.

The district is not required to notify individuals of the results of screening because screening alone does not render a determination of disability or impairment. If the screening indicates the individual may have a work-related barrier, the district should obtain a qualified professional's assessment of the extent to which a barrier exists, how it affects the individual's ability to participate in work activities and then determine how it can best be accommodated. Districts administering validated screening tools must indicate in their biennial employment plan a description of the district's screening policy and procedures.

## Notification of Exempt/Non-Exempt Status

Districts must notify an individual of its exempt/non-exempt determination whenever an individual alleges to be unable to participate, or the individual otherwise participates in the employability disability review described in 18 NYCRR 385.2. Districts must also notify an individual whenever their status changes from exempt to non-exempt. Districts must use the Notification of Temporary Assistance Work Requirements Determination (Exempt) (LDSS 4005) or Notification of Temporary Assistance Work Requirements Determination (Nonexempt) (LDSS 4005(a) (or an approved local equivalent) to notify an individual of its determination. These notices and related instructions are contained in Appendix C of the manual.

Districts must issue the LDSS-4005 or LDSS-4005(a) under the following circumstances:

- Whenever an individual alleges to be unable to participate (for medical or nonmedical reasons);

- Whenever updated or new documentation is received to support an individual's claim of continued exempt status (for medical or nonmedical reasons);
- The individual otherwise participates in the employability disability review process; and
- Whenever an individual's status changes from exempt to non-exempt, including drug/alcohol.

## Relationship Between Exempt/Non-Exempt Status and Work Participation Rates

Although State law exempts certain individuals from participation in work activities, there are only four federal exemptions that excludes a case from the All Families work participation rate calculation:

- An individual in a true single-parent case who is personally providing care for a child under the age of one for a maximum of twelve months during the 60-months duration of the case. (Note: while a parent in either a single parent or two-parent family may be exempt from participation in work activities because they are the caretaker of a child under twelve months, only true single parent families with the exemption are removed from the TANF All-Families participation rate calculation.);
- For up to 3 months in a 12-month period during which time an individual has been sanctioned for failure to comply with employment requirements;
- Cases with a parent who is the caretaker of a disabled child or other disabled family member residing in the household; and
- Child only cases.

Specific information regarding work participation rates is included in Section 385.8 of this manual.

## Relationship Between TA Work Requirement Exemptions and SNAP Employment and Training (SNAP E & T) Requirements

A separate determination of exempt/non-exempt status must be made for both TA and SNAP. An individual may be required to participate in TA work activities but be exempt from participation in SNAP work requirements; therefore, a separate determination must be made for each program.

Individuals who are not exempt from TA work activities who may be exempt from participation in SNAP work requirements include recipients of unemployment compensation, students enrolled at least half-time in a qualified training or education program and a caretaker of a child under six years of age (unless the caretaker is participating in a TANF work experience program).

Specific information regarding SNAP work requirement exemptions and SNAP E&T activities is included in Section 385.3 of this manual.

## Federal Disability Laws and Employment Requirements

The Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) requires that Title II of the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) apply to TANF programs. The ADA (42USC Section 12101 et seq.; 28 CFR Part 35) applies to states, counties and other local governments administering all or part of a TANF program, and Section 504 (29 USC Section 794; 45 CFR Part 84) applies to entities which receive federal funding, either directly or indirectly, through a grant, contract or subcontract. The ADA and Section 504, as they apply to TA and SNAP employment programs, require that districts:

- ensure equal access to employment programs for qualified people with disabilities through the provision of appropriate services;
- adopt methods of administration which do not discriminate against, and which ensure equal access and opportunity to qualified individuals with disabilities; and
- modify policies, practices, and procedures to provide equal access which allows qualified individuals with disabilities to participate in and benefit from employment programs unless doing so would fundamentally change the program or cause an undue hardship.

### Equal Access

To ensure that individuals with disabilities are provided with equal access to employment programs, districts must first assess individuals' specific abilities and limitations, and may not make work activity assignments based on generalizations or stereotypes. For example, a district may not determine that any individual with a disability is to be assigned to the same activity or to no activity.

### Reasonable Accommodations

Qualified individuals with disabilities must be provided reasonable accommodations so they have an opportunity to participate in and benefit from services and programs in a manner that is as effective and meaningful as the opportunities available to individuals without disabilities unless doing so would fundamentally change the program or cause the district an undue hardship. The district, when developing the employability plan as described in 18 NYCRR 385.6

and 385.7, should determine what activities are appropriate and available and what accommodations are necessary to allow the individual to participate. Additionally, individuals with disabilities may require accommodation when scheduling appointments. For example, when assigning an individual to appear for an assessment, the district should consider if the individual needs to be seen with a short waiting period. A discussion of determining appropriate activity assignments is provided below.

For more information regarding federal disability laws, districts may refer to the federal statutes and regulations cited above, or visit the United States Department of Health and Human Services Office for Civil Rights website at <https://www.hhs.gov/ocr/index.html>.

## Grievance Procedure

Whenever an individual requests a reasonable accommodation, the district must record the request, including the district's response, in the individual's case record. If an individual who has requested an accommodation believes they have not been adequately accommodated, the individual may request in writing to have the matter resolved through the district's grievance procedure as described in 18 NYCRR 385.11(b). The grievance procedure is to be applied whenever an individual who has requested a specific accommodation believes that the district has not adequately responded to the request. The district has thirty (30) days from the date of the written request to resolve the grievance and must provide for at least one meeting with the individual, appropriate staff and the mediator. The district must also provide the individual with the results of the grievance procedure in writing. If the matter is not resolved through the grievance procedure, the individual must be informed of the right to a fair hearing. The grievance procedure is not used for disputes regarding the district's determination of the exempt/non-exempt status, which is disputed through the fair hearing process, as described in the disability review procedure below.

## Participation Requirements During Grievance

During the grievance process, the individual may not be sanctioned for failing or refusing to comply with the disputed activity or appointment, however, consistent with 18 NYCRR 385.11(b), the individual may be required to participate throughout the adjudication process. If the individual's grievance alleges that the worksite is not appropriately accommodating the individual's health limitations, the individual may not be required to perform the specific worksite tasks at issue until the district determines the individual's limitations are being accommodated.

## Voluntary Disclosure

In general circumstances, the United States Department of Health and Human Services prohibits requiring an individual to disclose a disability. Therefore, general screening for a disability, including learning disabilities and mental health disorders, must be voluntary for TA clients. Nonetheless, districts must inquire about an individual's health-related limitations to determine appropriate work assignments. Districts are encouraged to offer screenings as part of a mandatory employment assessment. If an individual refuses to disclose or cooperate with efforts to identify a suspected disability, the district should discuss the following with the individual:

- An impairment is suspected and that disclosure is voluntary;
- The steps the district wishes the individual to take to identify the suspected impairment;

- The benefits of identification, including the accommodations and services which are available to individuals with documented disabilities; and,
- If the individual chooses to not disclose a disability or cooperate with efforts to identify a disability, the individual may be required to participate in work activities without accommodation.

## Waiver of Accommodations

Districts should document in writing in the case record when an individual with a suspected disability refuses to participate with efforts to verify the disability and chooses to participate in work activities without accommodation. A sample waiver is available for district use that describes the requirements and benefits to the individual and has a place for the individual to sign acknowledging they have been informed and chooses to participate without accommodation. These individuals would be non-exempt and assigned to work activities without applying the disability review procedure. See Appendix A for the sample waiver form.

## Voluntary Screening and Assessment of Disability

Districts are not limited in their ability to assess an individual's non-health related barriers if the assessment is not intended to identify a disability. For example, assessments that determine an individual's education level, literacy level or English language proficiency are not intended to identify any specific disability and the district may require the individual's cooperation as part of the mandatory assessment.

## Exceptions to Voluntary Disclosure

General screening for a disability under TA programs must be voluntary for the individual; however, there are circumstances when identification and treatment for a disability is critical to program administration. Under these circumstances, an individual may be required to participate in efforts to evaluate a suspected disability and participate in necessary treatment. Districts may require an individual to participate in a screening and evaluation of a suspected disability under the following circumstances:

- If an individual claims to be unable to work, or is limited in their ability to work due to a disability, the individual may be required to participate in a screening and evaluation to verify the alleged disability/work limitation and to identify appropriate services. Failure to participate in efforts to document an alleged disability is subject to TA case closure in accordance with 18 NYCRR 385.2(d).
- If an individual has demonstrated an inability to successfully participate in work activities or employment and the district has reason to believe this is due to a disability/work limitation, the district may require the individual to participate in a disability related screening and/or evaluation. Additionally, if an individual has demonstrated an inability to

successfully function in a work setting and is determined through an evaluation/assessment to need treatment, the individual may be required to participate in necessary treatment as a condition of eligibility for TA accordance with 18 NYCRR 385.2(e).

Individuals with confirmed disabilities must be offered and provided with reasonable accommodations and services to support their participation in employment activities and programs.

## Disability Review Procedure

Referenced in: SSL § 332-b, 18 NYCRR 385.2(d)

An individual's capacity to participate in work or other employment activities can range from having no health barriers to employment to permanent disability. Districts may not assume that individuals with disabilities are unable to participate and are exempt but instead must accurately document each individual's specific abilities and limitations to support appropriate work activity assignments.

At the time of application and recertification districts must inquire whether the applicant/recipient has any medical or other conditions that would limit their ability to participate in work activities. Additionally, districts should review health related factors whenever an individual alleges an impairment or the district has reason to believe that one exists. For example, districts may suspect a hidden disability after repeated job losses or work activity failures.

If an individual claims, or the worker has reason to believe, that an individual is unable to participate in work activities, the district must comply with the disability review procedure which includes the following requirements:

- The district may not assign an individual with an alleged or suspected impairment to a work activity until it completes the disability review, unless the individual agrees to such assignment and it is consistent with the alleged limitation.
- The district must notify the individual verbally or in writing that they may provide medical documentation to the district within ten (10) calendar days. The medical documentation submitted by the individual may include, but need not be limited to, medication prescriptions and reports from the individual's practitioner. To render the documentation useful for purposes of the district's determination of disability, the district may want to inform the individual to submit documentation that contains a specific diagnosis, prognosis, and a list of the individual's resulting work activity limitations.
- The district shall decide if the medical documentation provided by the individual or the individual's practitioner is sufficient evidence to support the alleged impairment. There is no requirement that the individual's health care practitioner is a certified physician or certified psychologist. Nevertheless, the district always has the option to rely solely on

medical evidence submitted by an individual or to send the individual to the district's own health care practitioner for additional documentation.

- Districts are mandated to use the LDSS-2642 Documentation Requirements form or approved local equivalent form for each TA and SNAP case in which the applicant or recipient is being asked to provide proof of an eligibility factor, including requests for medical documentation to support a claimed disability (see 93-ADM-20). If the district requires an individual to submit medical evidence of an impairment from their own health care provider, then the individual must be provided with the LDSS-2642 Documentation Requirements form or approved local equivalent form giving the individual 10 days to submit the evidence. There may be instances when the district determines that 10 days is insufficient and it may extend the time allowed for the submission of documentation. This may include, but is not limited to, instances where an individual is unable, through no fault of their own, to obtain an appointment with their health care provider within the 10 day period.
- If the district sends an individual to its own health care provider for a medical exam, the individual should be directed to bring any medical documentation to the exam and must be given 4 business days after the examination to submit any additional medical information. The district must notify the individual and should ensure the individual understands their right to provide medical evidence within 4 days following the date of the examination.
- The district's practitioner is required to provide to the district a specific written diagnosis based on medically appropriate tests or evaluations conducted regarding the alleged impairment. If the district's practitioner to whom the individual is referred issues an opinion that differs from the applicant's treating health care practitioner, the district's practitioner shall provide a written determination that specifies why the district's practitioner disagrees with the applicant's treating health care practitioner's disability determination and present evidence that supports the opinion. The practitioner must also report to the district any other conditions discovered during the evaluations that would affect the individual's participation in work activities. The district must provide the individual a copy of the district practitioner's report.
- The district must provide written notification of its determination. If the individual does not agree with the district's determination of their exempt/ non-exempt status and any limitations, they have only 10 days from the issuance of the LDSS 4005 or 4005(a) to request a fair hearing. If the individual requests a fair hearing within the 10 days, the district may not require the individual to participate in work activities pending the fair hearing determination. However, if the individual agrees to the assignment, a district may assign such an individual to a work assignment consistent with any alleged limitations.

## Collection of Medical Evidence

Rather than relying solely on an individual's practitioner to determine to what extent an individual can participate in work activities, districts may find it advantageous to employ or contract with someone qualified to interpret medical evaluations provided by individuals' health care practitioners, or to contract with a provider to examine individuals directly and make a determination. It is beneficial to both the client and the district to have a medical professional consult on determinations and to identify any necessary treatment or accommodations. The examining professional should be made aware of the purpose of the evaluation and how the district will use the results. A district may want to:

- attach a cover letter to the medical form that explains what information the district needs and how it will be applied;
- contract with a specific provider who is aware of the district's goals and intent;
- speak with the individual's examining professional directly if the medical documentation requires clarification or is inconsistent with your observations.

See Appendix A of the manual for a sample cover letter to accompany the request for medical information.

## Misrepresentation of a Disability

If the local district has reason to believe an individual does not have a claimed disability or limitation, and such belief is based in fact upon medical or other evidence, the district must provide the individual written notification that a TA sanction may be imposed if the medical evaluation process results in a determination that the individual does not suffer from a limitation. Districts should then impose a sanction if the medical evidence indicates there was no basis for the individual's claim and the district determines that the individual intentionally misrepresented their medical condition. Regardless of whether the household has dependent children or not, the sanction period is 90 days for the first sanction, 150 days for the second, and 180 days for the third. (See Section 385.12 of this manual for specific information regarding a sanction for misrepresentation of a disability.) This sanction notice is supported by the automated client notices system.

## Relationship Between Disability Review Procedure and Assessment Requirements

A determination of exempt/non-exempt status is distinct from the assessment requirements outlined in Sections 385.6 and 385.7 of this manual and 18 NYCRR 385.6 and 18 NYCRR 385.7; however, a district may choose to fulfill both requirements at the same time. Districts have the option to make the determination of an individual's exempt/non-exempt status either before conducting an employability assessment or in conjunction with the assessment process. However, the information obtained about the individual when determining exempt/non-exempt

status should be incorporated in the individual's assessment and employability plan. The assessment and employability plan should reflect an individual's current circumstances and therefore should be updated as circumstances change, including when an individual's exempt/non-exempt status changes. When fulfilling these requirements, districts must consider the following:

- An individual's exempt/non-exempt status must be determined prior to making an employment assignment and must be reviewed at recertification or sooner if there is reason to believe an individual's status may have changed. As described above, changes should be incorporated in the assessment and employment plan.
- Employment assessments for households with dependent children must be completed within 90 days of case opening and are required of both the exempt and the non-exempt as described in 18 NYCRR 385.6.
- Employment assessments for households without dependent children must be conducted within a year of the date of application for Safety Net assistance. Districts are only required to complete an employment assessment of those non-exempt from employment requirements as described in 18 NYCRR 385.7. However, districts are encouraged to provide assessments to all adult individuals and may require these individuals who are applying for or receiving TA and are part of a household without dependent children to comply with an employment assessment, in accordance with section 3.3 of the district's biennial employment plan.
- Only non-exempt individuals may be assigned to a work activity prior to completion of the employment assessment as described in 18 NYCRR 385.6 and 18 NYCRR 385.7.

## Medical Documentation Requirements

Referenced in: 18NYCRR 385.2(d) SSL § 332-b

The collection of documentation regarding an individual's health status is subject to disability review procedure requirements, even if the information is requested during the individual's employability assessment and plan. Client penalties for failure to comply with the district's efforts to document an alleged medical barrier differ from the penalties for noncompliance with an assessment.

### Medical Documentation Requirements for Clients

Periodic medical reviews are necessary to update an individual's progress toward economic self-sufficiency for individuals who are work-limited, or potentially non-exempt. Districts should reevaluate an individual's exempt/non-exempt status at least annually at recertification and whenever there is reason to believe the status may have changed.

The request for medical documentation or referral of an individual to a medical assessment for the purpose of determining exempt/non-exempt status is an eligibility requirement as stated in

18 NYCRR 385.2(d). An individual who fails to cooperate with the district's effort to obtain medical documentation is subject to case denial or closing for noncompliance (the entire filing unit closes or is denied assistance), unless the individual has agreed to participate without accommodation in accordance with voluntary disclosure procedures described above. Requests for medical documentation that are subject to case denial or closing include, but are not necessarily limited to, requests under the following circumstances:

- An initial determination of TA exempt/non-exempt status when the individual alleges a work limitation or has demonstrated an inability to function in an activity;
- An update or review of an individual previously determined to be exempt, including the potentially non-exempt;
- An update or review of an individual previously determined to be work-limited;
- A determination of exempt/non-exempt status following a new claim of disability by non-exempt recipients; and
- To develop a treatment plan for individuals with medical limitations (both exempt and non-exempt).

There are certain circumstances for which a district may request medical documentation that are not eligibility requirements. These circumstances include:

- The continued claim of the same disability made by a nonexempt recipient. An individual who claimed a disability and was determined by the district to be non-exempt but does not agree with the district determination always has the right to furnish additional evidence. However, if the individual does not request a fair hearing within 10 days of being notified that they are nonexempt, the individual must participate in employment programs as assigned. The individual remains non-exempt until, and unless, the district determines the individual to be exempt;
- Failure to cooperate with efforts to obtain medical documentation required by a worksite prior to participation in a particular work assignment. An individual who fails to cooperate with efforts to obtain medical documentation that is required by the worksite is considered to be noncompliant with an employment assignment and subject to a pro-rata employment sanction.

## Employment Requirements for Each Exempt/Non-Exempt Status

The employment activities an individual may be assigned to and the subsequent penalties for noncompliance differ depending on the individual's exempt/ non-exempt status. Districts must assign employment activities that are consistent with individuals' abilities and must ensure that any limitations are accommodated. Additionally, because current information regarding an

individual's abilities is essential to support employment assignments that best promote self-sufficiency, districts should ensure that they update information about the individual's abilities as necessary. The following describes the health-related categories of participation for each exempt/non-exempt status and provides guidelines that broadly outline the allowable employment activities for each category.

## Non-Exempt

An individual should be determined to be non-exempt if the individual is capable of participating in work activities. Non-exempt individuals range from those who have few or no work-related limitations to those with more severe limitations, but for whom an employment assignment with accommodation is appropriate.

Non-exempt individuals fall within one of the following categories:

### 1) Non-Exempt: No limitations. Does not meet one of the exemptions in 18 NYCRR 385.2

- The individual has no physical or mental health barriers to employment and can fully participate in work activities.
- The individual may be assigned to any work activity included in 18 NYCRR 385.9 or to participate in an assessment as required by 18 NYCRR 385.6 and 18 NYCRR 385.7.

### 2) Non-Exempt, but Work Limited - See 18 NYCRR 385.2(d)(13)

- The individual possesses physical and/or mental health barriers to employment which may range from mild to severe. However, the individual is able to participate in work activities with appropriate accommodation.
- The individual may be assigned to any work activity included in 18 NYCRR 385.9; however, any assignment must be consistent with the individual's limitations. The individual is also required to participate in an assessment as required by 18 NYCRR 385.6 and 18 NYCRR 385.7.
  - Districts must inform worksite supervisors in writing of the individual's limitations to ensure they are accommodated. This information should be presented in a manner that is easily understood by the supervisor and which does not disclose a specific diagnosis of disability. For example, inform the supervisor that the individual cannot lift over 10 pounds, but not the specific medical diagnosis. The information must be transmitted as confidential, protected information.

- The district cannot assign the individual to a work activity which would interfere with a medical treatment plan or which otherwise would be inappropriate in view of the individual's medical limitations.
- The individual is required to accept any reasonable medical care or otherwise comply with a treatment plan deemed necessary to improve the individual's ability to work.
  - Treatment plans may include vocational rehabilitation or therapy and should be developed by a qualified individual.
  - Each plan must be appropriate and beneficial to the individual's needs and consistent with their limitations.
  - Treatment intensity and frequency should correspond to the severity of the individual's limitations.

Note: Individuals with suspected limitations who wish to be assigned without accommodation according to the voluntary disclosure procedures described above are considered to be non-exempt and may be assigned to work activities without accommodation. However, the individual may at any time decide to comply with efforts to identify their suspected disability and the district must then follow the disability review procedure requirements described above.

Additionally, if the individual demonstrates an inability to successfully function in a work setting, the district may require medical evaluations, assessments, and resulting necessary treatment.

## Exempt

Exempt individuals include those who are unavailable for a work assignment for reasons such as being needed as a caretaker of another individual, being exempt due to age and being exempt due to health-related limitations.

**An individual should be determined to be exempt due to health factors if the individual is not currently capable of employment in any capacity. Individuals who have been determined to be exempt by the district through the disability review procedure may not be required to participate in the work activities described in 18 NYCRR 385.9.**

Districts are required to determine whether or not an individual who has been determined to be exempt from participation in work activities has the potential to be restored to self-sufficiency through rehabilitation and may require such individuals to participate in rehabilitation or treatment programs, as appropriate. Districts may assign individuals determined to be exempt

from participation in work activities to treatment that has been determined by a health care practitioner as appropriate and necessary to improve the individual's ability to work.

#### Exempt: Time-Limited Condition

- The individual has a condition that results in a temporary removal from the workforce (e.g., a broken leg or postpartum 6-week period).
- There should be no work assignment for the time period defined by the limitation, following which the individual's condition should be reevaluated.
- The individual is required to participate in an employment assessment as required by 18 NYCRR 385.6 and 18 NYCRR 385.7.
- The individual may be required to comply with medical treatment necessary for recovery.

#### Exempt: Potentially Non-Exempt

- An individual who is currently exempt due to significant physical or mental health barriers to employment such that an assignment to work activities would be inappropriate, may be considered potentially "non-exempt" to the extent that treatment, as determined necessary by a health care professional, is expected to improve the individual's health so they are able to participate in work activities or employment. This category includes those individuals with significant developmental barriers who are currently incapable of competitive employment but have the ability to participate in Vocational Rehabilitation Services as determined appropriate and necessary by treating professionals.
- The individual may not be required to participate in work activities.
- The individual is required to participate in an employment assessment as required by 18 NYCRR 385.6 and 18 NYCRR 385.7.
- The individual is required to accept any reasonable medical care or treatment as determined by a medical professional that will assist the individual in recovering from the mental or physical impairment; accept referral to and enrollment in a program of vocational rehabilitation, training and other essential rehabilitation designed to restore an individual to self-sufficiency, and
- give evidence, as requested by the social services official, that they are participating in such program as assigned by the district.
- Any treatment plan must be appropriate and beneficial to the individual's needs and consistent with their limitations.
- Treatment intensity should correspond to the severity of the individual's limitations.

- Treatment may include work-like activities if part of a treatment assignment prescribed by a health care professional. Districts may not independently assign such individuals to work activities.

Exempt individuals who in the judgment of the social services official have the potential to be restored to self-sufficiency through rehabilitation or treatment determined by a medical professional to be necessary to improve the individual's ability to work may not also be required by the district to apply for SSI as an eligibility factor for receipt of Temporary Assistance. The individual may elect to pursue an application for SSI benefits on their own, and the district may elect to assist the individual with that application, but the submittal of an SSI application or appeal of a denied application may not be considered an eligibility requirement if the individual is also being required by the district to engage in treatment necessary for a restoration to self-sufficiency. An exempt individual should only be required to engage in recommended treatment when medical documentation supports treatment as a reasonable option for the individual to improve their condition enough to engage in work activities.

#### Exempt: Permanently Unable to Participate

- The individual possesses severe and permanent barriers to employment and would not currently benefit from rehabilitation or treatment. This category may include individuals who voluntarily participate in a sheltered workshop setting and are not currently expected to become able to work in the future.
- The individual may not be required to participate in work activities or any other employment-related activities.
- The individual is still required to participate in an employment assessment as required by 18 NYCRR 385.6 and 18 NYCRR 385.7 (see Note below).
- An SSI application should be filed and actively pursued.

Exempt individuals who in the judgement of the social services official do not have the potential to be restored to self-sufficiency are generally required to apply for SSI benefits. If a district finds that a TA applicant or recipient reasonably appears to be eligible for SSI, the district must require the applicant or recipient to apply for SSI benefits, follow through on the application for such benefits and accept such benefits, if eligible. When requiring an individual to apply to SSI as a condition of eligibility for receipt of TA the district should assign the individual employability code 43 (incapacitated/disabled SSI applicant). Individuals who are assigned employability code 43 and required by the district to apply for SSI benefits as a condition of eligibility for TA cannot also be required to engage in treatment as the district has determined that the individual does not have the potential to be restored to self-sufficiency, and reasonably appears to be eligible for SSI.

As noted in 04 ADM-05, if the TA applicant or recipient is not physically or emotionally capable of applying for SSI benefits, the district must provide services that are necessary to ensure that the individual is assisted in applying for and following through with the application for SSI

benefits including helping the individual complete the application or filing for an appeal, as appropriate. In such instances, the TA benefits shall not be reduced or discontinued for failure to apply for SSI benefits.

Individuals whose application for SSI benefits are denied, but are still unable to participate in work activities including employment because of a medical condition that reasonably appears to qualify the individual for SSI, must be required to file an appeal to maintain their eligibility for temporary assistance benefits. Please refer to 06-ADM-06 for additional guidance.

### Assessment Requirements for Exempt Individuals

Note: A TA recipient who willfully and without good cause fails or refuses to comply with assessment requirements is subject to a pro-rata sanction in accordance with 18 NYCRR 385.12. An applicant who fails to comply with assessment requirements is denied (case denial) [see 18 NYCRR 385.6(a)(6)(1) or 385.7(a)(6)(1)].

### Additional Considerations

An individual whose disability is due to alcohol or substance abuse is subject to the requirements of 18 NYCRR 351.2(i). However, the individual must still be considered within the framework of ability listed above when determining their exempt status. This determination is best done in cooperation with the provider who completes the formal drug/alcohol assessment.

### HIV Clients

An individual who is eligible to receive health services through a comprehensive HIV special needs plan (Social Services Law § 364-j(1)(n)) shall be considered to be either disabled or work limited by the district. In each instance, assessment requirements should follow the requirements of either disabled or work-limited.

### SSI Applicants not Categorically Exempt

An individual with physical or mental disabilities may pursue SSI/SSD independently or as required by the district. These individuals are still required to comply with the disability review procedure and to cooperate with efforts to determine their exempt/non-exempt status. Individuals who are required by the district to apply for SSI as a condition of eligibility are considered exempt and cannot be assigned to work activities (see 06-ADM-06). If an individual is required by the district to apply for SSI as a condition of eligibility for TA, then the district may only assign the individual to work activities if it determines, based on medical evidence, that the individual is no longer required to pursue SSI as a condition of eligibility, and has notified the individual that they are no longer exempt from work requirements.

## Client Penalties for Noncompliance with Employment Requirements

The penalty imposed for failure to comply with TA employment requirements will vary depending on whether or not the individual is exempt or non-exempt from assignment to work activities and whether or not the individual is an applicant or a recipient of TA. Specific information regarding the imposition of a work-related sanction or other penalty is contained in Sections 385.11 and 385.12 of this manual.

### Non-Exempt Sanction

#### Non-Exempt Consequences of Noncompliance

- A non-exempt TA applicant or recipient who willfully and without good cause fails or refuses to comply with an employment requirement (other than applicant job search and applicant assessment) is subject to conciliation and a pro-rata sanction (except as noted below).
- A non-exempt TA applicant who fails to comply with job search or an assessment is not eligible for TA and the household's application for TA shall be denied. See 18 NYCRR 385.9(e) and Section 385.9 of this manual for additional information regarding job search and related activities. See 18 NYCRR 385.6 and 18 NYCRR 385.7 and Sections 385.6 and 385.7 of this manual for additional information on assessment requirements.

### Exempt Individual Ineligible

#### Exempt Consequences of Noncompliance

- An exempt individual, who the district has determined has the potential to restore their employability, who without good cause fails or refuses to accept referral to or participate in reasonable medical care, treatment or rehabilitation determined by a medical professional to be necessary to improve the individual's ability to work, is ineligible for assistance (removed from the case) until compliance (see 18 NYCRR 385.2 (e)) in accordance with 18 NYCRR 385.12.
- An exempt TA recipient who willfully and without good cause fails or refuses to comply with assessment requirements is subject to conciliation and a pro-rata sanction in accordance with 18 NYCRR 385.12.
- An exempt TA applicant who fails or refuses without good cause to comply with an assessment is not eligible for public assistance and the household's application for TA shall be denied. See 18 NYCRR 385.6 and 18 NYCRR 385.7 and Sections 385.6 and 385.7 of this manual for more information regarding assessment requirements.

## Good Cause Considerations

Districts must consider the individual's limitations and abilities when determining whether or not noncompliance was willful and without good cause. It may be appropriate to first determine if the individual's condition has precipitated the noncompliance. In those instances when a recipient is receiving services from a mental health professional, substance abuse counselor or other similar professional, it may be appropriate to have the professional intervene to determine the reason for noncompliance and/or to facilitate re-engagement.

When determining whether noncompliance with a treatment requirement occurred without good cause, the district must consider whether or not continued treatment is appropriate as a work assignment, in particular if the individual is successfully participating with all other work assignments.

When determining whether noncompliance occurred without good cause for those individuals who chose to participate without accommodation, in lieu of cooperating with efforts to identify a suspected disability (voluntary disclosure procedure), the district should consider whether the suspected impairment may have contributed to the failure and address the suspected impairment again with the individual. If the district feels the individual's suspected impairment contributed to the failure, and the individual now agrees to cooperate with the disability review procedure requirements, the district may consider the individual to have had good cause for the failure.

## Separate SNAP Determination

When an TA/SNAP applicant or recipient individual fails to comply with the requirement to provide verification of a claimed exemption from SNAP work requirements, a separate determination regarding ongoing eligibility for SNAP benefits must be made. See Section 385.3, Section 385.12 and Section 385.13 of this manual for additional information regarding SNAP work requirements.

## Engaged-in-Work Requirement

Districts are responsible for making sure recipients of TA are "engaged in work" within the following specified time periods:

- A parent or caretaker of a dependent child receiving federally funded TA Family Assistance or TANF-funded Safety Net Assistance) must be engaged in work as soon as practicable, no later than 24 months from the date the individual first receives federally funded TA. The 24- month period includes non-consecutive months of assistance and does not include any assistance received before December 2, 1996.

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- A parent or caretaker of a dependent child receiving TA that is not federally funded (non-TANF Safety Net Assistance) and who is not exempt from participation in work activities due to a disability must be engaged in work as soon as practicable.
- An adult member of a household without dependent children receiving TA who is not exempt from participation in work activities due to a disability must be engaged in work as soon as practicable.

The term “engaged in work” is defined by each district in its local TA and SNAP Employment Plan and should include all activities that the district determines as appropriate to move individuals toward self-sufficiency or otherwise become engaged to the extent possible. As such, “engaged-in-work” may include activities other than the standard work activities described in 18 NYCRR 385.9. For example, a district may wish to include participation in substance abuse or mental health treatment in its definition of “engaged in work.”

Districts should note that the term “engaged in work” is defined separately for participation rate purposes, where it refers to the type of participation that counts toward participation rates (see Section 385.8 of this manual).

## Part C - Questions and Answers

### Participation Requirements/Exemptions

Q.1 Can a parent in a two-parent household be exempt because they are the caretaker of a child less than twelve months of age?

A.1 Yes, a parent in a two-parent household can be excused from participation because they are the caretaker of a child less than twelve months of age up to a lifetime maximum of twelve months. Because only true single parent families with the exemption are removed from the TANF All Families denominator, the case would remain in the TANF two-parent and All Families denominators and the household is required to meet two-parent participation requirements. For example, a two-parent family without child care is required to participate thirty-five hours weekly. If one parent is exempt because they are the caretaker of a child under twelve months of age, the other parent must participate at least thirty-five hours for the household to meet the minimum participation requirements.

Q.2 A Family Assistance applicant has a child who is four months old. Is the applicant exempt?

A.2 Normally, the three-month exemption will be used in the first three months after the child's birth; however, districts have the discretion to allow the exemption for more than three months as long as the parent does not receive the exemption for more than twelve months in their lifetime. The district should consider the need for the exemption based on the household's circumstances, availability of child care for children this age, the district's participation rate requirements, and any other pertinent information when determining whether to extend the exemption beyond three months for any one child.

Q.3 How long can a person be exempt from employment requirements?

A.3 While there is no time limit on how long an individual may be exempt, there is the expectation that certain exempt individuals will progress so they are able to participate in traditional work activities. These individuals should be evaluated periodically to monitor treatment progress and to determine if their ability to participate in work activities has changed. If improvement is not seen within a reasonable amount of time, the need for treatment should be re-evaluated, as well as eligibility for SSI/SSD. For those individuals considered permanently unable to participate, SSI and SSD should be pursued. The condition of those who are denied SSI/SSD should be re-evaluated to determine if rehabilitation or treatment is warranted.

Q.4 Must TA applicants and recipients be notified as to whether or not the social services official has determined that they are exempt from work requirements?

A.4 Districts must use the LDSS-4005 Notification of Temporary Assistance Work Requirements Determination (Exempt) (or an approved local equivalent) to notify an individual that they have been determined to be exempt whenever an individual alleges to be unable to participate, or the individual otherwise participates in the employability disability review process described in 18 NYCRR 385.2. This notice is included in Appendix C of the Employment Manual.

Q.5 What is the difference between the LDSS-4005 (Notification of Temporary Assistance Work Requirements Determination (Exempt)) and the LDSS-4005(a) (Notification of Temporary Assistance Work Requirements Determination (Nonexempt)) and when must they be issued?

A.5 The LDSS-4005 (Notification of Temporary Assistance Work Requirements Determination (Exempt)) is issued to notify an individual they have been determined to be exempt from work requirements. The LDSS-4005(a) (Notification of Temporary Assistance Work Requirements Determination (Nonexempt)) is issued to notify an individual they have been determined to be non-exempt from employment requirements. Districts must issue the LDSS-4005 or 4005(a) under the following circumstances:

- Whenever an individual alleges to be unable to participate (for medical or nonmedical reasons);
- The individual otherwise participates in the employability disability review process; and
- Whenever an individual's status changes from exempt to non-exempt, including drug/alcohol.

Following are several examples of circumstances describing when the 4005 or 4005(a) should be issued:

**Example of change from exempt to non-exempt:**

An individual who was previously determined to be exempt because they were the caretaker of an incapacitated household member would be issued the 4005(a) if circumstances change and the individual is subsequently determined to be non-exempt.

**Example of when an individual requests an exemption:**

An individual submitted medical documentation to support an extension of their existing exemption would either be issued the 4005 or 4005(a) based on the district's determination.

**Example of when an individual participates in the disability review process:**

An individual for whom the district collects medical evidence consistent with the disability review process described in 18 NYCRR 385.2 because they allege to be unable to participate due to a health-related issue, or the district suspects the individual has a health-related issue and the individual has demonstrated an inability to successfully participate in work activities, would be issued either the 4005 or 4005(a) based on the district's determination.

Q.6 Are individuals who are evaluated for drug/alcohol issues (employability codes 63 and 64) sent the LDSS-4005 and LDSS-4005(a)?

A.6 Districts are required to send the LDSS-4005(a) (Notification of Temporary Assistance Work Requirements Determination (Nonexempt)) (or an approved local equivalent) whenever an individual's status changes from exempt to non-exempt, including for drug/alcohol issues. Districts are not required to notify an individual who has been determined to be exempt because of drug/alcohol issues (code 63) with the LDSS-4005 (Notification of Temporary Assistance Work Requirements Determination (Exempt)) however, the district should inform the individual of any treatment requirements and that the individual is exempt from work requirements.

Q.7 What are the exemptions from the federal participation rate?

A.7 The only exemption that removes a case from the denominator for the federal TANF All Families participation rate is a single caretaker relative of a child under one year of age (for three months or longer if decided by the local district) in true single parent cases for a maximum of twelve months in the individual's lifetime. Two-parent families with the caretaker exemption remain in the TANF All Families and Two-Parent denominators. The Safety Net Individual and Households without Dependent Children participation rate denominator includes the total number of cases without dependent children that include at least one adult receiving TA, without regard to employability status.

Q.8 If the medical evaluation confirms an individual has work limitations but is able to work, does this remove the case from the participation rate calculation?

A.8 Work limitations do not remove a case from the TANF or Safety Net participation rate denominators. However, for Safety Net Individuals and Households without Dependent Children, an individual participating in a countable activity to capacity qualifies as fully participating and the individual is included in the numerator. In addition, for Safety Net Individuals and Households without Dependent Children, an exempt individual who is participating any number of hours in a countable activity also qualifies as fully participating and is included in the Safety Net numerator and denominator similar to work-limited individuals.

Q. 9 When a TA grant is provided for a child living with their parent who is under twenty-one years of age, while the parent's needs are being met by the grandparents, can the parent in the household be required to participate in work activities?

A. 9 Yes, and failure to participate is subject to sanction in accordance with Section 385.12. Under the case circumstances, the parent is part of the TA case because they are legally responsible for the child (filing unit rules). However, because the parent's needs are met by the grandparents, the case receives a reduced grant. Failure to comply would result in a pro-rata sanction (which in this example, would be 50% of the grant).

Q.10 When a TA grant is provided for a child living with their grandparent(s) and the grandparent(s)' needs are not being met by the grant, may the grandparent be required to participate in work activities?

A.10 No. The grandparent is not legally responsible for the child and so is not part of the TA case. Therefore, the grandparent cannot be required to participate in work activities.

Q.11 Is an eighteen-year-old with a high school diploma who is attending a vocational school exempt?

A.11 No. The exemption for those under the age of nineteen who are attending a secondary, vocational or technical school full-time applies to those who do not have their high school diploma or its equivalent. An eighteen-year-old with a high school diploma attending vocational school full time would be non-exempt (unless the individual met another exemption criteria) and would be required to participate in work activities consistent with their employability plan, which may include vocational education. If it is necessary to assign the individual to another, concurrent activity, the district must make a reasonable effort to assign the activity during hours that do not conflict with the vocational education.

Q.12 What is the penalty if a household does not document whether a household member age sixteen through nineteen is satisfactorily attending school?

A.12 Documentation of a claimed exemption from work requirements is an eligibility requirement for the household and the entire case would be closed or denied. The household remains ineligible until the necessary documentation is provided.

Q.13 If someone has applied for SSI/SSD, should we automatically consider them exempt?

A.13 No. The fact that an individual has applied for SSI/SSD does not automatically render the individual exempt, and in fact non-exempt or work limited individuals may also apply for SSI. Employability code 43 is to be used for those TA individuals who the district, based on the documentation available, has required to apply for SSI as a condition of eligibility for TA. Such individuals are exempt and cannot be assigned to work activities until the district determines, based on medical documentation, that the individual is no longer required to pursue SSI and the individual has been notified that they are required to participate in work activities consistent with 18 NYCRR 385.2.

Q.14 What should be done if the district suspects that an individual has an unidentified barrier?

A.14 The district should inform the individual of the reasons why they think the individual may have a particular barrier and the recommended process for identifying an assessing this barrier. For example, if the district suspects an individual may have a learning disability, the district should inform the individual of their suspicion and the reasons why. The district should then explain the process for determining if the individual has a learning disability. The individual may choose whether or not to participate in screening or assessment to identify the suspected disability. If the individual does not agree to cooperate with efforts to

identify the suspected disability, the individual must participate in work activities without accommodation.

Q.15 How would a district screen individuals for possible unidentified barriers?

A.15 If the district chooses to screen to identify individuals whom they believe may possess unidentified barriers, it must decide what screening tool will be used. The screening tool must be properly validated for its intended purpose and must be administered by trained staff. The district must also decide who will be screened, the screening process including when in the client flow it will be administered, and what happens after screening. Individuals may not be required to participate until they have been properly informed and have agreed to be screened consistent with voluntary disclosure requirements. As with other claims of work limitations, if an individual claims to be exempt from participation in TA work activities, they must cooperate with efforts to document the exemption and failure to do so would result in case closure.

Q.16 What are the special needs plans and how do they affect the exempt/non-exempt determination?

A.16 Individuals who are eligible for an HIV special needs plan (HIV positive and in receipt of Medicaid) are to be considered as either disabled or work limited and their limitations must be accommodated. For example, the individual may have doctor's appointments which must be considered when making an assignment. Additionally, activities that are part of the individual's treatment plan may satisfy their employment requirements. Individuals are not required to disclose that they are HIV positive to the district, but if they do, the district must treat the information as protected, confidential information and may not disclose it without the individual's express permission.

## Disability Review Procedure

Q.17 Can a participant who claims to have health-related limitations be assigned to a work activity pending the completion of the disability review procedure?

A.17 If the participant agrees, they may be assigned to an activity that accommodates the claimed limitations. As when assigning individuals with confirmed work limitations, the district must notify the work-site supervisor in writing of the claimed limitations, and the information should be presented in a manner that is easily understood and which does not disclose a specific diagnosis or disability. The district must also describe that the information is confidential and protected and is only to be used for the purpose of accommodating the individual's limitations.

Q.18 Can individuals who disagree with the district's exempt/non-exempt determination contest the determination?

A.18 If an individual does not agree with the district's exempt/non-exempt determination, the individual may request a fair hearing within 10 days (for medical determinations) or 60

days (for non-medical determinations) of being issued a notice of the district's determination (LDSS 4005 Notification of Temporary Assistance Work Requirements Determination (Exempt) or the LDSS 4005(a) Notification of Temporary Assistance Work Requirements Determination (Nonexempt)) (or an approved local equivalent). For medical determinations, if the individual does not request a fair hearing within 10 days as indicated on the notice, the right to request a fair hearing on the issue is terminated and the individual must participate in assigned activities. For non-medical issues, the individual has 60 days from the date of the notice to request a fair hearing to contest the determination. If the individual requests the fair hearing within 10 days of the notice date, the individual does not have to comply with work-related requirements pending the fair hearing decision.

Individuals who request fair hearings within 10 days cannot be required to participate in work activities, however, they may volunteer to participate in activities and the district must ensure the assignment accommodates the individual's limitations and is consistent with any treatment plan.

If an individual alleges a new medical impairment, the district is required to repeat the disability review procedure to address the new claim. If the district suspects that the individual is misrepresenting an impairment to avoid a work assignment, the district must notify the individual in writing that they could be sanctioned if the district determines that the individual intentionally misrepresented their condition.

Q.19 Does an individual who fails to provide requested medical documentation receive conciliation?

A.19 No. In most instances, applicants and recipients who fail to provide documentation or cooperate with efforts to document a claimed or suspected impairment are ineligible for assistance (case closes) until compliance and are not conciliated. Non-exempt individuals who fail to cooperate with efforts to obtain medical documentation required for a particular worksite are considered to be noncompliant with an employment assignment and subject to conciliation and a pro-rata employment sanction.

Q.20 What is the penalty for failure to provide medical documentation to substantiate a claimed disability for a SNAP applicant/recipient?

A.20 Failure to substantiate a claimed disability by a SNAP applicant/recipient would result in the individual becoming or remaining a work registrant. Providing documentation to support a claim of disability is not an eligibility requirement for SNAP. The regulation regarding this matter [385.2(d)(4)] inadvertently references both the SNAP and public assistance regulations with regard to the failure to provide medical documentation to evaluate a claim of exemption due to a disability as being an eligibility requirement. A regulatory change will be made to correct this error. It is an eligibility requirement for TA (18 NYCRR 351) but not for SNAP.

Q.21 How does the Medicaid disability review determination relate to the exempt/non-exempt determination?

A.21 Each program has a different definition and a different process for determining whether an individual is considered disabled. The process for determining Medicaid eligibility and exempt status for employment purposes are not the same. Districts should coordinate medical information and review processes to ensure as complete a medical file as possible for each program determination and for evaluation of any work limitations. An individual determined to be disabled for Medicaid would be exempt from TA/SNAP employment requirements if they are disabled and currently unable to work.

Q.22 An individual discloses an impairment and submits medical documentation; however, the district requires that the individual be examined by the district's practitioner. What are the consequences if the individual refuses to comply with the examination by the district's practitioner?

A.22 An individual who alleges an impairment and who does not comply with the district's requirement to be examined by the district practitioner without good cause is subject to case denial/closure. Even though the individual has provided medical documentation, the district has the authority to accept the documentation or to send the individual to the district practitioner for an evaluation.

Q.23 What happens if an individual does not follow a treatment plan?

A.23 18 NYCRR 385.12 states that if an individual is potentially employable and fails to comply with health care or rehabilitation to restore themselves to self-sufficiency, the individual is ineligible for assistance (removed from the case) until willing to comply. When determining if an individual had good cause for failing to comply with treatment, districts must consider if the individual's condition caused the failure. Additionally, the district may only assign an individual to a treatment activity when an appropriate health care professional has determined what specific activity is necessary to restore the individual to self-sufficiency. For example, the district may not require an individual to participate in mental health counseling without first having an appropriate health care professional evaluate the individual and recommend such counseling.

Q.24 What must a district do to protect an individual's confidentiality regarding protected health-related information?

A.24 The district must have the individual's signature authorizing it to obtain medical information from health care practitioners. The State medical form (LDSS-4526) contains an authorization the individual signs allowing the release of information to the district. If the district has obtained the individual's authorization, the Health Insurance Portability & Accountability Act of 1996 (HIPAA) does not impose any additional requirements for the provider to release medical information to the district.

Q.25 May TANF funding be used for medical evaluations?

A.25 TANF funds may be used to assess the ability of an applicant or recipient to participate in work activities for those individuals who are eligible to receive TANF services. TANF funds

may also be used to help the district identify appropriate activities that a TANF eligible individual may participate in to overcome their employment-related limitations. TANF funds may be used for these purposes even if the evaluation is conducted by a medical professional because these activities are necessary program requirements of the administering agency and are not solely a service to the individual.

TANF funds may not be used to provide a medical service, including any medical service that is identified as an activity that may help the individual overcome limitations or to assess an individual who is not eligible to receive TANF funded non-assistance. For example, although TANF funds may be used to identify any limitation (e.g., the inability to lift heavy objects) and to recommend a general course of action to overcome the limitation (e.g., physical therapy), TANF funds may not be used to provide a medical service to overcome the limitation (e.g., fund the physical therapy).