

The John R. Oishei Foundation Mobile Safety Net Team

# Resource Manual



Neighborhood  
Legal Services, Inc.

2011

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## Introduction

Neighborhood Legal Services, Inc. is a not-for-profit organization dedicated to providing expanded access to justice in civil legal matters for low income and disabled people in Western New York. Our primary service area includes Erie, Niagara, Orleans Genesee and Wyoming counties and we have offices in Buffalo, Niagara Falls and Batavia. In addition to extensive direct legal representation, we also provide counsel and advice and brief service to people in need, as well as community legal education, written advocacy materials and community agency legal support.

We are very grateful to have received funding from the John R. Oishei Foundation which has allowed us to underwrite the creation of this advocacy manual; permits us to work collaboratively with the Mobile Safety Net Team and its community partners; allows us to expand our public assistance advocacy efforts in Niagara County; and will allow us to rebuild and modernize the NLS website. We hope that this manual is used by the Mobile Safety Net Team and its community partners as a resource to assist and refer people who find themselves facing income and housing instability, domestic violence, family law concerns and disability related issues. We welcome your calls and we look forward to answering your questions and providing support. We are your partners in serving this community.

Sincerely,  
William J. Hawkes  
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Neighborhood Legal Services, Inc.  
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## NLS Eligibility

Services are provided *FREE* to financially eligible persons who reside in Erie, Niagara, Orleans, Genesee and Wyoming counties. In some matters clients are required to pay court costs. In some cases our Disability Law Unit will represent persons in counties outside of Erie County and without regard to income. Federal poverty guidelines are used to determine financial eligibility for our services based upon the number of persons in the household. These guidelines may vary in regard to disability, housing discrimination and domestic violence cases.

## Chapter

# 1

## Introduction

### Protocols for Accessing the Neighborhood Legal Services, (NLS) Technical Support Line (TSL) For Oishei Foundation Mobile Safety Net Team And Partner Agencies

**Background:** The NLS Technical Support Line (TSL) is a legal hotline resource funded by the John R. Oishei Foundation and made available to support the work of the Mobile Safety Net Team and the partner agencies when they are on-site at a community outreach event. The NLS TSL will provide support from NLS attorneys in the areas of **housing, public benefits, family, domestic violence and disability law**. The TSL will operate during normal business hours of 9:00 a.m. to 5:00 p.m. When the Oishei Mobile Safety Net Team (MSNT) has an evening outreach event, the Outreach Team Member, or partner agency staff, may contact the TSL on the next business day for technical support.

#### TSL Access Protocols for Community Outreach Events:

1. Oishei Mobile Safety Net Team and partner agency staff may call **362-2555** to reach the NLS **Technical Support Line**.
2. When the NLS receptionist answers the caller should identify themselves and indicate that they are calling for the Oishei Technical Support Line and also indicate the problem type (i.e., housing, public benefits, family, domestic violence and disability law).
3. The NLS receptionist will then connect the caller with either the Supervising Attorney of the relevant NLS Unit (housing, public benefits, family, domestic violence and disability law), or the backup technical support person for the day.
4. If neither the relevant NLS Supervising Attorney, nor the TSL back-up person of the day is available, the caller will be connected to the NLS unit secretary to collect information and the TSL contact person will call back ASAP.
5. If the caller is assisting a client who has more than one potential legal need, the caller should be sure to identify all of the client's concerns or issues when connected to the TSL attorney.
6. The caller then follows-up with their client and provides information, referral or advocacy.

(Call NLS at 362-2555 ask for Oishei TSL) → (Identify self and issue area)  
(Speak to TSL Attorney) → (Follow-up with caller's client)

## **NLS Housing Law Overview**

Homelessness has become an increasingly serious problem, especially for families with young children. The correlation between homelessness and evictions is strong and undeniable. The Housing Law Unit represents clients facing housing crises. Usually, this means representing clients facing eviction. Sometimes our clients have already been locked out of their homes. By making sure that landlords maintain apartments that are safe and habitable, the Housing Unit helps preserve and improve the housing stock. The Housing Unit also represents tenants in both public and subsidized housing and helps clients obtain or retain housing subsidies. The City of Buffalo funds the Housing Unit to provide legal assistance and advocacy to victims of housing discrimination regardless of income. Through this funding the Housing Unit assists families and individuals who have been denied the housing of their choice, or who have been discriminated in the terms or conditions of their tenancy in violation of Federal, State or local law.

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**Chapter**

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## NLS Housing Law Overview

Families and individuals who are economically challenged often confront a variety of housing issues, including, most commonly, poor living conditions and an inability to pay rent. According to the National Low Income Housing Coalition's *Out of Reach 2010 Study* which measures housing affordability in the U.S., 52% of Erie County renters cannot afford the housing they need. As a community advocate, it is important to understand the protections available to renters forced to live in substandard housing, the eviction process in New York State, and the resources available to low income households facing eviction. The following will provide an overview of these three common issues.

### Substandard Housing Conditions

Under New York State law, a landlord guarantees that a tenant will not be subjected to any conditions that threaten life, health or safety. This guarantee is known as the **warranty of habitability**. When a landlord fails to make necessary repairs to a rental unit or violates the warranty of habitability, a tenant has several options. Before exercising any of these options, the tenant should be sure that they can document the fact that the landlord was made aware of the repairs that need to be made as well as the tenant's attempts to encourage the landlord to make the repairs. This is best done by writing one or more letters to the landlord that specifically describe the nature of the substandard housing conditions and the repairs the tenant is seeking, together with information about any prior conversations between the landlord and tenant about the necessary repairs including the date(s) of those discussions.

If the landlord continues to ignore the problems cited by the tenant, the tenant may consider calling the local building inspector or health department.

The tenant may also want to consider the option of either withholding rent, or making the necessary repairs and deducting the cost of those repairs from the rent. However, rent withholding or the notion of "repair and deduct" **is not a safe option** for all tenants. Some federally subsidized housing programs (for example, the Housing Choice Voucher Program which is the same as Section 8 tenant-based assistance) prohibit rent withholding. In addition, some lease provisions define rent withholding or the practice of "repair and deduct" as lease violations. Other lease provisions allow a landlord to collect attorneys' fees, court costs and other charges from a tenant who withholds rent or repairs and deducts when either a court determines that the underlying conditions were tenant based, that the conditions did not threaten the health or safety of the tenant, or that the landlord was not properly notified by the tenant.

More information regarding these options is contained in the Resource section following these materials.

The landlord may start an eviction action against a tenant who withholds rent or deducts money from the rent in order to make repairs. A tenant may raise a **warranty of**

## NLS Housing Law Overview

**habitability defense** in an eviction proceeding asking the court to abate or reduce the amount of rent the landlord is claiming to be owed based on the diminished value of the rental unit as a result of these hazardous or unhealthy conditions, and/or based on the amount of money the tenant spent in making necessary repairs. More information about the warranty of habitability defense is included in the Resource materials.

### The Eviction Process in New York State

The most important thing to remember when counseling individuals faced with eviction is that the eviction process in New York State moves very quickly. A landlord who does not receive rent on the day it is due is only required to ask the tenant for the rent. This **demand for rent** can be verbal or in writing. If it is in writing, the landlord must wait three days to see if the tenant pays the rent before serving the tenant with eviction court papers. If the demand is verbal, and the tenant does not pay the rent due, the landlord can have the eviction court papers served on the tenant the following day. The court papers in an eviction action are called the **notice of petition** and the **petition**.

The notice of petition and the petition must be served on the tenant at least five days before the court date. If the tenant loses in court, the landlord will be awarded a **warrant of eviction** and the tenant will be served with a **72 hour notice to vacate** by a **civil officer** (who may simply just attach the notice to the tenant's door). If the tenant is still in possession of the apartment when the civil officer returns, the civil officer has the authority to **execute the warrant**. What this means is that the civil officer will direct the tenant to leave, will oversee the changing of the locks, and will advise the tenant that they no longer have the right to enter the premises.

Attached, is a **Worst Case Scenario Timeline** that shows that a tenant who fails to pay rent on the first of the month could be put out of their home by the 11<sup>th</sup> of the same month. Typically, the process does not move that quickly, but a landlord who does not receive rent on the first of the month could easily have a tenant evicted for nonpayment of rent by the third week of that same month. Tenants often confuse the **demand for rent** that the landlord gives when rent is not paid (which is also called a **pay-or-quit notice** or a **three day notice**) with the **72 hour notice** served after court by the civil officer (often the Buffalo City Court Marshal' office or the Erie County Sheriff's Department). Clearly, the 72 hour notice served after court is the notice that should cause the most concern because once it is served, the tenant may only have several days (or hours even) before they will be removed. Although the demand for rent served by the landlord advises the tenant that he or she must pay rent or move, the only legal way a landlord can have a tenant put out is by starting a court proceeding and enlisting the services of a civil officer as described above.

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A tenant who **rents** a **mobile home** or **manufactured home** in a mobile home park, or who **owns** a **mobile** or **manufactured home** and rents a lot in a mobile home park has additional protections.

Tenants who rent both the mobile home they are living in and the lot on which it is located may be evicted using the process described above for other residential tenants **except** that they are entitled to a **written 30 day pay or quit notice** as opposed to the oral or three-day pay or quit that other residential tenants receive.

Tenants who **own** their own **mobile or manufactured home** and **rent** a **lot in a mobile home park** have additional protections. A written 30 day pay or quit notice must be provided to a mobile home lot tenant who owes back lot rent and who owns the mobile or manufactured home that is on a rented lot in a mobile home park. If the tenant loses in court, the tenant will be served with a **thirty day notice** from a civil officer (instead of the 72 hour notice that other tenants receive) before the warrant executes and the tenant is physically evicted. A tenant who **owns** a mobile or manufactured home and **rents** the lot on which the home sits who is evicted for reasons **other than non-payments** or **threats to health or safety** is entitled to a **ninety day notice** from the civil officer

Attached in the resource section are information sheets that explain the eviction process and potential defenses to the eviction process.

Defenses to nonpayment eviction cases can be grouped into three general categories: defenses that go to whether the amount of rent money due, defenses that go to whether the landlord correctly filled out the paperwork, and defenses that raise issues about whether the landlord followed the correct process in bringing the eviction action. Payment of all rent due and owing is a defense. If the tenant paid the rent prior to the court date, proof of payment should be brought to court. The tenant may be able to prevent their eviction by bringing the amount of rent demanded in the court papers to court together with an additional \$45 to cover statutory costs. Generally speaking, if the tenant has all the rent money due and owing in court together with the \$45 in costs, the judge will direct the landlord to accept the payment and to continue the tenancy. A landlord will NOT generally be required to accept payments that are not in the form of cash or certified funds (e.g. personal checks), or letters of guarantee from the Department of Social Services or a similar agency.

### Financial Resources for Households Facing Eviction

The **Erie County Department of Social Services** (ECDSS) is the major provider of **emergency financial assistance** for low income households facing eviction in this area. In most circumstances, ECDSS can pay up to **six months** of back rent to prevent

## NLS Housing Law Overview

household's eviction, moving and storage expenses, and also provide a security agreement. There are also special grants available to pay for household establishment for Temporary Assistance (TA) recipients.

Generally speaking, a household is only entitled to emergency rental assistance (for the payment of rental arrears) from ECDSS **once every five years**. For **SSI recipients**, ECDSS can pay **four** months of rental arrears **every twelve months**. ECDSS will only pay **rental arrears** and will **not** pay other fees that may have to be paid to avoid eviction such as **late fees and attorney fees**. However, ECDSS will not provide emergency rental assistance to households who can not demonstrate an ability to afford future rents. What this means is that applicants for emergency assistance must be able to show how they will pay the rent due in the future. This requires applicants for ECDSS emergency assistance to have sufficient income to pay rent going forward. If there is no income in the household, the applicant should consider applying for a public assistance grant and possibly moving to a less expensive rental unit.

The five year rule described above does **not** apply to moving and storage assistance which may be paid more often than every five years. However, there are other criteria that an applicant must meet. To get moving assistance, an applicant must meet one of the following criteria:

1. The move is to a less expensive apartment.
2. The move is related to a disaster, like a fire or flood, or because the Health Department, the court or a building inspector has ordered the applicant to relocate for safety and health related reasons.
3. The move is necessary because of a serious medical or physically handicapping condition (for example, the apartment has stairs and the applicant is not able to navigate them).
4. A household member has put the applicant out and they are homeless.
5. The move is from temporary (e.g. a homeless shelter) to permanent housing.
6. The applicant's living situation is dangerous (e.g. due to family violence).

In order to obtain moving assistance, an applicant must provide ECDSS with three sealed estimates from the moving companies ECDSS contracts with to provide these services.

Information regarding these emergency benefits including the protocol for obtaining moving assistance from ECDSS is included in the Resource section of this manual.

Emergency financial assistance may be available through the various federally funded Homeless Prevention and Rapid Re-Housing (HPRP) Programs in the area. They include

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the **Buffalo Housing Opportunities Program** (BHOP), the **Erie County Housing Opportunities** (ECHO) **Program**, and the **Tonawanda Tenant Assistance** (TTAP) **Program**. These programs can assist low income tenants with rent and utility payments and moving and relocation expenses. Unfortunately, the waiting list for HPRP benefits differs from program to program, but it can be long. Unless the landlord is cooperative and willing to wait to receive HPRP monies, HPRP assistance may not be available quickly enough to assist a household that has already been served with eviction papers. In addition, HPRP dollars are being spent rapidly and some programs may soon be shutting down due to a lack of ongoing HPRP funding.

Emergency financial assistance to prevent homelessness may also be available through Housing Opportunities for People With AIDS (HOPWA), FEMA, area churches, and other local agencies.

## Inspection Reports

### **When would I want to have my apartment inspected?**

If there are things wrong with your apartment that may be dangerous to your health and safety, you may want to have your apartment inspected.

### **Who should I call to get my home or apartment inspected?**

The Erie County Health Department and your local building inspection department inspect homes and apartments. Because the Health Department and the building inspectors look at different kinds of problems, call them both.

### **What does the Health Department look for?**

The Health Department looks for problems like rodents, lead paint, not enough heat or hot water or unsanitary conditions. The Erie County Health Department's general information number is **881-4052**.

### **What does the building inspector look for?**

The building inspector looks at structural problems such as holes in the walls, exposed wires, improper insulation, broken sinks or toilets.

### **What is the building inspector's number in Buffalo?**

In Buffalo, the building inspector's number is **851-4949**. If you live in a building with three or more apartments and there are problems throughout the building, you may want to call the multiple dwelling inspector at **851-4933**. If you have serious problems with the electrical or plumbing systems in your home, you may want to call the electrical inspector at **851-5902** or the plumbing inspector at **851-5067**.

### **What about outside of Buffalo?**

Look in the blue pages of your telephone book under the city, town or village that you live in. If there is not a listing for a building inspector, call the town clerk for a phone number.

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### **Should I get a copy of the inspection report?**

Yes. Ask the inspector what you need to do to get a copy of the report. Be sure to get the inspector's name, in case there are any problems, or any questions.

## Withholding Rent Due to Bad Conditions

### Do I have to live with bad conditions in my apartment?

No. In New York State, every lease or rental agreement (oral or written) contains a guarantee that your landlord will rent a safe and decent place to live. This guarantee does not have to be in writing; it is implied. It is called the Warranty of Habitability. Your landlord cannot make you agree to rent your apartment “as is.” Even if you have rented an apartment “as is,” you do not have to live with bad conditions.

### What are examples of bad conditions?

Some common examples of conditions that might violate the Warranty of Habitability include:

1. roach, rat or mice infestation
2. no heat or inadequate or unsafe heaters
3. faulty plumbing or electrical systems
4. no hot water, or no water at all

There are many other conditions that would violate the Warranty of Habitability. The Warranty of Habitability does not cover conditions that only make the apartment look bad, like a dirty wall or bad paint job. But, if these conditions are unsanitary, or dangerous to you or your family, the Warranty of Habitability protects you.

### What if I caused the bad conditions?

If you, a member of your family or your guest has caused the problem, your landlord has not violated the Warranty of Habitability.

### Can I make my landlord fix the bad conditions in this apartment?

Yes, but it is not always easy. There are several steps you must take.

First tell your landlord about the problem things in your apartment that you want fixed. If you have talked to him, and nothing is done, write a letter to your landlord. This letter is very important and should include:

1. A list of how many times, where and when you have spoken to him about the problem.
2. A description of the problem and how it harms you. For example, if the back bedroom cannot be used because of a falling ceiling, and your children have

## NLS Housing Law Overview

- had to sleep in your room, let the landlord know.
3. A request that the problem be fixed. Give your landlord a date, within a reasonable time, by when you want the repairs done.

Be sure to keep a copy of this letter for your own records. This will be important if you end up in court.

### **I have notified my landlord of the problems in my apartment, but nothing has been done. Now what?**

It's time to get some help. Call the Health Department and the building inspectors. We have included information that tells you how to do this. The inspectors will look at your apartment and make a report. Don't miss your appointment with the inspectors and be sure to show them the problems that concern you.

### **What can my landlord do to me if I call an inspector?**

Sometimes tenants are afraid to call an inspector because their landlord may try to evict them when he hears from the inspector. New York State law gives you some protection. If your landlord tries to evict you after hearing from the inspectors, you should call Neighborhood Legal Services.

### **I receive Section 8 benefits. Can I withhold rent?**

**No.** If you have a Section 8 voucher, you should call the Section 8 program and talk to someone there about the problems in your home. The Section 8 program will send out an inspector and will stop paying the Section 8 portion of the rent if your landlord refused to make repairs. **You must continue to pay your share of the rent or you will risk losing your Section 8 benefits.**

### **Can I refuse to pay my rent until the landlord fixes my apartment?**

Generally the answer is "Yes," but only if you follow the instructions below. **RENT WITHHOLDING IS A VERY SERIOUS STEP AND YOU COULD BE EVICTED IF YOU DO NOT DO IT CORRECTLY.** You should talk to Neighborhood Legal Services first. You should only withhold rent if there are serious health or safety problems. **If you are on Section 8, you should not withhold rent** (see above). If you have a lease, you may want Neighborhood Legal Services to review it for you before you withhold rent.

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### What should I do before I withhold rent?

**BEFORE** you withhold any rent money, make sure you have taken the following steps:

1. Write to your landlord about the unsafe conditions in your apartment. Be sure to include the information on the list above. **BE SURE TO KEEP A COPY OF THE LETTER.**
2. Obtain copies of building and health inspector reports.
3. If the inspection reports show serious violations, you should write a letter to your landlord and tell him or her that you plan to withhold rent until the repairs are completed. **KEEP A COPY OF THE LETTER.**

### What should I do with the rent money after I've withheld it?

**DO NOT SPEND THE RENT MONEY.** Keep the money in a bank account or in another safe place. If your landlord tries to evict you for not paying the rent, you may have to show that you have the rent money and that you withheld the rent because of the condition of your apartment.

### Can I spend the withheld rent money on a new apartment?

You should spend the rent money you withheld on a new apartment only if you can move into that apartment very quickly or if you have another place to stay if you are evicted. Your landlord may attempt to have you evicted for not paying rent. If he wins in court, you could be put out of your apartment in as few as twelve (12) days after your rent is due. Unless you can move into your new apartment in twelve days, you should not spend the withheld rent on a new home.

### What should I do if my landlord tries to evict me for withholding rent?

Never ignore any legal or court papers you receive. If you receive court papers, you should contact Neighborhood Legal Services, or another attorney for assistance.

### What if I can't get a lawyer?

Go to court and tell the judge in a clear and precise manner that you have the money and why you have withheld the rent. Show the judge the copies of your letters, any building and/or health inspectors' reports as well as any pictures or other proof you may have.

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### **What will happen next?**

The judge will decide based upon the information presented to him or her whether you had a good reason for withholding the rent. If the judge decides that you did not have good cause for withholding rent, you may be ordered to pay the full amount of the rent.

## Repairing Your Apartment and Deducting It From Your Rent

### What can I do if my landlord refuses to make repairs to my apartment?

If your landlord refuses to make repairs in your apartment, you may be able to make the repairs yourself and deduct the cost from your rent. Some Lease Agreements may prohibit this. In addition, if you receive Housing Choice Voucher (Section 8) benefits, your Section 8 provider may not allow you to use the rent money to make necessary repairs without your permission FOR THESE REASONS: YOU SHOULD TALK TO A LEGAL REPRESENTATIVE BEFORE YOU TAKE THIS STEP.

### What should I do first?

1. If the problem is a serious but not a safety problem or an emergency, you should tell your landlord about the problem and give him a chance to fix it. Do this with a letter and remember to keep copies of any letters you send.

You also can call the building or health inspector and ask for an inspection. Get certified copies of their reports so that you will have proof something was wrong. Write a letter to your landlord letting him know that you intend to repair and deduct if the problem is not resolved. Keep a copy of the letter. Get written estimates (2 or 3) of the cost for the repair. Use the cheapest one. Get and save receipts.

2. If the problem requires immediate attention, such as no heat or water, it is always suggested that you attempt to contact your landlord. If you are unable to reach your landlord or your landlord refuses to make the repairs, you may contact a reputable service/repair company to correct the problem. If time permits, try to get 2 or 3 estimates first. Have the repair person provide a detailed receipt explaining what the problem was and the steps taken to correct it and also the total charge. Send your landlord a copy of the receipt. If your landlord does not reimburse you for the repair cost, you may be able to deduct the cost from your rent.

Also, if time permits, call the building or health inspector and request certified copies of their reports so that you will have additional proof something was wrong.

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### **What can happen after I have deducted the repair cost from the rent?**

Your landlord may try to evict you for non-payment. It will be important to have copies of letters, receipts, etc. to show the judge that the repairs were necessary and fairly priced.

### **What should I do if I get a court petition?**

Never ignore legal or court papers. Contact your local legal service agency. If you are unable to obtain legal representation, you should appear at the hearing and let the judge decide if your actions were proper.

### **What should I do at the hearing?**

Present your case in a clear and precise manner. Show the judge copies of your letters, estimates, inspection reports, receipts and any other supporting evidence you may have. Remember, the judge's decision will be based upon the information presented at the hearing.

### **Will the Judge make a decision the same day?**

Usually the judge will tell you at the end of the hearing if you had good cause or reason for deducting the repair cost from the rent. If the judge decides you did not have good cause or reason **you may be ordered to pay the rent you owe right there in court.** You may ask the judge for more time if you need it, but be prepared for the judge to say no. **If you do not pay the amount of rent you are supposed to pay, when the judge says you have to pay it, you will be evicted.**

## Preparing For Your Warranty Habitability Hearing

You have said that there are conditions in your home that threaten your health and safety. Usually when a tenant raises a warranty of habitability hearing at an eviction proceeding, a hearing is scheduled for another day. Because you may not have a lawyer representing you at a hearing, you must prepare for it on your own. The following instructions will help you prepare for your warranty of habitability hearing.

\*\*\*\*\*

### Winning A Warranty of Habitability Hearing

As a tenant, you can raise what is called a “*warranty of habitability*” defense if there are conditions in your home that threaten your health and safety as long as your landlord knows about the conditions and you did not cause them. The purpose of this defense is to have the judge take money off the rent for every month that you had to live with these bad conditions (this is called a “rent abatement”). Usually, the judge will say that you have to pay your landlord something for the rent. How much depends on how bad the conditions are and how good your “proof” (your testimony, photos, inspection reports, witness, etc.) is. If you do not have the money the judge says you owe your landlord with you IN COURT, the judge can order you to move and you may be evicted as little as 3 to 5 days later.

To win your case, you need to do the following:

1. **Prove that there are bad conditions in your home.**

You can do this by:

- a) Describing each condition AND/OR
- b) Showing the judge pictures that show each condition AND/OR
- c) Showing the judge a report from the building inspectors or the Erie County Health Department describing what is wrong with your home or apartment. (Call the Health Department at 858-7690, the Buffalo Building Inspector at 881-4949 or your local building inspector to find out how to get a copy of the inspection report. Because getting the reports can take time, you should do this immediately).

2. **Prove that these conditions affect the health and/or safety of you and your family.**

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You can do this by:

- a) Describing what concerns you have about the safety of your family (for example: you worry that your child may eat the peeling paint chips or play with exposed wires) AND/OR
- b) Describing any injuries you have received as a result if these bad conditions: for example falling down stairs, getting electric shock, etc. (if any of these injuries were serious, you may want to speak with a private attorney).

### 3. **Prove that the landlord knew about these bad conditions.**

You can do this by:

- a) Describing the conversations you have had with your landlord about these conditions, including how many conversations you had and when each one took place.
- b) Showing the judge a copy of a City of a building inspector's report or a Erie County Health Department report that was sent to your landlord.
- c) Showing the judge copies of letters you wrote to your landlord complaining about the conditions.

### 4. **Prove how long these bad conditions existed.**

You can do this by:

- a) Telling the judge.
- b) Showing the judge building inspector's reports or Erie County Health Department inspection reports.
- c) Showing the judge letters from you to your landlord.

### 5. **Prove you did not cause these bad conditions.**

You can do this by:

- a) Telling the judge you did not cause them.
- b) Telling the judge when these problems started (if these conditions were present when you first moved into your apartment, you could not have caused them).

## **NLS Housing Law Overview**

- c) Showing the judge reports inspection reports from before you moved in.
- d) Have someone else (for example, someone who helped you move in), tell the judge that these conditions existed when you moved in.
- e) Describing the conditions ( it is unlikely that you made the roof leak).

### **Here Is a Checklist of Things You Should Try To Bring To the Hearing:**

- The rent money asked for in your court papers - or as much of it as you have in CASH or money order.
- If you can get one, a letter of guarantee for the Erie County Department of Social Services for any of the rent money you do not have (keep in mind that the judge may say your landlord does not have to accept this).
- Photographs of the unsafe conditions in your home.
- Inspection reports from the building inspectors and/or the Erie County Health Department.
- Letters you have written to your landlord about the unsafe conditions.
- A witness who can talk about the unsafe conditions in your apartment, how long the unsafe conditions have existed and/or the attempts you have made to get your landlord to make repairs.

## My Landlord Wants Me to Move

### **I don't have a lease and my landlord wants me to move. What should I do?**

If you do not have a lease, your landlord must give you a full month's notice if s/he wants you to move.<sup>1</sup> This notice may be verbal or in writing.

### **What is good notice to move?**

The notice to move must be given at least the day before the rent is due.

For example, if your rent is due on the first and your landlord wants you to move before March 1<sup>st</sup>, you must receive the notice BEFORE February 1<sup>st</sup>. If you receive the notice AFTER February 1<sup>st</sup>, the notice is not good.

### **What will happen if my landlord gives me a notice to move?**

Your landlord may try to evict you if you remain in the apartment after the date by which your landlord has asked you to move. If you receive court papers, call the Housing Unit at Neighborhood Legal Services (NLS). It is illegal for a landlord to change the locks, remove the door, or remove your property without serving you with court papers and getting a court order. Call NLS or an attorney if this happens.

### **Does the landlord have to have a good reason for wanting me to move?**

No. If you do not have a lease or rental agreement, your landlord does not have to have or give a reason for wanting you to move. Your landlord cannot evict you for an illegal reason. An illegal reason would be one that is discriminatory or one that is in retaliation for you asserting your rights as a tenant. You should always talk to a lawyer if you think you are being evicted for an illegal reason. You can contact Neighborhood Legal Services for more information.

### **What happens if I don't move out after I receive a full month's notice from my landlord?**

Your landlord may take you to court and ask a judge to order you to move. Legally, your landlord cannot lock you out.

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<sup>1</sup> The "one-month" rule applies to tenants. There are special circumstances in which you may get only 10 days notice. If you think your situation may not be a normal landlord-tenant relationship, be sure to contact Neighborhood Legal Services or another attorney.

## NLS Housing Law Overview

### **What should I do if my landlord tries to evict me in court?**

Call NLS or another attorney for help. **NEVER IGNORE LEGAL PAPERS.**

### **What will happen when I go to court?**

Be sure to get to court on time, and, if you are in Buffalo City Court, ask for the "Attorney of the Morning" before you check in. This attorney can review your court papers, and may be able to represent you. Your name and your landlord's name will be called out by the court clerk. After the court clerk calls out your name, both you and your landlord will go up to the front of the courtroom and stand in front of the judge.

### **What will the judge do?**

The judge will ask your landlord why he is in court. After your landlord tells the judge his side of the story and why he wants you to move, you will have a chance to tell the judge your side of the story.

### **Should I tell the judge if I was not given proper notice to move?**

Yes. If the notice your landlord gave you was not proper, you should not have to move. If you have a copy of your written notice, show it to the judge. Tell the judge that under Real Property Law §232-b, the eviction case against you should be dismissed if you did not receive proper notice. If the judge does not dismiss the case, you should contact one of the following organizations:

- Neighborhood Legal Services (847-0650)
- Legal Aid Bureau (853-9555)

### **What happens after the judge listens to both my landlord and I tell our sides of the story?**

The judge will make a decision. The judge can order you to move (grant your landlord a judgment of eviction), or the judge could throw out your landlord's case.

### **What happens if the judge orders me to move?**

You will receive a notice from a civil officer (usually from the Marshal or the Erie County Sheriff's office) telling you to move in 72 hours. The notice should have a telephone number on it. The 72 hour notice is counted differently in different towns and cities. You should call the number on the notice to find out exactly how much time you have. If you are still in the apartment after the 72 hours are up, the civil officer will make you leave the apartment

## **NLS Housing Law Overview**

and will allow your landlord to change the locks. You will have to arrange a time with your landlord to pick up those things you left behind. To protect your possessions, you should try to have everything moved out of the apartment before the civil officer comes to put you out.

### **If I win in court and have my eviction stopped, what can my landlord do?**

Your landlord can try to evict you again. However, if the judge threw the case out because the notice to move was not proper, your landlord will probably have to serve you with a new notice.

## Mobile Home Evictions

### **Can I be evicted for not paying rent?**

Yes, a court can order your eviction for nonpayment of rent. If you own your mobile home, you will receive notice in writing from the Sheriff or Marshal telling you that you have 30 days to move.

If you do not own the mobile home in a mobile home park, you will receive a notice from the Marshal or Sheriff telling you that you have 72 hours to move.

### **Can I pay my rent in court and stop the eviction?**

Yes, if you bring the rent you owe plus the court costs (approximately \$45.00) to court, the court should order the park owner to accept the money and permanently stay your eviction.

### **Can the mobile home park owner charge me late fees?**

A park owner may not charge you if your rent is paid less than 10 days late. After that, he or she can only charge you up to 5% of what you owe as a late fee. The owner can't take you to court for not paying late fees unless you agreed to this in your lease.

### **Can the park owner evict me for not paying a rent increase?**

If the park owner has not offered you the opportunity to sign a written one year lease, he or she may not be able to evict you for not paying that increase. You should contact Neighborhood Legal Services for more information.

### **My rent is all paid. Can the park owner still evict me?**

If you were served with a proper notice according to your lease agreement telling you to move by a certain date, and you have not moved, the park owner can take you to court and ask that you be evicted. You should contact Neighborhood Legal Services to find out whether the notice you received is proper.

### **What happens if I have no lease?**

If the park owner never offered you the opportunity to sign a written lease agreement, he or she may not be able to evict you. You should call Neighborhood Legal Services for more information.

## **NLS Housing Law Overview**

### **If the park owner wins in court, how much time will I have to move?**

You will receive a ninety day notice in writing from the local sheriff or marshal telling you that you have to move.

In some situations, where the park owner can prove in court that the tenant is threatening the safety or health of other park tenants, the judge can order the tenant out in 30 days.

# Eviction Fact Sheet

Most evictions are either **nonpayment** evictions or **holdover** evictions.

### Non-Payment Evictions

- Landlord must either ask for rent, or provide tenant with a **pay or quit notice** (also known as a “three day notice” or a “demand letter”) telling the tenant to pay the rent in three days or move.
- The pay or quit notice can be served personally upon the tenant or by mailing it to the tenant by regular and certified mail and putting a copy on the tenant’s door.
- If tenant fails to pay all the rent demanded, landlord may have the tenant served with eviction papers (a **notice of petition** and **petition**).
- The notice of petition and petition can be purchased at a legal stationery store.
- Once the papers are filled out, file them in court for city or town where property is located.
- Filing fee in Buffalo City Court is \$45.
- In towns, you can serve first and then file. Filing fee is \$20.
- Any adult, other than the landlord, may serve the notice of petition on the tenant.
- The notice of petition and petition may be served personally or by substitute service.
- A process server or the Buffalo City Court Marshals may also serve the tenant. The Buffalo City Court Marshals charge \$30 to serve the notice of petition and petition and \$15 for each additional tenant.
- Tenant entitled to at least five days notice before court appearance.
- If tenant has all the money judge determines to be due and owing **in court**, the judge may direct landlord to accept money from tenant and case will be dismissed.
- If landlord wins in court (e.g., because tenant does not have money or tenant fails to appear), judge may award landlord a **money judgment** and **issue a warrant of eviction**.
- Court clerk will give landlord an authorization to purchase the warrant which should be brought to the Buffalo City Court Marshals office.
- Only a civil officer (e.g., the Buffalo City Court Marshals or the Sheriff’s Department) may **execute** a warrant of eviction (put the tenant out).

## NLS Housing Law Overview

- In the City of Buffalo, the cost for having the warrant of eviction executed by the City Marshal is \$105 for one respondent (tenant) and \$15 for each additional person.
- Cost of executing the warrant in the towns varies (.e.g., Amherst is \$65, Cheektowaga is \$85).
- The Erie County Sheriff's Department charges \$107 per person plus mileage.
- Warrant of eviction is good for 30 days.
- Generally, in Erie County, a landlord cannot put tenant's possessions out with the tenant.
- Marshals advise landlord that he or she must keep property safe for a reasonable period. Landlord must sign affidavit.
- Sheriffs require that landlord store tenant's possessions for 30 days off the property.
- Landlord must return possessions to tenant.
- The tenant may be put out in as few as 72 hours or 3 days from the date of the court appearance (Civil Officers in the towns often execute in exactly 72 hours, the Buffalo City Marshal generally takes 5 days, the Sheriff's Department generally takes longer).
- Where tenant defaults, judge may reopen case if tenant has all money owed plus court costs (generally \$45) and a good reason for not appearing in court.

## Holdover Evictions

- A holdover action can be brought when a tenant has violated a lease provision, at the end of the lease, or where the landlord has given the tenant proper notice that the tenancy will be terminated and the tenant has not moved.
- In a month-to-month tenancy, landlord must give tenant a full calendar month's notice to move.
- If there is a lease, landlord must give amount of notice required in lease.
- If tenant does not move, landlord may have tenant served with a **notice of petition** and **petition** for a **holdover eviction**. See Nonpayment section for filing and notice requirements.
- Same requirements apply for holdover evictions.

### COMMON DEFENSES TO EVICTION PROCEEDINGS

#### General Defenses

- Notice of petition and petition not served or improperly served
- Federal subsidy not mentioned in petition

#### Nonpayment Evictions

- Landlord accepted rent
- Landlord failed to give a pay or quit notice
- Pay or quit notice improperly served
- Tenant has money in court
- Tenant doesn't owe money
- Warranty of habitability defense

#### Holdover Evictions

- Landlord gave untimely notice
- Landlord gave equivocal notice
- Landlord accepted rent before serving court papers (notice of petition and petition), but after date of termination of tenancy
- Landlord's reason for terminating tenancy is not true
- Landlord is bringing eviction for retaliatory reasons
- Landlord is bringing eviction for discriminatory reasons  
Protected classes are:
  - 1) Race
  - 2) Color
  - 3) National origin
  - 4) Gender
  - 5) Disability
  - 6) Familial status
  - 7) Religion
  - 8) Age (New York State)
  - 9) Marital status (New York State)
  - 10) Military status (New York State)
  - 11) Sexual orientation (New York State)
  - 12) Lawful source of income (Hamburg, Buffalo, West Seneca)
  - 13) Gender identify & expression (Buffalo)
- Landlord has failed to provide a reasonable accommodation

## **Small Claims Court in Erie County**

### **What is Small Claims Court?**

Small Claims Court handles cases with claims of \$3,000.00 or less (**\$5,000.00 or less in Small Claims Court in Buffalo**). The judge in Small Claims Court only has the power to award money judgments.

### **How can I use Small Claims Court?**

You can use Small Claims Court for many different types of cases. Some examples are given below:

1. Disputes over money owed for security deposits, utility bills or rent;
2. Claims for the value of damaged, lost or destroyed personal property;
3. Money damages resulting from an unlawful eviction.

Small Claims Court is not a separate court, but part of your local City, Town, Village or Justice Court.

### **Do I need a lawyer to go to Small Claims Court?**

No. **Lawyers are not necessary in Small Claims Court.** You can use a lawyer if you want to.

### **How do I start a case in Small Claims Court?**

You may only sue in the Small Claims Court in the county where the person you are suing ("the defendant") lives, has a place of business, or has a regular place of employment. This usually means you can use the Small Claims Court in Erie County.

Call the Small Claims Court to find out how to file your claim. The number for Small Claims in Buffalo is 845-2663. Look in the blue pages of the phone book for the number to Small Claims Court in other areas of Erie County. If you are under 18, an adult must file for you.

The filing fee is \$10.00 for claims under \$1,000.00. The filing fee for all claims over \$1,000.00 is \$15.00.

## NLS Housing Law Overview

### What should I take when I go to file my case?

When you go to file, make sure you have:

1. the name and the mailing address of the person you are suing (the defendant)
2. the reason you are suing
3. the date the problem occurred
4. the amount the defendant owes you
5. any proof you have, such as letters, etc., showing your attempts to settle the dispute.

You will be given a hearing date. The court will contact the person you are suing.

### Can the person I am suing try to sue me?

**Yes!** The person you are suing (the defendant) may decide to sue you for money owed from the same event. This is called a "counterclaim". Before you sue someone in Small Claims Court, you should think carefully whether that person could prove that you owe them even more money. In Small Claims Court the limit on a counterclaim is \$3,000.00 (**\$5,000.00 in Buffalo Small Claims Court**).

### What should I do if the case is settled before the hearing?

If you and the defendant settle your case before the hearing, put your agreement in writing, and tell the Small Claims Court clerk before the hearing date.

### What do I do to prepare for the hearing?

To prepare for the hearing, plan what you want to say and show. If there are any witnesses, ask them to go to the hearing. If they will not go, ask the Small Claims Court clerk for a subpoena for the witness. You can ask the clerk for a subpoena when you go to court to file the claim or any time before the date of trial. The clerk will tell you how to serve the subpoena.

Decide what you need to bring to the hearing to prove your case. The following are examples of some evidence you might need for different kinds of cases:

## **NLS Housing Law Overview**

### **My landlord won't return my security deposit.**

If you sue your landlord because your security deposit was not returned, you must prove first how much security you paid. Then you must show that you do not owe your landlord for rent or damages if your landlord says you do.

- Bring your lease or rental agreement if you have one along with any receipts you have that show how much security deposit you paid.
- If your landlord might say you damaged the apartment, bring photographs or witnesses who can talk about the condition of your apartment on the day you moved in and on the day you moved out.
- If your landlord might say you moved out owing rent money, bring rent receipts to show that you paid your rent.

### **My landlord has kept my property.**

Bring a list of your lost possessions and what they are worth. If possible, bring receipts or estimates that show how much you spent for your things. You can also bring pictures or witnesses who can describe what your possessions looked like and how much they were worth.

If you believe that your landlord still has your possessions, tell the judge. You must prove that your landlord took your possessions, what those possessions were and how much they are worth.

### **I didn't pay my rent because the landlord refused to repair my apartment.**

If your landlord has refused to make repairs, you may be able to get money back from the rent you have already paid. This is called a "rent abatement". If you want a rent abatement, call us and we will send you more information on how to prove your case.

### **Can I ask for a jury?**

No, but if the defendant wants one, he or she may request one.

### **What will happen at the hearing?**

Both sides tell their story to the judge.

The judge will probably ask questions. You and the defendant will have a chance to question each other and any witnesses. Don't try to act like a lawyer. Tell your story clearly

## **NLS Housing Law Overview**

and honestly. Show the judge any evidence (letters, bills, etc.) you have. Don't interrupt or argue with your opponent.

### **When will the judge or hearing officer make a decision?**

The judge or hearing officer will make a decision after listening to both sides. The judge may tell you the decision in court or you may have to wait for it in the mail.

### **What happens if I miss my court date?**

Your claim will be dismissed.

### **What happens if the defendant misses the court date?**

If the defendant doesn't show up, you will most likely win by default.

### **Can I appeal if I lose?**

If your case was heard by a hearing officer, you may demand a trial de novo (a new trial). Your request for a new trial must be made within 35 days from the time you receive the Court's decision. You will have to pay a filing fee of \$75.00 for the trial de novo. The case will then be heard by a judge.

If your case was heard by a judge the first time, you may need an attorney to appeal. You must file a notice of appeal and pay the required fee within 30 days after the judgment is entered. Technical mistakes would not be grounds for reversal of the decision. The court on appeal will only consider whether substantial justice was done.

If you are interested in requesting a trial de novo or in appealing a Small Claims Court decision, you should contact the Small Claims Court clerk for more information.

### **How do I collect my money if I win?**

If the defendant has little or no money or property, it may be impossible.

In other cases, if the defendant does not pay you in a reasonable time, go to the Clerk of Small Claims Court for help. Take with you any information you have about the defendant's bank accounts, property and employment.

You will probably be directed to the Marshal's office or Sheriff's Department for assistance. There will be a fee for their services.

## NLS Housing Law Overview

### **If I receive public benefits, will my Small Claims Court award affect my eligibility?**

Yes. If you are successful in Small Claims Court, and you receive an award that is more than \$2,000.00, **AND** you actually collect more than \$2,000, you may become ineligible for some types of governmental programs including but not limited to food stamps, Medicaid, SSI, and cash assistance. For more information about this, you should contact the Public Benefits unit at Neighborhood Legal Services.

### **What should I do if I am sued in Small Claims Court?**

Do not ignore a notice saying you are being sued, even if you think you have done nothing wrong.

If you don't know why you are being sued, call the person who sued you.

If you settle, put it in writing; if not, go to the hearing ready to tell your side of the story. If you can't go to the hearing on the day you are supposed to, call your opponent and the Small Claims Court beforehand to change the date.

If you think your opponent owes you money, call the Small Claims Court clerk before the hearing for information on how to file a counterclaim.

You may request a jury. Call the Small Claims clerk in advance to request one. There will be some costs involved.

## Public Assistance and Moving Expenses

### Will the Erie County Department of Social Services help me with moving expenses?

Maybe. To get your moving expenses paid, you must meet one of the following conditions:

1. The move is to a less expensive apartment.
2. You have to move because of a disaster, like a fire or flood, or the Health Department or code enforcement has said you have to move.
3. The move is necessary because of a serious medical or physically handicapping condition (for example, your apartment has stairs and your doctor says you shouldn't climb stairs).
4. Someone you and your family lived with has put you out, and you and your family are homeless.
5. The move is from temporary to permanent housing, including moving from a shelter to your own apartment.
6. Your living situation is dangerous (for example, family violence).

### What if I have to move because I did not pay my rent?

You can still receive help from the Erie County Department of Social Services, but they will "recoup" the amount they give you (that is, Erie County Department of Social Services will take the amount out of your public assistance grant in monthly installments).

Moving expenses are recovered/recouped only if you are evicted due to non-payment of rent.

### What do I have to do to get help with moving expenses?

Fill out the attached form by checking the box next to Moving Expenses, then give it to your caseworker. Keep a copy. Your caseworker may send you to the Housing Unit located on the first floor of the Rath Building, 95 Franklin Street, Buffalo.

### What will I have to show to get Erie County Department of Social Services to pay for my moving expenses?

Erie County Department of Social Services will want the following items:

## **NLS Housing Law Overview**

1. Sealed estimates from 2 moving companies on Erie County Department of Social Services' list. They will give you the list.
2. A Board of Health inspection of the apartment you are moving to, unless it is public or Section 8 housing, or has been inspected recently, or has more than 3 Units. Be sure to write down the name of the inspector.
3. A written notice from the Board of Health to vacate your current apartment, if that is your reason for moving.
4. A Landlord Statement signed by the landlord of the apartment you are moving to.
5. Request for an Additional Allowance form.

Take these with you to Erie County Department of Social Services. Keep a copy. If you have these documents, you should be granted a moving allowance.

### **What if I have problems getting Erie County Department of Social Services to pay for my moving expenses?**

If you are having problems getting moving expenses, *and you have given Erie County Department of Social Services all the documents you can provide, call our office at 847-0650.*

## NLS Public Benefits Law Overview

Attorneys and paralegals in the Public Benefits Unit assist clients by providing advice and representation in matters involving eligibility for public benefits such as Family Assistance, Safety-Net Assistance, Food Stamps, Medicaid, Emergency Assistance and other county, state, and federal benefits. We also engage in direct outreach at area homeless shelters to individuals and families who are in need of legal services.

In addition to educational presentations at the shelters, we also provide advice, counsel and legal representation to those who need help accessing shelter, public benefits and community resources.

### **Supervising Attorneys**

Elizabeth White  
Penny Selmonsky

### **Attorneys**

Diana Proske

### **Paralegals**

Tracy Gannoe  
Darlene White  
Karen Kalwicki  
Traserra Adams  
Carla Robinson  
Tom Stern  
Elizabeth Padgett

### **CCVC**

Leigh Hill

### **Administrative Support**

Kellie Brozyna

**Chapter**

**3**

# Emergency Housing Issues

### **I couldn't pay the rent and now I'm being evicted. How can I get help to pay back rent?**

- \* You can apply for emergency rental assistance from DSS. Go to the Emergency Housing Unit located on the first floor of the Rath Building, 95 Franklin Street, Buffalo.
- \* You must show that you are being evicted because you owe back rent (arrear). DSS requires court papers or a letter from your landlord threatening to sue you if you don't pay. The letter from your landlord should have a breakdown of the exact months and amounts you owe. The letter does not have to be a formal court document. In order to get assistance with rent arrears you must have a future ability to pay the rent. Also, in most instances, DSS does not have to help you if you have had assistance with rent arrears within the last 5 years.
- \* Under certain circumstances, DSS may ask for the money back, either by recouping future cash assistance or by having you sign a repayment agreement.
- \* If you go to Window #5 or #6 at DSS and tell the worker that you have an emergency, you must be seen that day. Any denial of assistance must be in writing. If DSS is willing to help, but needs more documentation from you, you should be given a list of items needed and a date to return. If your emergency need must be met the same day, DSS must issue a "guarantee letter" that day. If DSS denies your request, it must be in writing.
- \* If DSS refuses to pay your back rent, and your landlord is threatening to evict you, call our office immediately at 847-0650 and ask for the Public Benefit Unit. We will review DSS' decision with you. We will tell you how to challenge the decision. We may agree to take your case.

### **I need to move, how can I find an affordable apartment?**

- \* You will need to find an apartment that is affordable. The maximum amount you can pay for rent varies according to household size and utilities. DSS uses these numbers as a guideline (if your income is public assistance). If your income is higher, they may allow a larger rental expense:

## NLS Public Benefits Law Overview

1 person household	2 person household	3 person household	4 person household	5 person household
\$280-300	\$375	\$475	\$525	\$575

- \* When you find an apartment you will need to bring your completed landlord statement to DSS so you can get your rent.
- \* Belmont Housing Resources of NY (1195 Main St, 884-7791) and the Rental Assistance Corp. (470 Franklin St, 882-0063) usually have apartment listings for individuals who need to find affordable housing. If you want counseling or help in finding an affordable home, you can also contact Housing Opportunities Made Equal (HOME) at 854-1400. If you are homeless you can call Crisis Services at 834-3131.
- \* You can apply for Section 8 assistance at the Rental Assistance Center and at Belmont Housing Resources of NY. The waiting list for Section 8 is very long; however, they often have shorter lists for individuals who meet criteria for various special programs. Always ask if you might be eligible for one of these special Section 8 programs. You can call Belmont at 884-7791 and the Rental Assistance Center (RAC) at 882-0063. BMHA also provides Section 8 vouchers on a limited basis.
- \* You can apply for public housing at the Buffalo Municipal Housing Authority. BMHA has guidelines for acceptance, however, if you are denied you can ask for a review and contact our office for advice. You can call 855-6774 or go to 245 Elmwood Ave., Tuesday, Wednesday, and Thursday, from 8:00 AM to 12:00 PM and 1:30 PM to 3:30 PM.

### How can I get help with moving/storage expenses?

- \* DSS can sometimes help with moving expenses. Go to Windows #5 and #6 at the Rath Building and ask for assistance.
- \* DSS can only pay for moving expenses if you are moving to a less expensive apartment or you are under extreme circumstances. For DSS, extreme circumstances are: homelessness, transition out of a shelter, leaving a dangerous or abusive environment, natural disasters, building condemnation, or serious medical conditions that require different housing arrangements.

## **NLS Public Benefits Law Overview**

- \* DSS will only provide moving expenses if they determine the apartment you are moving to is “affordable.” If you are on Public Assistance, your new rent should be no more than the chart on the previous page. If you have other income, DSS may allow a higher rent.
- \* If you are denied moving expenses or you have questions about this program, feel free to contact our office at 847-0650.
- \* If you need help with storage, DSS can help while you are living in a temporary living situation.

### **How can I get help getting a security agreement?**

1. DSS may provide a "security agreement". A security agreement is a form DSS gives the landlord promising to pay damages you owe when you move out. In return, the landlord will let you move in without paying a security deposit. If you get a security agreement and DSS ends up having to pay your landlord, it can be taken out of your grant.
2. To apply, go to Windows #5 and #6 at the Rath Building.
3. DSS only provides security agreement if you are moving to a cheaper place or if you are in extreme circumstances. For DSS, extreme circumstances are: homelessness, transition out of a shelter, leaving a dangerous or abusive environment, natural disasters, building condemnation, or serious medical conditions that require different housing arrangements.
4. If you are denied a security agreement or you have questions about this program, feel free to contact our office at 847-0650.

### **I am being evicted and I am going to a temporary shelter, but I can't take all my things. What can I do?**

- \* DSS can pay to move your belongings to a storage place and pay to store them, if you are financially eligible and in a temporary living situation.
- \* DSS can also pay for your things to be moved out of storage and moved to your permanent home.
- \* You can apply for this benefit at Window #5 or #6 at the Rath Building. If you are denied you can contact our office if you feel you are unfairly denied.

## NLS Public Benefits Law Overview

### Can I get assistance with transportation and child care when I am looking for housing?

If you have a minor child, DSS must help you with transportation or child care costs to help parents to search for permanent housing. DSS can provide you with either bus passes or tokens.

### I have no place to stay, what can I do?

- 1) If you have no place to stay, go to Window #5 or #6 at the Rath Building and ask for assistance. DSS must place you in a shelter or a hotel room if the shelters are full.
- 2) Crisis Services (834-3131) can also help place people in shelters and provide other assistance after hours.
- 3) You can contact shelters directly and ask for a bed. The largest shelters in Buffalo are:

<b>City Mission (for men)</b>	<b>Cornerstone (for women and children)</b>	<b>Little Portions (for adults)</b>	<b>Salvation Army</b>	<b>Haven House</b>
100 E. Tupper St. Buffalo, NY 14203 (716) 854-8181	150 E. North St. Buffalo, NY 14203 (716) 854-8181	1305 Main Street Buffalo, NY 14209 (716) 882-5705	960 Main Street Buffalo, NY 14202 (716) 884-4798	451 Ellicot Sta. Buffalo, NY 14201 (716) 884-6000

- \* If you are already on Public Assistance and you find yourself homeless, make sure your caseworker knows of your changed circumstances to avoid an overpayment. If they pay your shelter allowance and you have no rent expense, you will have to pay the money back.

You are still entitled to a personal needs allowance while you are at the shelter. Your Temporary Assistance grant may be reduced, not eliminated. If you are staying at a shelter that provides 3 meals a day, you are entitled to \$45 per person. If the shelter provides less than 3 meals a day, you are entitled to \$166 (for a single person). You are always entitled to Food Stamps even if the shelter provides 3 meals a day.

## DSS and Rental Arrears – Emergency Assistance

### **Can the Department of Social Services pay my rent arrears if I am being evicted?**

Yes. If you are receiving or applying for public assistance, the Erie County Department of Social Services can pay your back rent, mortgage or taxes. **Even if you do not want public assistance, you can get rent arrears if you are income eligible.** The best way to be sure is to apply.

### **How do I apply for assistance with rental arrears?**

Go to Windows 5 and 6 of the Erie County Department of Social Services located on the first floor of the Rath Building, 95 Franklin Street, Buffalo. Complete an application and submit it when you go to Windows 5 or 6.

### **What do I have to show to have my back rent paid?**

You must show that you are being evicted because you owe rental arrears. The Erie County Department of Social Services requires court papers or a letter from your landlord stating that she/he will evict you if you do not pay the rent along with a month-by-month breakdown of the arrears. This does not need to be a formal eviction notice.

### **How much money should I get?**

If the Erie County Department of Social Services finds that you are eligible for assistance, they can give you up to six months of back rent one time in a 5-year period. If you are getting SSI, the Erie County Department of Social Services can help you once a year for 4 months back rent. You must show that you can afford to pay the rent.

### **Can the Erie County Department of Social Services make me pay them back?**

If you are on public assistance, the Erie County Department of Social Services may recoup the amount it paid to stop your eviction. If you are an applicant for public assistance, they may recoup part of the money.

If you are not eligible for public assistance because your income is too high, the Erie County Department of Social Services may ask you to sign a repayment agreement. The agreement says that you will repay the money within 12 months. You will also be asked to sign a Confession of Judgment. Be sure to ask whether you are eligible for public assistance, even

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if you are not applying for a cash grant. If you are eligible for public assistance, you do not have to sign a repayment agreement. The amount you have to pay back can vary depending on your household type.

If you own your home, you may be asked to sign a lien to DSS for the cost of the mortgage/tax assistance you receive.

### **How often can I receive assistance with my back rent?**

You can only receive an emergency payment for your back rent once in five years, unless you are getting SSI in which case you can get help once a year. In addition, you cannot have any unpaid loan amounts.

### **What happens if the Erie County Department of Social Services will not pay my back rent?**

If the Erie County Department of Social Services refuses to pay your back rent, and your landlord is threatening to evict you, call us at 847-0650 immediately. We will review the Erie County Department of Social Services' decision with you. We will tell you how to challenge the decision.

If you have to be in Court before you talk to us, be sure to go to Court on your scheduled date. If you are scheduled to appear in Buffalo City Court, get there by 9:00 a.m. Listen for an announcement about the Attorney of the Morning Program. Talk to a representative from the Attorney in the Morning Program before you tell the Court Clerk you are there. The services provided from the Attorney of the Morning Program are free and may be of help to you.

# DSS and Security Agreements

### **Does the Department of Social Services help with security agreements?**

Sometimes. The Erie County Department of Social Services may provide a "security agreement" to your landlord. A security agreement is a form the Erie County Department of Social Services gives the landlord promising to pay damages you may owe when you move out. In return, the landlord will let you move in without paying a security deposit. If you get a security agreement and the Erie County Department of Social Services ends up having to pay your landlord, it will be taken out of your grant. ECDSS will not pay a cash deposit to the landlord.

### **Under what circumstances will the Erie County Department of Social Services issue a security agreement for my new apartment?**

The Erie County Department of Social Services should take care of your security agreement if you are income eligible and you meet one of the following requirements:

1. You are moving to a cheaper apartment/house.
2. Your previous home was condemned or destroyed.
3. You had to move because of a medical problem or physical handicap.
4. The person you had been staying or living with made you leave.
5. You are moving **out of** temporary housing.
6. You have to move **into** temporary housing because you do not have permanent housing.
7. You have to move because of dangerous conditions in your previous home.

### **How do I get a security agreement?**

You have to ask. You can ask verbally, but it is best to use the attached form. Just check the box for "security agreement," sign and date the form, and bring it to the first floor of the Rath Building. Please remember the name of the emergency worker you give it to. Keep a copy.

If you do not hear anything within a few days, you should call the Public Benefits Unit at 847-0650 and ask about your request.

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### **What if I cannot find a landlord who will take a security agreement?**

Many landlords in Erie County take security agreements. Some will not. If you cannot find a landlord who will accept an agreement you should check to see if you are eligible under the HPRP program. They will pay security deposits under certain circumstances. You can also ask the Department of Social Services to call your landlord and explain the security agreement. Often, the landlord will accept the agreement once they understand the process.

### **What if the Erie County Department of Social Services refuses to help me?**

If you think you should have been given a security agreement, but the Erie County Department of Social Services refuses, you should ask for a decision in writing and request a fair hearing. Notify NYSOTDA by telephone, fax, or mail that you want a fair hearing. You can write on the back of your notice the reason for requesting the hearing. If you phone, get the name of the person you speak to. If you write, send your letter by certified mail and keep a copy. The correct address is:

New York State Office of  
Temporary and Disability Assistance (OTDA)  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, New York 12201-1930  
Telephone No.: 1-800-342-3334  
Fax No. (518) 473-6735 (use the attached form)

If you have an emergency, you should ask for an "expedited" hearing. NYSOTDA will determine if you have an emergency and may schedule the hearing more quickly.

## Request for Emergency Assistance and/or Special Grant

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am requesting the following allowance(s) for special need(s):

- |  |   |
|--|---|
| <input type="checkbox"/> Back Rent<br>(18 NYCRR 370.3, 372.1-372.6,<br>397.1-397.5)                          | <input type="checkbox"/> Pregnancy Allowance**<br>(18 NYCRR 352.7)                                    |
| <input type="checkbox"/> Back Mortgage and/or Taxes<br>(18 NYCRR 352.7)                                      | <input type="checkbox"/> Property Repairs<br>(18 NYCRR 387.8)   |
| <input type="checkbox"/> Brokers' or Finders' Fee<br>(18 NYCRR 352.6)  | <input type="checkbox"/> Rent Security Agreement<br>(18 NYCRR 352.6)                                  |
| <input type="checkbox"/> Enhanced Shelter Allowance for<br>Persons Living with HIV/AIDS (18<br>NYCRR 352.3k) | <input type="checkbox"/> Restaurant Allowance**<br>(18 NYCRR 352.7)                                   |
| <input type="checkbox"/> Expedited Food Stamps<br>(18 NYCRR 387.8)   | <input type="checkbox"/> Storage Fee<br>(18 NYCRR 352.6)  |
| <input type="checkbox"/> Household Establishment Grant<br>(18 NYCRR 352.7)                                   | <input type="checkbox"/> Transportation fees<br>(Only for families with children)<br>(18 NYCRR 352.7) |
| <input type="checkbox"/> Moving Expenses<br>(18 NYCRR 352.6)   | <input type="checkbox"/> Utility Arrears<br>(SSL 131-S)   |

\*\* Must have an active Public Assistance Case in order to receive, for all other benefits, persons do not need to be on Public Assistance but are subject to certain income guidelines.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

# Moving Expenses

### **Will the Erie County Department of Social Services help me with moving expenses?**

Maybe. To get your moving expenses paid, you must meet one of the following conditions:

1. The move must be to a less expensive apartment.
2. You have to move because of a disaster, like a fire or flood, or the Health Department or code enforcement has said you have to move.
3. The move is necessary because of a serious medical or physically handicapping condition (for example, your apartment has stairs and your doctor says you shouldn't climb stairs).
4. Someone you and your family lived with has put you out, and you and your family are homeless.
5. The move is from temporary to permanent housing, including moving from a shelter to your own apartment.
6. Your living situation is dangerous (for example, family violence).

### **What if I have to move because I did not pay my rent?**

You can still receive help from the Erie County Department of Social Services, but they will "recoup" the amount they give you (that is, the Erie County Department of Social Services will take the amount out of your public assistance grant in monthly installments).

Moving expenses are recovered/recouped only if you are evicted due to non-payment of rent.

### **What do I have to do to get help with moving expenses?**

Fill out the attached form by checking the box next to Moving Expense. Go to the Housing Unit located on the first floor of the Rath Building, Windows 5 and 6 at 95 Franklin Street, Buffalo.

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### What will I have to show to get the Erie County Department of Social Services to pay for my moving expenses?

The Erie County Department of Social Services will want the following items:

1. Identification
2. A Completed Landlord Form (see attached)
3. Written verification of the reason for moving
4. Proof of income
5. Verification of the amount of Belmont or Section 8 received
6. Pre-tenancy inspection of the property
  - This is a **joint inspection** conducted by the landlord and the tenant.
  - DO NOT sign a pre-tenancy inspection form until you have seen the apartment's condition.
  - You must make the arrangements with the landlord for a mutually agreed upon time to conduct the inspection and you must be present for the inspection to attest to the condition.
  - The original copy of the Pre-Tenancy Inspection Form must be submitted at the time of your eligibility interview. You and your landlord should retain copies for your records.
  - Prior to issuing a Security Agreement, the Erie County Department of Social Services may go to the house/apartment.
7. Anyone in the household 18 years or older must go in to be finger-imaged (unless you are getting SSI).

### What moving companies must I use?

You can only use the following movers and you will need two written sealed estimates from the following list of movers. You must bring the two sealed estimates to ECDSS:

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You can contact:

A Plus Moving Services, Inc.	238-1157	J&J Movers	837-6161
ABC Moving	362-0810	Kyros Moment Moving	316-6680
All Star Movers	881-1125	M&J Moving	684-6329
Connie's Moving	896-3332	The Moving Doctor	835-1335
Demerly the Movers	684-1957	XYZ Eclectic Inc.	444-2820

### **What if I have problem getting the Erie County Department of Social Services to pay for my moving expenses?**

If you are having problems getting moving expenses, and you have given Erie County Department of Social Services all the documents you can provide, call our office at 847-0650.

## Request for Emergency Assistance and/or Special Grant

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am requesting the following allowance(s) for special need(s):

- |  |   |
|--|---|
| <input type="checkbox"/> Back Rent<br>(18 NYCRR 370.3, 372.1-372.6,<br>397.1-397.5)                          | <input type="checkbox"/> Pregnancy Allowance**<br>(18 NYCRR 352.7)                                    |
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| <input type="checkbox"/> Brokers' or Finders' Fee<br>(18 NYCRR 352.6)  | <input type="checkbox"/> Rent Security Agreement<br>(18 NYCRR 352.6)                                  |
| <input type="checkbox"/> Enhanced Shelter Allowance for<br>Persons Living with HIV/AIDS (18<br>NYCRR 352.3k) | <input type="checkbox"/> Restaurant Allowance**<br>(18 NYCRR 352.7)                                   |
| <input type="checkbox"/> Expedited Food Stamps<br>(18 NYCRR 387.8)   | <input type="checkbox"/> Storage Fee<br>(18 NYCRR 352.6)  |
| <input type="checkbox"/> Household Establishment Grant<br>(18 NYCRR 352.7)                                   | <input type="checkbox"/> Transportation fees<br>(Only for families with children)<br>(18 NYCRR 352.7) |
| <input type="checkbox"/> Moving Expenses<br>(18 NYCRR 352.6)   | <input type="checkbox"/> Utility Arrears<br>(SSL 131-S)   |

\*\* Must have an active Public Assistance Case in order to receive, for all other benefits, persons do not need to be on Public Assistance but are subject to certain income guidelines.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

## DSS and Utilities – Emergency Assistance

### **I am behind on my utility bills. Is there anything I can do?**

Yes. You can apply for “emergency assistance.” Emergency assistance is not the same thing as HEAP. If you have gotten HEAP, the HEAP office is closed, or have been denied HEAP, you should then apply for emergency assistance. You must apply for HEAP first, before you apply for emergency assistance, if HEAP is open.

### **Where do I apply for emergency assistance?**

1. If you are on public assistance you have to see your caseworker.
2. If you are not on public assistance, you must apply at the HEAP office, 478 Main Street, Buffalo, New York during HEAP season.
3. When the HEAP office is closed, you must apply at ECDSS, 95 Franklin Street, Buffalo, New York, on the first floor at Windows 5 and 6. Complete the application and submit it when you get to DSS.

### **What do I need to bring with me when I apply for emergency assistance?**

You must bring the following papers:

1. A shut-off notice, if you have one
2. A Financial Statement from the utility company
3. Photo ID for everyone in your household
4. Proof of income
5. Proof of expenses:
  - (a) proof of housing costs: rent receipts/lease /landlord statement, mortgage statements;
  - (b) other utility bills;
  - (c) if you own a car, proof of your car payments and insurance costs;
  - (d) monthly medical expenses, such as prescription co-pays;
  - (e) childcare expenses.

### **How do I get the financial statement from the utility company?**

If your emergency is a gas emergency, you must go to the National Fuel office at 409 Main Street, Buffalo, and bring the following items:

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- \* Proof of Income (for at least the past 8 weeks of either wages, SSI, or UIB)
- \* Identification

National Fuel will decide whether they will offer you a “deferred payment arrangement (DPA).” If they offer you a DPA, you won’t need emergency assistance. If they deny your request for a DPA, they will state this on your financial statement. Bring the financial statement to Windows 5 and 6 at Erie County Department of Social Services.

If your emergency is an electric emergency, you can ask for the Financial Statement with National Grid over the telephone. You should also request a DPA from National Grid. If they deny your request, they will state this on your financial statement. Their phone number is 1-800-642-4272. The utility company will send the information directly to the Erie County Department of Social Services.

### **How much emergency assistance can I get?**

Generally, you will only receive assistance for the four months just before your application. However, if you are receiving SSI or public assistance, you will receive assistance for the most recent four months in which you received service from the 10 months prior to your application.

### **Do I have to repay this assistance?**

If you are not receiving public assistance or SSI (and you are not income eligible for public assistance or SSI) then you will have to sign a repayment agreement. You must repay the assistance within two years. If you default on this repayment agreement, you will not be able to obtain more emergency assistance for utilities in the future until it is repaid (**unless you are receiving SSI, public assistance or you are income eligible for public assistance at the time you make your second request for emergency assistance for utilities**).

If you are on public assistance, the Erie County Department of Social Services will recoup the assistance it paid you from your grant.

### **Is there an income limit on emergency assistance for utilities?**

No. Anyone can be eligible for emergency assistance if you do not have enough income or resources to meet the emergency.

### **Does the Erie County Department of Social Services have to interview me the same day I apply?**

Yes, at a minimum, you must be screened. This means that the Erie County Department of Social Services has to talk to you and decide whether you have an immediate need. An

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immediate need is when you have a shut-off notice or are already shut off and you are applying for assistance. If you have an immediate need, the Erie County Department of Social Services must either grant you the assistance the same day you apply, get a hold on your utility account until they are able to give you an appointment, or give you a denial in writing.

### **Do I have to be on Public Assistance to get this assistance?**

No, there is no income limit.

### **What if I am on SSI and my utilities are shut off?**

The Erie County Department of Social Services should turn you back on and guarantee your payment to the utility company for six (6) months.

### **What if I don't get the help I need?**

You should insist upon a written denial and contact our office. We can be reached at 847-0650.

## Home Energy Assistance Program (HEAP)

### What is HEAP?

HEAP is a program that can help you pay for Electricity, Propane, Natural Gas, Wood, Oil, Kerosene, Coal, or any other heating fuel to help you heat your home. HEAP is a federally funded program that assists with home heating costs. HEAP also offers an emergency benefit for households in a heat or heat related energy emergency. Also, HEAP offers a furnace repair and/or replacement benefit for households with heating equipment that does not work.

### How does HEAP work?

HEAP benefits are paid directly to the heat supplier to the account of the customer of record.

### What are the different kinds of available HEAP benefits?

There are three available HEAP benefits: the regular benefit, an emergency benefit, and furnace repair or replacement.

### What is the regular benefit?

The regular benefit assists low-income households with the cost of heating their home. **The Regular Benefit component of the 2010-11 HEAP opened on November 1, 2010.**

- If heat is included in your rent, you can get \$40-\$50 depending on your income level.
- If heat is not included in your rent, you can get between \$400-\$500 depending on your monthly household income, and the presence of an individual that is either age 60 or older, under age 6, or permanently disabled in your household.

### What is the HEAP emergency benefit?

The HEAP Emergency Benefit helps people who are facing a heat or heat related energy emergency, or shut off, and do not have the resources available to resolve the emergency. The Emergency Benefit component of the 2010-11 HEAP program opened on November 1, 2010.

One HEAP emergency benefit is available for both gas and electric in order to restore or continue utility service to eligible customers for 30 days. Customers who receive Food

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Stamps or Temporary Assistance should contact their worker by phone to resolve a utility emergency.

The emergency HEAP benefit amount is based on income, available resources, the number of household members and the primary fuel type.

You may be eligible for an Emergency Benefit if:

- Your electricity is necessary for your heating system to work and is either shut-off or scheduled to be shut off, or
- Your natural gas heat is off or scheduled to be shut-off, or
- You are out of or in danger of running out of fuel (oil, propane, wood, or coal), or
- Your applicant owned heating equipment is inoperable.

And

- Your income is at or below the current income guidelines or you receive Family Assistance, Safety Net Assistance, Food Stamps or Supplemental Security Income.
- The heating and/or electric bill is in your name, and
- Your available resources are:
  - less than \$2,000 if no member of your household is age 60 or older; or
  - less than \$3,000 if any member of your household is age 60 or older.

### What is the emergency benefit amount?

Emergency HEAP Benefit Amounts for 2010-2011	
TYPE OF EMERGENCY	AMOUNT
Heat Related Domestic (electric service required to operate heating equipment)	\$160
Natural Gas Heat Only	\$400
Natural Gas Combined with Heat Related Domestic	\$560
Electric Heat Combined with Heat Related Domestic	\$560
Non-utility heating fuel (oil, kerosene, propane, wood, corn pellets, etc)	\$600

### What is the Furnace Repair or Replacement program?

The Furnace Repair and Replacement Program of HEAP is available to help home owners repair or replace furnaces, boilers and other direct heating components necessary to keep your home's primary heating source working.

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Furnace benefits amounts are based on the actual cost incurred to replace or repair the furnace, boiler, and/or other essential heating equipment necessary to keep your home's primary heating source working.

Applications for furnace repairs or replacements are available at the Erie County DSS services office.

### What are the income guidelines for HEAP?

Your total gross monthly income for your household size must be at or below the following guidelines:

Household Size	Maximum Gross Monthly Income
1	\$2,129
2	\$2,784
3	\$3,439
4	\$4,094
5	\$4,749
6	\$5,404
7	\$5,527
8	\$5,650
9	\$5,773
10	\$5,896
11	\$6,029
Each additional	Add \$468

### How do I apply for HEAP?

1. If you are on public assistance call the HEAP office at (716) 858-7644..
2. If you are not on public assistance, you must apply at the HEAP office, 478 Main Street, Buffalo, New York during HEAP season.
3. When the HEAP office is closed, you must apply at the ECDSS, 95 Franklin Street, Buffalo, New York, on the first floor at Windows 5 and 6. Complete the application and submit it when you get to DSS.

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### **What if I am denied HEAP?**

Call our office immediately. We will review the decision with you. If it appears to be wrong, we will tell you how to challenge it, or we may agree to take your case. You must ask for a Fair Hearing to challenge the denial within 60 days.

### **Can I appeal a decision I don't agree with?**

Yes. You must ask for a Fair Hearing to challenge the denial within 60 days. To request a Fair Hearing, notify the New York State Office of Temporary and Disability Assistance (OTDA) by telephone, fax, or mail that you want a Fair Hearing. You can write on the back of your notice the reason for requesting the hearing. If you phone, get the name of the person you speak to. If you write, send your letter by certified mail and keep a copy. The correct address is:

New York State Office of  
Temporary and Disability Assistance (OTDA)  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, New York 12201-1930  
Telephone No.: 1-800-342-3334  
Fax No. (518) 473-6735

For further information about HEAP, you may call our office at (716) 847-0650.

## Emergency Shelter

### What are the laws governing Emergency Shelter in Erie County?

New York State law requires that the Erie County Department of Social Services (ECDSS) provide temporary shelter for persons who are homeless in Erie County (18 NYCRR 352.35; 94 ADM 20).

Placement in a shelter (or hotel) must continue as long as the homeless person remains homeless, is following the emergency shelter rules and regulations (see below), and is searching for permanent housing (18 NYCRR 352.35).

Homeless persons and persons in an emergency situation may be eligible for assistance from ECDSS with security agreements (18 NYCRR 352.6), moving expenses (18 NYCRR 352.6), storage fees, and furniture (18 NYCRR 352.7) grants.

### What are the emergency shelter rules?

DSS requires that you:

1. Cooperate in the completion of an assessment of your housing and housing-related public assistance needs.
2. Cooperate in the development, carrying out, and completion of an Independent Living Plan.
3. Actively look for housing other than temporary housing. You must complete and document a minimum of five (5) apartment searches per week. Apartments should fall within the Housing and Emergency Services Rental Guidelines. (These amounts can be higher if you receive income other than public assistance.)

1 person household	2 person household	3 person household	4 person household	5 person household
\$280-300	\$375	\$475	\$525	\$575

4. Comply with all other Public Assistance requirements applicable to you. These requirements include complying with work requirements. Work requirements include looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services. You may also have to comply with Child Support Enforcement, and you may have to apply for and follow through on applications for any income or resources that may reduce or eliminate the need for Temporary Housing Assistance. If you do not comply with these requirements or

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you commit acts that endanger the health and safety of yourself or others, your Temporary Housing Assistance could be discontinued or denied.

### **What if I am denied or discontinued Temporary Housing Assistance?**

If you feel you were wrongly denied, you can request a fair hearing. You have 60 days from the notice date to ask for a fair hearing. If you request a hearing within 10 days of your discontinuance, you are entitled to “aid continuing.” This means DSS must keep you in the shelter until you get a hearing decision or you default your hearing. Call us at 847-0650 immediately. We will review your case and tell you how to challenge Erie County Department of Social Services' decision, or we may agree to take your case.

### **What if I need help?**

If you or someone you know need help or have been denied these services call our office at 847-0650 or ask the shelter staff to speak to a representative from the Homeless Task Force from Neighborhood Legal Services when they come to the shelter.

## Request for Emergency Assistance and/or Special Grant

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am requesting the following allowance(s) for special need(s):

- |  |   |
|--|---|
| <input type="checkbox"/> Back Rent<br>(18 NYCRR 370.3, 372.1-372.6,<br>397.1-397.5)                          | <input type="checkbox"/> Pregnancy Allowance**<br>(18 NYCRR 352.7)                                    |
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| <input type="checkbox"/> Enhanced Shelter Allowance for<br>Persons Living with HIV/AIDS (18<br>NYCRR 352.3k) | <input type="checkbox"/> Restaurant Allowance**<br>(18 NYCRR 352.7)                                   |
| <input type="checkbox"/> Expedited Food Stamps<br>(18 NYCRR 387.8)   | <input type="checkbox"/> Storage Fee<br>(18 NYCRR 352.6)  |
| <input type="checkbox"/> Household Establishment Grant<br>(18 NYCRR 352.7)                                   | <input type="checkbox"/> Transportation fees<br>(Only for families with children)<br>(18 NYCRR 352.7) |
| <input type="checkbox"/> Moving Expenses<br>(18 NYCRR 352.6)   | <input type="checkbox"/> Utility Arrears<br>(SSL 131-S)   |

\*\* Must have an active Public Assistance Case in order to receive, for all other benefits, persons do not need to be on Public Assistance but are subject to certain income guidelines.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

# Household Establishment Grant

### What is a Household Establishment Grant?

A Household Establishment Grant is money paid by the Erie County Department of Social Services to help a person buy furniture needed to set up a home. It can be used to buy such things as beds, dressers, tables, a stove or a refrigerator. It cannot be used to replace furniture worn out by normal use.

### What makes a person eligible for a Household Establishment Grant?

To be eligible for a Household Establishment Grant, you must show that you need furniture to set up a household. This includes moving out of a shelter. It is hard to get a furniture grant if you ever had your own furniture before.

### How do I show that?

This is not easy to do, and the grants are difficult to get. You must be very persistent. You should have written documentation of your problems before you make your request. Some suggestions:

1. If you moved from an apartment because of unsafe conditions, doing the following things will help you obtain a Household Establishment Grant:
  - a. Keep a record of your complaints to your landlord, with dates and results of your complaints, if any.
  - b. Keep a record of your complaints to the Health Department, with dates and results of the complaints, if any.
  - c. Take photographs of the apartment and date them on the back.
  - d. Keep a record of what people who have seen your apartment have said about its condition.
2. If you had to move into an unfurnished apartment because of domestic violence, the following records will help you get a Household Establishment Grant:
  - a. Police complaints - Keep track of the reason for your complaints, the dates, the complaint number given by the police, and any results.

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- b. Attempts to make a police complaint - Even if the police refused to take your complaint, keep a record of the date you tried to make it and the fact that the police would not respond.
  - c. Medical records
  - d. Counseling records
  - e. Court records
3. If you moved into an unfurnished apartment because your old home was overcrowded, keep a record of the following:
    - a. The number of people living in the apartment
    - b. The number of bedrooms
    - c. The sleeping arrangements
    - d. The reason you had to move

### **Should I do anything else before trying to get a Household Establishment Grant?**

Yes. You should try the suggestions listed below, if possible. Remember to write down names, addresses, dates, etc.

1. Try to find a furnished apartment. Be ready to explain why you could not rent one. Keep the classified ads for the time you tried. Keep a list of the apartments you looked at, the dates, addresses, rent, landlords' names, and why you couldn't rent them. Remember, if the rent is higher than what the Erie County Department of Social Services will pay, you do not have to rent the apartment.
2. If you are on public assistance, ask your worker for help in finding an apartment. Keep track of when you spoke to your worker and the results.
3. Ask family and friends for donations. Keep track of who you asked, when, and the results.
4. Ask charitable organizations for help. Keep track of the organization you asked, the name of the person you spoke to, and the results. Organizations you might ask include:

* Catholic Charities	(856-4494)
* St. Vincent DePaul	(882-3360)
* Goodwill	(854-3494)
* Salvation Army	(883-9800)
* 211	211

## **NLS Public Benefits Law Overview**

### **Can I apply for a Household Establishment Grant even if I don't have any of the information?**

Yes, but your chances of getting one will be much better if you have this information.

### **How do I apply for a Household Establishment Grant?**

You can apply for a Household Establishment Grant in person at the Erie County Department of Social Services or by filling out the form we have attached and mailing it to your worker. Check the box next to the words "Furniture and Other Household Items." Date and sign the form and send it in. Be sure to keep a copy of it and any other documents you send in.

### **What happens after I submit the form?**

Your worker should contact you to find out why you are asking for a Household Establishment Grant. Be ready to tell your worker why you had to move into an unfurnished apartment and what effort you made to find an affordable furnished apartment. Have as much of the above information as possible. Remember, just telling your worker that you need a Household Establishment Grant is not enough. You must show why you need it.

If your worker does not contact you within 10 days, call him or her and ask what is happening with your request for a Household Establishment Grant.

If the Erie County Department of Social Services approves your application, they will send a home economist to look at your apartment to find out what furnishings you need.

If the Erie County Department of Social Services denies a Household Establishment Grant for you, call us at 847-0650 immediately. We will tell you how to challenge the denial, or we may agree to take your case.

## Restaurant Allowance

### **If I am applying for or receiving public assistance, can I qualify for special benefits if I can't prepare meals at home?**

Yes. You may qualify for a Restaurant Allowance if you cannot prepare meals at home.

### **What do I have to show in order to qualify for a Restaurant Allowance?**

You must show that you do not have access to adequate cooking facilities where you live. This includes a stove and refrigerator. It may be that you do not have any cooking facilities or that they do not work.

If your cooking facilities do not work, the Erie County Department of Social Services may choose to repair or replace them. The Erie County Department of Social Services must give you a Restaurant Allowance while this is being done.

### **What are "adequate" cooking facilities?**

The definition of "adequate" depends on the facts of each case. *Cooking facilities located outside of your home are never considered adequate.*

### **How much will I receive as a Restaurant Allowance?**

The amount you receive will depend on the number (and age) of the people in your household and whether you can prepare any of your meals in your home. The monthly allowance for each person in the household is as follows:

Must eat dinners in restaurants:	\$29
Must eat lunch and dinners in restaurant:	\$47
Must eat all meals in restaurant:	\$64

### **Is this the most that will be paid?**

No. An additional \$36 per month will be given to the following:

1. Any pregnant woman
2. Any person under 18 years of age

## NLS Public Benefits Law Overview

3. Full-time students under the age of 19 who are in a high school or vocational program and will complete the program before turning age 19.

### **How do I apply for a Restaurant Allowance?**

Fill out the attached form, "Request for an Additional Allowance by a Public Assistance Recipient." Fill it out and mail or take it to your Erie County Department of Social Services worker. **Be sure to keep a copy.**

You may also call your worker on the telephone and ask for a Restaurant Allowance. Be sure to keep notes of when you spoke to your worker about this. You should follow up your call with a written request. **Be sure to keep a copy.**

When you make your request, ask for a Restaurant Allowance dating back to the time when, as a person applying for or receiving public assistance, you were first unable to prepare meals at home. You can also ask for a voucher for a stove and/or refrigerator.

### **How long does the Erie County Department of Social Services have to decide if I am eligible for a Restaurant Allowance?**

The Erie County Department of Social Services must let you know within 30 days of your request.

### **What can I do if the Erie County Department of Social Services denies my request, takes longer than 30 days to decide, or I think they've made a mistake in the amount of the allowance?**

Call us at 847-0650 immediately. We will review your case and tell you how to challenge the Erie County Department of Social Services' decision, or we may agree to take your case. You must ask for a Fair Hearing within 60 days of the date of Erie County Department of Social Services notice to you. To request a Fair Hearing, notify New York State Office of Temporary and Disability Assistance (NYSOTDA) by telephone, fax, or mail that you want a Fair Hearing. You can write on the back of your notice the reason for requesting the hearing. If you phone, get the name of the person you speak to. If you write, send your letter by certified mail and keep a copy. The correct address is:

New York State Office of Temporary and Disability Assistance (OTDA)  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, New York 12201-1930  
Telephone No.: 1-800-342-3334  
Fax No. (518) 473-6735 (*see attached form*)

## Request for Emergency Assistance and/or Special Grant

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am requesting the following allowance(s) for special need(s):

- |  |   |
|--|---|
| <input type="checkbox"/> Back Rent<br>(18 NYCRR 370.3, 372.1-372.6,<br>397.1-397.5)                          | <input type="checkbox"/> Pregnancy Allowance**<br>(18 NYCRR 352.7)                                    |
| <input type="checkbox"/> Back Mortgage and/or Taxes<br>(18 NYCRR 352.7)                                      | <input type="checkbox"/> Property Repairs<br>(18 NYCRR 387.8)   |
| <input type="checkbox"/> Brokers' or Finders' Fee<br>(18 NYCRR 352.6)  | <input type="checkbox"/> Rent Security Agreement<br>(18 NYCRR 352.6)                                  |
| <input type="checkbox"/> Enhanced Shelter Allowance for<br>Persons Living with HIV/AIDS (18<br>NYCRR 352.3k) | <input type="checkbox"/> Restaurant Allowance**<br>(18 NYCRR 352.7)                                   |
| <input type="checkbox"/> Expedited Food Stamps<br>(18 NYCRR 387.8)   | <input type="checkbox"/> Storage Fee<br>(18 NYCRR 352.6)  |
| <input type="checkbox"/> Household Establishment Grant<br>(18 NYCRR 352.7)                                   | <input type="checkbox"/> Transportation fees<br>(Only for families with children)<br>(18 NYCRR 352.7) |
| <input type="checkbox"/> Moving Expenses<br>(18 NYCRR 352.6)   | <input type="checkbox"/> Utility Arrears<br>(SSL 131-S)   |

\*\* Must have an active Public Assistance Case in order to receive, for all other benefits, persons do not need to be on Public Assistance but are subject to certain income guidelines.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

## Temporary Assistance Application Process

### What is Temporary Assistance?

Temporary Assistance is financial help for people who need help paying their daily expenses. There are two major Temporary Assistance programs.

### What are the two major Temporary Assistance Programs?

Family Assistance (FA) and Safety-Net Assistance (SNA).

### Who can get Family Assistance (FA)?

Family Assistance (FA) is a program that provides cash assistance to families that include a minor child under the age of 18. Most people can get FA for 60-months. After that you can get non-cash Safety-Net Assistance (SNA) at the same amount (if you are otherwise eligible). When your Family Assistance benefits end and your non-cash Safety Net Assistance starts, your grant will be put on voucher and anything left over after your rent and utilities are paid to your landlord or utility company will be given to you in cash. This means that a portion of your rent and utilities will be directly paid to your landlord or utility company. There is no time limit for non-cash Safety-Net Assistance.

### Who can get Safety Net Assistance (SNA)?

SNA provides cash assistance to singles, childless couples, children living apart from any adult relative, families of persons using drugs or alcohol, families of persons refusing drug/alcohol screening, assessment or treatment and persons who have exceeded the 60-month limit on assistance. Generally, you can receive cash SNA for a maximum of two years in a lifetime. After two years of Safety-Net Assistance or 60 months of Family Assistance, you can get non-cash Safety-Net Assistance. Non-cash means that that your benefits will be put on voucher first (rent and utilities) and anything left over will be given to you in cash assistance.

### Are there any income or resource guidelines?

Yes. To be eligible for Temporary Assistance, there are income and resource guidelines. These guidelines depend on your household size and if your utilities are included in rent or paid separately. In most instances, as an applicant, if you have more income \* than what the chart states below, you are not eligible for Temporary Assistance. See the chart on the next page for the maximum Temporary Assistance grant amounts.

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Household Size	Maximum Grant With heat included	Maximum Grant Without heat included
1	\$ 335	\$389
2	478	532
3	654	708
4	793	849
5	938	996
6	1043	1106
7	1146	1213
8	1234	1305

*\* If you have earned income, add \$90 to the numbers in the chart.*

You can have up to \$2,000 in resources or up to \$3,000 if you are age 60 years or older to be eligible for Temporary Assistance. You can also own a car worth up to \$4,650. If you use the car to seek or retain employment the car can be worth up to \$9,300. Other resources like the home you live in, are exempt. You can call Neighborhood Legal Services with any resource or income questions.

### How do I apply for Temporary Assistance?

You can call 858-8000 and ask that an application be mailed to you. Also, you can get an application from the Erie County Department of Social Services (ECDSS) on the 1st floor of the Rath Building, 95 Franklin Street, Buffalo. When you apply for Temporary Assistance, you can also apply for Food Stamps, Medicaid or emergency assistance.

Try to complete the entire application. Give honest and complete answers. You must fill out the "employment history." Take your completed application to windows 1 - 4 on the 1st floor of the Rath Building.

You should identify any emergency needs you may have at this time. If you have an emergency, you will be interviewed and told in writing about the decision on your emergency the same day you apply. You **DO NOT** have to be eligible for ongoing Temporary Assistance to receive emergency assistance. You only have to fill out one application, even if you are applying for both on-going cash assistance and emergency assistance.

### What proof will I need to provide to my worker?

When you are applying for benefits you will be asked to provide proof of certain things (see the chart on the next page). Your worker will tell you which of these things you **must** provide. If

## NLS Public Benefits Law Overview

you bring proof with you when you first go to apply for assistance, you may be able to get help sooner. If you drop documentation off at ECDSS, you should ask for a receipt to prove what documentation you left. The receipt should have your name, the specific documentation that you dropped off, the time, date, county name and the name of the social services worker who provided the receipt. **Never leave an original document. If you cannot get the proof you need, ask your worker to help you. They have to help you get the proof you need. If you cannot get the proof, make sure to tell them so.** If ECDSS already has proof of the things that do not change, such as your social security number, you do not need to provide them again.

What You May Be Asked To Prove	Examples of How to Prove It
Who You Are	Photo ID, driver's license, U.S. passport
Age of Each Applying Household Member	Birth or baptismal certificate, hospital records, driver's license
Where You Live	Current rent receipt, mortgage records, statement from non- relative landlord
Shelter Expenses	Current rent receipt, current lease, mortgage records, property and school bills, telephone bills, tax records, sewer and water bills, fuel bills, utility bills
Social Security Numbers	Social Security Card or proof that you have applied for Social Security numbers for everyone in your household who is applying for help
Citizen or Immigrant Status	Birth certificate, U. S. passport, military service records, naturalization certificate, and U.S. Citizenship and Immigration Services documentation
Whether you are Drug/Alcohol Dependent	Alcohol/drug screening and assessment which may include a drug test
Earned Income	Current pay stubs, statement from employer, tax records, business records, statement from roomer or boarder of amount paid for lodging
Child Support or Alimony	Statement from person paying support
Social Security Benefits	Current benefit check or current award letter
Veteran's Benefits	Current benefit check, current award letter, official correspondence from U.S. Department of Veterans Affairs
Unemployment Insurance Benefits	Official correspondence from New York State Department of Labor
Interest and Dividends	Statement from bank, credit union or broker
Educational Grants and Loans	Statement from school or bank, award letter
Worker's Compensation	Current award letter or check stubs
Bank Accounts	Bank statements or credit union records
Checking Accounts	Bank statements
Burial Trust or Fund	Bank statement or copy of funeral agreement

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Burial Plot or Agreement	Statement from cemetery, funeral director or church, copy of funeral agreement
Life Insurance	Insurance policy
Real Estate Other Than Where You Live	Deed, appraisal/estimate of current value by real estate broker
Motor Vehicle	Registration, title, financing information
Stocks and Bonds	Stock certificates, bonds
School Attendance of Those Attending School	School records, statement from school
Health Insurance	Insurance policy, insurance card, statement from provider of coverage, Medicare card
Unpaid Rent or Utilities	Copy of each bill, statement from landlord or utility company
Paid or Unpaid Medical Bills	Copy of each bill and proof of payment if a paid bill
Noncustodial Parent	Death certificate, survivor's benefits, divorce papers, veteran's assistance or military records
Disabled/Incapacitated/Pregnant	Statement from medical professional, proof of Social Security Disability or Supplemental Security Income (SSI) benefits
Other Expenses/Dependent Care Expenses	Cancelled checks or receipts, statement from child care provider, court order, statement from aide or attendant

### What if I need help with my application?

Ask the county worker for assistance. Ask for help at Windows 1- 4.

### What happens next?

Hand in your application and have a seat. You will be called by name to Windows 8-15. A screener will review your application for Temporary Assistance, immediate needs, expedited food stamps and then they will set up an orientation appointment for the next day.

A screener will then call you to do an alcohol screening, domestic violence screening, or an employment assessment to see if you have an employment history, need an alcohol referral or to see if you have a medical problem. You will be handed an appointment letter telling you when your orientation and employment appointment is scheduled for. Orientation is usually scheduled on the following day. No orientation is scheduled for refugees, individuals over 60 years of age, women who are 9 months pregnant or payees.

Immediately following orientation you will see an employment counselor. An appointment for your certification appointment is given to you by your employment counselor.

## NLS Public Benefits Law Overview

### **What happens at my certification appointment?**

At this interview, which should be within a week of your application date, you should give ECDSS the documents asked for on the certification appointment sheet or acceptable substitutes. (See pages 2- 3) If you are missing any documents, you will be given a Call Back sheet.

### **What should I know about the Call Back Sheet?**

The Call Back sheet shows what papers you will need to get benefits. Try to get as many as possible.

### **What if I am unable to keep an appointment made for me while applying for Temporary Assistance?**

Call to reschedule it. If you do not show up for an appointment, your application could be denied. If you contact the certification worker the day of or the day before your appointment, you will be rescheduled.

### **Do I have to work to receive Temporary Assistance?**

Recipients of Temporary Assistance who are determined to be able to work must comply with work requirements to receive Temporary Assistance benefits.

### **What if the worker and I disagree about whether I am able to work?**

If you believe you cannot work, you should explain why to the interviewer. The interviewer will probably send you to your own doctor or ECDSS will send you to ECMC if you do not have a doctor.

### **What if I am disabled?**

If you are disabled and believe you cannot work, **make sure to let your worker know**. You can be exempt from work if your doctor says you cannot work or may be determined work limited if your doctor says you can only do certain types of work. Individuals who are 60 years or older, are needed in the home to care for another household member with a verified mental/physical impairment, under 19 and attending secondary/vocational/technical school, disabled or pregnant and due to give birth in 30 days are exempt from work requirements.

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### How long do I have to wait for my case to open?

For Family Assistance, the Erie County Department of Social Services (ECDSS) has up to 30 days to open your case. For Safety Net Assistance, ECDSS will open your case within 45 days of your application.

### What if the interviewer believes I will not qualify for assistance?

He or she may request that you sign a withdrawal of your application. If you refuse, he or she must accept your application anyway. **You cannot be forced to withdraw your application.** You can request that the application process continue.

### What happens if I am approved?

Carefully read the written notice telling you that you have been approved. In the same notice, you could be accepted for Temporary Assistance and Medicaid, while being denied Food Stamps. This could happen because one of the people living with you may not be eligible for one of the programs. The notice must tell you how much cash and Food Stamps you will get every month and list the names of the people in your household covered by Medicaid.

### What happens if I am denied?

You should receive a written notice of denial. If you have any questions about why you were denied, contact your caseworker, whose name and telephone number are written at the top of the notice. If you still believe the denial was wrong after talking to your caseworker, you can ask for a Fair Hearing. **You only have 60 days from the date of the notice to request a fair hearing for Temporary Assistance, 60 days from the date of the notice to request a fair hearing for Medicaid and 90 days from the date of the notice to request a fair hearing for Food Stamps.** Notify NYSOTDA that you want a Fair Hearing by telephone, fax, online or mail. You can write on the back of your denial notice the reason for requesting the hearing. If you phone, get the name of the person you speak to. If you write, send your letter by certified mail and keep a copy. The address is:

New York State Office of Temporary and Disability Assistance (OTDA)  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, NY 12201-1930

The Telephone Number is: 1-800-342-3334 or (716) 852-4868

The Fax Number is.: (518) 473-6735 (must have the form from Albany)

## **NLS Public Benefits Law Overview**

You can also go to OTDA's website to request a fair hearing or request an adjournment at <http://otda.ny.gov/oah/FHReq.asp>

### **What happens if I have any questions?**

If you have any questions about Fair Hearings or your Temporary Assistance case, please call our office at (716) 847-0650. We will either send you information, or upon reviewing the facts you give us, we may decide to take your case.

# Food Stamps

### What are Food Stamps?

Food Stamps are benefits that can help you buy food. Benefits are provided on an electronic benefit card, similar to a debit or credit card. Eligibility and benefit levels are based on household size, income, expenses and other factors. **Anyone can apply for Food Stamps.**

### How do I know if I qualify for Food Stamps?

If your income (based on your family size) is less than or equal to the amounts in the charts below, you *may* be eligible for Food Stamp benefits. **The only way to know for sure if your household is eligible for Food Stamps is to apply.**

### What counts as income?

“Income” means your household’s total gross monthly income before taxes and withholdings are subtracted. Certain household expenses, such as monthly Child Support payments, also can be deducted from gross income when calculating your household’s income. Benefits from other assistance programs such as Unemployment Insurance Benefits, public assistance payments, Social Security or SSI benefits count as income.

### What are the income guidelines?

Income Guidelines (no elderly or disabled member)		
Family Size	Monthly Gross Income	Annual Gross Income
1	\$1,174	\$ 14,088
2	\$ 1,579	\$ 18,948
3	\$ 1,984	\$ 23,808
4	\$ 2,389	\$ 28,668
Ea. Add. Person	+ \$406	+ \$4,872

### Is there a resource limit for Food Stamps?

Sometimes. The only time resources count is if you are on public assistance and a member of your household has been sanctioned or disqualified from getting Food Stamps.

## NLS Public Benefits Law Overview

### Are there special guidelines for elderly or disabled people?

Yes. The income guidelines for elderly and disabled people are higher for Food Stamps. You are considered disabled if the Social Security Administration says you are disabled. You are considered elderly if you are 60 years old or older. See the chart below.

Income Guidelines for Households with An Elderly or Disabled Member		
Family Size	Monthly Gross Income	Annual Gross Income
1	\$ 1,805	\$ 21,660
2	\$ 2,428	\$ 29,136
3	\$ 3,052	\$ 36,624
4	\$ 3,675	\$ 44,100
Ea. Add. Person	+ \$ 623	+ \$ 7,476

### Are there resource limits for elderly or disabled people?

There is no resource test for households with elderly/disabled members whose income falls at or below the amount listed above, unless a member of the household has been sanctioned or disqualified from Food Stamps. Households with elderly/disabled members who are sanctioned or disqualified and whose gross income exceeds these amounts, may still be eligible for Food Stamps, if their countable resources do not exceed \$3000. Certain resources, like the home you live in, are excluded. If you have questions about resource exemptions, call our office at (716) 847-0650.

### Are there special rules if you have child care expenses?

Yes. The guidelines are higher for Food Stamps. See the chart below.

Income Guidelines for households with Dependent Care Expenses		
Family Size	Monthly Gross Income	Annual Gross Income
1	\$ 1,805	\$ 21,660
2	\$ 2,428	\$ 29,136
3	\$ 3,052	\$ 36,624
4	\$ 3,675	\$ 44,100
Ea. Add. Person	+ \$ 623	+ \$ 7,476

Note: "Dependent Care Expenses" are out-of-pocket costs paid by the household to a caregiver for the care of a child or other dependents (including an incapacitated adult) when the care is necessary for a household member to accept or continue employment or training for employment. Please note that only "out-of-pocket" expenses count. This means that you must pay at least a portion of the expense out of your household income.

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### What is the maximum amount of Food Stamps I can get?

The maximum amount depends on the household size, income and expenses. See chart below for maximum allowances:

Maximum Food Stamp Benefit Allowances	
Household Size	Maximum Allotment
1	\$ 200
2	\$ 367
3	\$ 526
4	\$ 668
5	\$ 793
6	\$ 952
7	\$ 1,052
8	\$ 1,202
Ea. Add. Member	+ \$150

### How do I apply for Food Stamps?

You can apply for Food Stamps in several ways. You may either:

- Pick up an application at the Erie County Department of Social Services, on the first floor of the Rath Building at 95 Franklin Street, Buffalo, New York.
- Request that an application be mailed to you by calling (716) 858-8000 or writing to the Erie County Department of Social Services, Rath County Office Building, 95 Franklin Street, 8th Floor, Buffalo, NY 14202-3959.
- Apply online at <https://www.mybenefits.ny.gov/>
- Download the application at <http://otda.ny.gov/main/programs/applications/>
- Fax the application to 858-6834
- Apply at the kiosk on the third floor of the Rath Building, where you can file the application online. There are two workers available to help you.

### What if I need help applying for Food Stamps?

For help applying for Food Stamps in Erie County, please contact:

Food For All, Network of Religious Communities  
1272 Delaware Ave.  
Buffalo, NY 14209  
NOEP Coordinator: Kelly Ann Kowalski  
Phone: 716-882-7705 ext. 220  
[kellyannkk@aol.com](mailto:kellyannkk@aol.com)

## **NLS Public Benefits Law Overview**

### **Can someone apply for me?**

If you have a physical or mental hardship, and are disabled, New York allows you to have someone you designate apply for you. You may also authorize someone who knows your household circumstances to apply for Food Stamp Benefits for you. If you would like to authorize someone, print the person's name, address and phone number on the signature page (page 5) of your Food Stamp application.

### **Can I apply by phone?**

**Anyone can be interviewed over the phone.** If you apply in person, you will be scheduled for a phone interview (unless you qualify for expedited food stamps). After you mail, fax, or submit your application online to DSS, a worker from the Food Stamp office will call you for an interview. If you are available, they will conduct the interview immediately over the phone. If you cannot be reached immediately, a letter will be sent to you scheduling you for a phone interview with a date and time. If you cannot be reached by phone at all, you will be scheduled for a face-to-face interview. During your interview, the worker will tell you what documents you need to provide, and they will send you a form with an envelope to return the required documents.

### **What are the required documents that I must provide?**

You will be required to show proof of residency and proof of income. If you are applying for other specific costs like medical expenses, child support and/or dependent care, you will be required to show proof of these expenses as well.

### **What if I do not provide the required documents?**

If you do not provide proof of residency and income, DSS will send you a denial letter outlining why your application was denied. If you receive a denial letter due to missing documents, you can still submit the missing documents, but they must be submitted within 60 days from the date you submitted your application. If you fail to submit the missing documents within the 60 day period, your application will be denied and you must re-apply for food stamps.

### **How long before the Food Stamp Office make its decision?**

The food stamp office must make a decision on your application within 30 days of the date you submit it. They will usually issue Food Stamps going back to the date of your application.

## **NLS Public Benefits Law Overview**

However, if you or someone in your household causes a delay, your application can be held open another 30 days. In this case, you will not get back benefits. If you delay completing the application for more than 60 days, your application can be denied.

For more information about how and where to apply, call 1-800-342-3009 and press “1” for Food Stamps.

### **If I am a current Food Stamp recipient, can I recertify by phone?**

Yes. If you already get Food Stamp benefits in Erie County, as long as you do not also get Temporary Assistance (cash) benefits, you can recertify (renew your benefits) without going to the Rath Building. You no longer have to go to the Food Stamp Office for recertification.

### **Where can I call for more information?**

For more information on any of these methods of application or recertification, contact the Erie County Department of Social Services at (716) 858-8000 or the toll-free at hotline: 1-800-342-3009.

### **What are Transitional Food Stamp Benefits?**

If your temporary assistance cash case closes, in most cases, you can still receive Food Stamps, even if the reason that your case is closing is because you now have too much income to be eligible. For most families leaving cash assistance, Food Stamps benefits can be continued – for five months.

### **What can I do if my application is denied?**

Call our office immediately. We will review the decision with you. If it appears to be wrong, we will tell you how to challenge it, or we may agree to take your case. You must ask for a Fair Hearing to challenge the denial within 90 days from the date of the notice. To request a Fair Hearing, notify the New York State Office of Temporary and Disability Assistance (OTDA) by telephone, fax, or mail that you want a Fair Hearing. You can write on the back of your notice the reason for requesting the hearing. If you phone, get the name of the person you speak to. If you write, send your letter by certified mail and keep a copy. The correct address is:

New York State Office of  
Temporary and Disability Assistance (OTDA)  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, New York 12201-1930  
Telephone No.: 1-800-342-3334  
Fax No. (518) 473-6735

## **NLS Public Benefits Law Overview**

### **What if I have questions about Food Stamps?**

For further information about Food Stamps, you can call Neighborhood Legal Services at (716) 847-0650.

## Food Stamp Household

### What is a Food Stamp Household?

A Food Stamp household can be a person living alone, or a group of people living together (they do not have to be related) who buy food and prepare meals together.

There can be more than one food stamp household in the same house. In this case, "separate household status" is granted to each of the households.

### What is a separate household?

A separate household can be a person who lives with another person or persons, or a group of persons who live together, but for each separate household, the person or persons involved buy and prepare their own food separately from the others. They do not have to store their food separately or use a different stove or refrigerator.

### Can you be a separate household from your spouse?

No. Spouses who live together are always considered part of the same Food Stamp household.

### Can your children or stepchildren under 22 be a separate household?

No. Even if your children are married and/or have children of their own, they cannot be considered a separate food stamp household as long as they're living with you and are under age 22.

### Can there be more than one food stamp household in the same house?

Yes, but the following people who live together must be in the same food stamp household even if they buy and prepare food separately:

- (1) Spouses
- (2) Parents and children under age 22, even if the child is married or has a child of her own
- (3) Minors (under 18) under the parental control of an adult in the home

# Expedited Food Stamps

### **What are Expedited Food Stamps and how do I know if I am eligible for them?**

Expedited Food Stamps are food stamps you can get quickly. You and members of your household may be eligible for them if you are in one of the following categories:

1. Your household has \$100 or less in liquid resources and less than \$150 in gross monthly income. Liquid resources is money that is available to you, such as cash on hand, bank accounts, savings certificates, and lump-sum payments (tax refunds, retroactive lump-sum Social Security, SSI, or public assistance payments); or
2. You are a migrant or seasonal farm worker without money or resources; or
3. Together, your monthly income and liquid resources are less than the total of your monthly rent or mortgage and heating costs and utilities (electricity, telephone, and water). The heating cost amount for any household size is \$645.

### **How do I apply for Expedited Food Stamps?**

You can apply for expedited food stamps by mail, fax, or online application.

To apply in person go to the first floor of the Rath Building, 95 Franklin Street, Buffalo, New York. Tell the worker that you are in need of Expedited Food Stamps.

The worker should give you an application to fill out. The only thing you will have to prove to get your first month of food stamps is your identity. You can show your identity by producing a driver's license, birth certificate, or Social Security card, library card, etc. If you don't have written proof, the worker should use collateral contacts (e.g., calling your friends, neighbors, etc.) to verify your identity. If you have problems with this, feel free to contact our office at 847-0650.

### **What happens next?**

You will be screened for Expedited Food Stamps. The screening must be conducted within a day of your request for Expedited Food Stamps. You must receive your expedited Food Stamps within 5 calendar days if you are eligible.

## NLS Public Benefits Law Overview

### **How long will it take for me to get my Expedited Food Stamps?**

You will get Expedited Food Stamps within 5 calendar days. If you have no food, ask for an immediate referral to a food pantry.

### **If I am approved for Expedited Food Stamps, will I continue to receive Food Stamps from month-to-month?**

Not automatically. In order to continue receiving Food Stamps, you must provide additional requested verification documents within 10 days. This means that you will have another interview and be asked to submit certain documents. If you do not follow through, you will not continue to receive Food Stamps. Your case will stay open for 30 days and if you submit the requested documents within this time you will not need to re-apply if you are eligible and you will continue to get Food Stamps each month.

### **What if I have trouble getting Expedited Food Stamps?**

If you are not allowed to apply for Expedited Food Stamps or are denied them, you should immediately request an expedited fair hearing by telephone, fax, or mail to:

New York State Office of Temporary and Disability Assistance  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, New York 12201-1930  
Telephone: 1-800-342-3334  
Fax No.: (518) 473-6735

You must state that you want an expedited fair hearing so that the hearing will be scheduled quickly (within about 10 days). If you need further assistance, call our office at 847-0650.

## Request for Emergency Assistance and/or Special Grant

Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am requesting the following allowance(s) for special need(s):

- |  |   |
|--|---|
| <input type="checkbox"/> Back Rent<br>(18 NYCRR 370.3, 372.1-372.6,<br>397.1-397.5)                          | <input type="checkbox"/> Pregnancy Allowance**<br>(18 NYCRR 352.7)                                    |
| <input type="checkbox"/> Back Mortgage and/or Taxes<br>(18 NYCRR 352.7)                                      | <input type="checkbox"/> Property Repairs<br>(18 NYCRR 387.8)   |
| <input type="checkbox"/> Brokers' or Finders' Fee<br>(18 NYCRR 352.6)  | <input type="checkbox"/> Rent Security Agreement<br>(18 NYCRR 352.6)                                  |
| <input type="checkbox"/> Enhanced Shelter Allowance for<br>Persons Living with HIV/AIDS (18<br>NYCRR 352.3k) | <input type="checkbox"/> Restaurant Allowance**<br>(18 NYCRR 352.7)                                   |
| <input type="checkbox"/> Expedited Food Stamps<br>(18 NYCRR 387.8)   | <input type="checkbox"/> Storage Fee<br>(18 NYCRR 352.6)  |
| <input type="checkbox"/> Household Establishment Grant<br>(18 NYCRR 352.7)                                   | <input type="checkbox"/> Transportation fees<br>(Only for families with children)<br>(18 NYCRR 352.7) |
| <input type="checkbox"/> Moving Expenses<br>(18 NYCRR 352.6)   | <input type="checkbox"/> Utility Arrears<br>(SSL 131-S)   |

\*\* Must have an active Public Assistance Case in order to receive, for all other benefits, persons do not need to be on Public Assistance but are subject to certain income guidelines.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

# Medicaid

### Who is eligible for Medicaid?

Medicaid is not just for people on Temporary Assistance. You may be eligible for Medicaid even though you have too much money to qualify for Temporary Assistance.

Whether you are on Temporary Assistance or not, Medicaid can help you pay for hospital care and most other doctor, dentist, and prescription bills.

### How do I apply for Medicaid in Erie County?

You can apply in several ways.

You can pick up an application at the Rath Building located at 95 Franklin St. in Buffalo. You can call (716) 858-4919 and ask for an application to be sent to you. Once you have the application you can apply in any of the following ways:

1. You can fax your completed application to (716) 858-7224.
2. You can go to the Rath Building. The reception area is on the 4<sup>th</sup> floor.
3. You can apply for Medicaid through a “facilitated enroller” at area hospitals and health clinics.
4. You can download an application online at [www.health.state.us/forms/doh-4220.pdf](http://www.health.state.us/forms/doh-4220.pdf)
5. You can mail an application to the Rath Building.
6. You can email to request an application at [Medicaid@erie.gov](mailto:Medicaid@erie.gov).

### What happens next?

If you apply at the Rath Building and submit an application you may be asked to meet with one of the workers (if the wait time is less than two hours). If the wait time is longer, the clerk will take your application and it will be given to a worker. The worker will review your application. You will then be sent either a “pending letter” or a decision in the mail. There is no face-to-face requirement anymore. You have the right to a face-to-face meeting if you would like one, but do not have to have a face-to-face meeting.

If you mail in your application a worker will send you a “pending letter” if they need more information or the worker will send you a decision on the case if they have all the documentation they need to make a decision. If you do not send the information back within 10 days, your application will be denied.

## NLS Public Benefits Law Overview

### **What documents do I have to provide?**

Along with your application, bring in proof of residency (a bill or piece of mail addressed to you with your current address) and proof of income (e.g. 4 weeks of paystubs). If you are disabled or over 65, you also have to fill out the resource section (*see attached "Supplement A"*).

### **What if I cannot get the documents?**

If you cannot submit the documents on the list within 10 days, or cannot get one or more of them at all, the worker may give you more time or let you substitute other documents. Call your worker and explain. Your worker is required to help you get the documents you need. Ask for help.

### **How long must I wait?**

The whole application process should take no more than 45 days for most applicants. If you are pregnant or applying on behalf of a child, you should get Medicaid within 30 days of your application. It can take up to 90 days if you think you have a disability. If your application is not decided within 30, 45 or 90 days of the date you submitted it, call our office.

If you are accepted, you should get a Medicaid card within 2 weeks, but often this takes longer. Also, Medicaid may pay your medical bills for 90 days before the date of your application. Ask your worker if you qualify.

### **Are there income limits for Medicaid?**

Yes, the income guidelines vary depending on your household type and size. Call our office at 847-0605 for more information.

### **What if I am over the income level for Medicaid?**

New York has insurance programs for adults who are over the income level for the Medicaid program such as Family Health Plus. If you apply for Medicaid and you appear eligible for this program, DSS will automatically evaluate your application for eligibility for this program. New York also has a health insurance plan for children called Child Health Plus. If you appear eligible for this program, your Child Health Plus application will be sent to the health plan that you choose on your application. DSS will send all the documents along with your

## **NLS Public Benefits Law Overview**

application to a facilitated enroller at the health plan you chose. Make sure to follow up with the health plan provider.

### **What are the resource limits for Medicaid?**

It depends. There are only resource limits for disabled applicants and those who are over 65 years of age. Call our office at 847-0650 for more information on resource levels.

### **What if my application is denied?**

If your application is denied you should receive a written notice in the mail. If you have questions, call your Medicaid caseworker. If you still believe the denial was wrong, call our office immediately at 847-0650. We will review the denial with you, and if it appears wrong, we will tell you how to challenge it, or we may agree to take your case. You only have 60 days from the date of the denial to request a fair hearing to challenge the denial.

Notify OTDA that you want to request a fair hearing. Notify NYSOTDA by telephone, fax, or mail that you want a fair hearing. You can write on the back of your notice the reason for requesting the hearing. If you phone, get the name of the person you speak to. If you write, send your letter by certified mail and keep a copy. The correct address is:

New York State Office of  
Temporary and Disability Assistance (OTDA)  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, New York 12201-1930  
Telephone No.: 1-800-342-3334  
Fax No. (518) 473-6735 (use the attached form)

If you have an emergency, you should ask for an "expedited" hearing. NYSOTDA will determine if you have an emergency and may schedule the hearing more quickly.

# Access NY Supplement A

This Supplement must be completed if anyone who is applying is:

- Age 65 or older
- Certified blind or certified disabled (of any age)
- Not certified disabled but chronically ill
- Institutionalized and applying for coverage of nursing home care.  
This includes care in a hospital that is equivalent to nursing home care.

Note: If you are applying for the Medicare Savings Program (MSP) only, this Supplement does not need to be completed.

## INSTRUCTIONS:

- Sections A through F must be completed and this Supplement must be signed.
- If you or anyone in your household is applying for coverage of nursing home care, you must also complete sections G through I.

## A. This Supplement is being completed for:

Legal Last Name	Legal First Name	MI	Social Security Number	Marital Status

Note: The remaining questions are for the person(s) named above.

## B. Blind, Disabled or Chronically ill

1. Are you chronically ill?  Yes  No  
*(Examples of chronically ill would be unable to work for at least 12 months because of an illness or injury, or having an illness or disabling impairment that has lasted or is expected to last for 12 months.)*

2. Are you Certified Blind by the Commission for the Blind and Visually Handicapped?  
**(If yes, send proof.)**  Yes  No

3. If you are disabled and working, are you interested in applying for the MBI-WPD program?  Yes  No  
*The Medicaid Buy-In program for Working People with Disabilities (MBI-WPD) offers Medicaid coverage to people who are disabled, working, and at least 16 years old but not yet 65 years old. The program allows higher income levels than the regular Medicaid program so working people with disabilities can earn more and keep their Medicaid coverage.*

## C. Are you living in an adult home or assisted living facility?

Yes  No

**D. Resources/Assets (check the box that applies):**

You are applying for Medicaid coverage but not coverage of community-based long-term care services. You may attest to the amount of your resources. You are not required to submit documentation of your resources. This coverage does not include nursing home care, home care or any of the community-based long-term care services listed below.\*

You are applying for coverage of community-based long-term care services. You must submit documentation of the current amount of your resources.\* These services include:

- Adult day health care
- Limited licensed home care
- Private duty nursing
- Hospice in the community
- Hospice residence program
- Assisted living program
- Consumer directed personal assistance program
- Certified Home Health Agency services
- Residential treatment facility care
- Personal emergency response services
- Personal care services
- Managed long-term care in the community
- Waiver and other services provided through a home and community-based waiver program

**Note: Some examples of home and community-based programs that provide waivers and other services are Traumatic Brain Injury Program and Long Term Home Health Care Program.**

You are institutionalized and applying for coverage of nursing home care. You must submit documentation of your resources back to February 1, 2006, or the past 60 months, whichever is less.

\*You may be eligible for short-term rehabilitation services. Short-term rehabilitation services include one commencement/admission in a 12-month period of up to 29 consecutive days of nursing home care and/or certified home health care.

List all resources owned by you and/or your spouse/parent(s), including custodial accounts. **If applying for coverage of nursing home care, also list any accounts closed since February 1, 2006, or in the past 60 months, whichever period is shorter; include balance at closing and provide an explanation of where the balance was transferred to or how it was spent. On a separate sheet of paper, provide an explanation of each transaction of \$2,000 or more. Note: Medicaid retains the right to review all transactions made during the transfer look-back period.**

**1. Checking/Savings/Credit Union Accounts/Certificates of Deposits (CDs):**

Bank Name and Account Number	Name of Owner(s)	Current Dollar Amount	Closed Account Balance/ Date Closed
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

**2. Retirement Accounts (Deferred Compensation, IRA and/or Keogh):**

Account Number	Name of Owner(s)	Type/Institution	Current Dollar Amount	Pay Out
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

3. Life Insurance Policies:				
Insurance Company	Policy Number	Name of Owner(s)	Cash Value	Face Value
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$

4. Annuities, Stocks, Bonds, Mutual Funds:			
Name of Owner(s)	Company	Date Purchased	Value
			\$
			\$
			\$
			\$
			\$
			\$

5. Trust Accounts: If you and/or your spouse created or are the beneficiary of a trust, submit a copy of the trust, including the schedule of trust assets.					
Name of Trust	Grantor	Trustee(s)	Assets	Beneficiary	Income
			\$		\$
			\$		\$
			\$		\$

**6. Burial Assets/Burial Contracts: (Include copies)**

Do you and/or your spouse have a pre-paid funeral agreement for you or anyone else in your family?  Yes  No

Do you and/or your spouse have a burial space or plot for you or anyone else in your family?  Yes  No

Do you and/or your spouse have money in a bank account set aside for a burial fund?  Yes  No

If **yes**, in what account(s) is your and/or your spouse's burial fund?

Bank Name and Account Number	Name of Owner(s)	Value
		\$
		\$
		\$

Do you have life insurance to be used as your burial fund?  Yes  No

If **yes**, what is your policy number(s)? \_\_\_\_\_

If **yes**, is the full cash value to be used for your burial expenses?  Yes  No

Does your spouse have life insurance to be used as a burial fund?  Yes  No

If **yes**, what is the policy number(s)? \_\_\_\_\_

If **yes**, is the full cash value to be used for burial expenses?  Yes  No

7. Vehicle(s): List all cars, trucks and vans. List all recreational vehicles, including campers, snowmobiles, boats and motorcycles.				
Name of Owner(s)	Year/Make/Model	Fair-Market Value	Amount Owed	In Use?
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
			\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

### 8. Equity Value in Home:

If you own your home, what is the equity value in your home? \$ \_\_\_\_\_

**Note:** Equity value is the fair market value less any outstanding liens, mortgages, etc.

### 9. List Any Other Resources:

Resource Type	Name of Owner(s)	Value
		\$
		\$
		\$
		\$
		\$
		\$

### E. Real Property (other than your home)

Do you and/or your spouse own or have a legal interest in any other real property? (Check any that apply)  Yes  No

<input type="checkbox"/> Rental Property	<input type="checkbox"/> Vacation Property	<input type="checkbox"/> Time Share	<input type="checkbox"/> Vacant Land	<input type="checkbox"/> Other Property Rights (In or outside of New York State)
--	--	-------------------------------------	--------------------------------------	--

If **yes**, please answer the following questions.

Name and Address of Owner(s)	Address of Property	Type of Ownership (Check one)	Equity value
		<input type="checkbox"/> Individual <input type="checkbox"/> Joint tenancy <input type="checkbox"/> Life estate	\$
		<input type="checkbox"/> Individual <input type="checkbox"/> Joint tenancy <input type="checkbox"/> Life estate	\$
		<input type="checkbox"/> Individual <input type="checkbox"/> Joint tenancy <input type="checkbox"/> Life estate	\$
		<input type="checkbox"/> Individual <input type="checkbox"/> Joint tenancy <input type="checkbox"/> Life estate	\$

### F. Homestead

1. Do you and/or your spouse own or have a legal interest in your home, including a life estate?  Yes  No

2. If you are in a medical facility and own your home, do you intend to return to your home?  Yes  No

3. If **no**, is anyone living in the home?  Yes  No

Who is living in the home? \_\_\_\_\_

How is this person related to you and/or your spouse? \_\_\_\_\_

If you and/or your spouse's child (of any age) is living in the home, is the child disabled?  Yes  No

**Note:** If there is a legal impediment that prevents you from selling this property, the property is not counted in determining Medicaid eligibility.

**STOP HERE** unless you or anyone in your household is institutionalized and applying for coverage of nursing home care. However, the last page of this document **MUST** be signed.

### G. Applicant Living in a Long-Term Care Facility/Nursing Home

Name of Facility	Date Admitted / /	Telephone Number ( )	
Street Address	City	State	Zip
Applicant's Previous Address	City	State	Zip

### H. Asset Transfers

#### 1. Transfers

a. Did you, your spouse, or someone on your behalf transfer, change ownership in, give away, or sell any assets, including your home or other real property?  Yes  No

b. Are you in the process of selling property?  Yes  No

c. Did you, your spouse or someone on your behalf, change the deed or the ownership of any real property, including creating a life estate?  Yes  No  
If yes, when? \_\_\_\_\_

d. If you purchased a life estate in another person's home, did you live in the home for at least one year after you purchased the life estate?  Yes  No

e. Did you, your spouse, or someone on your behalf purchase a mortgage, loan, or promissory note?  Yes  No  
If yes, when? \_\_\_\_\_

f. Did you, your spouse, or someone on your behalf purchase or change an annuity?  Yes  No  
If yes, when? \_\_\_\_\_

2. In the last 60 months, have you or your spouse created or transferred any assets into or out of a trust?  Yes  No

**If you answered yes to any of the questions above, explain the transfer(s) below. Attach additional sheets of paper, if needed.**

Description of Asset (including income)	Date of Transfer	Transferred to Whom	Amount of Transfer
			\$
			\$
			\$
			\$

3. Have you, your spouse, or someone acting on your behalf given a deposit to any health care or residential facility, such as a nursing home, assisted living facility, continuing care retirement community or life care community? **If yes, send copy of agreement.**  Yes  No

### I. Tax Returns

Did you and/or your spouse file U.S. income tax returns in the last four years?  Yes  No  
**If yes, send copies of these returns.**

Upon receipt of Medicaid, a lien may be filed and a recovery may be made against your real property under certain circumstances if you are in a medical institution and not expected to return home. Medicaid paid on your behalf may be recovered from persons who had legal responsibility for your support at the time medical services were obtained. Medicaid may also recover the cost of services and premiums incorrectly paid.

Federal and State laws provide that any transfer of assets for less than fair market value made by an individual or an individual's spouse, within the transfer of assets look-back period (or 60 months in the case of trust-related transfers) prior to the first of the month in which the individual is both in receipt of nursing facility services and determined otherwise eligible for Medicaid coverage of nursing facility services, may cause the individual to be ineligible for nursing facility services for a period of time.

As a condition of Medicaid coverage for nursing facility services, applicants are required to disclose a description of any interest the individual or the individual's spouse has in an annuity. This disclosure is required regardless of whether the annuity is irrevocable or a countable resource.

In addition to the purchase of an annuity, certain transactions made to an annuity by the applicant or the applicant's spouse on or after February 8, 2006, may be treated as a transfer unless:

- The State is named the remainder beneficiary in the first position for at least the amount of Medicaid paid on behalf of the annuitant; or
- The State is named in the second position after a community spouse or minor or disabled child, or in the first position if such spouse or representative of such child disposes of any such remainder for less than fair market value.

If documentation is not submitted verifying that the State has been named remainder beneficiary, you may be ineligible for coverage of nursing facility services.

If the annuity is a countable resource at the time of application, you/your spouse are not required to name the State as remainder beneficiary.

I certify under penalty of perjury, that the information on this form is correct and complete to the best of my knowledge. I understand that I must report any changes in this information within 10 days of the change.

X \_\_\_\_\_  
SIGNATURE OF APPLICANT/REPRESENTATIVE

X \_\_\_\_\_  
DATE SIGNED

X \_\_\_\_\_  
SIGNATURE OF APPLICANT'S SPOUSE

X \_\_\_\_\_  
DATE SIGNED

# ACCESS NY HEALTH CARE Medicaid / Family Health Plus / Child Health Plus

PLEASE READ the entire application and INSTRUCTIONS before you fill it out. Print clearly in blue or black ink. An incomplete application cannot be processed and will result in a delay of a decision on your application.

## Section A Applicant's Information Please tell us who you are and how to contact you.

<b>Legal First Name</b>		<b>Middle Initial</b>	<b>Legal Last Name</b>	
<b>Primary Phone #</b> <input type="checkbox"/> Home <input type="checkbox"/> Cell <input type="checkbox"/> Work <input type="checkbox"/> Other		<b>Another Phone #</b> <input type="checkbox"/> Home <input type="checkbox"/> Cell <input type="checkbox"/> Work <input type="checkbox"/> Other		<b>What Language Do You Speak?</b> _____
<b>HOME ADDRESS</b> of the persons applying for health insurance <input type="checkbox"/> Check here if homeless		<b>SEND PROOF</b>		<b>Street</b>
		<b>City</b>	<b>State</b>	<b>Apt.#</b>
			<b>Zip Code</b>	<b>County</b>
<b>MAILING ADDRESS</b> of the persons applying for health insurance if different from above.		<b>SEND PROOF</b>		<b>Street</b>
		<b>City</b>	<b>State</b>	<b>Apt.#</b>
			<b>Zip Code</b>	
<b>OPTIONAL:</b> If there is another person you would like to receive your Medicaid notices, please provide this person's contact information. I want this contact person to:		<b>SEND PROOF</b>		<b>Name</b>
		<b>Street</b>	<b>Apt.#</b>	<b>State</b>
		<b>City</b>		<b>Zip Code</b>
<b>Check all that apply</b>	<input type="checkbox"/> Apply for and/or renew Medicaid for me <input type="checkbox"/> Discuss my Medicaid application or case, if needed <input type="checkbox"/> Get notices and correspondence			<b>Phone #</b> <input type="checkbox"/> Home <input type="checkbox"/> Cell <input type="checkbox"/> Work <input type="checkbox"/> Other

## Section B Household Information If you live in the household, start with yourself. If you do not, start with any adults who live in the household. List the full legal names of the persons applying for or already receiving Medicaid, Family Health Plus or Child Health Plus and list the ID Number from their Benefit Card or health plan ID card. You must provide information for household members including: parents, step-parents, and spouses. You may provide information for other household members (for example, a dependent child under the age of 21). Listing other household members may allow us to give you a higher eligibility level. Pregnant women and children under 19 may be eligible for health insurance regardless of immigration status.

	<b>Legal First, Middle, Last Name</b>	<b>SEND PROOF</b> Date of Birth	<b>SEND PROOF</b> Is this person applying for health insurance?	<b>SEND PROOF</b> Is this person pregnant?	Is this person the parent of an applying child?	What is the relationship to the person in Box 1?	If this person has or had public health coverage in the past, check the box that applies.	Social Security Number (if you have one)	Please mark one box that indicates your current Citizenship or Immigration Status. Not needed for pregnant women <b>SEND PROOF</b>	*Race/Ethnic Group
01	_____ Full Maiden Name (person's birth name before they were married) City of Birth      State of Birth      Country of Birth This Person's Mother's Full Maiden Name	/ / <input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No What is the Due Date? / /	<input type="checkbox"/> Yes <input type="checkbox"/> No	SELF	<input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	
02	_____ Full Maiden Name (person's birth name before they were married) City of Birth      State of Birth      Country of Birth This Person's Mother's Full Maiden Name	/ / <input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No What is the Due Date? / /	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	

Effective 7/1/10, citizen children who provide a SSN are not required to provide identity or citizenship documentation if eligible for Child Health Plus.  
**SEND PROOF** Refer to the "Documents Needed When You Apply for Health Insurance" in the instructions on pages 1-3, "Documentation Checklist for Health Insurance", for a list of documents that prove Identity, Citizenship or Immigration Status.

**Section B Household Information** (Continued from previous page)

	Legal First, Middle, Last Name	Date of Birth <b>SEND PROOF</b>	Is this person applying for health insurance? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is this person pregnant? <b>SEND PROOF</b>	Is this person the parent of an applying child? <input type="checkbox"/> Yes <input type="checkbox"/> No	What is the relationship to the person in Box 1?	If this person has or had public health coverage in the past, check the box that applies. <input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:	Social Security Number (if you have one)	Please mark one box that indicates your current Citizenship or Immigration Status. Not needed for pregnant women <b>SEND PROOF</b> <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	*Race/Ethnic Group
03	_____ Full Maiden Name (person's birth name before they were married) City of Birth      State of Birth      Country of Birth This Person's Mother's Full Maiden Name	____/____/____ <input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No What is the Due Date? ____/____/____	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	
04	_____ Full Maiden Name (person's birth name before they were married) City of Birth      State of Birth      Country of Birth This Person's Mother's Full Maiden Name	____/____/____ <input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No What is the Due Date? ____/____/____	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	
05	_____ Full Maiden Name (person's birth name before they were married) City of Birth      State of Birth      Country of Birth This Person's Mother's Full Maiden Name	____/____/____ <input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No What is the Due Date? ____/____/____	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	
06	_____ Full Maiden Name (person's birth name before they were married) City of Birth      State of Birth      Country of Birth This Person's Mother's Full Maiden Name	____/____/____ <input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No What is the Due Date? ____/____/____	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	
07	_____ Full Maiden Name (person's birth name before they were married) City of Birth      State of Birth      Country of Birth This Person's Mother's Full Maiden Name	____/____/____ <input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No What is the Due Date? ____/____/____	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Child Health Plus <input type="checkbox"/> Medicaid <input type="checkbox"/> Family Health Plus ID Number from Benefit Card/Plan Card, if known:		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Immigrant/non-citizen Enter the date you received your immigration status ____/____/____ Month Day Year <input type="checkbox"/> Non-immigrant (Visa holder) <input type="checkbox"/> None of the above	

Is anyone in your household a veteran?     Yes     No    If yes, name: \_\_\_\_\_

Effective 7/1/10, citizen children who provide a SSN are not required to provide identity or citizenship documentation if eligible for Child Health Plus.

**SEND PROOF** Refer to the "Documents Needed When You Apply for Health Insurance" in the instructions on pages 1-3, "Documentation Checklist for Health Insurance", for a list of documents that prove Identity, Citizenship or Immigration Status.

\*Race/Ethnic Group Codes (optional): **A**-Asian, **B**-Black or African-American, **I**- Native American or Alaskan Native, **P**- Native Hawaiian or other Pacific Islander, **W**-White, **U**-Unknown. Please also tell us if you are Hispanic or Latino-**H**

## Section C Household Income

Write the types of money and the amount received by everyone listed in Section B and **SEND PROOF**

**Earnings from Work:** Includes wages, salaries, commissions, tips, overtime, self-employment. If you are self-employed check here:  Check here if no earnings from work:

Name of Person	Type of Income/Employer Name	How Much? (before taxes)	How Often? (weekly, monthly)

**Unearned Income:** Includes Social Security Benefits, disability payments, unemployment payments, interest and dividends, veterans' benefits, Workers' Compensation, child support payments/alimony, rental income, pension, annuities and trust income. Check here if no unearned income:

Name of Person	Type of Income/Source	How Much? (before taxes)	How Often? (weekly, monthly)

**Contributions:** Money from relatives or friends, roomers or boarders (include money that anyone gives you each month to help meet living expenses). Check here if no contributions:

Name of Person	Type of Income/Source	How Much? (before taxes)	How Often? (weekly, monthly)

**Other:** Temporary (cash) Assistance, Supplemental Security Income (SSI) payments, student grants, or loans. Check here if none:

Name of Person	Type of Income/Source	How Much? (before taxes)	How Often? (weekly, monthly)

1. Do you or any applying adult in Section B have no income?  No  Yes Who? \_\_\_\_\_

2. If there is no income listed above, please explain how you are living:  
(For example: living with friend or relative)

3. Have you or anyone who is applying changed jobs or stopped working in the last 3 months?  No  Yes

If yes: Your last job was: Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Name of Employer: \_\_\_\_\_

4. Are you or anyone who is applying a student in a vocational, undergraduate, or graduate program?  No  Yes

If yes:  Full Time  Part Time  Undergraduate  Graduate Student's Name: \_\_\_\_\_

5. Do you have to pay for childcare (or for care of a disabled adult) in order to work or go to school?  No  Yes

Child's/adult's name:	How much? \$	How Often? (weekly, every two weeks, monthly)
Child's/adult's name:	How much? \$	How Often? (weekly, every two weeks, monthly)
Child's/adult's name:	How much? \$	How Often? (weekly, every two weeks, monthly)

6. If you are not eligible for Medicaid or Family Health Plus coverage, you may still be eligible for the Family Planning Benefit Program. Are you interested in receiving coverage for Family Planning Services only?  No  Yes

## Section D Health Insurance

You and your family may still be eligible even if you have other health insurance.

1. Does anyone who is applying have Medicare?  No  Yes

If yes, include a copy of your card (red, white and blue card), for each Medicare beneficiary. **SEND PROOF**  
Complete the rest of this application and complete Supplement A.

2. Does anyone who is applying already have other commercial health insurance, including long term care insurance?  No  Yes If yes, you must send a copy of the front and back of the insurance card with this application. **SEND PROOF**

Name of Insured (primary) \_\_\_\_\_ Persons Covered \_\_\_\_\_ Cost of Policy \_\_\_\_\_ End date of coverage, if ending soon \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month Day Year

Note: If you are applying for the Medicare Savings Program only (MSP), go to Section G. You do NOT need to complete Supplement A.

3. Is the parent/step-parent of any child applying a public employee who can get family coverage through a state health benefits plan? (see instructions)  No  Yes  
If yes, does the public agency where that person works pay all or part of the cost of the health plan?  No  Yes

4. In the past 6 months, has anyone lost or cancelled any type of health insurance that was provided through an employer?  No  Yes (If no, skip to question 5) If yes, what date did you lose coverage? \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month Day Year

Your answer to this question will help us understand why people change their health insurance.

Why do the person(s) no longer have the health insurance? (Check only one)

- |  |   |
|--|---|
| <input type="checkbox"/> 1. The person who had the insurance no longer works for the employer that provided the insurance.   | <input type="checkbox"/> 4. The cost of health insurance went up and it was no longer affordable.   |
| <input type="checkbox"/> 2. The employer stopped offering health insurance.  | <input type="checkbox"/> 5. Child Health Plus or Family Health Plus costs less than the insurance the person(s) used to have.             |
| <input type="checkbox"/> 3. The employer stopped offering health insurance for the child(ren) or stopped paying for health insurance for the child(ren) but continued to cover the working parent. | <input type="checkbox"/> 6. Child Health Plus or Family Health Plus offers better benefits than the insurance the person(s) used to have. |

5. Does your current job offer health insurance? We may be able to help pay for it.  No  Yes If yes, a "Request for Information Employer Sponsored Health Insurance" form will be sent to you.

## Section E Housing Expenses

1. Monthly housing payment such as rent or mortgage, including property taxes (just your share). \$ \_\_\_\_\_

2. If you pay for water separately how much do you pay? \$ \_\_\_\_\_ **SEND PROOF** How often do you pay?  every month  2 times a year  quarterly (4 times a year)  once a year

3. Do you receive free housing as part of your pay?  No  Yes

## Section F Blind, Disabled, Chronically Ill or Nursing Home Care

These questions help us determine which program is best for the applicants.

If no one applying is Blind, Disabled, Chronically Ill or in a Nursing Home **STOP** please go to Section G.

1. Are you, or anyone who lives with you, and is applying, in a residential treatment facility or receiving nursing home care in a hospital, nursing home or other medical institution?  No  Yes  
If yes, finish completing this application AND complete Supplement A.

2. Are you or anyone who lives with you blind, disabled or chronically ill?  No  Yes If yes, finish completing this application AND complete Supplement A.

Note: If you are applying for the Medicare Savings Program only (MSP), go to Section G. You do not need to complete Supplement A.

## Section G Additional Health Questions

1. Does anyone applying have paid or unpaid medical or prescription bills for this month or the three months before this month? Medicaid may be able to pay these bills or reimburse you.

No  Yes If yes: Name: \_\_\_\_\_ In which month(s) of the previous three months do you have medical bills? \_\_\_\_\_

**SEND PROOF** of income for any month in the three-month period for which you have bills. If you have paid medical bills for which you are seeking reimbursement, you must send copies and proof of payment.

2. Do you, or anyone applying, have any unpaid medical or prescription bills older than the previous three months?  No  Yes

3. Have you, or anyone who lives with you and is applying, moved into this county from another state or New York State county within the past three months?  No  Yes

If yes, who? \_\_\_\_\_ Which state? \_\_\_\_\_ Which county? \_\_\_\_\_

4. Does anyone who is applying have a pending lawsuit due to an injury?  No  Yes If yes, who: \_\_\_\_\_

5. Does anyone applying have a Workers' Compensation case or an injury, illness, or disability that was caused by someone else (that could be covered by insurance)?  No  Yes

If yes, who? \_\_\_\_\_

## Section H

**Parent or Spouse Not Living in the Household or Deceased** Families who are applying for their children and pregnant women are **NOT** required to fill out this section. All other people who are applying and are age 21 or over must be willing to provide information about a parent of an applying minor or a spouse living outside the home to be eligible for health insurance, unless there is good cause. Children may still be eligible even if a parent is not willing to provide this information. If you fear physical or emotional harm as a result of providing information about a parent or spouse not living in the home, you may be excused from providing this information. This is called **Good Cause**. You may be asked to show that you have a good reason for your fears.

1. Is the spouse or parent of anyone applying deceased?  No  Yes

If yes, name of applicant with deceased parent or spouse : \_\_\_\_\_ (If spouse or parent is deceased go to question 3.)

2. Does a parent of any applying child live outside the home? (If no, skip to question 3)  No  Yes

If you fear physical or emotional harm if you provide information about a parent who does not live in the home, check this box

<b>Child's Name:</b> _____ Date of Birth (if known): ____/____/____	<b>Name of parent living outside the home</b> _____ Date of Birth (if known): ____/____/____	<b>Current or last known address:</b> Street: _____ City/State: _____ SSN (if known): _____
<b>Child's Name:</b> _____ Date of Birth (if known): ____/____/____	<b>Name of parent living outside the home</b> _____ Date of Birth (if known): ____/____/____	<b>Current or last known address:</b> Street: _____ City/State: _____ SSN (if known): _____

3. Is anyone applying still married to someone who lives outside the home?  No  Yes If yes, name of person applying who is still married: \_\_\_\_\_

If you fear physical or emotional harm if you provide information about a spouse who does not live in the home, check this box

<b>Legal name of spouse living outside of the home:</b> _____	<b>Date of Birth (if known):</b> ____/____/____	<b>Current or last known address:</b> Street: _____ City/State: _____ SSN (if known): _____
--	--	---

## Section I Health Plan Selection

If you are in receipt of Medicare, **STOP** skip this section.

**IMPORTANT:** People with Family Health Plus and Child Health Plus **must** choose a health plan to get their health services. Most people with Medicaid **must** choose a health plan; if you don't choose a health plan you may be automatically enrolled in one unless it is determined you are exempt. **For Medicaid and Family Health Plus:** If you need information about what plans are available in your county, what plans your doctor is in and if you have to join, please call **New York Medicaid CHOICE** at 1-800-505-5678. You can also call or visit your local Department of Social Services. For information about Child Health Plus plans, call 1-800-698-4543. If you already know what plan you want, use this section for your plan choice.

**NOTE:** If you or family members are found eligible for Medicaid, you will be enrolled in the health plan you choose if it provides Medicaid. If you live in a county that does not require people on Medicaid to join a health plan, you can tell us you do not want to be in a health plan by calling or writing to your local Department of Social Services or by checking this box

Legal Last Name	Legal First Name	Date of Birth	Social Security #	Name of Health Plan You are Enrolling in	Preferred Doctor or Health Center (optional) Check Box if Your Current Provider	OB/GYN (optional)
					<input type="checkbox"/>	
					<input type="checkbox"/>	
					<input type="checkbox"/>	
					<input type="checkbox"/>	
					<input type="checkbox"/>	
					<input type="checkbox"/>	

## Section J Signature

I agree to have the information on this application and on the annual renewal shared only among Medicaid, Family Health Plus, Child Health Plus, the health plans indicated in Section I, the local social services district, and the facilitated enrollment organization providing the application assistance. I also consent to sharing this information with any school-based health center that provides services to the applicant(s). I understand this information is being shared for the purpose of determining the eligibility of those individuals applying for Medicaid, Family Health Plus, Child Health Plus, or to evaluate the success of these programs. Each applying adult must sign this application in the space below. By signing this application, I understand that each person applying for Medicaid, Family Health Plus, Child Health Plus, will be enrolled in the appropriate program, if eligible. **I have also read and understand the Terms, Rights and Responsibilities included in this application booklet on the next page.** I certify under penalty of perjury that everything on this application is the truth as best I know.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of adult applicant or authorized representative for the applicant

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of adult applicant or authorized representative for the applicant

## TERMS, RIGHTS AND RESPONSIBILITIES

By completing and signing this application, I am applying for Medicaid, Family Health Plus, and Child Health Plus. I understand that this application, notices and other supporting information will be sent to the program(s) for which I want to apply. I agree to the release of personal and financial information from this application and any other information needed to determine eligibility for these programs. I understand that I may be asked for more information. I agree to immediately report any changes to the information on this application.

- I understand that I must provide the information needed to prove my eligibility for each program. If I have been unable to get the information for Medicaid or Family Health Plus, I will tell the social services district. The social services district may be able to help in getting the information.
- If I am applying at a place other than a local department of social services, and my children are not found eligible for Medicaid using this application, I can contact the local department of social services to see if my children are eligible for Medicaid on some other basis.
- I understand that workers from the programs for which family members or I have applied may check the information given by me for this application. The agencies that run these programs will keep this information confidential according to 42 U.S.C. 1396a (a) (7) and 42 CFR 431.300-431.307, and any federal and state laws and regulations.
- By applying for Child Health Plus, I agree to pay the applicable premium contribution not paid by New York State.
- I understand that Medicaid, Family Health Plus, and Child Health Plus will not pay medical expenses that insurance or another person is supposed to pay, and that if I am applying for Medicaid or Family Health Plus,

I am giving to the agency all of my rights to pursue and receive medical support from a spouse or parents of persons under 21 years old and my right to pursue and receive third party payments for the entire time I am in receipt of benefits.

- I will file any claims for health or accident insurance benefits or any other resources to which I am entitled. I understand that I have the right to claim good cause not to cooperate in using health insurance if its use could cause harm to my health or safety or to the health and safety of someone I am legally responsible for.
- I understand that my eligibility for these programs will not be affected by my race, color, or national origin. I also understand that depending on the requirements of these individual programs, my age, sex, disability or citizenship status may be a factor in whether or not I am eligible.
- I understand that if my child is on Medicaid or Family Health Plus, he or she can get comprehensive primary and preventive care, including all necessary treatment through the Child/Teen Health Program. I can get more information on this program from the local department of social services.
- I understand that anyone who knowingly lies or hides the truth in order to receive services under these programs is committing a crime and subject to federal and state penalties and may have to repay the amount of benefits received and pay civil penalties. The New York State Department of Tax and Finance has the right to review income information on this form.

### SOCIAL SECURITY NUMBER

Child Health Plus: SSNs are not required to enroll in Child Health Plus. If available, I will include it for children applying for Child Health Plus.

Medicaid, or Family Health Plus: SSNs are required for all applicants, unless the person is pregnant or a non-qualified alien. SSNs are not required for members of my household who are not applying for benefits. I understand that this is required by Federal Law at 42 U.S.C. 1320b-7 (a) and by Medicaid regulations at 42 CFR 435.910. SSNs are used in many ways, both within department of social services (DSS) and between the DSS and federal, state, and local agencies, both in New York and other jurisdictions. Some uses of SSNs are: to check identity, to identify and verify earned and unearned income, to see if non-custodial parents can get health insurance coverage for applicants, to see if applicants can get medical support, and to see if applicants can get money or other help. SSNs may also be used for identification of the recipient within and between central governmental Medicaid agencies to insure proper services are made available to the recipient. Also, if I apply for other programs in this joint application, those programs will have access to my SSN and could use it in the administration of the program.

### FOR MEDICAID APPLICANTS ONLY

- **Release of Educational Records**  
I give permission to the local department of social services and New York State to obtain any information regarding the educational records of my child(ren), herein named, necessary for claiming Medicaid reimbursements for health-related educational services, and to provide the appropriate federal government agency access to this information for the sole purpose of audit.
- **Early Intervention Program**  
If my child is evaluated for or participates in the New York State Early Intervention Program, I give permission to the local department of social services and New York State to share my child's Medicaid eligibility information with my county Early Intervention Program for the purpose of billing Medicaid.

- **Reimbursement of Medical Expenses**

I understand that I have a right as part of my Medicaid application, or later, to request reimbursement of expenses I paid for covered medical care, services and supplies received during the three month period prior to the month of my application. After the date of my application, reimbursement of covered medical care, services and supplies will only be available if obtained from Medicaid enrolled providers.

### FAMILY HEALTH PLUS AND MEDICAID MANAGED CARE

I understand that in order to receive Family Health Plus benefits, I must join a managed care health plan. I also know that in some counties, joining a health plan may be required to receive Medicaid. I have read how to find out whether my county requires Medicaid enrollees to join a health plan, and how to find out what health plans are available to me in Family Health Plus and in Medicaid managed care. I understand that if I am found eligible for Family Health Plus, I will be enrolled in the Family Health Plus plan I have chosen. I/we also understand that if I/we are found eligible for Medicaid instead of Family Health Plus and I/we are in a county that requires Medicaid enrollees to be in a managed care health plan, I/we will be enrolled in the health plan I/we chose unless that health plan does not participate in Medicaid managed care. If I/we are in a county that does not require enrollees to be in a Medicaid managed care health plan, I/we will still be enrolled in the health plan I/we chose unless I/we notify my local social services department in writing, or I/we check the box in Section I, that I/we do not want to be in that plan.

I have read how to find out the rights and benefits that I will have as a member of a managed care health plan and the benefit limitations of managed care membership. I understand that in both Family Health Plus and Medicaid managed care, I must choose a Primary Care Provider (PCP) and that I will have a choice from at least three PCPs in my health plan. I understand that once I enroll in a health plan, I will have to use my PCP and other providers in my health plan except in a few special circumstances. I understand that if a child is born to me while I am a member of a Medicaid managed care health plan, my child will be enrolled in the same health plan that I am in. I understand that if a child is born to me while I am a member of a Family Health Plus plan that also participates in Medicaid managed care, my child will be enrolled in the same health plan that I am in.

- **Release of Medical Information**

I consent to the release of any medical information about me and any members of my family for whom I can give consent:

- By my PCP, any other health care provider or the New York State Department of Health (NYSDOH) to my health plan and any health care providers involved in caring for me or my family, as reasonably necessary for my health plan or my providers to carry out treatment, payment, or health care operations. This may include pharmacy and other medical claims information needed to help manage my care;
- By my health plan and any health care providers to NYSDOH and other authorized federal, state, and local agencies for purposes of administration of the Medicaid, Child Health Plus, and Family Health Plus programs; and

- By my health plan to other persons or organizations, as reasonably necessary for my health plan to carry out treatment, payment, or health care operations.

I also agree that the information released for treatment, payment and health care operations may include HIV, mental health or alcohol and substance abuse information about me and members of my family to the extent permitted by law, until I revoke this consent.

If more than one adult in the family is joining a Family Health Plus or Medicaid health plan, the signature of each adult applying is necessary for consent to release information.

- **Reimbursement of Medical Expenses**

I understand that if I am determined eligible for Family Health Plus my enrollment will be effective no later than 90 days from the date of submission of a completed application. In the event of an error or delay in my enrollment, Medicaid may be able to reimburse me for reasonable medical expenses I pay as a result of the error or delay. Medicaid may pay my provider for any unpaid expenses only if that provider is a Medicaid enrolled provider.

## FOR OFFICE USE ONLY

### To be completed by the person assisting with the application

Signature of Person Who Obtained Eligibility Information:  X _____	Employed By: (check one) <input type="checkbox"/> Community-Based Facilitated Enrollment Agency <input type="checkbox"/> Health Plan <input type="checkbox"/> Social Services District <input type="checkbox"/> Provider Agency <input type="checkbox"/> Qualified Entities  Employer Name: _____
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### To be completed by Facilitated Enrollers

Facilitated Enroller:		Lead Agency/Plan Name:		Lead Org/Plan ID:
Language Used for Application Assistance:	Application Start Date:	Application Sequence Number:	Application Completion Date:	Enter Code of Applying Child: Medicaid _____ CHPlus _____

### To be used by the local Social Services District

Eligibility Determined By:	Date:	Eligibility Approved By:	Date:
Center Office:	Application Date:	Unit ID:	Worker ID:
Case Name:	District:	Case Type:	Case #:
Effective Date:	MA Disposition Reason Code: <input type="checkbox"/> Denial Code <input type="checkbox"/> Withdrawal	Proxy: <input type="checkbox"/> Yes <input type="checkbox"/> No	Registry #: Ver:

### To be used by Child Health Plus Plans

CHPlus Disposition: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	Denial Code:	Effective Date:	# Children Enrolled (CHPlus):
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# Low Cost Medical Care

For adults and children who do not qualify for Medicaid, obtaining low-cost health care can be difficult. Many adults do not get the medical care they need because they are uninsured, or because they have very limited insurance plans that do not cover all the services they need. Others have trouble taking time off from work for different appointments, or have trouble using public transportation to get to medical appointments. Do not be intimidated by limited time or money when it comes to taking care of your health! Use the guide below creatively to keep yourself healthy.

### What if I do not have Medicaid or private health insurance?

The following sites provide various health care services to low-income adults and children without insurance. If you do qualify for Medicaid but have not yet applied, most of these programs will require you to do so.

If you do not qualify for Medicaid and do not have other coverage, you may be charged a **sliding scale fee**. This means you will pay a percentage of your actual bill based on your income. You may also be able to arrange **payment plans**, so that you can pay for medical services over a period of time. Remember that failure to make payments on a payment plan for medical services will make it difficult to get non-emergency care from a site. Bring proof of your income and proof you have been denied Medicaid (if possible) to initial appointments at all of these sites.

You may also apply for **Medicare**, an insurance program for people aged 65 or older, some disabled people under age 65, and people of all ages with End-Stage Renal Disease (permanent Kidney failure treated with dialysis or a transplant). For general Medicare information, ordering Medicare booklets, and information about health plans, contact 1-800-MEDICARE (1-800-633-4227) 24 hours a day, 7 days a week for assistance.

### Where can I go for doctor's visits?

- (1) Dr. Glick at the Jericho Road Family Practice (881-6191) is located at 184 Barton Street. The office hours are Monday 8:30am to 8pm, Tuesday 9:00am-8:00pm, Wednesday 9:30am-8:00pm, Thursday 9:00pm-4:00pm, Friday 8:30-3:30pm and Saturday 9:00am-12:00pm. This office is closed 12:00pm-1:00pm daily. There is a second office located at 1609 Genesee Street. The office hours are Monday and Thursday 8:00am-4:30pm, Tuesday 1:00pm-4:30pm, Wednesday 8:30am-4:30pm and Friday 8:30am-11:30am. They offer sliding scale fees and payment plans. To make an appointment, call the numbers listed above. There is no dental on-site.

## NLS Public Benefits Law Overview

- (2) Reduced Fee for Care Program at Erie County Medical Center (ECMC) (898-3000) is located at 462 Grider Street. There is one clinic site outside of ECMC, and the Reduced Fee for Care Program covers any medical service offered within ECMC hospital. The Cleve Hill Clinic (831-8892) is located at 1461 Kensington Avenue. The hours of the financial counselor who will make your payment arrangements are: Monday, Wednesday, and Friday from 8:30am to 12pm and from 1pm to 2:30 pm. The various clinics have different hours. They offer sliding scale fees and payment plans. The program time limit is 6 months.

To make an appointment, call the general number listed above and indicate the nature of your health problem, or which services you are looking for. You will be referred to the appropriate clinic. When you speak to the clinic, tell them you do not have health coverage and are interested in the Reduced Fee for Care Program.

Once you qualify, you may receive assistance from the program for 6 months. When your 6 months is over, you can apply for an extension. If you have unpaid ECMC bills when you apply for this program, tell your financial counselor when you apply. You may receive up to 3 months of retroactive coverage to help you with those bills if you qualify for Medicaid. This program accepts patients of all ages, but bases income eligibility for those under 21 on their parents' income. Dental is available on-site at some locations.

- (3) Charity Care Program through Buffalo General Hospital (859-5600) located at 100 High Street.

There is one clinic site located in Buffalo General Hospital, and four outside locations: The Deaconess Family Medicine Center at 10001 Humboldt Avenue (886-4400), the North Buffalo Medical Park Clinic at 900 Hertel Avenue (871-1571), the North Buffalo Medical Park West Clinic at 900 Hertel Avenue (871-1571), and the Hertel Elmwood Internal Medicine Center at 900 Hertel Avenue (871-1571). They offer sliding scale fees. If you qualify for this program, between 10% to 100% of your bill will be covered. They also offer payment plans.

To make an appointment call the clinic closest to you. You may pick up an application for the Charity Care Program at the clinic or call 859-7200 (Kaleida Financial Services). ***You must have a written Medicaid denial to be eligible for this program and you must have been denied because of excess income.*** You can receive medical services and THEN apply for the program, but you must do so immediately. There is a 1 year program time limit and you may only use this program once.

## NLS Public Benefits Law Overview

- (4) Healthcare Assistance Program through Sisters Hospital (862-1000) located at 2157 Main Street.

There are several clinics throughout the city. One clinic is the Lovejoy St. Vincent Healthcare Center located at 1595 Bailey Avenue, and the number is 893-8550. There is also a clinic located on the first floor of the hospital, and the number is 862-1984.

The hours are different at each clinic. Clinics offer sliding scale fees based on family size and gross income. Clinics also offer payment plans.

To make an appointment if you do not have an emergency, first call Mrs. Conte at 862-1971 for an application. Then contact a clinic for an appointment. Also, you can contact Kenmore Mercy Hospital at 601-3600 or Sisters of Charity Hospital at 601-3600 to speak with a financial counseling representative.

To make an appointment if you have an emergency and have been denied Medicaid, you may utilize any Sisters' healthcare site and then apply for the program. If you are eligible, the coverage will be backdated.

- (5) The Northwest Buffalo Community Health Care Center offers medical care to individuals who have limited income. Their services are offered on a sliding scale fee discount program. You could be discounted 90%, 75% or 20% depending on income. You must have a birth certificate or license for all family members to show residency. You also must show the clinic a month worth of income. This must be done by bringing in the most recent consecutive pay stubs. If you qualify for the program, you can receive all services offered at the center. The operating hours are Monday and Wednesday 8:00am-8:00pm and Tuesday, Thursday, Friday 8:00am to 5:00pm. Upon arrival at the clinic you must have \$10. If you qualify for the 90% discount, that will be your entire bill.

**You must call ahead and make an appointment at 875-2904 ext. 202.** For more information contact the Center at (716) 875-2904. Also, you can find information at [www.nwbchcc.org](http://www.nwbchcc.org).

### **Where can I go for mental health or substance abuse issues?**

**Horizon Health Services** - offers a wide variety of mental health services. There are twelve clinic sites. The providers have individual and group counseling sessions that address anything from HIV/AIDS-specific issues to sexual abuse issues. They also specialize in substance abuse programs. Horizon Health Services has inpatient and outpatient facilities. You can access all of these services even if you have no insurance. Begin by calling 831-

## **NLS Public Benefits Law Overview**

1800, the Central Intake number. Indicate the type of problem you are having and explain your insurance situation. If you are not Medicaid-eligible and have no insurance, there is a sliding scale fee program. They also accept Medicaid and most types of insurance. Horizon will also help you coordinate transportation to their clinics.

**Lake Shore Behavioral Health, Inc.** promotes self-sufficiency, mental wellness and recovery, and an enhanced quality of life for all individuals with mental illnesses and chemical use issues by providing effective, accessible and culturally sensitive services. Most insurance are accepted, including Medicaid, Medicare and a sliding fee scale. No one is turned away due to inability to pay.

For Mental Health Counseling there are four centers. (1) Lower West Side Counseling located at 951 Niagara Street. You can contact Elizabeth Woike-Ganga, LCSW at (716) 884-0700. (2) Linwood Community Services located at 625 Delaware Ave. You can contact Almira Sulejmanovic, LCSW-R at (716) 882-3151. (3) Abbott Corners Counseling located at 3176 Abbott Road, Suite 500. You can contact Steven Osterstrom, LCSW-R at (716) 822-2117. (4) North Collins Mental Health Services located at 2107 Spruce Street. You can contact Gary Ehinger, LCSW-R at (716) 337-3706.

For Outpatient Chemical Dependency Programs there are two centers. (1) Buffalo Drug and Alcohol Abuse Services located at 951 Niagara Street. You can contact Kevin Kelly, LMSW at (716) 883-5344. (2) Abbott Corners Addiction Services located at 3176 Abbott Road, Suite 500. You can contact John Morgan, LMSW at (716) 822-2117.

For Adolescent Chemical Dependency Treatment Program there are two locations available. (1) West Side Location located at 951 Niagara Street. You can contact Sandra Mobley-Terry, CASAC at (716) 818-7195. (2) East Side Location located at 463 William Street-Towne Garden Plaza. You can contact Sandra Mobley-Terry, CASAC at (716) 818-7195.

**Spectrum Human Services New Alternatives** focuses on mental health and substance use services. The types of care they provide include outpatient and partial hospitalization/day treatment. They also have special programs for persons with co-occurring mental and substance use issues. For payment, they accept self-payment, Medicaid, Medicare and private health insurance. Substance Abuse Services is located at 1235 Main Street. You can contact Spectrum at (716) 884-5797.

**The Margaret A. Stutzman Addiction Treatment Center** is a 33 bed, inpatient residential rehabilitation program which is medically supervised and staffed by a multi-disciplinary treatment team. Their patients share common goals in recovery, including abstinence from alcohol and other drugs, involvement in self-help fellowships and the involvement of families and other important persons in treatment. Special treatment services are available for women, pregnant women, Native Americans, trauma survivors and those with a concurrent mental health diagnosis. Payment is based on gross income and household size.

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They are located at 360 Forest Ave, Buffalo, NY 14213, and their contact number is (716)882-4900.

**Mid-Erie Counseling and Treatment Services** provides adult mental health services. They focus on symptom management and stabilization, psychiatric rehabilitation, forensic treatment and community safety, and adult mental health clinic treatment. There are two Adult Mental Health Clinics. The first is located at 1526 Walden Ave, Suite 400, Cheektowaga, NY 14225, and the contact number is (716) 895-6700. The second clinic is located at 1500 Broadway, Buffalo, NY 14212, and the contact number is (716) 893-0062. They accept most health insurance plans including Medicaid and Medicare. A sliding fee, based on income, might be available for people without health insurance.

**Alcohol and Drug Dependency Services** offer detoxification, inpatient, and chemical dependency treatment. They accept Medicaid recipients and they offer a sliding scale fee based on income. They are located at 291 Elm Street, Buffalo, NY 14203 and you can contact the office at (716) 854-2977.

The **ECMC Downtown Clinic** provides outpatient services, including substance abuse treatment. They accept Medicaid recipients and offer a reduced fee program. Their office hours are Monday-Thursday 8:00am-7:30pm and Friday 8:00am-5:00pm. To contact this clinic you can call (716) 883-4517.

The **Northwest Community Mental Health Center** focuses on mental health services. At their Buffalo clinic, located at 1300 Niagara Street, they offer Substance abuse treatment, Detoxification, Outpatient, and Partial hospitalization/day treatment. They also service persons with co-occurring mental and substance abuse disorders, and seniors. They accept self payment, Medicaid, Medicare, private health insurance and military insurance. They also offer a sliding fee scale based on income and other factors and payment assistance. They can be contacted at (716) 882-5959. The Kenmore clinic site is located at 2495 Kenmore Avenue. There contact number is (716) 877-6763. To speak with someone in administration, you can call (716) 882-2127.

### **Where can I go for low-cost dental care?**

If you have Medicaid coverage but need help locating a dentist who will accept your Medicaid, call the Department of Social Services Managed Care Office at 858-8666.

If you do not have dental coverage, the following sites provide reduced-fee dental services to low-income adults and children.

- (1) **ECMC Reduced Fee for Care sites** (addresses listed above) at ECMC (898-3189) will refer you to an outside location that accepts your program coverage if you need very basic work or cleaning, and will see you in the hospital for more serious dental work.

## NLS Public Benefits Law Overview

- (2) Buffalo General Charity Care sites (addresses listed above)
  - o Buffalo General (859-7301)
  - o Deaconess Clinic (887-8200)
- (3) State University of New York at Buffalo Dental Clinic (829-2732) - You will be seen by a dental student supervised by a dentist at this site. Clinic hours are from 9am-12pm and 1pm-4pm. They service patients with Medicaid. The cost of care can be decreased a third to a half of the normal cost for dental care.
- (4) Erie Community College Dental Hygiene Clinic (851-1336) - You will be seen by a dental student supervised by a dentist at this site. This clinic offers dental services for about a third of usual office prices. *These sites may offer more orthodontic options (braces, etc.) than the above clinics.*
- (5) Northwest Buffalo Community Health Care Center provides their sliding scale discount to all dentistry patients who qualify. The dental clinic hours are Monday 8:30am-5:00pm, Tuesday 8:30am-4:30pm, Wednesday 8:00am-8:00pm, Thursday 8:00am-4:30pm and Friday 8:00am-4:30pm. **You must call ahead and make an appointment at 875-2904 ext. 202.**
- (6) Aspire Family Dental – Locations and phone numbers as follows: Lockport Office located on 5875 S. Transit 280-1001; Buffalo Offices 476 Hertel Ave 877-3510 and 484 Ontario St. 873-0681; Niagara Falls Office 1705 Pine Ave 248-0110.

*For a list of Dentists that accept Medicaid, call (716) 858-8666*

### **Where can I go for women's health services?**

Most of the clinic sites listed above provide a variety of women's health services. In addition, you can contact **Planned Parenthood**. They have a generous sliding scale fee program regardless of whether or not you are Medicaid eligible. Planned Parenthood has five clinic sites: the Buffalo site (831-2200) is located at 2697 Main Street. The West Seneca site (675-1012) is located at 240 Center Road. The Niagara Falls site (282-1221) is located at 732 Portage Road, Haerberle Plaza. The North Tonawanda site (694-6454) is located at 15 Webster St. The Wheatfield site (205-0708) is located at 6951 Williams Rd.

**Planned Parenthood** provides a variety of services including birth control, family planning counseling, pregnancy and AIDS testing, sexuality counseling services, OBGYN exams, abortion referrals, and much more.

## NLS Public Benefits Law Overview

**Planned Parenthood** offers “walk-in” hours when you can be seen without having an appointment. Hours are Tuesdays from 9am-11am; Fridays from 9am to 2pm at the Main Street clinic; and Thursdays from 12pm to 3pm at the West Seneca Clinic. They also have evening hours available at both clinics. Call for a complete listing of hours.

You can also apply for **WIC**. WIC stands for Women, Infants, and Children. It is a supplemental nutrition program that provides free, healthy foods, nutrition and breastfeeding education/support. To get information about WIC, contact Catholic Charities WIC Program (332-3304) located at 211 E. Eagle St in Buffalo. They will refer you to your closest WIC office.

### Where can I get free prescriptions?

Whether you are uninsured or your insurance does not cover a medication, have your doctor contact the **Patient’s Assistance Program** at 1-888-477-2669. Most drug companies will supply doctors with prescriptions for patients who cannot afford them. You may be able to get free drugs for several months.

**The Pfizer Maintain Program** will help eligible people in financial need continue to get their Pfizer medicines if they have recently become unemployed and do not have prescription coverage. Beneficiaries of the program will get their Pfizer medicines for free for up to a year or until they become re-insured (whichever comes first). If you believe that you qualify for these services, you should call 1-866-706-2400 or visit [www.PfizerHelpfulAnswers.com](http://www.PfizerHelpfulAnswers.com).

**The Medicine Program** helps you get medications free of charge if you cannot afford them. You must not have any insurance coverage for outpatient prescription drugs or not be Medicaid eligible, and show that it is a financial hardship for you to purchase the medication at a retail price. If you are approved for the program, your medication will be sent to your doctor, and s/he will dispense it to you.

To apply for the program, you must write a letter including the following information: (1) your name, address and telephone number, (2) the name of your medication(s), and (3) the name of the doctor who prescribes the medication(s). You must also include a \$5.00 processing fee for each medication. You can request that this be returned to you if you do not qualify for the program. Mail your letter to The Medicine Program, P.O. Box 515, Doniphan, MO 63935-0515. After your information is received, the program will contact you and your doctor and do an income assessment. If you have questions about this program, call 1-573-996-7300. An application form may also be found at [www.themedicineprogram.com](http://www.themedicineprogram.com).

You may also want to ask your doctor about generic drugs, which are less expensive than brand name drugs. Make it clear that the price of medicine is important to you. Your

## NLS Public Benefits Law Overview

doctor may be able to order a less expensive medication. Finally, different pharmacies may charge different prices for the same drugs. Shop around.

Other programs that provide prescription assistance include:

<b>Erie County Services</b>	
<i>Prescription Assistance – programs that provide access to low-cost or difficult to obtain prescription drugs or supportive services that help patients take their medications as prescribed by their physician</i>	
<b>AARP</b>	<a href="http://www.aarp.org">www.aarp.org</a> 435 E. Henrietta Road, Rochester NY 14620 (585) 760-5450 Serving: Erie & Niagara counties
<b>Catholic Charities</b>	– Central Intake <a href="http://www.ccwny.org">www.ccwny.org</a> 525 Washington St., Buffalo NY 14203 (716) 856-4494 Serving: Erie County
<b>Community Health Center of Buffalo</b>	<a href="http://www.chcb.net">www.chcb.net</a> 462 Grider St., Drive #1, Buffalo NY 14215 (716) 986-9199 Serving: WNY
<b>Elderly Pharmaceutical Insurance Coverage Program</b>	<a href="http://www.health.state.ny.us">www.health.state.ny.us</a> PO Box 15018, Albany NY 12212-5018 (800) 332-3742 Serving: NY including WNY
<b>Kaleida Health Women and Children’s Hospital</b>	<a href="http://www.wchob.org">www.wchob.org</a> 219 Bryant St., Buffalo NY 14222 (716) 878-7000 Serving: WNY
<b>New York Prescription Saver</b>	<a href="http://www.nyprescriptionsaver.fhsc.com">www.nyprescriptionsaver.fhsc.com</a> PO Box 12069, Albany NY 12212-2069 (800) 788-6917 Serving: NYS including WNY
<b>Society of St. Vincent De Paul</b>	<a href="http://www.sydpwny.org">www.sydpwny.org</a> 1298 Main St. Buffalo NY 14209 (716) 882-3360 Serving: WNY
<b>Tops Discounted Prescription Drug Program</b>	<a href="http://www.topsmarket.com">www.topsmarket.com</a> PO Box 1027, Buffalo NY 14240-1027 (800) 522-2522 Serving: WNY

The New York **AIDS Drug Assistance Program (ADAP)** is a program that helps eligible people obtain needed prescriptions. To qualify for this program you must be HIV positive, be a NYS resident, meet the income requirements and requirements for liquid assets. U.S. citizenship is not required for this program. For more information, you can contact the AIDS hotline at 1-800-541-2437.

### How can I save time when making appointments?

Coordinate as many services as possible for each trip you make to a health care site. Many of the clinics listed above will try to coordinate services for you and your family on the same

## NLS Public Benefits Law Overview

day if possible. This way, time missed from work is minimized and so are transportation costs.

### **Can I get Medicaid Transportation if I have Medicaid and am having trouble getting to appointments?**

You may be eligible for Medicaid transportation services if you have a physical or mental health problem that makes it difficult for you to take public transportation, and if you cannot afford regular public transportation for medical trips. Begin by getting something in writing from your doctor about why you need Medicaid transportation services. Submit this information to your Medicaid worker. If you feel you are unfairly denied, call our office.

### **Am I eligible for Medicaid even though I am no longer on Public Assistance?**

That depends. One form of Medicaid that is available after you get off of public assistance is Transitional Medicaid. Transitional Medicaid is for families transitioning off of public assistance. If your family has lost LIF (Low-Income Family Medicaid) due to increased income or increased child support, you may be eligible. You must also have had Medicaid under LIF for three out of the past six months to be eligible for Transitional Medicaid.

If the increased income is from child support, you can get a four month extension of Medicaid. If the increased income is from employment, you will get between six and twelve months. The first six months of coverage will be guaranteed, but there are income limits for the second six months.

If you are not on public assistance, there are other forms of Medicaid that are available depending on income and family composition and other eligibility requirements. For example, you could apply for Family Health Plus or Healthy New York. For information about other insurance providers contact your local Department of Social Services (Erie County 858-8000) or visit the New York State Department of Health's website at <http://www.health.state.ny.us/>.

### **What about insurance for my children?**

**No child should be uninsured.** For uninsured children, there is a program called Child Health Plus. CHP is available for children up to age 19, and includes a wide variety of services, including eye, dental care, shots, physical therapy, home care and much more in addition to regular doctor's visits. Teenagers can apply for themselves. Children may also be eligible for the program if their insurance does not cover services offered by Child Health Plus.

# Fair Hearings

### What is a Fair Hearing?

A Fair Hearing is a chance for you to try to show that a decision made by the Erie County Department of Social Services is wrong.

### What kinds of decisions can result in a Fair Hearing?

Every time the Erie County Department of Social Services decides to reduce or stop a grant or denies an application, your caseworker must send you a notice. The notice must explain the reason(s) for the decision and the date it will go into effect. It must also state your right to a conference or Fair Hearing if you think the decision is wrong. If you think the decision is wrong, ask for a Fair Hearing immediately.

### How do I request a Fair Hearing?

You can request a Fair Hearing by telephone, fax (see attached form), or mail. If you have access to the internet, you can send a request on-line at [www.otda.state.ny.us](http://www.otda.state.ny.us).

If you phone, get the name of the person you speak to. These lines are often quite busy and you may have to try 20 to 30 times to get through. You can call after business hours for a faster response.

If you write, you can put the reason for requesting the hearing on the back of your notice. Make sure and list every problem that you are having with the Erie County Department of Social Services. If you do not, the judge at the hearing will not be able to address the issue. Keep a copy of your letter and send it by certified mail. The correct address is:

New York State Office of  
Temporary and Disability Assistance (OTDA)  
Office of Administrative Hearings  
P. O. Box 1930  
Albany, New York 12201-1930  
Telephone No. (716) 1-800-342-3334  
Fax No. (518) 473-6735 (see attached form)  
[www.otda.state.ny.us/oah/](http://www.otda.state.ny.us/oah/)

## NLS Public Benefits Law Overview

### **When do I request a Fair Hearing?**

You must request a hearing about public assistance, HEAP, or Medicaid within 60 days of the date on the notice and within 90 days of the date of notice for Food Stamp decisions. You should request a hearing immediately to avoid problems. If you are sent a new notice after you requested a Fair Hearing, make sure to call for a Fair Hearing on that notice too.

### **What should I include in my request for a Fair Hearing?**

You should make sure to list every action the Erie County Department of Social Services has taken that you disagree with. The judge will only listen to the issues you listed on the request.

### **Will I still get my benefits while I wait for the hearing?**

If the Erie County Department of Social Services threatens to reduce your benefits or close your case, you can keep getting your full benefits while you wait for the hearing and decision. This is called "aid continuing." You must call for the hearing within 10 days of the date listed on the notice to get aid continuing. If you get aid continuing and lose the hearing, the benefits you received after the date of the notice will be an overpayment. If you are calling a hearing on a **denial** of an application, you cannot get any benefits until after you win the hearing.

### **What should I do while I wait for my hearing to be scheduled?**

You may want to reapply for benefits while you wait for the hearing. It is possible that your benefits will begin from the new application prior to your hearing date or decision on the initial application. If you have any questions, call us at 847-0650.

### **When will the hearing be scheduled?**

You will get a notice in the mail telling you when the hearing is scheduled. Hearings are usually scheduled for a date about 3 to 4 weeks after they are requested.

### **How can I get a faster hearing if I have an emergency?**

If you have an emergency, ask for an "expedited" hearing. An emergency means having no food, no heat in cold months, no electricity, or eviction or homelessness. You must explain your emergency. If your emergency is so serious that an expedited hearing is not fast enough, or if the Erie County Department of Social Services will not give you an expedited hearing, call our office at once.

## **NLS Public Benefits Law Overview**

### **What if I cannot attend the Fair Hearing?**

If you cannot attend the Fair Hearing, you have several choices. (1) If transportation is a problem, you can ask for tokens at the Fair Hearing Office. (2) You may appoint someone who knows your situation to appear for you. This person must have written authorization from you and a letter from your doctor saying that you cannot travel. (3) You can ask for a home hearing if you are unable to leave your home due to medical reasons. If you ask for a home hearing, the agency can either decide in your favor or have a hearing with a speaker phone.

### **How do I get ready for the hearing?**

You have the right to a "Fair Hearing Summary and Packet" from the Erie County Department of Social Services worker. This will include a paragraph about why the caseworker took the action s/he did, and copies of the documents s/he will bring to the hearing. You will have a chance to prove they are wrong. The agency should give you this in a reasonable time after you ask for it. You also have a right to see a copy of your file. It is best if you look at it before the hearing.

Your caseworker has to give you free copies of anything you need in the file. You should get any papers or evidence (such as medical reports, letters or sworn statements) that will help to prove you are right. You can also decide to bring along people who will be witnesses for you to help your case.

### **Where will I have to go for the hearing?**

Hearings are held in an office on the 7th floor of the Rath Building, 95 Franklin Street, Buffalo, New York. Hearings are held on a first-come, first-served basis, beginning at 9:00 a.m. or 1:00 p.m. Get there one-half hour before the time on your notice. Be sure to go to the desk and sign in when you get there.

### **Who is at the hearing?**

Hearings are held in a small room. You and your witnesses will be sitting at a table. Your caseworker will be on the other side of the table. The hearing officer will be in charge. Everything is recorded, so remember to speak clearly.

### **What happens at the hearing?**

First, the hearing officer will explain how the hearing will be held and what the problem is. Be ready to explain in your own words why you called the hearing. The worker tells his (her)

## **NLS Public Benefits Law Overview**

side of the story. After that, you or the hearing officer can ask him (her) questions. Next you tell your side, and the worker or judge can ask you questions. Your witness can also speak and may be asked questions. Remember, you have the right to be treated with dignity and respect and to have a chance to tell your story. Remember also to treat the judge with respect.

### **Can I get any help with expenses for going to the hearing?**

Yes. Right after the hearing is over, tell the office people you need to be paid back for travel expenses and/or child care. They will tell you what to do to get your money.

### **What happens after the hearing?**

After the hearing all the documents are sent to Albany. You will get a written decision in the mail. If you have not received it in about a month, you can call the Fair Hearing telephone number and ask them where your decision is. If you win, the Erie County Department of Social Services has to correct their mistake. If this does not happen in a reasonable time, call the worker and Albany (ask for the Compliance Unit). You can also call our office for assistance.

# **HPRP STIMULUS FUNDING DESK AID**

**Neighborhood Legal Services, Inc.  
Public Benefits Unit**

237 Main Street, Suite 400  
Buffalo, New York 14203  
Phone: (716) 847-0650  
Fax: (716) 847-0227  
Web: [www.nls.org](http://www.nls.org)

**What are the programs in Erie County called and what areas do they cover?**

**ECHO:** For Erie County residents excluding those living in Buffalo, Tonawanda, Amherst, Cheektowaga and Hamburg

**T-TAP:** For Town of Tonawanda residents (including the Village of Kenmore)

**B-HOP:** For Buffalo residents

**Who are the partnering agencies in these programs?**

**ECHO:** Belmont, Catholic Charities, Crisis Services, Neighborhood Legal Services, HAWNY

**T-TAP:** Belmont, NLS, HAWNY

**B-HOP:** American Red Cross, NLS, HAWNY, Crisis Services, Catholic Charities, CAO, HOME, Matt Urban and Saving Grace Ministries

**Who can I call about accessing these funds?**

**ECHO:** Call Crisis Service at 834-3131 and ask for ECHO assistance.

**T-TAP:** Call Belmont Housing Resources for WNY at 884-7791, ext 321 and ask for T-TAP assistance.

**B-HOP:** Call Crisis Services at 834-3131 and ask for B-HOP assistance.

<p><b>Who is eligible to get HPRP Funds?</b></p>	<p>To be eligible for HPRP assistance you must:</p> <ol style="list-style-type: none"> <li>1. Be <u>at risk of homelessness</u> or <u>homeless</u> (see page 4 for definitions) AND no appropriate housing options have been identified and you lack the financial resources and support networks needed to obtain housing or remain in housing; and</li> <li>2. Have income at or below 50% of the AMI; and</li> <li>3. Have less than \$2,000 in available resources. Resources are items that can be quickly converted into cash including retirement accounts, lump sums, and investments such as stocks and bonds and checking and savings bank accounts; and</li> <li>4. Have written proof of homelessness, court papers or utility shut-off; and</li> <li>5. Meet with a case manager for an initial consultation; and</li> <li>6. Pass the “but for” test: Would the individual or family be homeless <u>but for this assistance?</u>; and</li> <li>7. Live in Erie County (see chart on next page).</li> </ol>
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Income includes the current gross of all household members at the time of application								
50% of AMI	1	2	3	4	5	6	7	8
	\$22,250	\$25,400	\$28,600	\$31,750	\$34,300	\$36,850	\$39,350	\$41,900
Resources:					\$2,000			

**You are eligible if you live in:**

City of Buffalo  
City of Lackawanna  
City of Tonawanda  
Town of Alden  
Town of Aurora  
Town of Boston  
Town of Brant  
Town of Clarence  
Town of Colden  
Town of Collins  
Town of Concord  
Town of Eden  
Town of Elma  
Town of Evans  
Town of Grand Island  
Town of Holland  
Town of Lancaster  
Town of Marilla  
Town of Newstead  
Town of North Collins  
Town of Orchard Park  
Town of Sardinia  
Town of Tonawanda  
Town of Wales  
Town of West Seneca

Village of Akron  
Village of Alden  
Village of Angola  
Village of Depew  
Village of East Aurora  
Village of Farnham  
Village of Gowanda  
Village of Kenmore  
Village of Lancaster  
Village of Orchard Park  
Village of North Collins  
Village of Springville

\* You can be eligible for HPRP funds if you live in any part of the Village of Gowanda (even if it is in Cattaraugus County)

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**You are NOT eligible if you live in:**

Amherst  
Blasdell  
Cheektowaga  
Egbertsville  
Hamburg  
Lakeview  
Parts of Depew  
Sloan  
Synder  
Williamsville  
Woodlawn

**What are some of the risk factors that HUD considers in determining “at risk” of homelessness (prevention)?**

The list includes, but is not limited to factors such as: eviction within 2 weeks from a private dwelling (including housing provided by family or friend); discharge from institution within 2 weeks; condemned housing; or sudden and significant loss of income or increase in utility costs.

Families who are precariously housed or doubled up may be eligible for HPRP if they would be homeless but for this assistance and they are otherwise eligible.

Families where there are two unrelated household members are either HPRP eligible or not. One cannot be eligible while the other is ineligible.

**What are some of the factors HUD considers for rapid re-housing (homeless)?**

This list includes, but is not limited to, those living in emergency shelter, those living in places not meant for human habitation, those timing out of transitional housing and survivors of domestic violence.

**What services are available under HPRP?**

There are five types of services available:

1. Case Management services (short-term and long-term) to meet the housing needs of participants and help obtain housing stability;
2. Financial Assistance to keep participants in housing and rapidly re-house them if they are already homeless;
3. Housing Relocation and Stabilization Services to meet re-housing needs of participants including housing search and placement;
4. Legal Services to help participants stay in their homes when faced with eviction or in relation to other landlord/tenant matters; and
5. Credit Repair to help with budgeting, money management, free credit reports and resolving personal credit issues.

### What financial assistance is available under HPRP?

Financial Assistance (must be paid to third party vendors) can be provided for upon behalf of a participant in the following ways:

1. **Rent Arrears:** HPRP funds can be used to pay up to 6 months rent arrears, if the payment enables the participant to remain in the housing unit for which the arrears are being paid or to move to another unit.
  - In order to get rent arrears you must have a written lease or landlord form.
2. **Rental Assistance:** Short term rental assistance (rental costs up to a 3 month period) and medium term assistance (rental costs from 4-18 months) that is given to help participants remain in their existing units or obtain new units of housing. Participants can receive rental assistance for up to 18 month. If a participant receives rent arrears, the amount of the months the participant received rent arrears is deducted from the 18 month period. The 18 months of assistance do not have to be consecutive.
  - Rental assistance cannot be provided for a participant who receives federal, state or local housing subsidy programs for the same period of time (e.g. future rent cannot be provided to Section 8 recipients, but rent arrears for Section 8 recipients can be paid by HPRP).
  - In order to get rent arrears you must have a written lease or landlord form.
3. **Security deposits and utility deposits:** HPRP funds can be used for security and utility deposits. In Erie County the participant can keep a security deposit to use for the next tenancy.
4. **Utility assistance and arrears:** HPRP funds may be used to pay up to 18 months of utility payments, including up to 6 months of utility arrears, provided that the participant or member of the household has an account in their name with a utility company or proof of responsibility to make utility payments such as Canceled checks or receipt in their name from a utility company.

- Utilities include water, electricity, gas, sewer and garbage. They do not include telephone and cable bills.

5. Moving: HPRP funds can be paid for reasonable moving costs such as truck rental or hiring a moving company.
6. Storage: Short term storage fees can be paid for a maximum of 3 months or until housing has been identified (whichever is shorter).
7. Hotel/motel vouchers: HPRP funds can be used for reasonable hotel/motel vouchers for up to 30 days if no appropriate shelter beds are available and subsequent permanent housing has been identified but is not immediately available.

**For what period of time can HPRP pay rent or utility arrears?**

HPRP funds can be used to pay rent and utility arrears for a 6 month period of time. However:

Rent arrears and utility arrears payments do not have to be paid for the most recent six months in time. HPRP funds can be used to pay rental or utility arrears for up to six months, regardless of when the arrears/debts were incurred, if the payment enables the participant to remain in housing. If an eviction cannot be prevented, arrears can still be paid if it satisfies the grievance with the evicting landlord and thereby allows the person to obtain different housing.

**Can HPRP funds be used to pay late fees?**

Yes. HPRP funds can be used to pay late fees associated with the rent if the payment of the late fees would enable the participant to remain in housing.

**Can HPRP funds be used to pay damages?**

No. HPRP funds cannot be used to pay for tenant damages.

**Do you always have to get a denial from ECDSS before you are eligible for HPRP funds?**

No. If you are eligible for benefits from ECDSS you must access them first, since HPRP is a benefit of last resort. However, if the NLS "Determination of Benefits" indicates that the participant is not eligible for benefits from ECDSS, a participant is not required to get a denial from ECDSS.

**What can't ECDSS pay for?**

With some limited exceptions:

- ECDSS will not pay future rent;
- ECDSS will not pay future utilities (non TA/SSI);
- ECDSS will not pay first month's rent (non TA);
- ECDSS will not pay for a cash security deposit;
- ECDSS will not pay late fees;
- ECDSS will not pay water arrears;
- ECDSS will not pay 6 months utility arrears;
- ECDSS will not pay rent or utility arrears if there is an outstanding loan or someone has received a loan within the past 5 years (unless SSI recipient, then once in a 12 month period);
- ECDSS does not pay utility deposits;
- ECDSS will not pay rent or security if they determine there is no future ability to pay the rent; HPRP funds are not limited to this rule;
- ECDSS will not pay rent arrears if the participant is moving to another unit;
- ECDSS will not provide rental assistance to a sanctioned individual.

### What can HPRP pay for and ECDSS can't?

HPRP can pay late fees;

HPRP can pay water arrears;

HPRP can pay utility deposits;

HPRP can pay for future rent and/or utilities (non TA);

HPRP can pay first month's rent (non TA);

HPRP can pay rent arrears even if the participant moves to another unit.

### What can ECDSS pay for and HPRP can't?

ECDSS pays for hotel/motel costs even if permanent housing is not identified;

ECDSS pays for rent arrears even if there is no written lease.

### What CANNOT be funded by HPRP funding?

**Mortgage - Homeowner costs including fees, taxes or others costs of refinancing a mortgage cannot be paid with HPRP funding, although homeowners who become homeless are eligible for all other funding and services, if otherwise eligible. (e.g. moving, utility arrears, etc.)**

**Debt:** Credit card bills or other consumer debt, car repair or other transportation costs, travel costs, food, medical or dental care and medicines, clothing, home furnishings, work or education related materials are not HPRP fundable.

**Legal Fees:** Legal fees are only eligible for HPRP funds if incurred by the client. HPRP funds cannot be used to reimburse landlords for eviction costs.

**Written Leases:** Neither rental assistance nor security deposits can be paid unless there is a written agreement or landlord form.

**Transitional housing:** HPRP funds may not be used to move someone into transitional housing or to help someone residing in transitional housing. HPRP assistance can only be provided if a participant is graduating from transitional housing and moving into permanent housing.

**What protocol has been established to carry out the program?**

If you want assistance you should:

1. Call Crisis Services (or Belmont if in Tonawanda), meet with a representative in housing court, or contact your current case manager;
2. Your case manager will refer your case to NLS for a determination of benefits (“DBA”);
3. If you have an immediate need the DBA will be referred to your case manager within 24 hours; if you do not have an immediate need, the DBA will be referred to your case manager within 72 hours;
  - If you have a court date or a pay or quit notice be sure to tell Crisis Services or your case manager so that you will be referred for legal services;
4. After receiving the results of the DBA your case manager will contact you to advise you of your eligibility for HPRP funds;
5. If you are determined eligible for HPRP funds your case manager will make sure that a third party payment of financial assistance is paid on your behalf;
6. If you are NOT eligible, you will be directed to other services. There is a grievance process. If you feel you have been wrongfully denied, ask your case manager about the grievance process.

## **Required Documentation**

\_\_\_\_\_ is being referred to the BHOP program through NLS. You have an appointment with \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_.

Please bring the following documents with you:

1. Names, dates of birth and social security numbers for ALL household members
2. ALL household income for the last 30 days;
  - a. Public Assistance — budget sheet that includes food stamps
  - b. Employment — last 30 consecutive days of pay (pay stubs)
  - c. Child Support — current order
  - d. Social Security — award letter
3. Lease agreement or landlord statement

All members of the household that are 18 years of age and older that do not have any income need to come to the appointment also; they will need to sign paperwork.

If you do not come to your appointment with all the documents that are listed this will delay your BHOP application.

## NLS Family Law and Domestic Violence Law Overview

The Family Law Unit helps families in crisis. Often this involves spouses who have been battered or children who have been taken away by a disgruntled parent. It can include someone who has cancer who needs help or a grandparent seeking custody. Other times, the crisis may be economic—children without the basic necessities because child support is not being paid. By vigorously pursuing cases in all appropriate courts, the Family Law Unit seeks to protect the rights of all people—both parents and children—to live in a safe and stable environment. The Family Law Unit specializes in child support, child custody and and matrimonial cases. Understanding that a broken family is often a tragedy in and of itself, and that children living with only one parent are often the most economically deprived, the Family Law Unit seeks to prevent further hardship through fair and just resolutions.

Victims of domestic violence offer suffer in silence. They are fearful, not just continuing abuse by their spouse or partner but of the economic consequences of leaving the abusive situation. Legal assistance provides knowledge of the legal options, which, in turn, increases the likelihood the victims will chose a path to a better life for themselves and their children.

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## Chapter

# 4

# Child Custody in New York State

Custody matters in New York State are regulated under the Family Court Act. A custody court matter begins when a party, usually a parent or grandparent, files a Petition for Custody and Visitation on the 4<sup>th</sup> Floor of the Erie County Family Court. The person asking for custody/visitation is called the “petitioner.” The petitioner files against the parent(s) or grandparent(s) who is called the “respondent.” All parties – the petitioner and the respondent(s) – will be notified of a court date. Although parties may represent themselves (“pro se”), it is highly preferred that parties be represented by legal counsel. Petitioners and respondents usually do not know what legal rights they have, what the legal standards are, and who has the burden of proof. Without the advice of counsel, parties may inadvertently waive their rights or not exercise the rights that they already have. Once waived or given up by consent, the parties’ rights are very difficult to reestablish.

### **THE ATTORNEY FOR THE CHILD:**

The Court will usually appoint an “Attorney for the Child” prior to the first court appearance. It is crucial for petitioners and respondents to understand that the child’s attorney represents only the child. Since the attorney for the child represents an “opposing party,” parents and grandparents should speak to the attorney for the child only in the presence of their own attorney.

### **PATERNITY:**

When a child is born, the biological father has the option to sign an Acknowledgment of Paternity. This is generally done right after the birth at the hospital. It is important to recognize:

#### **Child of a Marriage:**

- i. When a child is born into a marriage, then the husband is deemed to be the legal father, regardless of whether he is the biological father. “Legal” or “adjudicated” fathers have precedence over “biological” fathers. A married couple has equal rights and obligations regarding the custody of a child (no court orders are required).

#### **Child of two parties who are not formally married:**

- i. A birth certificate is not sufficient to prove paternity; only an Acknowledgement of Paternity will suffice; and
- ii. If the child’s father does not sign the Acknowledgement within 60 days of the birth, then he will have no standing in a custody matter; he is not the “legal” father. If, at a later date, the putative father wishes to be acknowledged as the legal father, he must bring a

## NLS Family Law Overview

paternity suit in Family Court. Unless and until the putative father brings a paternity suit and is granted an Order of Filiation by a judge in Family Court, he will not be consulted on any matters pertaining to the custody of the child.

- iii. Not only a putative father, but also the child's mother or the Department of Social Services may file a Petition for Paternity in Family Court. This is commonly done when DSS or the mother of the child is attempting to collect child support, but no Acknowledgement of Paternity was previously signed by the biological father.

### **INITIAL CUSTODY PROCEEDING BETWEEN PARENTS:**

When a child is born, and if there is no court order regulating custody, then custody of the child resides equally with the mother and father, whether they are married or not (provided father has signed an Acknowledgement of Paternity).

### **Starting a Custody Lawsuit; Filing the Petition:**

A parent may decide to file for custody against the other parent. That parent must go to the Petition Processing Department on the 4<sup>th</sup> floor of the Erie County Family Court and file a Petition for Custody. It is extremely important that the petition detail exactly why one parent wishes to enforce custody over another parent.

**Burden of Proof:** Petitioner-Parent has the burden to prove her case.

### **Standard of Proof:**

The court will decide the custody matter in accordance with the standard of "best interests of the child." As between parents, the Court has generally designated the following as the five (5) top "best interest" factors.<sup>1</sup> ***Petitioners generally underestimate the importance of filling out the petition with sufficient detail/grounds; however, a petition that does not address some or all of these factors is not likely to be successful.***

1. Quality of the home environment and the parental guidance which the current de facto custodial parent provides to the child;
2. Ability of each parent to provide for the child's emotional and intellectual development;
3. The financial status of each parent, and their ability to provide for the child;
4. The relative fitness of the parents; and
5. The length of time the present custody arrangement has been in effect.

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<sup>1</sup> see *Maber vs. Maber*, 1 AD3d 987 and also *Matter of Kristi L.T. v. Andrew R.V.*, 48 AD3d 1202).

## NLS Family Law Overview

No one factor of the five is controlling; instead, it is a totality of the circumstances that will determine who has custody.

It is worth noting that the desires of a child are not controlling. Depending on the age of the child, the Court may consider the child's desires, but the wishes of the child do not replace the five factors listed above.

### What to Expect a Custody Proceeding between Parents

Once the Petition for Custody has been filed, a date for a first appearance will be scheduled. At the first appearance the judge will appoint an attorney for the child(ren). The parties should also retain counsel. If the parties are financially eligible, they may be appointed a free attorney. While a party may represent him or herself ("pro se"), this is extremely unwise. A custody matter can be resolved in one of two ways:

1. The parties can come to mutual agreement regarding all issues of custody.  
In the early stages of a court proceeding, the emphasis is on finding common ground between the parties. The parties are given opportunity, through their attorneys, to negotiate a settlement. If both parties come to a consensus, the judge will consider their resolution and, if it meets legal standards, will grant it and issue an Order of Custody. That Order then becomes binding upon the parties. The parties must abide by it. Even if they mutually wish to change its provisions, they may not do so.
2. The parties can go to trial.  
If the parties are unable to resolve the custody issues, then a trial will be scheduled. At trial, the burden is on the Petitioner to prove that it is in the best interest of the child to have custody awarded to the Petitioner. The judge will hear the proof and then make a decision regarding custody.

It is important to note that a trial should be a last resort. Clearly, custody matters in family court are contentious. Petitions are filed because the parties cannot work together. However, a court proceeding takes a private family matter and places in the public realm. The parties will have to present a case which often puts the other party in a bad light. At trial, a judge will be forced to make a decision to award custody to one party and provide access to the other party. Neither party may be happy with the result they receive after trial. For that reason, it makes sense for parents, with the assistance of attorneys and mediators, to resolve custody issues between themselves, without going to trial. A custody matter must be resolved within 6 months, either by consent or at trial.

### INITIAL CUSTODY PROCEEDING BETWEEN PARENTS AND NON-PARENTS:

**Burden of Proof:** Non-Parent/Petitioner has the burden to prove her case.

## NLS Family Law Overview

### **Standard of Proof:**

In the State of New York, there is a general cultural and legal consensus that *parents have the absolute right to raise their children* without undue influence from government agencies or from other family members or friends.

For that reason, although anyone may petition the Court for custody, the standard of proof required for a non-parent to be granted custody is extremely high.

Recall from the above discussion that a Petitioner-Parent need only prove that it is in the *best interests* of a child to have custody awarded to him. A Non-Parent-Petitioner, however, must FIRST prove that *extraordinary circumstances* exist which necessitate a transfer of custody from parent to non-parent.<sup>2</sup>

The controlling case law, *Bennett v. Jeffreys*, states: “The parent has a 'right' to rear its child, and the child has a 'right' to be reared by its parent. However, there are exceptions created by extraordinary circumstances, illustratively, surrender, abandonment, persisting neglect, unfitness, and unfortunate or involuntary disruption of custody over an extended period of time.”

To reiterate: It is not enough for the Non-Parent to prove that extraordinary circumstance exist – that is merely the threshold requirement in order to proceed to the “best interests” hearing.

At a best interests hearing, the five “Maher” factors will be considered by the judge in making her final custody decision.

### **Starting a Custody Lawsuit; Filing the Petition:**

Anyone, grandparents, aunts, uncles, siblings and non-relatives, may file for custody of a child. However, the Court generally favors blood relatives over non-relatives.

When Petitioner files the initial Petition for Custody in Family Court, it is crucial that she state what the extraordinary circumstances are. Petitions that do not allege “surrender, abandonment, persisting neglect, unfitness” are subject to dismissal. Therefore, Petitioners should not underestimate the importance of filling out the petition with sufficient detail.

Non-Parent/Petitioners must file against both Mother and Father of the child. There is no need to file against a non-adjudicated father. (See “Paternity” section, above.)

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<sup>2</sup> The relevant case law, which defines the standard is *Bennett v. Jeffreys*, 387 N.Y.S.2d 821, 40 N.Y.2d 543, 356 N.E.2d 277

## NLS Family Law Overview

### What to Expect in a Custody Proceeding between Non-Parents

Once the Petition for Custody has been filed, a date for a first appearance will be scheduled. At the first appearance the judge will appoint an attorney for the child(ren). All parties should retain counsel. A custody matter can be resolved in one of two ways:

1. The parties can come to mutual agreement regarding all issues of custody.  
In the early stages of a court proceeding, the emphasis is on finding common ground between the parties. If both parties come to a consensus, the judge will consider their resolution and, if it meets legal standards, will grant it and issue an Order of Custody. That Order then becomes binding upon the parties. The parties must abide by it. Even if they mutually wish to change its provisions, they may not do so.
2. The parties can go to trial.  
If the parties are unable to resolve the custody issues, then a trial will be scheduled. At trial, the burden is on the Non-Parent/Petitioner to prove:
  - i. That *extraordinary circumstances* exist, which necessitate the transfer of custody from a parent to the non-parent; and
  - ii. That it is in the *best interest* of the child to have custody awarded to the non-Parent/Petitioner. The judge will hear the proof and then make a decision regarding custody.

### MODIFICATION OF AN ORDER OF CUSTODY:

The threshold requirement when a petitioner desires to modify an existing Order of Custody, is that a “*significant change in circumstances*” must have occurred since the last order was issued by the Court.

Petitioner must clearly state the “significant change in circumstances” in the petition.

### What is a “significant change of circumstances”?

It is clear that whatever change the Petitioner alleges, it must be significant.

Beyond that, the Petitioner must prove BOTH of the following:

1. That Petitioner’s circumstances, since the issuance of the last order, have significantly improved or, conversely, that Respondent’s circumstances have significantly deteriorated; and
2. That it is in the *best interests of the child* to modify the previous order.

## NLS Family Law Overview

Note the following:

- a. It is not enough for Petitioner to allege a positive change to her circumstances (or a deterioration of Respondent's situation) – the child's best interests are defining.
- b. A change in the child's desire regarding who she wants to live with is NOT necessarily a significant change of circumstances.
- c. Grandparents who have had a grandchild living with them full-time for a period of 2 years or more can claim "significant change of circumstances." This provision applies only to grandparents, not to other relatives and/or non-relatives (see Domestic Relations Law, Section 72)

### **CHILD PROTECTIVE PROCEEDINGS (THE ABUSE AND NEGLECT STATUTE)**

In the above sections, the petitioner in the custody proceeding was always a parent or a non-parent. Those cases are often resolved by the consent of the parties. The matters are regulated under Article 6 of the Family Court Act.

However, there are cases where the petitioner is the Department of Social Services. These matters are regulated under Article 10 of the Family Court Act.

When Child Protection Services, the police or other regulatory agencies are notified that a child may be abused, neglected, abandoned, etc., then the Department of Social Services (DSS) may bring an action in Family Court against the parents. Only DSS can be the "petitioner." The "County" or the "Department" has the right to remove the child and place the child in foster care or with a relative, such as a grandparent. Once the case is brought in Family Court, DSS is legally obligated to make diligent efforts to rehabilitate the parent, so that the child can go back home. The rehabilitation plan (called a dispositional "menu") typically involves agencies such as Baker Victory, Catholic Charities, Horizon, Gateway-Longview and Mid-Erie, who work with the parent accused of abuse/neglect to rectify the problems that stop the parent from adequately caring for the child.

If, after 15 to 22 months, the parent is deemed to be fit to care for the child, then the Court orders the child to be returned into the care of that parent.

If the parent remains unfit to care for the child, or does not complete her/his menu, then a trial is held to determine whether the rights of the parent should be terminated. If, after trial, the judge decides that the parent's rights should be terminated, then the child can be adopted out, or go into expedited foster care with a grandparent, or be ordered into the custody of a non-parent.

## NLS Family Law Overview

When a parent's rights are terminated, the situation is permanent. The parent cannot reverse the outcome of the trial and regain custody. Often the child is adopted out and the parent has no right even to visitation ever again.

### **Article 6 and Article 10 Inter-play**

There are times when a parent charged under Article 10 – the abuse/neglect statute – is not able to complete the dispositional menu, is unable to rehabilitate herself, and is in danger of having her parental rights terminated.

Many times, the children who have been removed from the parent are living with a grandparent or other relative (called the “1017 custodian”). In those cases, the 1017 custodian may file a custody petition (under Article 6, the “consent” statute). The petitions are filed against the parents and against DSS.

The non-compliant parent may then agree to transfer custody of the child(ren) to the non-parent/petitioner. Clearly, the parent will only agree because, if she does not consent, her parental rights will be terminated after trial, in which case her child will be adopted out or placed in foster care.

By agreeing to give custody to the Non-Parent/Petitioner, the parent ensures that the child remains in the family. Also, since the parent has not had her parental rights terminated, there is the possibility that she may one day play an active role in her child's life again.

If DSS also agrees to the non-parent's custody, then DSS will ask the Court to close the Article 10 matter, leaving open only the Article 6 matter. DSS and the parents will then consent to the Non-Parent/Petitioner's custody and the matter will be resolved.

## **VISITATION/ACCESS**

### **Parents against Parent**

**Standing:** A non-custodial parent always has standing to file a petition for visitation of a child.

**Standard of Proof:** The standard of proof is “best interests of the child.”

**Petition:** The Petition for Visitation must state why it is in the best interest of the child to visit with the non-custodial parent.

**Trial:** Absent agreement by the custodian, the non-custodial parent/petitioner has the burden to prove “best interest of the child” at trial.

## NLS Family Law Overview

### **Modification of an Order of Visitation:**

The Petitioner/Parent must show that a “significant change of circumstances” has occurred since the filing of the last Order of Visitation, which requires a modification to the access provisions.

### **Petitions brought by Non-Parents:**

#### **Siblings:**

**Standing:** A sibling always has standing to file a petition for visitation of a child.

**Standard of Proof:** The standard of proof is “best interests of the child.”

**Petition:** The Petition for Visitation must state why it is in the best interest of the child to visit with the sibling.

**Trial:** Absent agreement by the custodian, the sibling/petitioner has the burden to prove “best interest of the child” at trial.

### **Modification of an Order of Visitation:**

The Petitioner/Sibling must show that a “significant change of circumstances” has occurred since the filing of the last Order of Visitation, which requires a modification to the access provisions.

#### **Grandparents:**

**Standing:** A grandparent may have standing to file a petition for visitation of a child if:

- (i) the parent is deceased, or
- (ii) there are other equitable circumstances (very high burden of proof!!)

**Standard of Proof:** If the threshold requirement (standing) is met, then the grandparent must prove “best interests of the child.”

**Petition:** The Petition for Visitation must meet the threshold requirements, in addition to stating why it is in the best interest of the child to visit with the grandparent.

**Trial:** Absent agreement by the custodian, the grandparent/petitioner has the burden to prove “best interest of the child” at trial.

### **Modification of an Order of Visitation:**

The Petitioner/Grandparent must show that a “significant change of circumstances” has occurred since the filing of the last Order of Visitation, which requires a modification to the access provisions.

#### **Others:**

**Standing:** No standing to file a Petition of Visitation/Access.

### Child Support Basics

Child support laws vary from state to state. In New York State the laws governing child support are generally found in the Family Court Act (Article 4), and the Domestic Relations Law (Section 236). Other provisions affecting child support are found in the Social Services Law and the General Obligations Law.

In New York State, although a child is considered for many other purposes to be an adult at age 18, a parent is responsible for the support of a child until the age of 21. This is true whether or not the child was in born of a marriage or out of wedlock. For a father to be held responsible for support of his out of wedlock child there must be either a signed acknowledgment of paternity or a filiations (paternity) order granted by the court. A court has no authority to extend child support beyond a child's 21<sup>st</sup> birthday even in most compelling circumstances.

Generally, a court will not allow a parent to terminate the other parent's obligation before the age of 21. The obligation does not end if a child is placed in foster care.

A step-parent can have an obligation to support his/her step child under limited circumstances. The child must be a recipient of public assistance or liable to become in need of public assistance before a court can find step parent responsibility.

#### **Emancipation**

The obligation to pay child support can end before the child reaches 21, if child is emancipated. A child who marries will usually be deemed emancipated. A child who is truly self-supporting will be found emancipated by the court.

A court will also find that a child who has placed him or herself entirely outside parental authority is emancipated. A child who does not follow a custodial parent's reasonable rules and/or abandons the parent's home will generally be considered emancipated. Even if the child is in receipt of public assistance, a court will not obligate a parent to pay child support to underwrite a lifestyle that a child chose against the parent's reasonable wishes or advice.

However, emancipation will not be found if the parent's neglectful or abusive behavior has caused the child to leave the home. Emancipation may also not be found if without reason the parent encourages the child to leave the home.

Unlike in other states, there is no emancipation proceeding in New York. Emancipation can only be found by a court as a justifiable "defense" in a child support proceeding.

## NLS Family Law Overview

### Amount of Child Support

In New York State, the amount of child support is determined by a statute (law), the Child Support Standards Act (“CSSA”). The CSSA provides guidelines for the court expressed in percentages of income when determining how much child support should be ordered:

17 % of parental income for one child

25 % of parental income for two children

29 % of parental income for three children

31 % of parental income for four children

No less than 35 % of parental income for 5 or more children

Beyond wages and earnings from self employment, parental income includes income from almost all available sources, including workers compensation benefits, unemployment insurance benefits, disability benefits, veteran benefits. Deductions from income include FICA (Social Security taxes), alimony or maintenance or other child support being paid based on an agreement or court order.

A court can vary the amount of support from the percentages based on a finding that such an order is unjust or inappropriate considering such factors as a parent’s non financial contributions toward the care of the child, the extraordinary cost of visitation, the educational needs of a parent, and the special needs of the child.

If a parent’s income is below the federal poverty level the guidelines generally do not apply and the court may make a minimum order of \$25 per month. If the ordering guidelines child support a parents income is below the self support reserve or 135 % of the Federal poverty level the court can order \$50 per week or the difference between the parent’s income and the self support reserve whichever is greater. However, the court is also free to examine a parent’s earning capacity and deem income according to that capacity. For example, a court may find an able bodied recipient of public assistance capable of working at a minimum wage job and calculate income based on that capacity.

In addition to the basic child support obligation a parent may be found responsible for “add ons”. These add ons can include child care, the cost of health insurance, a share of uncovered medical expenses, and under some circumstances school tuition and other education expenses (including college up to the age of 21.)

## **NLS Family Law Overview**

### **Getting a Child Support Order**

Child support can be granted in New York State Supreme Court as part of a divorce. A person needing a child support order can also file a petition in Erie County Family Court. If the custodial parent is in receipt of public assistance he or she has assigned the right to receive child support to the Department of Social Services and it will generally be the responsibility of DSS to pursue child support.

Individuals who are not in receipt of cash assistance can file petitions for child support themselves. The petition processing division of Family Court is located on the Fourth Floor, at One Niagara Plaza in Buffalo. There is no charge for filing a petition in Family Court. Petition forms are available at the court or on the internet. You must have an address for the person you are seeking support from.

After you file a petition you will get a notice of a court date in the mail. You will appear in front of a Support Magistrate. The Support Magistrate will advise you of your right to an attorney and also ask you to complete a financial affidavit outlining your income and expenses. At your request, the Support Magistrate will also issue a temporary support order, pending a final decision in your case. Unless both parties can agree on an amount to be paid the court will ask both parties to appear again. If the parties cannot reach an agreement the case maybe scheduled for a hearing, where testimony will be taken. All final orders of support are automatically made retroactive to the date of filing.

### **Modification of Support Orders**

Support orders can be modified. In order for a support order to be modified the petitioner must show a “change of circumstances” since the last order was granted. This is true for a petitioner who is a custodial parent receiving the child support or a non custodial parent who is paying child support. The most common change of circumstances is an increase or decrease in the non-custodial parents income. However, any decrease in income cannot be voluntary. So a non-custodial parent who quits a job will generally not be granted a downward modification.

The law does not allow a court to retroactively modify a child support order; Modifications in a child support order will generally be made effective only as of the date the petition is filed. It is extremely important for someone who has lost a job or become disabling to file a petition for a downward modification as soon as possible, otherwise arrears will accumulate.

### **Enforcement of Child Support Orders**

If the non-custodial parent has a regular salaried job, the Support Magistrate will generally

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issue an income deduction order (IDO) directing the employer to take the support directly out of that parent's paycheck. The custodial parent will have the option of having the child support paid through the Support Collection Unit of the County Department of Social Services (SCU). In most cases this having support payable through the SCU is a good idea. The SCU keeps a neutral accounting of the support paid. It also can use other administrative enforcement devices, including, expanding an IDO to collect arrearages, suspension of a driver's licenses and tax refund intercepts, without the need for the custodial parent to go back to court. The SCU can also help the custodial parent find out where the non-custodial parent is working. Te SCU cannot issue an IDO for arrearages when an individual's income is below the self-support reserve. Supplemental Security Income (SSI) benefits are exempt from enforcement. However, Social Security Retirement and Disability benefits (SSD) are not exempt.

There are other ways of enforcing a child support order. The court can suspend a professional license, issue a money judgment, sequester property, and suspend recreational licenses. If there is a willful violation of a support order the court has the power to incarcerate the non-payer for a period of up to six months. A jail sentence is usually imposed as a last resort when no other enforcement device has proven successful. Weekend incarceration can be used so that is used so that the non-custodial parent can continue to work or do jobs search during the week. In order to ask the court to take action to enforce a child support order, the custodial parent must file an appropriate petition.

### **In addition to Neighborhood Legal Services, other sources of help include:**

<b>Getting Help</b>	
Erie County Attorney (to petition against non-custodial parents who live out of state)	858-2200
Erie County Support Collection Unit (can provide low cost legal representation for custodial parents)	858-8309
Volunteer Lawyers Project	852-8687
Lawyer Referral & Information Service	852-3100

# Health Law

## Powers of Attorney

Effective September 1, 2009, as amended September 12, 2010, New York State's Power of Attorney law significantly changed, including the forms used to appoint an Agent. Due to the complexity of the new law and the forms, it is wise to consult with an attorney if considering having a Power of Attorney document prepared to: a) provide proper legal advice and counsel about the powers to be delegated to an agent; b) discuss gifting authority of your agent; and c) ensure that the document is properly executed and meets all legal requirements.

What is a "Power of Attorney"? A Power of Attorney is a legal document whereby a person delegates their legal authority over their property to another person. The person who signs the Power of Attorney is called the "Principal". The person who is receiving the legal authority to act is called the "Agent" or "Attorney in Fact". As Principal, you still have control over your property and can make decisions concerning same as long as you have capacity. The person appointed as Agent has the same legal control over the Principal's property.

An Agent under a Power of Attorney CANNOT make medical decisions. To be authorized to make medical decisions on your behalf, you will need to have a separate Health Care Proxy document.

The following are some examples of the types of authority that a Principal may give to their Agent under a Power of Attorney:

- i) buy or sell your real estate
- ii) manage or dispose of your personal property
- iii) conduct banking transactions
- iv) invest or not invest your money
- v) file tax returns
- vi) file or defend a lawsuit

This list is by no means exclusive. Due to the changes in the law, certain authority granted to an Agent has been changed and/or limited in scope. You should consult with an attorney to discuss those changes and/or limitations that will affect what your Agent can and cannot do under a Power of Attorney.

An Agent can be authorized to make gifts to others and/or to him or herself. The gifting authority that an Agent has under a Power of Attorney significantly changed on September 1, 2009, as amended on September 12, 2010 in New York State. In some cases, a separate

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document, called a “Statutory Gifts Rider”, may also need to be completed along with the Power of Attorney. You should consult with an attorney to discuss an Agent’s gifting authority and whether a “Statutory Gifts Rider” would be appropriate in your circumstance.

When selecting a person to be appointed as your Agent, you should always choose someone whom you can trust. You should never appoint a person as your Agent under a Power of Attorney whom you do not fully trust. Signing a Power of Attorney that gives an agent broad authority is like signing a blank check over to the agent. Further, do not ever allow anyone to force you into signing a Power of Attorney!

You can appoint more than one person to act as your Agent under a Power of Attorney. You can have one primary Agent or you can have more than one primary Agent. When choosing more than one primary Agent, you need to decide whether all primary Agents will act together or separately. This is important. There are pros and cons, however, to both. If the Agents are required to act separately, then someone will always be available to act on your behalf. This may also cause confusion if all the Agents do not communicate with each other. If the Agents are required to act together, then each Agent will be required to be present whenever the other Agent is acting on your behalf. This could result in delay or inaction in the event your Agents do not get along with each other.

In the event that your primary Agent(s) is/are unable or unwilling to act on your behalf, you can appoint a Successor Agent. The Successor Agent would have the same authority that the primary Agent(s) had. It is always a good idea to have a Successor Agent named; however, you also need to be able to trust your Successor Agent(s).

Whether you decide to appoint more than one primary Agent and/or Successor Agent(s), any agent under a Power of Attorney has the duty to act in the Principal’s “best interest”. An agent must keep the Principal’s property separate from their own. An agent cannot commingle their bank accounts or other property with the Principal’s property. An agent is also required to keep accurate records of all transactions they did on behalf of the Principal as agent and provide complete and periodic accountings to the Principal or any party that the Principal directs of those transactions. Failure of the Agent to provide such records could result in the removal of the person as agent.

Under the new law, you have the option of paying your Agent(s), from your assets, money whenever they act on your behalf under the Power of Attorney. It is important that you discuss the option of paying your Agent(s) with an attorney. If you decide to pay your Agent(s), you will need to specify: a) how much they are to be paid; b) which Agent(s) are to be paid; c) how often they are to be paid; etc. This can be quite burdensome. In addition, this could result in your Agent(s) being regarded as your “employee”. In that case, you must withhold income taxes, withhold and pay Social Security and Medicare taxes and pay unemployment taxes on the wages (monies) that you pay to your Agent(s). If your Agent(s) are considered to be “independent contractors” rather than as an “employee”, generally you

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do not have to withhold or pay any taxes on monies paid to your Agent(s).

Under the new law, you have the option of appointing a person, called a Monitor. A Monitor does not have the same authority as an Agent but rather acts as an “overseer” of the Agent(s) for the Principal. A Monitor can request the Agent(s) to provide an accounting of all transactions the agent(s) did on behalf of the Principal. If the Agent(s) refuse(s), the Monitor can bring what is called a “special proceeding” before the court to require the Agent(s) to provide an accounting. Whether to have a Monitor appointed or not is something that should be discussed with an attorney.

Under the new law, an Agent(s) authority under a Power of Attorney does not go into effect until the Agent signs. You can effectively sign a Power of Attorney as the Principal and hold onto the document and give it to your named Agent(s) for their signature(s) at a later time. The potential problems with this are: a) the Agent(s) may not know that you have appointed them; b) something needs to be handled immediately on your behalf and no one is able to act; c) you may have lost and/or misplaced the Power of Attorney document that you signed as the Principal; d) your Agent(s) live out of town requiring you to coordinate obtaining their signature(s) and (hopefully) having your Agent(s) return the original document to you, etc.

It is important once your Agent(s) sign the Power of Attorney, that you keep track of which you and your Agent(s) provided that document to. That information will be necessary when and if: a) you decide to revoke your Power of Attorney; or, b) your primary Agent(s) is/are no longer willing or able to act and your Successor Agent(s) must now act.

If you decide to revoke your Power of Attorney, you should consult with an attorney for the proper revocation procedure. You will also have to notify each person whom you and your Agent(s) provided a copy of your Power of Attorney to so that they know that you have revoked your Power of Attorney.

Unless your Agent is using his or her authority to handle a real estate transaction on behalf of the Principal, a Power of Attorney document is not required to be filed. If you do decide to file your Power of Attorney, it should be filed in the County Clerk’s Office in the county where the Principal resides. Remember, however, that you will have to pay a filing fee to the County Clerk to file your Power of Attorney. Depending on the number of pages contained in that document, including any “Statutory Gifts Rider”, the filing of a Power of Attorney can be expensive.

Prior to September 1, 2009, as amended September 12, 2010, a Power of Attorney document was rather simple to complete in New York State. Most individuals did not need to have an attorney prepare or explain the document to them. In light of the major changes to the statute, it is now a good idea for someone considering having a Power of Attorney document to consult with an attorney for the proper preparation and execution of same.

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**(Note** - despite the technical corrections to the statute effective September 12, 2010, there are still inconsistencies in the new law. It is anticipated that there will be additional future amendments to the statute in hopes of correcting same.)

### **Health Care Proxy**

What is a “Health Care Proxy”? A health care proxy is a document whereby you appoint another person as your “Health Care Agent” to make medical decisions for you when you are not able to make those decisions yourself. These decisions can include the management of your health care to keep you healthy. It can also include the termination of life support. A health care agent’s authority goes into effect when and if you are not able to communicate your medical wishes to your medical providers. Until that time, you maintain the right to tell your medical providers what medical treatment you want and don’t want.

When selecting a person as your health care agent, it is important to make sure that you talk with that individual first before naming them as your health care agent. You want to make sure when and if the time comes that your health care agent is called upon to act, they will be able to calmly make those medical decisions on your behalf.

A health care agent must be 18 years of age or older and NOT your treating physician.

You can only appoint one person at a time to act as your health care agent. It is a good idea to have an alternate health care agent named in the event your first choice is not able to act for you.

New York State law requires at a minimum that your health care agent be made aware of your wishes regarding artificial nutrition and hydration (that is, nutrition by a feeding tube and intravenous to prevent dehydration). If your health care agent is not aware of your wishes concerning those, he/she will not be permitted to make those decisions for you.

A health care proxy document must be signed in the presence of two (2) disinterested witnesses. The witnesses cannot be the person(s) you appointed as your health care agent(s). After signing a health care proxy document, you should make sure that your health care agent(s) are given a copy as well as your medical providers. It is not necessary that they receive an original health care proxy document. A photocopy will be acceptable.

Under New York State law, before your agent(s) can make health care decisions for you, they are required to first consult with “a licensed physician, registered nurse, licensed psychologist, licensed master social worker or a licensed clinical social worker”. (New York State Public Health Law Section 2982).

Completing a health care proxy document is simple and does not require the assistance of an attorney. If you travel to different states regularly for extended periods of time, it would be

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advisable to also have a health care proxy document signed from that other state as well.

In June, 2010, New York State enacted “The Family Health Care Decisions Act.” This new law provides an order of priority as to who may make medical decisions for someone who does not have a health care proxy document and now lacks capacity. Prior to this law, there was a misconception in New York State that a family member had the authority, without a health care proxy document, to make medical decisions on behalf of their loved one because they were the “next of kin.” This was not true until now. Under the “Family Health Care Decisions Act,” if there is no health care agent, your attending physician will determine whether you lack decision making capacity, the extent of the incapacity and the likelihood that you will regain such capacity. If it is determined that you lack capacity and that you will not regain your decision making ability, then a “health care surrogate” will be appointed for you by your attending physician in the following order or priority:

1. A court appointed guardian
2. The spouse or domestic partner of an individual
3. A child older than 18
4. A parent
5. A sibling
6. A close friend

If a surrogate is appointed, that surrogate has authority to make all health care decisions for you and be provided with your necessary medical information and records in order to make an informed medical decision. Until a surrogate is appointed, however, your attending physician is authorized to make regular medical decisions on your behalf.

While this new law provides a default for those without a health care proxy, it is still wise to have your own health care proxy document. That way, you can choose yourself whom you want as your health care agent.

### **Living Wills**

What is a “living will”? A living will is your written instructions on what medical treatment you want or do not want in the event that you are terminally ill or are suffering from a very serious medical condition. These decisions can include the management of your health care as well as the termination of life support.

A living will can provide guidance to your health care agent on what medical treatment you want and do not want.

A living will is a separate document from your health care proxy document. You can have a health care proxy document without having a living will; however, you cannot have a living

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will without a health care proxy document. The reason is that you need to have someone appointed to carry out the terms of your living will.

In New York State, there is no statute (that is, a law) that governs living wills. The New York State Court of Appeals has held that a living will is valid as long as it constitutes “clear and convincing evidence” of your wishes.

Unlike a health care proxy document, there is no standard form for a living will in New York State. In drafting a living will, it is impossible to provide specific instructions for all future events. A living will should be drafted in order for your health care agent to interpret general instructions in the realm of specific circumstances. If you decide to draft a living will, it is important that you review it carefully, especially if you already have a health care proxy document in place. You should also review your living will with your health care agent(s).

A living will must be signed in the presence of two (2) disinterested witnesses who are not the appointed health care agent(s). You can sign a living will at any time as long as you have capacity. After signing a living will, you should make sure that your health care agent(s) are given a copy as well as your medical providers. It is not necessary that they receive an original living will. A photocopy will be acceptable.

Whether you decide to have a living will or not, it is still wise to make sure that you have a Health Care Proxy document.

## **Last Will and Testament**

What is a “Last Will and Testament”? A Last Will and Testament is a document that you sign disposing of your assets at the time of your death. If you die without a Last Will and Testament, your assets will pass under the laws of intestacy. Under New York State law, that means that there is an order of priority as to whom is entitled to your assets and how much. They are as follows:

“If a decedent is survived by:

- 1) a spouse and children- \$50,000 and one-half of the residue to the spouse and the balance to the children by representation
- 2) a spouse and no children - all to the spouse
- 3) children and no spouse - all to the children by representation
- 4) no spouse and no children - all to the decedent’s surviving parents or parent
- 5) no spouse, no children, no parents or parent - all to the siblings of the parent(s) by representation;
- 6) no spouse, no children, no parent(s) or parent, no aunts or uncles - ½ half to

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the surviving paternal grandparent(s) and ½ to the surviving maternal grandparent(s); if no surviving grandparent on one side, then the whole to the surviving grandparent(s) on the other side.” (EPTL 4-1.1)

If you prepare a Last Will and Testament, your assets will be disposed of according to your directions. Under a Will, you can direct whom you want to receive your assets. While you may disinherit your children under your Will, you cannot disinherit your spouse.

Under a Last Will and Testament, you will need to determine whom you will name as the Executor. You should also name someone as an Alternate Executor. If the person you are appointing as Executor (or Alternate Executor) lives outside of New York State, they will be required to post a bond with the Court before assuming their responsibilities as Executor.

If you have children under the age of 18 years, you should have the following in your Will:

- a) the appointment of a Guardian(s) and Successor Guardian(s); and
- b) a trust to hold onto your assets until your children are old enough to receive them

If you have a trust, you will need to determine whom you will name as the Trustee. You should also name someone as an Alternate Trustee. The establishment of a trust under your Will should be handled by an attorney. The attorney can explain how such a trust works and ensure the proper language being used in your Will.

While you can find many Will forms online or at legal publisher stores, the better practice is to have an attorney prepare the Will for you. That way, if anyone decides to contest the terms of your Will, they will have to overcome the high burden of proving that the execution and other legal requirements of your Will were not met.

## NLS Domestic Violence Law Overview

# Domestic Violence (DV)

New York State defines domestic violence (DV) as:

**A pattern of coercive tactics, which can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an adult intimate partner, with the goal of establishing and maintaining power and control over the victim.**

Often DV victims do not even realize that they are being abused because abuse comes in various forms.

<b>Physical</b>	Hitting, kicking, pushing, shoving, punching, slapping and any other act that would physically hurt your body.
<b>Psychological</b>	Taunting and tormenting to the extent that it makes you feel “crazy”
<b>Sexual</b>	Forced sexual acts including rape, calling vulgar names, criticizing your physical appearance
<b>Emotional</b>	Attacking your self-esteem and making you feel worthless, humiliating you, making you feel guilty
<b>Verbal</b>	Calling you names, threatening
<b>Financial</b>	Controlling and threatening you by manipulating the way you spend or use money, not giving you access to money or bank accounts or credit cards
<b>Immigration</b>	Using your immigration status and fear of deportation to control you
<b>Spiritual</b>	Controlling and attacking your religious and spiritual beliefs
<b>Intimidation</b>	Threats or actual attack of your property or pets to control you.

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No matter what form the abuse comes in, you need to know that –

- ✓ **No one deserves abuse BECAUSE no one has the right to hurt you.**
- ✓ **You are not responsible for the violence BECAUSE it was the batterer's choice.**
- ✓ **You are not alone BECAUSE there are people who are concerned about you and want to help you.**

Domestic Violence is a stigma to the society. Healthy relationships are based on the belief that two people in a relationship have both rights and responsibilities that account for the success of the wonderful partnership called “Family”. Violence is not a part of this.

Abusive relationships are based on the mistaken belief that one person has the right to control the other. The relationship is based on the exercise of power to gain and maintain control. This is an active choice of the abuser. If the abuser can manage to behave in a civilized manner at his workplace and with his friends, he can do the same at home too. It is the abuser's choice and not the victim's fault. Realizing this is the first and most important step toward breaking the cycle of violence.

### **Know Your Facts**

- Domestic violence is the most under-reported crime in the country. Almost four million women are beaten in their homes every year by their male partners.
- Battering is an intentional choice to maintain power and control in the relationship. It is not about anger or losing control.
- The batterer is responsible for the violence – not the victim.
- Though substance abuse might be involved in half of all domestic violence incidents, that is not the cause of violence. Drugs and alcohol are mere excuses of the batterer to avoid responsibility for the abuse.
- Batterers are not violent because they are mentally or psychologically ill, but because of their unwillingness to stop their controlling behavior or violence in their intimate relationships.
- Eighty percent of children who live in homes where domestic violence occurs witness the abuse. This can have a variety of negative effects ranging from temper tantrums, aggression and violent behavior, difficulties in school to Post Traumatic Stress Disorder.

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### **There could be many different reasons why people stay in abusive relationships.**

- Fear of being beaten more severely.
- Dependence on the batterer for food, shelter and other basic necessities.
- Having no one to talk to who would understand and believe.
- Belief that children need both parents for a healthy upbringing.
- Wanting to keep the family together for religious reasons.
- Fear that you will not be able to take care of yourself and your children.
- Belief that things will get better.
- Belief that no one else will love you.
- Fear that family and friends will be ashamed of you.
- Fear of embarrassment and what others will think about you.
- Fear that you will be deported or your children will be taken away from you.
- Threat of your partner to commit suicide.
- Hoping to save the “batterer” and help him/her get better.

### **Planning For Your Safety**

DV is a dangerous situation. Therefore, take it seriously and seek assistance.

- Talk to someone you trust and develop a code word to alert them to call for assistance.
- Whenever you believe that you are in danger, leave your home with your children to a friend’s or relative’s home or a domestic violence shelter.
- Defend and protect yourself first. Later, take pictures of your injuries.
- Have a packed bag ready and leave it in a secret but easily accessible place at home or at a neighbor or friend’s house.
- Identify neighbors willing to help and ask them to call the police if they hear any disturbances from your house.
- Trust your own instincts and judgment. You have the right to protect yourself and your children. Whatever you need to do to survive is the right choice.
- Open a Savings Account in your name and give the bank a safe address (P.O. box or work address).
- Leave money, extra set of keys, important documents and extra clothes with someone you trust.
- Keep emergency phone numbers (e.g., shelter, DV hotline) close at hand and keep some change or a calling card at all times for emergencies.
- Create a safety plan with your children.
  - ❖ Warn children to stay out of adult’s conflicts
  - ❖ Talk about a safe place the children can go when they feel unsafe.

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- ❖ Make a list of people the children can trust and talk to when they are feeling unsafe.
- ❖ Teach children how to use police and other emergency phone numbers.
- If you stay in your home and the abusive partner leaves, change the locks on your doors and buy additional locks and safety devices, if necessary.
- Call your local phone company and ask for an unlisted phone number. This service may be free of charge.
- Secure an Order of Protection from the Family Court to set limits on the abuser's behavior by directing him/her to stay away from you and your children. Order of Protection is not an ultimate guarantee of safety; however, it can give you some protection. Violation of the conditions in the order can get the abuser arrested.
  - ❖ Have a copy of your Order of Protection with you at all times.
  - ❖ Call the police if your partner breaks the protective order
  - ❖ Inform your children's school if the child's name is in the order and provide school with a copy of the order
  - ❖ Keeps a diary detailing all calls, letters, threats, messages and such other from the abuser. Save phone messages.
  - ❖ Give copies of the order to family, friends and neighbors who are willing to help and a copy at your workplace.
- Call the police in immediate danger and provide details of the assault, show injuries or property damage and present any Court documents, including any Order of Protection.

### What you need to take with you when you leave?

- Identification, Driver's license, Car Registration
- Birth Certificates of you and your children
- Social Security Card, Welfare Identification
- Court Orders, Restraining orders
- Police Reports, Documentation/Pictures of previous abuse
- Bank Account numbers, Checkbooks
- Money, Credit cards, ATM cards
- Medical, Life and Auto Insurance papers
- House and car keys
- House deed, Lease/Rental agreement
- Medications and medical/immunization records of you and children
- School records
- Passport, Green Card or Work Permits
- Divorce papers or Marriage license
- Address/Phone book , cell phone

## **NLS Domestic Violence Law Overview**

### **How to use the Court system to protect yourself?**

The Court (Family Court and/or Criminal Court) can issue an Order of Protection which is –

- ❖ An official court paper signed by a Judge
- ❖ Ordering the perpetrator to stop verbal and/or physical abuse
- ❖ By directing the perpetrator to stay away from you, your home, your workplace, your children and their school or other family members.
- ❖ In case of custody and visitation issues, it will also specify time and place of visitation.

### **To obtain an Order of Protection from the Family Court, the perpetrator must be related to you in one of the following ways-**

- ✓ By blood or marriage
- ✓ Parent of children in common
- ✓ Formerly married
- ✓ Intimate relationships and dating

Those who do not have any of the above mentioned relationships need to go to the Criminal Court to obtain an Order of Protection.

**REMEMBER** – Family Court cannot put the perpetrator in jail unless he/she violates a currently effective Family Court Order of Protection.

### **How to file a Petition**

- ❖ Complete the Petition either yourself or with the help of an attorney or request Petition Clerks in Petition Processing to help you fill out the application.
- ❖ Make sure to include or give information about all the details of the incident, and also any and all threats made by your perpetrator.
- ❖ Completed forms must be filed at Petition Processing in the Family Court between 9 am and 5 pm at:  
One Niagara Plaza  
Fourth Floor  
Buffalo, NY – 14202

**REMEMBER** – You may seek help in filing the petition from the Haven House Advocate, Room 732, 7<sup>th</sup> Floor, Family Court.

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**If it is an emergency**, you have the right to see a Judge that same day or the very next morning to obtain a temporary Order of Protection. Take all evidence of abuse (photos, medical reports, police reports etc...) to the Court with you.

The Court will issue an order that is good until the next court date. On the next court date, you and your perpetrator will appear before the Judge and then decide on a permanent order.

**If it is not an emergency**, you will be given a return court date with no temporary Order of Protection. You and your perpetrator will appear before the Judge on your next court date.

### What happens inside the Court room?

- ❖ Tell the Judge briefly what happened and what you want in the order.
- ❖ If you need a lawyer and cannot afford to pay for one, ask the Judge to assign one for you
- ❖ If your case gets adjourned, ask for a temporary Order of Protection until your next court date.

### What to do with your children when you have Court?

Children are not permitted in the courtrooms or in the Family Court Petition Clerk Offices.

There is a free day care provided during the Court's hours on the First Floor of the Court. This service is available on a first come first serve basis only.

REMEMBER – This service is not available when you are in the Courthouse to meet with your Attorney. It is available only when you have a court appearance.

## IMPORTANT CONTACT NUMBERS

Neighborhood Legal Services, Inc. (NLS)	(716) 847-0650
Haven House 24 hour DV Hotline	800-884-6000
Family Justice Center	(716) 558-7233
Family Court DV Victim Advocate	(716) 845-2751
Volunteer Lawyer's Project	(716) 847-0662
Crisis Services 24 hours	(716) 834-3131
Central Referral Services	(716) 851-5555
Hispanics United	(716) 856-7110
NY State Coalition Against DV Hotline	800-942-6906 (English) 800-942-6908 (Spanish)

# New York State Divorce Law

The divorce laws of the State of New York changed dramatically on October 12, 2010. Most significantly, one party's sworn allegation that the marriage has been "irretrievably broken" for six months will mean that New York is joining the rest of the states in the country to have "no fault divorce." Despite this additional ground, most of New York's divorce laws will remain unchanged.

### Types of Matrimonial Actions

**A divorce** means that parties who were once legally married to each other are no longer married.

**An annulment** means that a defect occurring at the time of the marriage such as fraud or duress permits a court to retroactively invalidate a marriage.

**An action to declare the nullity of a void marriage** means that a court can declare a marriage to have never occurred, such as when either party is already married.

**A separation**, in which people remain legally married but are officially living apart, can occur either by a court order or by a written, properly executed agreement between the parties.

### Grounds For Divorce

Cruel and inhuman treatment (including physical or emotional abuse), abandonment for one year or more, imprisonment if one's spouse for three or more consecutive years, adultery, and living apart under a court order of separation or a separation agreement are all grounds for divorce. The new, interested, additional ground of irreversible breakdown of a marriage now joins those grounds. With the new law, it will be rare that a party who does not want to be divorced can defend a divorce based on grounds.

### Residency

A divorce can only be started in New York if residency requirements are met. One of the following residing requirements must be met:

- a) The parties were married in New York and either party is a resident of New York and has been for one year immediately preceding the commencement of the action.

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- b) The parties have lived together in New York as husband and wife and either party is a resident of New York and has been for one year immediately preceding the commencement of the action.
- c) The grounds for divorce occurred in New York and either party has been a resident of New York for at least one year immediately preceding the commencement of the action.
- d) The grounds for divorce occurred in New York and both parties are residents of New York at the time of commencement of the action.
- e) Either party has been a resident of New York for two years immediately preceding the commencement of the action.

### **Procedure**

The divorce starts when a summons is filed in the local County Clerk's Office. The person starting the divorce is called the "plaintiff" and the person against whom the divorce is brought is called the "defendant." The summons then must be personally on the defendant. Service by a person over the age of 18 who is not a party to the action, and on a day other than a Sunday. As an alternative, if the defendant is in agreement with the divorce, he or she can sign a defendant's affidavit, making it unnecessary for the plaintiff to have the summons personally served on the defendant. If the defendant signs an affidavit agreeing to the divorce, or, if the defendant is personally served and does not contest the divorce within forty days, the cause can be placed on the uncontested divorce calendar and decided by the court based on detailed affidavits and other papers, without a court appearance.

If the defendant contests the divorce, papers are exchanged and one or more court appearances are scheduled in New York State Supreme Court. The parties, their attorneys, and if necessary, a lawyer appointed to represent the child(ren) will continue to appear in court until either all issues in the case are settled by agreement or decided by a judge after a trial.

### **Ancillary Issues**

Besides the divorce itself, many issues must be settled in a divorce judgment. Some issues are settled in Family Court, and not all issues apply to all cases. The issues include child custody, visitation, maintenance (formerly know as alimony), child support, health insurance, uninsured health expenses, life insurance, disposition of the marital home, division of property including real estate, pensions, IRA's, 401k plans, bank accounts, vehicles, furniture, professional licenses, and other tangible or intangible property, attorneys' fees and expenses, orders of protection and more. Often, people think that they only need a "simple divorce" but beneath the surface there are important and complex issues which need to be addressed.

## **NLS Domestic Violence Law Overview**

### **Where to get legal help**

Neighborhood Legal Services, Inc. (716-847-0650), The Legal Aid Bureau of Buffalo, Inc. (716-835-9555), and the Volunteer Lawyers Project (716) 847-0662) provide divorce representation on a limited basis. The New York State Supreme Court Resource Center (716-845-1814) at 92 Franklin Street, Room 105 provides assistance to “pro se litigants” who do not have attorneys. The Erie County Bar Association Lawyer Referral Program (716) 852-3100) can refer litigants to private attorneys who will provide an initial consultation for a nominal fee but then will require payment.

In divorces where custody or visitation is in dispute, the court can provide low income litigants with a free attorney, but only for those issues.

Often, when people do not have the resources or desire to start a divorce, pressing issues, such as custody, visitation, spousal support, child support, and orders of protection can be settled in Family Court at no expense to the litigants, providing immediate relief. The divorce can then be commenced in the future once the parties are in a position to move ahead.

## NLS Disability Law Overview

The Disability Law Unit assists both children and adults with disabilities throughout Western New York and in some cases, statewide. Our attorneys and advocates assist persons with a range of physical, mental and sensory disabilities. Our range of activities is broad and includes both clients who require disability-related benefits and services, and those who need special help to enter or re-enter the work force. Some of the more common cases we handle relate to: special education; eligibility for services in the developmental disabilities systems; discrimination; defaulted student loans; rights in various residential placements; appeals involving specialized medical equipment (AT) through Medicaid and other funding sources; and benefits counseling for Social Security and SSI beneficiaries who go to work. The goal of all our work is to help persons with disabilities lead independent and productive lives. Although most of our clients have very low income, we can represent people who do not meet strict income guidelines.

### **Supervising Attorney**

James Sheldon

### **Attorneys**

Linda DeTine

Ellen Lawson

Diana Straube

Karen Welch

### **Paralegals**

Jessica Abbott

Marge Gustas

Charles Marinaccio

Krista McDonald

Viola Palmer

Marta Santiago

### **Administrative Support**

Juli Cushman

**Chapter**

**5**

# The Social Security and SSI Disability Programs

### Introduction

This chapter will cover two cash benefit programs, Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability benefits. Both programs are administered by the Social Security Administration. This chapter will not cover Social Security retirement benefits.

### Social Security Disability Insurance (SSDI)

The SSDI program pays benefits to adult wage earners and, in some cases, the wage earner's dependants (including spouses and children). An individual qualifies for SSDI by meeting an insured status test and a disability test. During 2010, the average monthly SSDI benefit is between \$1,000 and \$1,100 per month. Monthly benefits can be as low as a few hundred dollars or can be more than \$2,000 per month.

### Insured Status

To qualify for SSDI as a wage earner, the person must have worked and paid money into the Social Security trust fund through FICA deductions. A wage earner meets this test by obtaining enough "credits of coverage" in recent years. During 2010 or 2011, \$1,120 in gross earnings is enough to earn one credit. The wage earner can earn up to four credits per year. Once the person has \$4,480 in covered earnings in 2010 or 2011, for example, he or she has earned the maximum of four credits for the year.

Wage earners age 31 or older must have at least 20 credits of coverage during the 10 years before they become disabled (or about five years of work during the last 10 years). Younger wage earners can achieve insured status with fewer credits of coverage. If the person becomes disabled before age 24, he or she would need six credits in the three years before they become disabled. Between ages 24 and 30, the person would need to average two credits each year between age 21 and the year they become disabled.

### Establishing Disability

The SSDI disability criteria require a medical diagnosis and the inability to perform any substantial work activity because of the medical condition. Additionally, the disability must have lasted or be expected to last at least 12 months. In most cases, the disability must be severe enough to keep the person from doing a job he or she did in the past and keep the person from doing any other substantial work. It is very important that the person receives regular medical treatment for their condition, unless the condition cannot be treated. An

## **NLS Disability Law Overview**

SSDI application will only be approved if it is supported by reports from doctors and/or other health care providers.

### **How to Apply for SSDI Benefits**

An application can be filed in person, at one of the local Social Security offices. Alternatively, the application process can be started online by going to <https://secure.ssa.gov/apps6z/iClaim/dib>.

The SSDI applicant will be asked to provide the names of all doctors, clinics, and other health care providers from which they have received treatment. The Social Security Administration will then write to these treatment sources for reports about the person's medical condition and how it affects the person's ability to work. The content of these reports will be extremely important in determining whether the person's condition meets the disability criteria. For this reason, the doctors and other health care providers must write detailed reports, explaining why the person's disability prevents them from performing work-related activity.

### **The Right to Retroactive SSDI Benefits if Approved**

When a person applies for SSDI benefits they are asked to list the date when they believe they became disabled. Social Security calls this the disability onset date. If an SSDI application is approved, Social Security can go back up to 17 months before the application date to establish a disability onset date. In all cases, no benefits are awarded for the first five months following the approved onset date. This is known as the five-month waiting period. This means that Social Security can go back up to 12 months before the application date to award benefits. Since it always takes at least a few months before benefits are awarded (with appeals, sometimes two years or longer), a person's first big check could cover 18 months or more of back benefits.

### **The Right to Medicare after Two Years of SSDI Eligibility**

Medicare is a federally-sponsored health care program. After approval for SSDI, a person is eligible for Medicare after 24 months of eligibility for an SSDI cash benefit. Since many approvals go back a period of 12 months or more, the wait for Medicare could be much less than 24 months once the person starts getting checks. Medicare Part A (hospital benefits) is automatic and cost free. Medicare Part B (Supplemental Medical Insurance), paying for such things as doctors, limited home health benefits, and durable medical equipment, is optional and subject to monthly premiums, deductibles and copayments. In calendar year 2010, the monthly premium for Medicare is either \$96.40 (eligible before 2010), \$110.50 (first eligible in 2010), or \$115.40 (first eligible in 2011) for individuals with low or moderate levels of income. Many individuals with limited income will qualify for one of three Medicare Savings

## **NLS Disability Law Overview**

Programs to pay the Part B premiums and, in some cases, the deductibles and copayments. (See *Medicare Savings Plans At-a-Glance*, included at the end of this chapter.)

Medicare Part D (the prescription drug plan) is also optional and can be subject to significant out-of-pocket expenses for monthly premiums, deductibles, and copayments on prescription drugs. For those not eligible for the low-income subsidy or “extra help” benefits, the annual out-of-pocket expenses could reach more than \$6,000 in some cases. The good news is that many people with limited income will qualify for some type of low-income subsidy to reduce those expenses. In fact, those who are eligible for the full low-income subsidy will face no deductibles, will not pay a monthly premium in most cases, and will pay the lowest levels of copayments for their prescriptions. Individuals who are “dually eligible” for both Medicaid and Medicare are automatically eligible for the full low-income subsidy program without a separate review of their income. A person, who is eligible for one of the Medicare Savings Programs and not separately eligible for Medicaid, will be treated as a Medicaid recipient and automatically qualify for the full Part D low-income subsidy program.

### **The Right to Appeal if the SSDI Application is Denied**

Many SSDI or SSI disability applications are approved. However, many of those applications are denied, usually because the Social Security Administration finds that the person is not disabled. If the application is denied, the person has a right to appeal at a hearing. The hearing is conducted by an administrative law judge who had nothing to do with the original decision. At the hearing, the person has the right to be represented by a lawyer, a paralegal, or any other trained professional. We strongly recommend that persons who go to hearings get help from a lawyer or paralegal that has experience with the SSDI or SSI appeals process. Many persons who appeal win their hearings, but the chances of winning are much greater if a lawyer or paralegal is representing them.

An appeal must be filed within 60 days of the person’s receipt of the decision that denied benefits. The person should carefully read the letter from Social Security and carefully follow the instructions for appealing. The person can appeal by filing their request for a hearing at the Social Security office or by sending a written request for hearing to the Social Security office. If the request is made through the mail, we recommend sending the request by certified mail, return receipt requested. The person should keep a copy of the request for hearing. It is enough to send your hearing request in either a typewritten or hand-written letter. However, if you have access to a computer and printer, you can get a copy of the official hearing request form at: <http://www.ssa.gov/online/ha-501.html> (scroll down to obtain the form as a PDF document).

## NLS Disability Law Overview

### Supplemental Security Income (SSI)

The SSI program pays benefits to both children (under age 18) and adults who are disabled and have limited income and resources. During 2010 and 2011, most SSI recipients who live in the community receive monthly SSI based on one of two rates: \$761 per month if living alone; or \$697 per month if living with others and sharing expenses. These are base rates and the actual SSI check can be less if the person has other income. The base rate for persons who live with others and do not pay their share of expenses is \$472.34 per month. As we explain below, an SSI recipient qualifies for Medicaid automatically.

The SSI program also provides monthly benefits to persons 65 or older who meet the tests for limited income and limited resources. This chapter will not separately discuss this group of recipients, referred to by the SSI program as “aged.” Most of the SSI rules discussed in this chapter apply equally to SSI recipients age 65 or older.

### SSI's Income Rules

The SSI program defines income as anything received as cash or in a non-cash form that meets or could meet a person's need for food and/or shelter. Income can either be earned or unearned. The most common forms of earned income are wages from a job or the net income from a person's business. Some of the most common forms of unearned income (“anything that is not earned”) include Social Security benefits, unemployment benefits, New York State Disability payments, and payments from a private disability plan.

The SSI regulations and policy manual contain lists of different kinds of payments and benefits that will not count as income when the SSI program determines eligibility and payment amount. Here are some common examples of payments or benefits that do not count as income:

- Food stamps
- Most housing subsidy payments, such as section 8 assistance
- The proceeds of a loan
- Most state and federal grants that are to pay for educational expenses
- Student work study payments
- State and federal income tax refunds
- Refunds and advance payments of the Earned Income Tax Credit
- Home Energy Assistance Payments (HEAP)
- Payments made directly to a third party (i.e., not the SSI recipient) to pay for items other than food or shelter. This could include, for example, payments for clothing, a phone bill, or a cable TV bill.

## **NLS Disability Law Overview**

### **SSI's Resource Rules**

An SSI recipient can have no more than \$2,000 in what the program describes as “non exempt resources.” A couple, with both receiving SSI, can have no more than \$3,000 in non exempt or countable resources. The most common form of countable resource is cash in a savings or checking account, or even cash kept on hand. The SSI program will also count as a resource anything that can be quickly converted to cash, such as a savings bond or stocks.

The SSI regulations and policy manual also contain lists of things that will not be counted against the \$2,000 or \$3,000 resource limits. Here are some common examples of resources that do not count for SSI purposes:

- The home if the SSI recipient lives in it
- Household “goods and personal effects” have been completely excluded since April 2005 when the regulations changed. For example, the SSI program will not count the value of a refrigerator, stove, sofa or TV set.
- One vehicle, of any value, if it is used for transportation of the SSI recipient or another household member
- Income tax refunds (not counted as income or a resource in month of receipt, but what remains will count against the \$2,000 limit in the month after receipt)
- Earned income tax credits, received as a refund, are exempt for nine months following receipt
- Retroactive SSI or SSDI payments are exempt for nine months following receipt.
- A dedicated burial account of up to \$1,500

### **SSI Recipients Automatically Qualify for Medicaid**

New York is one of 39 states in which an SSI recipient automatically qualifies for Medicaid. As long as the person qualifies for at least a \$1 SSI check, Medicaid will be automatic.

### **Calculation of the SSI Check**

When the person has earned or unearned income, the SSI program calculates the check as follows:

- Start with the SSI base rate, such as \$761 for living alone.

## NLS Disability Law Overview

- Determine the amount of countable income they have (after subtracting any exclusions or that part of the income that is not counted).
- Subtract the countable income from the SSI base rate.

Here are two examples, using the same amount of monthly income but showing the different treatment of unearned and earned income:

*Example 1:* Mary receives \$485 in monthly SSDI payments and lives alone. Here is how her SSI check is calculated:

\$485	Unearned income
- <u>20</u>	General income exclusion
\$465	Countable income

\$761	SSI base rate (living alone)
- <u>465</u>	Minus countable income
\$296	Monthly SSI payment

*Example 2:* In this case, Mary receives \$485 in monthly gross wages from a job. Using a more generous set of rules, here is how her SSI check is calculated:

\$485	Earned income
- 20	General income exclusion
- <u>65</u>	Earned income exclusion
400	
- <u>200</u>	Additional 50 percent exclusion
\$200	Countable income

\$761	SSI base rate (living alone)
- <u>200</u>	Countable income
\$561	Monthly SSI payment

In both cases, Mary will continue to be automatically eligible for Medicaid.

### Establishing Disability

The SSI disability criteria for adults age 18 or older is the same as the SSDI criteria discussed above. The SSI disability criteria for children are very different. A child under age 18 is considered disabled when the condition they have seriously limits their development and

## **NLS Disability Law Overview**

functioning in typical daily environments (i.e., school, home, community) for 12 months or longer.

### **How to Apply for Benefits**

The application process for SSI is the same as that for SSDI as discussed above. In many cases, however, the most important evidence may come from special education programs and staff instead of or in addition to reports from doctors and health care providers. If the applicant child is a special education student, it is very important that the SSI program be made aware of that.

### **The Right to Retroactive SSI Benefits if Approved**

Like SSDI, the SSI applicant will be asked to list on their application the date they believe their disability began. Unlike SSDI, there is no right to retroactive benefits for any month before the month of application. When the SSI application is approved, the month following the month of application is the earliest month of entitlement to benefits.

*Example:* A person applies for SSI benefits on October 4, 2010 and the SSI application is later approved finding that the disability started in July 2010. Even though the person was disabled earlier and might have been eligible earlier, the first month of SSI eligibility is November 2010. If it takes a few months for the application to be approved, retroactive benefits can be awarded back to November 2010 but not earlier.

### **The Right to Appeal if the SSI Application is Denied**

We refer the reader back to the earlier explanation of appeals in the SSDI program. The right to an SSI appeal works the same way. If the person has applied for and been denied on separate SSI and SSDI applications, both cases can be appealed at the same time and will go to a hearing together. We will emphasize again that a person stands a much better chance of winning their SSI or SSDI hearing if they are represented by an experienced lawyer or paralegal.

### **What Happens When the SSDI or SSI Recipient Works?**

Despite their very severe disabilities, many persons who receive SSDI or SSI want to work. In fact, many persons have worked enough to greatly reduce or even eliminate their dependence on cash benefits. This section addresses a few of the major work rules and work incentives that apply to these two programs. Readers who would like more information on these topics can go to the New York Makes Work Pay website to review the

## NLS Disability Law Overview

growing number of resources on these topics, including the *Working* newsletter: [www.nymakesworkpay.org](http://www.nymakesworkpay.org) (and follow the Resources link from the home page).

### The SSDI Work Rules and Work Incentives

The SSDI beneficiary is allowed a nine-month trial work period to test his or her ability to work without being penalized. During the trial work period, the person will continue to get their full SSDI check no matter how much they earn. They will also continue to get Medicare coverage on the same terms as before. For calendar years 2010 and 2011, a trial month is used whenever the person has at least \$720 in gross monthly earnings.

*Example 1:* Randy has received SSDI benefits, based on a mental illness, since June 2004. Through the end of 2009 he does not use any of his trial work months. Despite his continuing disability, Randy begins work in January 2010 at a job that pays \$1,500 gross per month. He continues at that earning level through the first nine months of 2010, January through September. Under trial work period rules, Randy is allowed to keep his entire SSDI check during each of these nine months.

After the trial work period, the SSDI beneficiary moves into a new phase known as the extended period of eligibility. This 36-month period begins immediately after the ninth trial work month. The first time the person earns more than the “substantial gainful activity” (SGA) level (\$1,000 per month in 2010 or 2011, or \$1,640 per month if considered “statutorily blind”), he or she will be entitled to SSDI checks for that month and the next two months. Thereafter, for the remainder of the 36-month period: the person will not get a check if countable earnings are more than the SGA level; the person will get a check for any months when countable earnings are less than the SGA level. Gross earnings can be reduced by paid time off (vacation, personal, holiday or sick pay), impairment related work expenses, or subsidies.

*Example 2:* Randy’s trial work period ended in September 2010, meaning his extended period of eligibility starts in October 2010 and runs through September 2013. Randy continues to work after his trial work period ends. He earns \$1,500 gross in September, October, and December 2010 and continues earning at that level through the first six months of 2011, January through June. In July 2011, he has a flare up of his mental illness and does not work during July, August, or September 2011.

Randy will get SSDI checks for September, October, and December 2010 – his three month grace period which comes with his first month of SGA level work during his extended period of eligibility. When he continues earning \$1,500 during January through June 2011, he will not get SSDI checks for any of those months. However, when he stops working in July and stays out of work during August and September

## NLS Disability Law Overview

2011, he will once again qualify for SSDI checks because his earnings have fallen below the SGA level of \$1,000 per month. If Randy returns to work in October 2011, his right to an SSDI check will depend on whether his gross earnings (after any allowed deductions) are above or below the \$1,000 SGA level.

Under special *Extended Medicare Rules*, Randy's Medicare eligibility will continue throughout this entire period. In fact, Randy's Medicare can continue for at least 93 months following the end of this trial work period, even if he no longer qualifies for an SSDI check. (See *Extended Medicare for SSDI Benefits* at the end of this chapter.)

Readers who would like more detail on these issues can read the *Working* newsletter, *Social Security Disability Insurance and Work* (12 pages), available at [http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG\\_Newsletter\\_3.0.pdf](http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_Newsletter_3.0.pdf); or a much more extensive policy-to-practice brief, *Social Security Disability Insurance, Medicare and Work* (32 pages), available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/SSDI%20Brief-2.0.pdf>.

### SSI, Medicaid and Work

Work incentives are built into the formula for calculating the monthly SSI payment when a person works. As explained above, the SSI program will ignore the first \$65 of gross monthly earnings (or \$85 if this is the only income) and an additional 50 percent of earnings. What remains is subtracted from the SSI base rate to determine the monthly payment. So, in the example used above a person with \$485 in gross earnings will have \$200 in countable earnings with an SSI check of \$561 if they live alone (\$761 – 200).

SSI policy provides for additional exclusions from earned income. The following will also be deducted from earned income in calculating the SSI check:

- For full-time high school or college students under age 22, the first \$1,640 per month, up to a maximum of \$6,600 per year
- Impairment related work expenses
- Blind work expenses
- Income set aside for use in an approved Plan for Achieving Self Support

Remember, when the person gets at least a \$1 SSI check, Medicaid eligibility continues to be automatic.

## NLS Disability Law Overview

A special work incentive, known as *1619(b) Medicaid*, allows the person to keep Medicaid in most cases if he or she loses SSI due to work and wages.

*Example:* Mary has a severe arthritic disability and is an SSI recipient who lives alone. She had been earning \$485 in gross monthly earnings, receives SSI of \$561 per month (see example above) and continues to be eligible for Medicaid. Mary needs to keep Medicaid for doctor's bills and for very expensive medication. She gets a new job earning \$1,685 gross per month (\$20,220 per year). Her countable income will be \$800 per month ( $\$1,685 - 85 = 1,600 \div 2 = \$800$ ). Since this is more than the \$761 SSI base rate (living alone), Mary is no longer eligible for an SSI check.

Mary should be able to keep her Medicaid through section 1619(b). This is because she lost SSI due to work, continues to be disabled, would be eligible for SSI if her wages were not counted, and has annual earned income less than New York's eligibility limit of \$45,454 (in 2011) per year. If Mary continues to earn at this level, is still disabled, and continues to keep her resources within SSI limits, Medicaid should continue. (See *Section 1619(b) Medicaid At-a-Glance* at the end of this chapter.)

Readers who would like more detail on these issues can read the *Working* newsletter, *Supplemental Security Income and Work* (16 pages), available at [http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG\\_Newsletter\\_4.pdf](http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_Newsletter_4.pdf); or a much more extensive policy-to-practice brief, *Supplemental Security Income, Medicaid and Work* (32 pages), available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/SSIMedicaidPolicyPracticeBrief042010.pdf>.

## NLS Disability Law Overview

### **Help Available from Neighborhood Legal Services with Social Security or SSI Disability Issues**

NLS has a long history of helping people with SSDI and SSI issues. Here are some of the key services that we can provide.

### **The Disability Advocacy Program (DAP)**

This program offers free representation to persons who have been denied SSI benefits through our three offices covering five counties: Buffalo office, 716-847-0650 (covering Erie County); Niagara Falls, 716-284-8831 (covering Niagara County), Batavia office, 585-343-5450 (covering Orleans, Wyoming and Genesee Counties). We will also assist some people who have been denied SSDI (but most of those cases are referred out to private attorneys). If the person was denied on a joint claim for SSI and SSDI, we are usually able to assist them. Most of this representation will occur at the administrative law judge hearing, but we will also assist some people at higher levels of appeal (Social Security Appeals Council, federal District Court). Since we have limited resources for this service, we will decline to represent some people if we determine there is a very small chance for winning the appeal.

### Social Security Work Incentives Projects

NLS currently has three separate projects that will assist persons with disabilities and some callers from agencies who need help understanding how work affects benefits.

*Statewide Work Incentives Hotline (888-224-3272):* This service is part of our partnership on the New York Makes Work Pay Project with Cornell University. Callers to this toll-free line can be persons with disabilities, family members, or those from agencies who serve persons with disabilities. Callers can call on any issues related to benefits and work, with the great majority of calls involving SSDI, SSI, Medicare and Medicaid. The service is designed to answer most questions within 30 minutes and then refer to other resources as appropriate.

*Western NY Work Incentives and Benefits Advisement (WIBA) Project:* NLS and its partners (Independent Living of Niagara County, Niagara Falls, Southwestern Independent Living Center in Jamestown, the Advocacy Center in Rochester) are funded through a Social Security Administration grant to provide benefits advisement or counseling to SSDI and SSI beneficiaries in 16 Western New York counties. Our staff at NLS serves persons in Erie, Genesee and Wyoming Counties. The focus of this work is helping people understand how work affects benefits and how to take advantage of special work incentives that will help them. Callers from Erie County can call on our general number, 847-0650. Callers from other counties can call on our toll-free number, 888-224-3272, and we will refer them to one of our WIBA partners as appropriate. Many of the persons who contact us come in for a personal interview and receive very extensive services, including a detailed Benefits Advisement Report.

*Benefits Offset National Demonstration (BOND) Project:* NLS has been awarded this grant through the Social Security Administration to serve as one of 10 demonstration sites for this project that will begin serving SSDI beneficiaries during 2011. NLS and its partners will serve individuals in this research project in a 30-county region that includes all of Western New York, parts of Central New York, and parts of Northern Pennsylvania. Project participants will test a different set of SSDI rules that allows them to work for very significant wages without facing a total loss of benefits. NLS and its partners will provide benefits counseling to individuals to help them understand how these special test rules will operate and understand how to access other work incentives related to cash benefits and health care. Since project participants will be recruited for this project, following approved research methods, SSDI beneficiaries cannot join this project by calling us at NLS (unless they have been told to do so).

# SSI Application Process

When a child or an adult plans to apply for Supplemental Security Income (SSI) benefits, it is important to know what documents the SSI program will need to process the claim. In order to be eligible for SSI, the applicant must establish a severe disability and demonstrate financial need.

To begin the application process, the person must contact the local Social Security Office for a telephone interview. The application process for SSI becomes much easier when the SSI program is given as much proof as possible with the application for benefits.

### **Application:**

A completed SSI application must be submitted with all questions answered. It is very important to provide as many disability-related details as possible.

### **Medical Proof:**

It is best to submit with the application any medical proof that is currently available. The applicant should provide SSI the full names and correct addresses of all doctors, clinics, therapists, or counselors the person is seeing concerning his or her disability. Letters from doctors and other medical professionals, giving a history of the applicant's condition, symptoms, and treatment can also be very helpful. If the applicant is a child, statements from teachers concerning the impact the disability has on the classroom performance can also be extremely helpful.

### **Proof of Need:**

An applicant will need to submit proof of current income, all bank statements, cash surrender value of life insurance policies, and documentation concerning any other income or resources. If the applicant is under 18 years of age, the SSI program will need to see proof of parental income and resources. If the applicant is over 18 years of age, parental income and resources will not be considered available to the applicant. The SSI program will also need proof of the applicant's living arrangement, since the SSI program bases the amount of cash benefits on the individual's living arrangement.

### **Important things to remember throughout the application process:**

- ◆ The applicant should always respond to requests for additional information. If

## **NLS Disability Law Overview**

- the SSI program does not have enough information, the application is likely to denied.
- ◆ The applicant should provide complete and accurate information, to the best of his or her ability.
  - ◆ If the SSI program schedules a consultative examination with a doctor, it is very important that the applicant goes to that appointment. An SSI application can be denied solely due to a failure to attend a consultative exam.

### SSI: Income At A Glance

#### **Income:**

Anything received in cash or in kind that can be used to meet needs for food or shelter.

#### **Two Types of Income:**

Earned Income and Unearned Income

#### **Earned Income:**

Typically, gross wages - salaries, commissions, bonuses, severance pay and in-kind value of food or shelter; or net income from self-employment; sheltered workshop earnings; royalties from publications; and garnished funds.

#### **Earned Income Exclusions:**

The most common earned income exclusions are income tax refund payments, any portion of the \$20 general exclusion not applied to unearned income, \$65 per month and one-half of remaining earned income in a month. Additional earned income exclusions include impairment related work expenses, blind work expenses, and income set aside in an approved Plan for Achieving Self Support.

#### **Unearned Income:**

All income that is not earned income. Unearned income is counted when it is actually or constructively received.

#### **Unearned Income Exclusions:**

Many items, like needs-based assistance wholly funded by state or city, disaster relief assistance, and interest on excluded burial resources, are excluded from unearned income. Also, the first \$20 of unearned income is excluded as a general income exclusion.

## **NLS Disability Law Overview**

### **Non-income Items:**

These are not considered income by the Social Security Administration. Some of these include medical care and services (includes VA payments for unusual medical expenses), clothing received as a gift, income tax refunds, money borrowed and money received as repayment of a loan.

### **Special Income Exclusions:**

Some of these include payments to Japanese internees by the United States and Agent Orange settlement payments.

# SSI: Resources

### Resources:

Under SSI rules, this includes cash, other liquid assets, or real or personal property that an individual owns and could convert to cash that can be used to provide for food or shelter.

- ◆ Before an asset will be considered a resource an individual must have an ownership interest in property; a legal right of access to the property; and the legal ability to use the property for personal support and maintenance.
- ◆ The resource is counted or excluded “as of the first moment of the month.”
- ◆ The general rule is that an item received in a month is income and, unless spent, becomes a resource in the following month.
- ◆ The SSI program’s general resource limit in 2011 is \$2,000 for an individual, \$3,000 for an eligible couple.

### Liquid Resources:

Under SSI rules, this includes cash, or other property, that can be converted to cash within 20 working days. Some types of liquid resources include stocks, bonds, promissory notes, mortgages, and bank accounts.

### Non-Liquid Resources:

Property that is not cash and which cannot be converted to cash within 20 working days. Except for automobiles, the equity value of the non-liquid resource is countable. Some types of non-liquid resources are automobiles, trucks, tractors, boats, machinery, livestock, buildings and land.

### Exclusions from Resources:

Resources that are not counted for purposes of SSI’s \$2,000 or \$3,000 limits. Some of these are the residential home regardless of value, household goods and personal effects, and the total value of an automobile if necessary for transportation. See Chapter 2 of the *Benefits Management for Working People With Disabilities* manual for an exhaustive list of exclusions.

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### **Trusts Can be Used to Exclude Cash Resources if Certain Conditions are Met:**

- ◆ Neither the principal nor the trust income can be available to the SSI recipient to meet needs for food and shelter.
- ◆ The SSI recipient should not be the trustee.
- ◆ Trusts must be carefully drafted to comply with the Medicaid laws.

### Roomer-Lodger Agreements

The Supplemental Security Income (SSI) program has different monthly benefit rates for different living arrangements. In New York State, SSI payments are usually based on three rates. For 2011, those rates are:

- ◆ Living alone - \$761
- ◆ Living with others and paying fair share of household expenses - \$697
- ◆ Living in the household of another - \$472.34

A person is considered living alone when he or she has set expenses and is independent of anyone else. A person is living with others when they share expenses, such as food, utilities, rent or mortgage. There is an assumption that people living together share certain costs related to food and shelter.

If a person cannot pay the fair share of household expenses (one-half of expenses in a household of two, one-third of expenses in a household of three, etc.), they cannot be considered “living with others.” (For example, if an SSI recipient’s fair share in a parent’s home would be \$1,000 per month, he or she could not possibly pay the appropriate share of expenses out of an SSI check. Unless the SSI recipient can establish a separate living unit, he or she would be considered “living in the household of another.”)

#### **An SSI recipient can obtain the living alone rate by working out a business relationship under a roomer-lodger agreement:**

- ◆ A roomer/lodger agreement is based on the idea that the adult individual with a disability is paying a flat fee amount per month for shelter costs to the homeowner/lessee.\*
- ◆ The homeowner/lessee does not have to be the parent, but could be another relative (other than spouse) or a friend.
- ◆ The amount paid is what the homeowner/lessee would charge anyone else for the room and lodging being provided. They do not “share” household costs. The roomer/lodger’s name does not appear on any of the household bills (e.g., electric or gas).

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\* A lessee is the primary tenant who rents from the landlord.

## NLS Disability Law Overview

- ◆ This type of living arrangement is only possible if the homeowner/lessee offers this arrangement to the individual. There may be financial circumstances when such an agreement may not be in the homeowner/lessee's financial best interest.

An SSI recipient can change living arrangements at any time. If an individual wishes to establish a roomer-lodger status, he or she should submit a statement from the homeowner/lessee to the Social Security Administration indicating how much the SSI recipient is charged as a flat fee per month for room and lodging. The SSI program should accept the agreement and adjust the individual's SSI benefit accordingly. The SSI recipient is then entitled to New York's "living alone" status.

## SSI & Section 1619(b) Medicaid

### **In New York State, SSI Recipients Automatically Qualify for Medicaid:**

- ◆ If a person gets as little as \$1 in SSI benefits, Medicaid is automatic

### **Under Section 1619(b), Former SSI Recipients Can Still Keep Medicaid:**

- ◆ If the person's SSI payment was stopped due to earned income or a combination of earned and unearned income
  - Person living alone in 2011 – SSI payment will stop if gross monthly earnings are \$1,607 or higher (if no unearned income)
  - Person living with others in 2011 will lose SSI if gross monthly earnings are \$1,479 or higher (if no unearned income)
- ◆ The person's disability must continue

### **Additional Section 1619(b) Criteria (Non-Financial):**

- ◆ Prior month requirement: must have received an SSI check for at least one previous month on current SSI record
- ◆ Medicaid use test:
  - used Medicaid within past 12 months
  - expects to use Medicaid in next 12 months
  - would be unable to pay unexpected medical bill in next 12 months without Medicaid

### **Section 1619(b)'s Financial Criteria:**

- ◆ Unearned income must be within SSI's limits
- ◆ Resources must be within SSI's limits
- ◆ Annual income must be under New York State's section 1619(b) threshold, or it must be under an "individualized threshold"

## NLS Disability Law Overview

### **Section 1619(b)'s Earned Income Threshold:**

- ◆ For calendar year 2011, New York's earned income threshold is \$43,956 per year
- ◆ If annual wages are below \$43,956 and the other criteria is met, Medicaid will continue

### **Section 1619(b)'s Individualized Threshold:**

- ◆ If gross earnings are more than the general threshold, eligibility may be established by adding up the following:
  - base amount of \$19,284 in 2011
  - New York Medicaid amount from threshold chart (\$26,170 in 2011), or actual Medicaid expenses if higher
  - impairment related work expenses
  - blind work expenses
  - publicly funded attendant care costs
- ◆ The total of these items establishes the individualized threshold
- ◆ If annual gross earnings are below this threshold, and other criteria are met, Medicaid will continue.

## QMB, SLMB and QI-1: Medicare Savings Programs

### Qualified Medicare Beneficiary (QMB, also known as “Quimby”) Program

Can save Medicare recipients hundreds of dollars a year in Medicare Part B premiums and possibly thousands of dollars a year in deductibles and coinsurance payments. The QMB program requires every state to pay Medicare premiums, deductibles and coinsurance for disabled individuals who meet certain financial guidelines. In order to be eligible for QMB in New York in 2009, a person has to:

1. Be currently enrolled in the Medicare program;
2. Have gross monthly countable income of no more than \$903 a month (or \$1,215 for a couple);
3. **Note:** Effective April 1, 2008, there is no asset test for QMB. Prior to April 1, 2008, assets were required to be below \$4,000 for an individual and below \$6,000 for a couple.

### Specified Low-Income Medicare Beneficiary (SLMB, also know as “Slimby”) Program

This program pays for the Medicare Part B premium, which is \$96.40 per month in 2009. In order to be eligible for SLMB a person has to:

1. Be currently enrolled in the Medicare program;
2. Have gross monthly countable income of no more than \$1,083 per month (or \$1,457 for a couple);
3. **Note:** Effective April 1, 2008, there is no asset test for SLMB. Prior to April 1, 2008, assets were required to be below \$4,000 for an individual and below \$6,000 for a couple.

### Qualified Individual - 1 (QI-1)

This program pays for the Part B premium. In order to be eligible for QI-1 a person has to:

1. Be currently enrolled in the Medicare program;
2. Have gross monthly countable income of no more than \$1,219 per month (or \$1,640 for a couple);
3. No asset limit for QI-1.

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### Countable Income and Resources

For QMB and SLMB, assets do not include the person's home, usually one car, burial plots or \$1,500 in life insurance. Earned income does not include the first \$65 per month and one-half the remainder when calculating countable gross income. These are the rules as applied in New York State. If you are not in New York, check your local sources for the rules as they apply in your state.

If you think you or someone you know may be eligible for QMB, SLMB, or QI-1, contact your local Department of Social Services (The Human Resources Agency in NY City) Medicaid office.

# Extended Medicare for SSDI Recipients

### Background:

- ◆ A Social Security Disability Insurance (SSDI) recipient is entitled to Medicare coverage after 24 months of SSDI eligibility.
  - Part A, hospital insurance, is automatic and cost free.
  
  - Part B, covering outpatient services, is optional and carries a \$96.40 per month premium for most people who were eligible for Medicare in 2009, and \$110.50 per month for people who become eligible for Medicare in 2010. A small number of beneficiaries - individuals with income exceeding \$85,000 and married couples exceeding \$170,000 - will pay a higher Part B premium based on their income.
  
  - Part D, covering prescription drugs, is optional and may require out-of-pocket expenses for premiums, co-payments, and deductibles.
  
- ◆ Under the old, pre-2000 law, an SSDI recipient was entitled to continue Medicare coverage during a nine-month trial work period and for an additional 39 consecutive months following the ninth trial work month.
  - During this entire period (48 months), coverage for Parts A, B and D continued to be available under the same terms.

### New Provision from the Work Incentives Improvement Act

- ◆ The new law, effective January 1, 2000, extends Medicare eligibility, under these same terms, for at least an additional four and one half years (i.e., 54 months).
  
- ◆ Now when an SSDI recipient goes to work for the first time:
  - Medicare continues for a nine-month trial work period and at least 93 more additional months.
  
  - This means that the SSDI recipient who goes to work can keep Medicare for at least 102 months (or, nearly eight and one half years).
  
- ◆ Under the new law, Medicare Part A continues to be automatic and cost-free. Part B continues to be optional and subject to premium payment. The Part D prescription drug program would also continue to be available during this extended eligibility period.

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**Note:** Your local Medicaid office can, in many cases, pay for the Medicare Part B premium. This is usually done under one of three “Medicare Savings Plans”: the Qualified Medicare Beneficiaries (QMB) program, the Selected Low-Income Medicare Beneficiaries (SLMB) program, or the Qualified Individuals (QI-1) program for individuals with low income. For information about the QMB, SLMB, or QI-1 programs and eligibility criteria, call your local Medicaid office or our Work Incentives Hotline.

## **MSTN Vision & Strategic Direction**

The Mobile Safety-Net Team strives to strengthen, one community at a time, Western New York's Response to an increase in demand for Basic Human Needs services in light of the current economic climate by networking and bolstering the capacities of local and regional organizations that provide basic human needs services and informing people of the services available to them while providing opportunities for individuals to learn about and apply for needed services.

### **MSTN Vision**

The three teams that make up the Mobile Safety-Net Team will travel throughout Erie and Niagara Counties to assist with the changes in lifestyle people are experiencing. The program's objective is to provide support and information in key needs areas including Food, Finance/Legal Assistance, Employment, Health Insurance, Social Services and Crisis Services. This will be done by completing community needs assessments, creating inventories of services, determining organizations' ability to respond to an increase in demand for services and holding Community Resource Events at central locations in each community.

These events will serve as week-long one stop shops to assist and inform individuals and families who require human services support. This initiative is designed to supplement existing programs and better coordinate efforts and services to address the elevated needs resulting from the nation's economic decline.

### **MSTN Strategic Direction**

We are working with elected officials, faith-based groups, citizens and local and regional organizations to determine the needs in communities, how to bolster their services and how to help connect residents to services they need. Our goals are to provide information to foundations to help them direct their funding for basic human needs services where it is most needed; provide outreach and networking support to local and regional service providers and, of course, connect people who have never needed assistance before to necessary services. We also hope to ensure that organizations that publish directories on available services have the most current information.

We have three teams that are travelling to every community in Erie and Niagara counties, spending about five weeks in each municipality working to meet our goals and those of our many partners. We culminate our time in each community with a three day Community Resource Event. These events provide opportunities for organizations to provide outreach and to network with other service providers, as well as to make it easy for residents to access services without leaving their communities.

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## MSTN Partners



The American Red Cross prepares for and responds to community disasters and emergencies, and helps people lead safe and healthy lives.



The Buffalo City Mission offers long-term recovery programs, counseling, work and life-skills training, education assistance and health-care services for homeless men, women and families committed to turning their lives around.



Creating Assets, Savings & Hope (CASH) Buffalo strives to increase the stability of low-to-moderate income families by increasing access to tax credits and income supports; improving financial literacy; and providing opportunities for affordable housing and other asset development.



Catholic Charities offers counseling; basic emergency assistance and referrals; mental health and chemical dependency treatment; educational and vocational services; parish outreach; and foster care and adoption services.



Community Missions provides a unique blend of referral, crisis, community support, and residential services for youth and adults. These services are offered in cooperation with churches, groups, clubs, other providers, and government agencies.



The Food Bank of WNY's mission is to obtain nutritious food and support from public and private sources and efficiently distribute these resources to the hungry in Western New York through our member agencies.



Goodwill Industries serves individuals with disabilities by providing job training, employment services, educational opportunities and job placement and post-employment support.



Meals on Wheels is committed to delivering nutritious meals and providing related support services to those who have a limited ability to shop and/or prepare meals for themselves.



The Salvation Army offers recreational, spiritual, educational, and social programs to assist those in need. Programs are open to people of all ages and are focused on building character, confidence, and capacity for excellence within underserved communities.

## Chapter

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