

TURN UP THE HEAT: IT'S TIME TO RAISE NEW YORK'S SHELTER AND FUEL ALLOWANCES

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I. HOMELESSNESS IN NEW YORK

In Albany, New York, 2012, Ronald Anderson, a single parent with daughters aged 10 and 15, was evicted from his apartment for coming up \$75 short on his monthly rent.¹ He and his family stayed at Schuyler Inn, an old motel that receives funding from Albany Department of Social Services to house the homeless. Eventually he was able, through a philanthropic organization in Albany, to pay for an apartment and stabilize his daughters' lives. As Anderson said to Albany's Times Union:

"They have a better attitude," Anderson said, referring to his daughters. "They're happier. They're doing much better in school. They finally have a place where they can say 'I live here.'"²

The question "*Where do I live*" is becoming more common for a growing number of New York families, as New York's homeless population is on a steep upward trajectory.

From 2009 to 2014, the population of school children categorized as homeless by the New York State Education Department increased by more than one third.³ These data from the Education Department reflect a homelessness characterized by an unstable primary nighttime residence, including sleeping at a motel, "doubling up" with other families, living in a shelter, or having nowhere to sleep at all. For that period of 2009 to 2014, New York added more than 30,000 students to its homeless population, taking the number from 86,715 for the 2009-2010 school year, to 116,874 for the 2013-2014 school year.⁴

Other organizations offer similarly grim numbers. The National Alliance to End Homelessness, reporting on homeless populations living in places unsuitable for human habitation, emergency shelters, or transitional housing,

also saw an increase in the number of homeless people. According to the report, this group of New Yorkers (a narrower category than homeless school children), increased by 11.30%, from over 69,000 to more than 77,000,⁵ bringing New York's homeless population to 39.4 homeless people per 10,000 citizens, as compared to the national rate of 19.3 per 10,000. Additional data indicate an ongoing upward trajectory. The U.S. Department of Housing and Urban Development reports that between 2013 and 2014, New York experienced the largest increase in homelessness of any state in the nation.⁶ And the trend shows no signs of waning, as throughout 2015, news outlets reported record high numbers of homeless citizens in New York City.⁷



From 2009 to 2014, school children categorized as **HOMELESS** by the New York State Education Department has **INCREASED** by a **more than a third**

School Year	Rest of State	New York City	Total
2009-2010	19,784	66,931	86,715
2010-2011	21,262	69,244	90,506
2011-2012	26,889	71,285	98,174
2012-2013	29,342	80,574	109,916
2013-2014	29,637	87,210	116,847

II. NEW YORK’S CONSTITUTIONAL AND STATUTORY MANDATES

The New York State Constitution and Social Services Law provide a framework for lawmakers to address the needs of homeless individuals and families during this escalating crisis of housing instability. New York State Constitution, article XVII, mandates that the “aid, care and support of the needy ... shall be provided by the state ... in such manner and by such means, as the legislature may from time to time determine.”⁹ This broad constitutional mandate has been incorporated into law to articulate a duty to provide not just “aid, care and support” as the Constitution requires, but also, under section 131 of the Social Services Law, to provide it “adequately”:

“It shall be the duty of social services officials, insofar as funds are available for that purpose, to provide adequately for those unable to maintain themselves...”¹⁰

When it comes to housing children, that adequacy has a tangible, physical expectation that children experience childhood in an actual home. Section 350 (1) (a) of the Social Services Law requires that “[a]llowances shall be adequate to enable the father, mother or other relative to bring up the child properly,” such that legally responsible relatives can support “the physical, mental and moral emotional well-being” of minor dependent children “in the home.”¹¹

To this end, New York families that are on public assistance and pay for housing receive a shelter allowance, which is money earmarked specifically for the payment of housing expenses - and yet, the number of homeless people keeps increasing. This is because the amount of money allowed for public assistance recipients to pay their rent is simply not sufficient. This leads to the question, how will New York State fulfill its constitutional and statutory duty to house all families, when the rising homeless population, especially the increase in homeless school-age children in New York State, is spinning out of control? As set forth below, to assure the well-being of New York’s youngest citizens, lawmakers must first address the inadequacy of the public assistance shelter and fuel allowances which prevent low income families from obtaining and retaining stable housing.

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III. CONNECTING SHELTER ALLOWANCES TO HOMELESSNESS

In spite of New York’s clear obligation to house the homeless, more and more New York families become homeless every year. Career professionals in human services see a direct connection between the level of assistance that struggling families receive from their Social Services Districts, and the current levels of homelessness.

As Human Resources Administration Commissioner Steven Banks said in his New York Times interview this October (2015), “[t]he homelessness we are seeing now is the direct result of failed policies.”¹² Banks singled out a particular failing policy as contributing to the homeless problem in New York: the shelter allowance. Or rather, the inadequacy of the shelter allowance:

“If there is one frustration he admits to having, it has been the state’s reluctance to increase its contribution to housing for welfare recipients. ... The state has not increased its shelter allowance since 2003, he said. Toward this end, he said, he has been lobbying Albany since he got the job. But the state has not budged on the allowance....”¹³

The current shelter allowance schedule, as promulgated by the Office of Temporary and Disability Assistance,¹⁴ sets a maximum monthly allowance, by county, for rental expenses for families and individuals receiving public assistance. HRA Commissioner Banks’ grievance over the meager shelter allowance level is founded on the allowance’s clear inadequacy. The allowances have dragged through the last twelve years with no adjustment for the cost of living and other economic factors.

The economic reality of rental expenses is represented regionally by the Fair Market Rent Standard (FMR). The Fair Market Rent Standard is a measure of current market rental housing costs put forward by the U.S. Department of Housing and Urban Development,¹⁵ and can be used as a way to compare the sufficiency of the shelter allowance to the cost of a typical apartment. The definition of Fair Market Rent is as follows: “*The FMR is the 40th percentile of gross rents for typical, non-substandard rental units occupied by recent movers in a local housing market.*”¹⁶ The 40th percentile places the calculated FMRs below the median rent for a given region, but does not attempt to go so rock-bottom as to include substandard housing units, which may be less expensive, but would also possibly be uninhabitable.

As might be expected, the dominant trend in FMRs since 2003 has been a steady increase. When comparing the static 2003 schedule to the ever increasing cost of rent in the Capital District, the shelter allowance has gone from covering about 60% of fair market rental expenses, to covering barely 40% (see chart below). And yet, these decade-old shelter standards are still the rule for families in need. A sample chart

comparing FMR levels in Albany County¹⁷ to the shelter allowance provided by Albany’s Social Services District¹⁸ is representative of the disconnect between FMRs and the shelter allowance.

Albany County: Family of Three Shelter Allowance as Compared to One Bedroom HUD Fair Market Rent			
<i>YEAR</i>	<i>1 Bed FMR</i>	<i>Albany Shelter Allowance</i>	<i>Percent of FMR covered by the Allowance</i>
2003	\$515	\$309	60%
2004	\$516	\$309	59.88%
2005	\$559	\$309	55.28%
2006	\$586	\$309	52.73%
2007	\$616	\$309	50.16%
2008	\$697	\$309	44.33%
2009	\$711	\$309	43.46%
2010	\$716	\$309	43.16%
2011	\$737	\$309	41.93%
2012	\$713	\$309	43.34%
2013	\$744	\$309	41.53%
2014	\$750	\$309	41.2%
2015	\$782	\$309	39.51%

IV. HISTORY OF THE SHELTER ALLOWANCE

The shelter allowance was established in New York State in 1975 when the state moved away from providing individualized grants based on the actual needs of individual families, to a system of standard and uniform grants for meeting the needs of its poorest residents.¹⁹ Back then, the shelter allowances were set to reflect the amount of rent paid by 95% of public assistance households, and was roughly comparable to the U.S. Department of Housing and Urban Development’s (HUD) FMR schedule.²⁰ Since the introduction of the shelter allowance, a steady increase in rent prices and lack of regular or indexed adjustments of the shelter allowance widened the gap between the amount of the allowance and FMRs.²¹ The shelter allowances were adjusted in 1988, but instead of connecting the allowance closely to FMRs, they were effectively reduced, when “the State Department of Social Services recommended that the allowance be set at the 70th percentile of rents paid,”²² instead of the 95th percentile. Even though this 70th percentile would already have left three out of ten recipients unable to meet rent expenses with their shelter allowance, the Division of Budget further decreased the

amount to represent the 65th percentile of rents paid by public assistance recipients – leaving nearly 4 out of every ten recipients to pay rent in excess of their allowance.²³ Eventually, by 1990, more than 50% of public assistance recipients were paying rent higher than their housing allowance.²⁴

In 1990, 25 years ago, the case of *Jiggetts v. Grinker* successfully challenged the adequacy of New York City’s shelter allowances. The plaintiffs in *Jiggetts* were recipients of public assistance who were unable to pay their rent with the shelter allowance, were consequently threatened with eviction, unable to find other housing, and prevented from raising their children in their own homes.²⁵

The court in *Jiggetts* agreed with the plaintiffs, holding that the housing allowance was so low that it could not be considered “adequate,” and thereby violated statutory mandates.²⁶ To remedy this inadequacy, the court found a “statutory duty on the State Commissioner of Social Services to establish shelter allowances that bear a reasonable relation to the cost of housing.”²⁷ Noting the close connection between homelessness and social services policies, the court stated as follows:

“A [shelter allowance] schedule establishing assistance levels so low that it forces large numbers of families with dependent children into

homelessness does not meet the statutory standard.”²⁸

Although this case was decided in 1990, it took thirteen years for the regulations setting the shelter allowance to change. That was twelve years ago, in 2003.²⁹

The changes to the shelter allowance that resulted from *Jiggetts* did increase the allowance for families with children (although not for families without children), but still did not make it likely that any public assistance recipient would actually be able to pay for rent. At the time of the changes, advocates testified before New York’s legislature that the proposed housing allowances, while higher, remained inadequate.³⁰ The 1988 regulations allowed a family of three in Albany county \$245 for an apartment (with heat).³¹ The 2003 amendments increased that amount in Albany County to \$309,³² meaning that, over the course of 28 years, the rental allowance for an Albany County family of three, with children, increased by only 64 dollars.

For public assistance recipients without children, the shelter allowance remains the same as it was for an apartment (with heat) in 1988.³³ As New York’s OTDA explained in an Administrative Directive in 2010:



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“Housing costs have risen steadily in New York over the past 20 years. Because of this, it has become increasingly difficult for single adults and childless couples to find permanent housing when they become homeless. This results in these individuals being placed in temporary housing accommodations such as homeless shelters, hotels/motels, boarding houses or other temporary accommodations. These temporary arrangements are costly to districts and do not provide long term solutions to housing this population.”³⁴

In spite of this clear understanding of the housing problem that faces families both with and without children, a family of three in Albany, without children, still receives \$245 in shelter allowance, just as it did almost thirty years ago.

V. KEEPING FAMILIES IN THEIR HOMES IS MORE COST-EFFECTIVE THAN DEALING WITH HOMELESSNESS

As explained above, by looking at the history of the housing allowance, the current shortfall of the allowance in relation to FMRs, and the continued rise in homeless families, it is apparent that the current state of New York’s housing instability is directly connected to the insufficiency of the housing allowance. From a fiscal and social perspective, there are clear advantages to increasing the housing allowance, especially when the alternative – homelessness – is more expensive for communities than the cost of fair market rent, as explained below.

When it comes to first-time homeless families, the U.S. Department of Housing and Urban Development’s report on the associated expenses reflects a clear advantage in increasing the housing allowances over maintaining a homeless population: “In almost all cases, the costs associated with providing housing for individuals and families who are homeless within a program exceeds the Fair Market Rent cost of providing rental assistance without supportive services.”³⁵

And, the longer a family remains homeless, the more expensive it becomes:

“Individuals and families who remain in homeless programs for extended periods incur the highest percentage of costs, presenting the greatest opportunity for homeless system cost savings.”³⁶

“Extended stays were associated with escalating costs; each additional month in a program is associated with 35 percent higher costs for individuals and 22 percent higher costs for families.”³⁷

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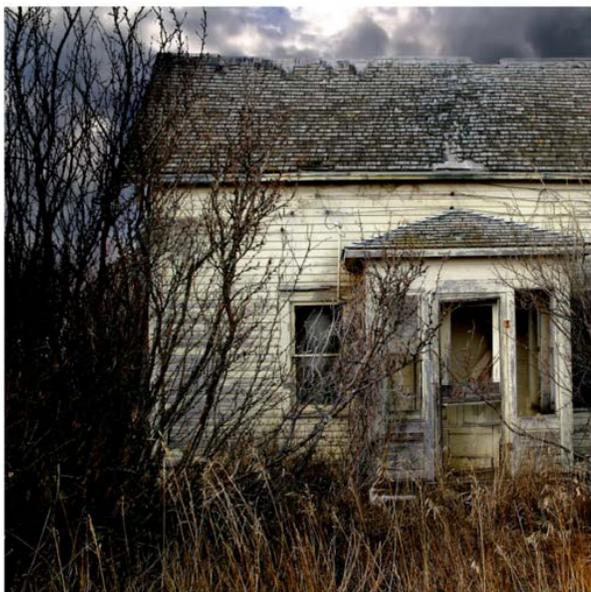
The idea that the cost of rent is less expensive than homelessness is not a new or revelatory idea – the Office of Temporary and Disability Assistance acknowledged and predicted the inadequacy of the allowance years ago. When the shelter allowance was changed in 2003, the regulations were structured to address anticipated gaps between the amount of the housing allowance and the level of FMRs by including a

“shelter supplement.”³⁸ In its 2003 Administrative Directive on the issue, OTDA acknowledged that “[e]ven with shelter increases... recipients might, for a variety of reasons, experience housing problems,” and so, “the recently enacted regulatory amendments provide for provision of a rent supplement at local discretion.”³⁹

The shelter supplement mechanism demonstrates the clear – and anticipated – insufficiency of the housing allowance. The Office of Temporary and Disability Assistance allows Social Services Districts to provide, at their option, housing supplements “to provide an additional shelter payment in

excess of the shelter allowance maxima to pay for shelter in high cost areas or special situations.”⁴⁰ These supplements are only available to residents of Social Services Districts that filed a plan with OTDA, and will be approved by OTDA when they are cost effective or cost neutral.⁴¹ As of the writing of this report, five districts, New York City, Westchester, Nassau, Suffolk, and Orange have had shelter supplement plans.⁴²

In its 2008 application to OTDA for shelter supplement approval, Orange County offered up a study that illustrates the financial advantage of increasing the amount of the housing allowance over keeping people in homeless shelters. Orange County calculated that the “average cost of providing services to a homeless family in 2008 equaled \$157 per day (\$4,710 per month) when we consider placements in hotel/motels and placements at our Local Emergency Housing Shelter.”⁴³ Keeping a family in permanent housing by supplementing the housing allowance, on the other hand, was considerably less expensive: “Considering an average family size is 3, the proposed Shelter Supplement would cost \$942 per month. On a case by case basis the cost savings of using the Family Shelter Supplement would equal \$3,768 per month,” per family.⁴⁴ In other words,



The amount of money allowed for public assistance recipients to pay their rent is simply not sufficient

providing a sufficient shelter allowance measured merely ¼ the expense of homelessness.

In addition to the fiscal advantages, from a social perspective, the benefits of stable housing over homeless shelters are well-established. The effects of long-term homelessness on school-age children are particularly well documented:

“Researchers have documented the well-established link between homelessness and child development in a large body of peer-reviewed literature. Homeless children have worse physical health, are less likely to have a regular source of medical care, and are more like to use emergency rooms when compared to poor, housed children and the general population. They are delayed in educational achievement, especially in language. Homeless children also experience more mental health and behavioral problems that the general population of children.”⁴⁵

Students with stable housing perform better in school than those who are uprooted by homelessness.⁴⁶ For example, moving schools more than twice the five years between preschool and third grade correlates directly with lowered test scores; children who move frequently tend to lag about eight months behind their classmates in math.⁴⁷ To respond to this issue, the McKinney-Vento Act requires that school districts provide transportation to and from the school of origin for homeless students when it is in their best interest.⁴⁸ This federal mandate creates significant expenses for school districts,⁴⁹ and while keeping those children transported to their school of origin is the best way to encourage a displaced student’s academic and social performance, there is a more cost-effective way to create this positive result: prevent that displacement by keeping children in permanent housing.⁵⁰

There is a logical disconnect between the policy that New York State employs – capped housing allowances – and the policy that would be most socially and fiscally effective – adequate housing allowances. New York places a cap on the amount that a Social Services District can provide for paying a family’s rent, and yet the time and expense of keeping a homeless family in emergency shelter may extend indefinitely. In effect, New York’s inadequate housing allowance encourages homelessness, even though it is more expensive for New York, and incurs no social benefits as compared to life in stable housing.

For all of these reasons – because it’s part of New York’s Constitution, part of its statutory scheme, because it’s better for people to live in their homes and better for children to stay in stable housing and in their own schools – a housing-based approach to homelessness is a more effective tool for fulfilling New York’s mandates than an emergency shelter-based approach to homelessness. Increasing the housing allowance to more closely reflect the actual cost of rent for low income New Yorkers is the fiscally and socially responsible answer to housing instability.

Orange County calculated that the “average cost of providing services to a homeless family in 2008 equaled \$157 per day (\$4,710 per month) when we consider placements in hotel/motels and placements at our Local Emergency Housing Shelter.”

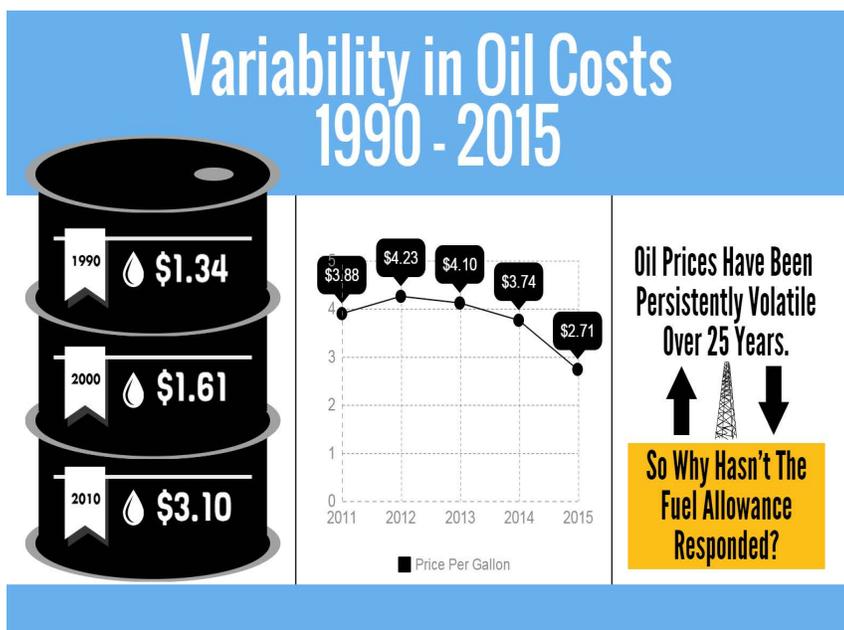
VI. THE FUEL ALLOWANCE

On top of the difficulties of meeting basic rental expenses, for many families living outside of New York City, heating costs are incurred separately from rental obligations. The Office of Temporary and Disability Assistance Rules and Regulations provide certain amounts to cover the cost of fuel, which are organized by county, and according to what type of heat a home requires.⁵¹ These fuel allowances have been in place, unchanged, since 1987.⁵² In contrast, as the charts below indicate, the cost of oil heat has more than tripled since that time, and although costs have recently moderated, the current cost of oil is approximately two times the cost it was in 1990. The cost of natural gas has nearly doubled as well. As a consequence, the amount allotted to a public assistance recipient to pay for heat does not bear any resemblance to the actual cost of heat.

The Price of Natural Gas in New York Nearly Doubled Between 1987 and 2014 ⁵³	
New York 1987	\$6.88 (per thousand cubic feet)
New York 2014	\$12.54 (per thousand cubic feet)

In upstate New York, where rural homes more often rely on oil or propane heating for the winter, the stagnancy of the fuel allowance means that heating a home on public

assistance is nearly impossible. For a family of three reliant on oil heating, the current allowance for several upstate counties is \$69 per month.⁵⁴ Meanwhile, the U.S. Energy Information Administration reports the price of New York residential heating oil for the last week of October 2015 at \$2.713 per gallon.⁵⁵ A typical amount of oil required to heat an upstate New York home, for one year, is about 800 gallons,⁵⁶ costing about \$2,170. This averages out to \$180.83 per month, more than 2 ½ times the \$69 provided by the fuel allowance. With such a shortfall in resources to meet heating needs, New York public assistance recipients are struggling to meet their oil heating needs.



Variability in Oil Costs over a 20 year Period 1990-2010⁵⁷

<i>Historical: 1990, 2000, 2010</i>	
New York 1990	\$1.34/per gallon
New York 2000	\$1.61/per gallon
New York 2010	\$3.10/per gallon

Variability in Oil Costs over the Past Five Years: 2011-2015⁵⁸

New York 2011	\$3.88/per gallon
New York 2012	\$4.23/per gallon
New York 2013	\$4.10/per gallon
New York 2014	\$3.74/per gallon
New York 2015	\$2.71/per gallon

Another concern about the inadequacy of the fuel allowance is the problem of poorly weatherized homes. New York offers a Weatherization Assistance Program funded by the U.S. Department of Energy, so that low income people, including renters, can improve the energy efficiency of their homes.⁵⁹ Because the majority of homes in New York State were built when energy was comparatively inexpensive, these older, draftier homes are considerably more expensive to heat than newer, more energy-efficient homes.⁶⁰ Low income people living in poorly weatherized homes will have much higher energy expenses than people who can afford to live in housing with up-to-date weatherization.

The Joint Center for Housing Studies of Harvard University prepared a Research Brief in December of 2013, explaining the dual encumbrances on low income people's abilities to meet their energy needs:

"The larger share of gross rents and of incomes that lower-income renters devote to energy costs reflects the fact that energy use is a necessity and does not change proportionately when incomes rise or fall. But the larger cost burden on low-income renters also arises from the lower energy efficiency of their housing, requiring more energy for a given level of comfort or service."⁶¹

Public assistance recipients in New York are not only likely, then, to be unable to pay an average heating bill, but are also more likely to have higher-than-average heating bills.

VII. WHAT ABOUT HEAP?

Some low income New Yorkers may have access to Home Energy Assistance Program, the income-based, federal fuel assistance program.⁶² HEAP may contribute to a low income family's ability to meet their heating needs, but it by no means covers all heating expenses. The regular (as opposed to emergency) HEAP benefit is a one-time annual grant. The applications for regular HEAP benefits this year were accepted beginning November 16,⁶³ well after the date many people in New York will have turned on their heat. Applications for emergency benefits, available to people without heat or when the loss of heat is imminent, will not be accepted until January 4, 2016.⁶⁴ Thus there are long gaps in time and funding that HEAP cannot cover.

The allocation of HEAP dollars shows that New Yorkers outside of New York City, who are less likely to have heat included in the rent, are the hardest hit by heating expenses. OTDA statistics from February 2015 show that out of \$136,668,669 non-emergency dollars authorized in HEAP benefits, \$108,778,704, or almost 80% of all HEAP dollars, are issued outside of New York City.⁶⁵ Another \$34,561,847 dollars in emergency support was issued, out of which \$33,666,050 was for households outside of New York City, or 97% of all emergency funds, as people ran out of money to heat their homes for the rest of the season.⁶⁶

VIII. THE HARSH CONSEQUENCES OF ACCEPTING EMERGENCY ASSISTANCE

Even when public assistance recipients qualify for HEAP, once those HEAP benefits are exhausted, they may still end up in need of emergency assistance from their local Social Services District. In the winter of 2014, an elderly man in Schoharie County was rescued from an unheated home.⁶⁷ The man had not asked his county for assistance, but the incident highlighted a concern in the county that not everyone is getting the help they need to meet their heating expenses. In discussing the incident with the press, Paul Brady, the Commissioner of Schoharie County Social Services, noted that a certain rhythm emerged during the harsh winter – one that showed how people go through their HEAP assistance, and still need help paying their heating bills:

“‘[A]t the end of February . . . people have exhausted their HEAP benefits,’ Brady said. ‘People now are starting to come in and ask for emergency assistance.’”⁶⁸

This emergency assistance is a last resort for families to keep their homes warm, when they have exhausted their fuel allowance and any HEAP assistance they received. In the vast majority of households, when families are unable to cover the cost of their heating fuel or utility service, an endless cycle of debt is created, leading to a

permanent 10% reduction in their public assistance grant.⁶⁹ For utility-based heating, the applicant or recipient presents their local Department of Social Services with a shut off notice from the utility company. To avoid the shut off, the local district pays the utility company on an emergency basis and provides a guarantee of full payment to the utility company for the rest of the heating season to ensure that there is heat available over the course of the winter. However, to the extent that the monthly amount paid to the utility provider exceeds the heating allowance, the local district recoups the funds paid to the utility company as an overpayment to the household. This is done in an annual “fuel reconciliation” process where the District totals the utility payments made against the total of the fuel allowance, and the difference is the overpayment, which is then recovered out of the already inadequate public assistance grant, reducing it by 10% until the debt is paid in full. A similar process occurs for non-utility (oil, propane) heat expenses. For most families who pay for their own heat, this begins an endless cycle of debt to the Social Services District as each heating season brings more heating bills that the family is unable to pay because of the inadequate fuel allowance.

The additional recoupment hardship that New York’s most vulnerable families incur illustrates how the overall structure of the inadequate public assistance grant fails to lift people out of poverty, and instead makes them even poorer, and debt-ridden. When a family is trying to pay rent with a housing allowance that covers barely 40% of housing expenses, other resources will likely be used, including money earmarked for fuel. If a family is forced to exhaust their public assistance grant on rental expenses alone, the family may then need emergency assistance to pay for heat. When families use emergency heating assistance, they put themselves in a permanent state of debt to the Social Services District, reducing their grant. And then the cycle begins again, making getting by on public assistance less possible for families every year.

IX. THE BIGGER PICTURE: THE EXPENSE OF ENERGY

In conjunction with the problem of the fuel allowance, the overall affordability of energy is a top concern for New York’s Public Services Commission. In June 2015, the Commission released a Staff Report, “Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers.”⁷⁰ The report details the towering number of New Yorkers struggling to keep up with their energy costs:

“As of April 30, 2015, there were 1,037,651 residential customers who were more than 60 days in arrears, carrying nearly \$799 million owed to utilities; and 295,797 residential customers statewide had utility service disconnected for non-payment during the preceding 12 months. Low income customers experience a disproportionately high amount of these arrears and service terminations for non-payment.”⁷¹

The allocation of HEAP dollars shows that New Yorkers outside of New York City, who are less likely to have heat included in the rent, are the hardest hit by heating expenses. OTDA statistics from February 2015 show that out of \$136,668,669 nonemergency dollars authorized in HEAP benefi ts, \$108,778,704, or almost 80% of all HEAP dollars, are issued outside of New York City.

The report calculates that a reasonable percentage of household income for a New York family to pay in energy costs is 6%.⁷² But for New Yorkers on public assistance, especially those living below the Federal Poverty Line, their energy burden could range from as high as 22% to 41% of their income.⁷³ The Commission explains that “customers accumulating the highest arrears tend to be the poorest and/or have high consumption (i.e., lower income relative to consumption). Further, “[t]he burden which the energy bill poses as a percentage of income may be the strongest determinant of a household’s ability to pay. This suggests that financial assistance needs to be strongest for customers with the lowest incomes.”⁷⁴

According to HUD, between 2013 and 2014, New York experienced the largest increase in homelessness of any state in the nation.



New York’s homeless population per 10k people is 39.4. The national average is 19.3.

X. WHAT CAN NEW YORK DO?

- ① **As a first step, New York should increase the shelter allowance to 50% of regional Fair Market Rents consistent with family size as a down payment toward better meeting the housing needs of families and single people on welfare. The cost of this adjustment will be offset by avoiding the substantially higher costs of housing homeless individuals and families as a result of the inadequacy of the shelter allowance.**
 - a. Every two years, OTDA should conduct a study of shelter costs relative to the shelter allowance.
 - b. In each State Fiscal Year following the study, the shelter allowance should be increased in accordance with the results, with the first adjustment bringing the allowance to a level consistent with the appropriate FMR for each County or Social Services District and each subsequent adjustment maintaining that standard.
- ② **After 28 years, the fuel for heating allowance must be increased in this year's budget to an amount commensurate with the market rate.**
 - a. Going forward, OTDA should be required to reassess the market rates on a regular basis, not to exceed once every five years, and increase the fuel for heating allowance accordingly.
- ③ **Because of the long-standing inadequacy of the public assistance grant in meeting fuel and utility costs, until such time as it is increased, a moratorium should be placed on the recoupment of energy-related payments from ongoing public assistance cases.**
 - a. Counties should have the option to suspend all public assistance recoupments during the moratorium period for administrative ease.
 - b. The State should consider forgiving the outstanding recoupments that resulted from the inadequacy of the fuel for heating allowance; and,
 - c. Any ongoing recoupment should be limited to 5% of the grant.

ENDNOTES

1. Lauren Stanforth, *Number of Homeless Children Explodes in State*, TIMES UNION, June 23, 2014, available at <http://www.timesunion.com/local/article/Number-of-homeless-children-still-high-after-5570153.php>.
2. *Id.*
3. THE NEW YORK STATE TECHNICAL AND EDUCATION CENTER FOR HOMELESS STUDENTS, Data and Statistics on Homelessness, SIRS Data on Student Homelessness (spreadsheets 2009 through 2014), available at <http://nysteachs.org/info-topic/statistics.html>.
4. *Id.*
5. The increase was from 69,566 to 77,430. National Alliance to End Homelessness, *The State of Homelessness in America 2014*, at 21, available at http://www.endhomelessness.org/page/-/files/2014_State_Of_Homelessness_final.pdf.
6. THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *The 2014 Annual Homeless Assessment Report (AHAR) to Congress*, October 2014, available at <https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf>.
7. *E.g.*, Hansi Lo Wang, *New York City Struggles to Keep Up with High Homeless Numbers*, August 23, 2015, <http://www.npr.org/2015/08/23/433290757/new-york-city-struggles-to-keep-up-with-high-homeless-numbers>; Harry Stevens & Greg B. Smith, *Thousands of New Yorkers Living in Dangerous 'Cluster Units' as Homeless Population Tops 59,000, a Record High*, DAILY NEWS, February 1, 2015, available at <http://www.nydailynews.com/new-york/nyc-homeless-population-tops-59k-record-high-article-1.2099150>; Robbie Couch, *Number of Homeless New Yorkers Hits Record High . . . Again*, HUFFINGTON POST, http://www.huffingtonpost.com/2015/02/03/new-york-homelessness_n_6598672.html.
8. THE NEW YORK STATE TECHNICAL AND EDUCATION CENTER FOR HOMELESS STUDENTS, Data and Statistics on Homelessness, SIRS Data on Student Homelessness (spreadsheets 2009 through 2014), available at <http://nysteachs.org/info-topic/statistics.html>.
9. N.Y. CONST. art. XVII, § 1. *See also id.*, XVIII (Housing).
10. N.Y. SOC. SERV. LAW §131(1).
11. N.Y. SOC. SERV. LAW §350(1)(a), (f).
12. Leslie Kaufman, *He Fought City Hall Over the Homeless. Now He's Battling From the Inside*, NEW YORK TIMES, October 9, 2015, available at <http://www.nytimes.com/2015/10/11/nyregion/he-fought-city-hall-over-shelters-now-he-runs-homeless-policy.html>.
13. *Id.*
14. 18 NYCRR § 352.3(a)(1).
15. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Fair Market Rent (FMR) FY 2015 and Income Limit (IL) FY 2015, available at http://www.huduser.gov/datasets/fmr/fmr_il_history/select_Geography.odn.
16. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, U.S. Housing Market Conditions, Summary, Fair Market Rents, <http://www.huduser.gov/periodicals/USHMC/winter98/summary-2.html#end3>.
17. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, <https://www.huduser.gov/portal/datasets/fmr.html>. The fair market rents listed in this chart understate the disparity between fair market rents and shelter allowances. On September 8, 2015, the United States Department of Housing and Urban Development issued proposed regulations which raise fair market rents between 3-7% in New York City, and similarly in other parts of the state, depending on the number of bedrooms in the household. See page 35 at: http://www.huduser.gov/datasets/fmr/fmr2016p/FY2016P_ScheduleB.pdf
18. 18 NYCRR § 352.3(a)(1).
19. LEGAL AID SOCIETY, *Testimony of the Legal Aid Society Before the New York State Assembly Standing Committee on Social Services and Task Force on the Homeless*, September 18, 2002 (on file with Empire Justice Center).
20. *Id.* at 8.
21. *Id.*
22. *Id.* at 7.
23. *Id.* at 7.
24. *Id.* at 7.
25. *Jiggetts v. Grinker*, 75 N.Y.2d 411, 414 (1990).
26. *Id.* at 417.
27. *Id.* at 415.
28. *Id.* at 417.
29. NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Administrative Directive 03 ADM-7, *Temporary Assistance: New Shelter Allowances and Related Changes*, August 4, 2003.
30. LEGAL AID SOCIETY, *Testimony of the Legal Aid Society Before the New York State Assembly Standing Committee on Social Services and Task Force on the Homeless*, September 18, 2002 (on file with Empire Justice Center).
31. *Id.*
32. 18 NYCRR § 352.3(a)(1).
33. NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Administrative Directive 03 ADM-7, *Temporary Assistance: New Shelter Allowances and Related Changes*, August 4, 2003 (Attachment B).
34. NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Administrative Directive 09 ADM-10, *Shelter Supplementation Plans for Safety Net Assistance Single Adults and Childless Couples*, May 28, 2009.
35. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Office of Policy Development and Research, *Costs Associated with First-Time Homelessness for Families and Individuals* at P-1, March 2010, available at http://www.huduser.gov/portal/publications/pdf/Costs_Homeless.pdf.
36. *Id.*
37. *Id.* at P-2.
38. 18 NYCRR § 352.3(a)(3).
39. NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Administrative Directive 03 ADM-7, *Temporary Assistance: New Shelter Allowances and Related Changes*, August 4, 2003.
40. *Id.*
41. *E.g.*, NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Administrative Directive 09 ADM-10, *Shelter*

Supplementation Plans for Safety Net Assistance Single Adults and Childless Couples, May 28, 2009.

42. All of these districts, besides Orange County, had litigation-based supplements as a result of Jiggetts or Jiggetts-like litigation. Orange County alone has taken creative advantage of this under-utilized regulation. ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES, Proposal for Revised Shelter Supplement, 2008, available at <http://www.empirejustice.org/assets/pdf/issue-areas/public-benefits/ssp-for-families/2008/shelter-supplement-plans-for.pdf>.

43. ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES, Proposal for Revised Shelter Supplement, 2008, available at <http://www.empirejustice.org/assets/pdf/issue-areas/public-benefits/ssp-for-families/2008/shelter-supplement-plans-for.pdf>.

44. *Id.*

45. NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* at 4, September 2011.

46. *Id.*

47. *Frequent Moves Slows Children’s Learning*, PUBLIC NEWS SERVICE – NY, October 15, 2015, available at <http://www.publicnewsservice.org/2015-10-15/early-childhood-education/frequent-moves-slow-childrens-learning/a48539-1>, citing Friedman-Krauss, A. H., & Raver, C. C. (2015, October 5). Does School Mobility Place Elementary School Children at Risk for Lower Math Achievement? The Mediating Role of Cognitive Dysregulation. *Developmental Psychology*. Advance online publication, available at <http://dx.doi.org/10.1037/a0039795>.

48. NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* at 5, September 2011; 42 U.S.C. 11432(g)(3)(B).

49. NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *Beds and Buses: How Affordable Housing Can Help Reduce School Transportation Costs* at 8, September 2011.

50. *Id.*

51. 18 NYCRR § 352.5; NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Temporary Assistance Energy Manual, available at <https://otda.ny.gov/programs/temporary-assistance/TAEM.pdf>.

52. *Id.*

53. U.S. ENERGY INFORMATION ADMINISTRATION, search “Natural Gas” on www.eia.gov, select “New York” from drop-down menu, click on year, or start at http://www.eia.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm.

54. 18 NYCRR § 352.5 (b). Monthly Allowances for Fuel for Heating: Oil, Kerosene, Propane:

Counties Of: Albany, Cayuga, Chemung, Greene, Schenectady, Schuylers, Seneca, Tompkins, Yates								
Number	1	2	3	4	5	6	7	8+
12 Month allowance	\$69	\$69	\$69	\$72	\$75	\$81	\$87	\$92

55. U.S. ENERGY INFORMATION ADMINISTRATION , Petroleum & Other Liquids, New York 1990-2005, available at http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=W_EPD2F_PRS_SNY_DPG&f=W; see also U.S. ENERGY INFORMATION ADMINISTRATION, Open Data, Weekly Heating Oil Residential Price, available at http://www.eia.gov/beta/api/qb.cfm?sdid=PET.W_EPD2F_PRS_NUS_DPG.W.

56. *E.g.*, Bottini Fuel (Catskills, Hudson Valley), <http://www.bottinifuel.com/en-us/payment-programs/monthly-budget-program/>.

57. U.S. ENERGY INFORMATION ADMINISTRATION , Petroleum & Other Liquids, New York 1990-2005, available at http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=W_EPD2F_PRS_SNY_DPG&f=W.

58. *Id.*

59. NEW YORK STATE HOMES AND COMMUNITY RENEWAL, Weatherization Assistance Program, <http://www.nyshcr.org/Publications/HousingInformationSeries/hiswap.pdf>

60. *E.g.*, SENECA COUNTY OFFICE FOR THE AGING, Seneca County Weatherization Program, <http://www.co.seneca.ny.us/departments/community-services/office-for-the-aging/weatherization-program/>.

61. Michael Carliner, *Reducing Energy Costs in Rental Housing: The Need and the Potential*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY: AMERICA’S RENTAL HOUSING, December 2013, available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/carliner_research_brief_0.pdf.

62. *E.g.*, NEW YORK OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, HOME ENERGY ASSISTANCE PROGRAM, <https://otda.ny.gov/programs/heap/>.

63. *See, e.g.*, NEW YORK OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Local Commissioners Memorandum 15-LCM-17, October 5, 2015.

64. *Id.*

65. NEW YORK OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Temporary and Disability Assistance Statistics February 2015, Table 26, available at <https://otda.ny.gov/resources/caseload/2015/2015-02-stats.pdf>.

66. *Id.* at Table 27.

67. Lissa Harris, *Frostbitten Summit Man Rescued from Unheated Home*, WATERSHED POST, February 5, 2014, available at <http://www.watershedpost.com/2014/frostbitten-summit-man-rescued-unheated-home>.

68. *Id.*

69. *See generally*, NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, Temporary Assistance Energy Manual, available at <https://otda.ny.gov/programs/temporary-assistance/TAEM.pdf>.

70. NEW YORK PUBLIC SERVICE COMMISSION, *Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers*, June 1, 2015.

71. *Id.* at 4.

72. *Id.* at 32.

73. *Id.* at 5.

74. *Id.* at 31.



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