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April 17, 2020

Michael P. Hein, Commissioner
New York State Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York 12243

Re: Public benefits and COVID-19

Dear Commissioner Hein:

We are writing to thank OTDA for taking so many affirmative steps to continue to provide benefits and services while protecting health and safety by minimizing contact between local DSS staff and clients during the COVID-19 public health emergency. To further this effort, we have created a list of some additional measures which we recommend OTDA take to maximize social distancing and to ensure enhanced assistance to needy New Yorkers. To provide some background for our concerns, we want to underscore that many people who contact us seeking assistance are themselves sick with COVID-19, particularly on Long Island.

We request a telephonic meeting with you and your staff to discuss the following items:

1. Streamlining the Application Submission Process: New York City is currently accepting Temporary Assistance applications online. Does upstate WMS have the capacity to accept and process public assistance applications on-line as is being done in New York City? This would be extremely helpful. If not, how can a Temporary Assistance application submission be improved for the low-income persons without capacity to print an online application from OTDA's website? Is there a way to facilitate remote or telephonic signatures by applicants for TA and SNAP? On Long Island, our office assists people in filling out applications over the telephone. It would expedite processing and minimize risk of viral exposure if our office could simply fill out the form and submit the application (by email, fax or regular mail) without the applicant signature. We urge OTDA to seek a waiver from USDA to utilize "telephonic signatures" for

SNAP, and strongly consider allowing this to be used for both TA and SNAP during the period of the public health emergency.

2. Eliminating the 45 day wait period for Safety Net Assistance: Would OTDA make a declaration that COVID -19 is an emergency circumstance sufficient to suspend the 45 day waiting period for SNA and authorize state reimbursement for that period? Social Services Law 153 (8) states that:

*8. Any inconsistent provision of the law or regulation of the department notwithstanding, state reimbursement shall not be made for any expenditure made for the duplication of any grant and allowance for any period, except as authorized by subdivision eleven of section one hundred thirty-one of this chapter, or for any home relief payment made for periods prior to forty-five days after the filing of an application unless the district determines pursuant to department regulations that such assistance is required to meet **emergency circumstances** or prevent eviction.*

3. Expedite application processing: We request that OTDA issue guidance reminding districts that the 30 day application processing time periods for Family Assistance and the 30 day and 45 day application processing time frames for Safety Net are maximum time frames and that districts should do everything possible to expedite application processing.

4. Sanctions: This time is particularly cruel for individuals who are being sanctioned because they have virtually no opportunity to find gainful employment or other income elsewhere. Moreover, sanctions can lead to loss of both permanent and temporary housing at a time when it is very dangerous not to shelter in place. In addition, we know that many of those sanctioned often have some type of disabling condition. We request that OTDA direct social services districts to suspend existing sanctions during this pandemic and refrain from imposing additional sanctions until otherwise directed.

We applaud the steps that your agency has already taken in this regard by advising districts not to take negative action for non-compliance with actions that require in-person contact such as housing search or job search. 20 TA/DC023, Temporary Assistance, Q.3/A.3; Employment, Introductory Note, p.5. However, negative actions that do not require in-person contact are still authorized such as noncompliance with drug assessment. Given the limited access that low income people have to telephones and cell phone minutes, and in rural areas, limited access to functioning or reliable cell and internet service, we strongly recommend that there be a suspension of, and moratorium on, all sanctions.

Moreover, because the sanctions can be imposed for failure to meet SNAP employment and training requirements in those districts that elect to operate a mandatory SNAP E&T program, we also urge OTDA to restrict this option in light of the current emergency. It is not necessary to comply with meeting data metrics, nor is it the best use of SNAP worker time to code and document sanctions, while caseloads are rising and applications need to be processed.

5. Homeless individuals and families: With respect to the extremely vulnerable homeless populations across the State, we recommend that OTDA direct social services districts to:

- A. House all homeless individuals and families, including undocumented persons, and not separate families ;
- B. Utilize hotel rooms and other non-congregate spaces to house the homeless, with priority given to those who are over the age of 60, disabled, immune compromised/suppressed or medically fragile
- C. Although legal evictions are currently stayed, we are beginning to hear client reports about illegal evictions and lockouts. We request that OTDA do the following:
 - a) Direct local districts to partner with legal services programs, other community organizations with their own staff, or with pro bono counsel to represent tenants faced with illegal lockouts;
 - b) Direct local districts to house the homeless and suspend any policies or procedures requiring the applicant to “verify” homelessness;
 - c) Allow individuals and families receiving THA to “shelter in place” until the COVID-19 crisis has abated, if the current THA placement is appropriate. Permit new THA applicants and current THA recipients who need to move to another location to apply via telephone rather than requiring them to report to a social service center;
 - d) Make homelessness prevention funding available to provide legal assistance for illegal lockouts. This could include support to legal aid and legal services offices to provide such assistance or to allow them to recruit and train pro bono attorneys.

6. Emergency Assistance for personal care and hygiene: Advise local districts that, due to COVID-19, persons requesting emergency assistance allowances for personal care and hygiene shall be presumed to be eligible and granted assistance for such items immediately. This is critical to contain the spread of the virus. Such action is authorized by 18 NYCRR 370.3(f).

7. SNAP Operations:

- A. OTDA has requested and been granted several critical waivers for SNAP case handling that will be helpful to both applicants and local social services districts to make it easier to respond to a rapidly expanding application pool. Additionally, we urge the agency to consider seeking additional waivers.
 - a) Suspend all claims activity—Like the State of Massachusetts, New York could apply for a waiver from USDA to suspend claims activity during a busy and chaotic time. While the State has already raised its threshold for claims establishment, this would enable workers spending time on claims activity to devote their efforts to preventing application processing delays and ensuring

that expedited benefits are issued timely to every household facing a critical food shortage.

- b) Purchase of hot foods—With many low-paid essential workers doing critical work in shifts, and many retail locations currently closed, a hot food waiver would help support those stocking grocery shelves, cleaning hospital facilities and otherwise performing critical functions at times when the food purchase options are limited.
 - c) Telephonic Signatures—At a time when face-to-face interaction is prohibited and many offices are operating on barebones staff onsite, allowing a telephonic signature on paper applications would make processing of SNAP a more accessible to the public and facilitate worker safety.
- B. New York currently has a pending application to operate a P-EBT program as authorized by the Families First Coronavirus Response Act. We would welcome the opportunity to discuss how to maximize benefit issuance by coordinating data with other agencies and how cards will be issued to those households who may not already have a common benefit identification card.
- C. Finally, is New York making other efforts to maximize food assistance? We would welcome any information you may be able to provide about WIC access and seeking to expand TEFAP distributions.

8. Child support and good cause: GIS message 20 TA/DC016 at page 4-5, noted that there is no time frame for requiring child support cooperation and that districts could delay this requirement when determining public assistance eligibility. Since establishing good cause requires obtaining documentation which may be difficult to procure at this time, we request that OTDA direct social services districts to suspend the child support cooperation requirements. When the pandemic is over, if good cause is ultimately denied, the effective date of any order obtained by the district would be the date that the family began to receive public assistance [Fam. Ct. Act § 440(1) (a)], so there will be no harm to the district.

9. Child support arrears and stimulus payments: Although the CARES Act exempts stimulus payments from various government tax offset programs, child support arrears is not among those exemptions. Therefore, when an individual with child support arrears receives a stimulus payment, any child support arrears will be deducted from the stimulus payment before any remaining balance is distributed to the individual. If assigned child support is owing to both the family and the social services district, the tax offset process will result in arrears being distributed to the social services district first, with the remainder, if any, then being sent to the children and custodial parent.

Since this is a time of critical economic instability for thousands of low-income New York families, we recommend that OTDA direct social services districts to “pass through” to the

family, any arrears sent to social services districts when both the district and the family are owed child support.

10. Treatment of federal stimulus benefits for Family Assistance households: Thank you for issuing 20 TA/DC027, which makes stimulus payments exempt from the lump sum rule for Temporary Assistance for Family Assistance, Safety Net Assistance, Emergency Assistance to Families and Emergency Safety Net Assistance, for the month of receipt and the following two months. With respect to Family Assistance benefits, we believe that the federal law requires a twelve month exemption period. The CARES Act includes a cross reference that the credit will be treated like EITC when it refers to the Refundable Credit (subpart C) section of the IRS Code:

CARES SEC. 2201. 2020 RECOVERY REBATES FOR INDIVIDUALS.

IN GENERAL.—Subchapter B of chapter 65 of subtitle F of the Internal Revenue Code of 1986 is amended by inserting after section 6427 the following new section:

“SEC. 6428. 2020 RECOVERY REBATES FOR INDIVIDUALS.

(a) IN GENERAL.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by subtitle A for the first taxable year beginning in 2020 an amount equal to the sum of—

“(1) \$1,200 (\$2,400 in the case of eligible individuals filing a joint return), plus

“(2) an amount equal to the product of \$500 multiplied by the number of qualifying children 5 (within the meaning of section 24(c)) of the tax6 payer.

(b) TREATMENT OF CREDIT - The credit allowed by subsection (a) shall be treated as allowed by subpart C of part IV of subchapter A of chapter 1.

The forgoing language provides that stimulus payments shall be treated as refunds, which are in C of part IV of subchapter A of chapter 1 (26 U.C.S. § 31 et. seq.). 26 U.S.C. § 32 includes the EITC. The treatment of the EITC is in the language quoted below in 26 U.S.C. § 6409 which provides:

Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds. [Emphasis supplied.]

We therefore request that you amend the GIS message 20TA/DC027 to reflect this exemption for recipients of Family Assistance.

11. Treatment of federal stimulus benefits for SNAP households: Currently, GIS 20 TA/DC027 makes a distinction in how stimulus payments are treated for eligibility purposes between recipients of on-going SNAP benefits and new applicants to SNAP, relying on language in previously existing SNAP regulations. New applicants to SNAP may only have their stimulus payment exempt from treatment as a resource in the month it is received and the following month. We believe that the federal law makes the twelve month exemption period available for all SNAP households, regardless of how long they have received benefits. Newly released guidance from the Food and Nutrition Service at USDA states:

“Pursuant to 26 U.S.C. § 6409, these rebates are excluded from consideration as income in the month of receipt and as an asset for 12 months following receipt for SNAP purposes. A household would not be considered to have exceeded the income limit due to these payments because they are excluded, but receipt of these payments could affect a household’s eligibility after 12 months if the payments cause the household to exceed the resource limit.” Supplemental Nutrition Assistance Program—Questions and Answers, COVID-19, Set #1, Q. 1. Available online at <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-COVID-QA1.pdf>.

The statutory provision, 26 U.S.C. § 2609, *supra*, references the exemption from treatment as a resource for the express purpose of determining eligibility. There is no basis in the federal statutory language relied on by FNS to draw a distinction between the treatment of stimulus payment for SNAP applicants and SNAP recipients. Similarly, the FNS question and answer document sets a single standard, without this distinction. OTDA should revise the GIS to do the same and authorize the same 12 month resource exemption for new SNAP households that is given to SNAP recipient households.

12. Outreach: Applicants for Recipients of Temporary Assistance who have not filed tax returns for 2018 or 2019 are able to get a stimulus payment if they submit the "non-filer" form to the IRS. See: <https://www.irs.gov/coronavirus/non-filers-enter-payment-info-here> Will OTDA be providing social services districts with information that they can distribute to applicants and recipients as to how to access stimulus payments? Can you put this information and a link on your web site?

13. Burial Assistance: We are aware that in hard hit areas, there has been a call for the expansion of the state's burial benefit under Social Services Law 141. See: <https://www.npr.org/sections/coronavirus-live-updates/2020/04/11/832572922/queens-among-hardest-hit-minority-communities-in-nyc> Will the state be providing additional assistance to social services districts in meeting burial costs, particularly burial assistance to families of undocumented immigrants?

Thank you for your consideration of the forgoing, and we hope to meet with you soon.

Very truly yours,

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