

Public Assistance Budgeting Intensive

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Things we will cover today:

- How to calculate a public assistance budget for families with and without children;
- How to treat earned and unearned income when calculating a budget;
- Beyond the basic budget:
 - Joint Custody;
 - Three generation households;
 - Sanctioned households;
 - Non-legally responsible people living together.

Terminology

- **Public assistance** – includes Family Assistance and Safety Net Assistance Programs
- **Family Assistance** is 100% federally funded from the Temporary Assistance with Needy Families (TANF) Block Grant. Families must have children and have not received TANF benefits for more than five years.
- **Safety Net Assistance (SNA)** is 79% locally funded and 21% state funded. Families who have reached the five year time limit are funded with SNA, as are all adults who have no children in the household.

Public Assistance Budgeting: The Basics

Resources

- The Benefits Law Database
<http://onlineresources.wnylc.net/welcome.asp?index=Welcome>
- A community of smart problem-solving colleagues – the Benefits list serve. Sign up at:
<http://service.wnylc.com/email.signup/email.signup.cgi>
- The Social Services Law and regulations (18 NYCRR)
- OTDA Administrative Directives (ADMs), Informational Letters (INFs), and Local Commissioner’s Memos(LCMs) available at:
<https://otda.ny.gov/policy/directives/2021/>
- General Information System (GIS) messages, available at:
<https://otda.ny.gov/policy/gis/2021/>
- The TA Source Book, available at:
<https://otda.ny.gov/programs/temporary-assistance/TASB.pdf> (index and search function work only on Microsoft Edge)

The Standard of Need

- The standard of need is the total of all grants that a person or household might be eligible to receive assuming no other income. It includes the regular recurring basic needs grant, the shelter allowance plus any special grants to which a person might be entitled. 18 NYCRR 352.1.
- The grants vary by county of residence and household size.
- The maximum shelter allowances are set forth in regulation and vary among the social services districts. 18 NYCRR 352.3
The recurring basic needs grant is in statute and regulations. SSL 131-a(2)(a); 18 NYCRR 352.2(d). The fuel for heating allowances are in 18 NYCRR 352.5(b).

The Standard of Need

- In no social services district is the standard of need enough to bring the PA household up to even 50% of the federal poverty level. For a household of three, the federal poverty level is \$1830/month. The standard of need for a family of three is \$836 per month in Suffolk County and \$834 per month in Nassau County.
- Worksheets to help you calculate the standard of need are available at:
https://empirejustice.org/resources_post/standard-need-charts/

Suffolk County

Household with children eff. 10/1/2012

HH	Flat grant that each household gets			Shelter Allowance	Heating (Fuel) Allowance 18 NYCRR 352.5(a) (pick one)				
	Basic Grant	HEA & SHEA	Total	with children	Total	Oil, propane, kerosene	Nat'l gas, coal, wood other	Electricity	Grand Total - standard of need
1	158	25.1	183.1	310	493.1	70	56	90	
2	252	39.5	291.5	358	649.5	70	56	90	
3	336	53	389	447	836	70	56	90	
4	433	68.7	501.7	503	1004.7	73	58	94	1077.70
5	534	84.7	618.7	560	1178.7	77	61	99	
6	617	97.2	714.2	586	1300.2	82	65	106	
7	702	109.7	811.7	611	1422.7	88	69	113	
8	787	122.2	909.2	611	1520.2	93	74	120	
PLUS 1	85	12.5	97.5						

Nassau County

Household - no children eff. 10/1/2012

HH	Flat grant that each household gets			Shelter Allowance		Heating (Fuel) Allowance 18 NYCRR 352.5(a) (pick one)				Grand Total - standard of need
	Basic Grant	HEA & SHEA	Total	without children	Total	Oil, propane, kerosene	Nat'l gas, coal, wood other	Electricity		
1	158	25.1	183.1	288	471.1	70	56	90		
2	252	39.5	291.5	334	625.5	70	56	90	\$695.50	
3	336	53	389	384	773	70	56	90		
4	433	68.7	501.7	419	920.7	73	58	94		
5	534	84.7	618.7	453	1071.7	77	61	99		
6	617	97.2	714.2	468	1182.2	82	65	106		
7	702	109.7	811.7	527	1338.7	88	69	113		
8	787	122.2	909.2	561	1470.2	93	74	120		
PLUS 1	85	12.5	97.5							

A Basic Budget – No Income

- **The Rule:** Add together basic grant, HEA,SHEA, shelter as paid up to the maximum, and fuel allowance if the household pays for heat. See charts.
- **Statute/Regs/policy documents:** SSL 131-a(2), (3-c),(3-d); 18 NYCRR 352.2(d); 352.3(a)(1); 352.5(b).
- Plus special allowances as eligible.

Special Allowances

- Pregnancy allowance - \$50 per month from the later of verification or the 4th month of pregnancy. 18 NYCRR 352.7(k).
- Restaurant allowance - \$64 per month; plus \$36 where there is a pregnant woman in the household or a child under 18, 19 if attending school. 18 NYCRR 352.7(c).
- Visitor's allowance - \$4 per day. TASB, Ch.13, sec. L.

Basic Budgeting example: Household with children

- Pregnant mother with three children living in Central Islip. Basic needs grant, plus HEA an SHEA = **\$501.70**.
- Rent is \$700 per month; shelter allowance of **\$503** is maximum rent that will be paid.
- She pays separately for heating;
- Oil heat. **\$73/month**
- Pregnancy allowance = **\$50/month**
- Total grant is **\$1127/month**
- **Grant is rounded down.** 18 NYCRR 352.29(d).

Household member on SSI

- **The General Rule:** SSI is invisible. The SSI recipient is not included in the household count and her income is not counted.
- **Statute/Regs/policy documents:** SSL 131-c(1); 18 NYCRR 352.2(b).
- **Exception: “Rice” Budgeting**
- **The Rule:** When one spouse in a married couple receives SSI, calculate a budget for two, and the non-SSI spouse will get $\frac{1}{2}$ of that amount.
- **Statute/Regs/policy documents:** 18 NYCRR 352.32(e)(1); 94 ADM-10.

Rice budgeting

- Husband and wife live together in Nassau County
- Wife receives SSI
- Their rent is \$500 per month, and they heat with oil heat.
- Standard of need for a household of 2 is \$695.50
- $\frac{1}{2}$ of \$695.50 = \$347.75, rounded down to \$347.
- Non-SSI spouse receives \$347 per month.
- Single adult living alone in Nassau County

Budgeting children in joint custody situations

- **The Rule:** Where parents share responsibility for raising a child, parent can receive a full shelter and fuel allowance for the child and a pro-rated living allowance based on the number of days that the parent is responsible for the child.
- **Statute/Regs/policy documents:** 18 NYCRR 352.29(f); 94 INF-45; Temporary Assistance Sourcebook Chap. 9, Sec. I. 4.

Budgeting children in joint custody situations

- 94 INF-45 contains a list of 15 questions that can be useful in determining shared responsibility. They include:
 - Who pays for child care or school expenses?
 - Who transports child to and from day care, school?
 - Who arranges medical and dental care?
 - Who is emergency contact at school, day care?
- The primary source of the information regarding the family's circumstances should be the applying parent.
- The legal court order regarding custody of the child is not the determining factor.

The Public Assistance Filing Unit

- The Rule: An applicant for public assistance must include his or her minor children and those who want to receive public assistance that are living within the same dwelling unit. When a minor child is named as an applicant for public assistance, his or her natural or adoptive parents and natural, adoptive or blood related siblings must be included on the application so long as they reside together.
- **Statute/Regs/policy documents:** SSL 131-a; 18 NYCRR 352.30(a).

Treatment of income

- Earned income
 - is subject to certain disregards, depending upon whether the family has children;
 - Can be disregarded entirely for certain recipients under age 21
- Unearned income reduces the household grant dollar for dollar;
- Some income is disregarded entirely or treated as income only in the month received and as a resource thereafter.

Earned income – Temporary Assistance HH with children

- **The Rule:** In households with children, \$90 disregard of gross earnings and then 55%* of remaining income IF parent has been on assistance 1 of the last 4 months before becoming employed. Gross earned and unearned income can not exceed the poverty level.
- **Statute/Regs/policy documents:** The Resources: SSL 131-a (8)(a)(iii); 16 ADM-4.

*This number is revised effective every June 1 and published annually in an ADM. See 21 ADM-02, available at <https://otda.ny.gov/policy/directives/2021/ADM/21-ADM-02.pdf>

The 185% Cap

- Income disregards are applied until the household reaches 185% of the standard of need or the poverty level, whichever is lower. SSL 131-a(8)(a)(iii), (10).

Earned Income

Safety Net Assistance – no children

- **The Rule:** Only the first \$90 is disregarded
- **Statute/Regs/policy documents:** SSL 131-a(8)(ii); 18 NYCRR 352.3(a)(1); 352.5(b).

Earned income - Student earnings

- **The Rule:** Student earnings are disregarded so long as the student is under 21 and enrolled in school full or ½ time. This includes enrollment in post-secondary education. This income is also disregarded in determining household gross income.
- **Statute/Regs/policy documents:** SSL 131-a(8)(i); 18 NYCRR 352.20(a); 04 ADM-06.

Self-Employment Income

- Income disregards are applied after expenses relate to production are subtracted.
- Expenses directly related to producing the goods or services, including expenses for inventory, and without which the goods or services could not be produced must be excluded to determine the amount of earned income. However, depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods are not excluded. 18 NYCRR 352.17(b)(2).

Tax Credits

- All tax credits are exempt as income in the month received and for the following twelve months as a resource.
<https://otda.ny.gov/policy/gis/2011/11DC002.pdf>
- This includes the new expanded Child Tax Credits
<https://otda.ny.gov/policy/directives/2021/INF/21-INF-03.pdf>
- The earned income tax credit is exempt in the month received and exempt as a resource thereafter with no time limit.

Emergency Rental Assistance Program (ERAP)

Rental and utility assistance received through ERAP do not count as income for purposes of determining eligibility for Public Assistance or Supplemental Nutrition Assistance Program (SNAP) benefits.

- For Public Assistance recipients, when the ERAP funds are covering future rents, the payment will cover the difference between the Public Assistance shelter allowance* and the monthly rent cost.

* The OTDA Q and A on the ERAP web site (see Q. 1, Other) uses the word “grant,” not shelter allowance. OTDA has clarified in an email that the word “grant” means shelter allowance in this context. 9/15/2021 email from Alison Maura to Susan Antos, on file at Empire Justice Center.

Other income - Child Support

- Child support must be assigned to the social services district as a condition of eligibility and is not received directly by the recipient.
- The first \$100 of child support collected by the support collection unit for a child under 21 (or \$200 for 2 or more children) is passed through to the TA recipient household and disregarded from consideration as income if the support was paid in the month it was due.
- The local DSS retains all the support except the pass through, and reimburses themselves, the State and federal government for benefits paid to the child's household.

Exempt Resources

- \$2,000 in general, or \$3,000 if there is a household member over 60;
- Home;
- Vehicle worth less than \$12,000 – SSL 131-n(1).
- Burial Plot and Funeral Arrangements up to \$1,500;
- Earned Income Tax Credit;
- Individual Development Accounts;
- Furniture, clothing, and appliances;
- Personal property necessary for employment.

18 NYCRR 352.23(b)

Motor vehicles as a resource

- When the fair market value of a vehicle exceeds \$12,000, the district must determine the applicant's equity value, by looking at the amount of outstanding loans. See: <https://otda.ny.gov/policy/directives/2020/ADM/20-ADM-08.pdf> *Stewart v. Roberts*, 163 A.D. 3d 89 (3d Dep't 6/21/18) (affirming Sup Court holding on the merits); 193 A.D.3d 121 (2021)(affirming class certification).
- If the person has no other resources, they can add that \$2000 limit to the value of the car and own a car with a fair market value up to \$14,000. See Temporary Assistance Source Book, Ch. 19, p. 19-3, available at: <https://otda.ny.gov/programs/temporary-assistance/TASB.pdf> ; fh # 5105384Q (12/2/2008) available in the Fair Hearing Bank of the Online Resource Center at <http://onlineresources.wnylc.net/> .
- If the person owns a car with a value over \$12,000/\$14,000, the social services district must look at whether there is a car loan that reduces the person's equity in the vehicle to an amount that is under the \$2000 resource limit. See: <https://otda.ny.gov/policy/directives/2020/ADM/20-ADM-08.pdf>

Public Assistance budgeting: Sanctions and special budgeting situations

Lump sum budgeting

- **The Rule:** Only applies to recipients.
- After certain exclusions (\$2000 resource level; auto purchase or other set asides made within 90 days); ineligibility is determined by dividing the remaining lump sum by the household standard of need.
- **Statute/Regs/policy documents:** SSL 131-a(12); 131-n(1); 03 ADM-10. .

Budgeting a household with a work rules or drug and alcohol sanction

- **The Rule:** The household budget is reduced pro rata to exclude the needs of the sanctioned person(s).
- Length of work rule sanction depends upon whether the case is FA or SNA.
- Length of Drug and Alcohol sanction:
 - Refusal to comply with screening, assessment or release of treatment information relates in a pro rata sanction until compliance 02 INF-22, Q. 1, p.11.
 - Failure to comply with treatment results in Durational Sanction
 - - 45 days for first instance
 - 120 days for second;
 - 180 days for third and subsequent.
- **Statute/Regs/policy documents:** SSL 131-a(2), (3-c),(3-d); 18 NYCRR 352.30(d)(2).
- The rest of the household is converted to a non-cash Safety-Net case.

Budgeting for refusal to cooperate with child support enforcement

- **The Rule:** Grant is reduced by 25%.
- **Statute/Regs/policy documents:** SSL 131(16); 18 NYCRR 352.20(d)(4).

Budgeting a household: other sanctions

- **The Rule:** Refusal to sign a mortgage results in the needs of the individual whose name is on the deed being taken off the grant until compliance. OTHER HOUSEHOLD MEMBERS REMAIN ELIGIBLE.
- **Statute/Regs/policy documents:** SSL 131; 18 NYCRR 352.30(d)(1).
- Effective April 1, 2022, this provision is repealed prospectively.

Three Generation Households

Teen parent under 18

- **The Rule:** Where a parenting teen resides with a legally responsible relative, the income of the legally responsible relative will be deemed to the teen parent and the teen parent's child. Where older adult is not applying, step-parent deeming applies.
- **Statute/Regs/policy documents:** 18 NYCRR 352.30(c)(1).

Three Generation Households parent between 18-21

- **The Rule:** Where oldest generation is not on assistance, step-parent deeming applies only against the needs of the middle generation. Youngest generation receives grant for its own needs.
- **Statute/Regs/policy documents:** 18 NYCRR 352.30(c)(2).

Step-parent budgeting

- **The Rule:** If the step-parent is not applying for assistance, disregard \$75 from the net income of the step-parent if employed, subtract the needs of step-parent and his dependents not considered in the PA eligibility determination (using a PA budget), deduct child and spousal support actually paid. Remaining amount is deemed available to those applying.
- **Statute/Regs/policy documents:** SSL 131-a(9); 18 NYCRR 352.14(3); 83 ADM-30; 83 ADM-55; TASB Chapter 18,(P)(1), p. 24. *Kelly v. Perales*, 566 F. Supp 785 (1983). Note - reg does not reflect the holding in *Kelly* which requires net income (reg says gross income).
- Net income excludes federal, state and local taxes, FICA and disability withholding.

Family Arrears

- Families on public assistance who applied after 10/1/09, may receive lump sums of retroactive child support which was owed to them before they went on public assistance. (Child support arrears assigned before 10/1/09 remain assigned to the social services district to reimburse it for assistance paid).
- Family Arrears received in one payment is treated as a lump sum. 03 ADM-10; 09 ADM-19.
- Recurring Family Arrears are treated as unearned income;

Cooperative Budgeting

- Applies when two or more assistance units are in the same dwelling unit and have separate TA grants.
- Are they a single or separate economic unit?
 - Single economic units
 - a) Pool income and resources; and
 - (b) Purchase and prepare food together; and
 - (c) Share the cost of household expenses, such as utilities, fuel, insurance, and car maintenance.
 - **Separate economic units** are determined to exist if a head of household states that some, but not all, of the above arrangements apply to their household.
 - Households may change their financial living arrangements at any time.
- **Statute/Regs/policy documents:** 18 NYCRR 352.32(e)(1);TASB, Ch. 13, sec. F.

Cooperative Budgeting

- SEPARATE ECONOMIC UNIT When the adults in the co-op case indicate that they are functioning as separate economic units NO items of need are prorated, including shelter.
- SINGLE ECONOMIC UNIT – PRORATION OF NEEDS – When the adults in the co-op cases indicate that they are functioning as a single economic unit and there are no legal lines of responsibility between members of either case, all items of need are prorated **EXCEPT shelter**. Each case would receive the lesser amount of the prorated actual cost or the maximum shelter allowance for the number of individuals in each particular case.

Questions?

Please feel free to contact me for more information at:

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