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Joint Legislative Public Hearings on 2023-2024 Executive Budget Proposal

Human Services

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INTRODUCTION

We appreciate the opportunity to submit this testimony on behalf of Empire Justice Center. This testimony addresses issues in the Executive Budget that pertain to human services.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip (Long Island). Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low-income individuals, as well as classes of New Yorkers in a wide range of poverty law areas including health, public assistance, domestic violence and Supplemental Security (SSI)/Social Security Disability (SSD) benefits.

Support for New York State's human services has never been more essential. As New York works to recover from the pandemic, we must strengthen access to healthcare and other benefits and address the disparities laid bare. We must prepare thoughtfully for coming changes, including the end of the public health emergency and the expansion of the Medicare Savings Program. We must acknowledge and address ongoing challenges – including the importance of programs that reduce homelessness and housing insecurity, and the imperative to support the increasing number of people suffering from long COVID. We urge the Legislature to decisively affirm its Constitutional commitment to aid and support the most vulnerable New Yorkers, to help ensure an equitable recovery for all of us.

This testimony touches on the work of the New York State Office for the Aging, the Office of Children and Family Services, the Office of Temporary and Disability Assistance, and the Department of Health. We will discuss the positions set forth below:

1. **Increase the legislature's funding for the Disability Advocates Program (DAP) by $500,000 and restore its previous $1.5 million add-on to the Executive Budget.**
2. **Allocate $8 million in the final budget to the Office of Children and Families to establish a Kinship Legal Network pilot program.**
3. **Expand and improve the Rental Supplement Program**
4. **Increase the shelter allowances to 100% of Fair Market Rent.**
5. **Increase the basic needs grant to reflect inflation.**
6. **Amend the governor's bill to more comprehensively address "skimming" of public benefits.**
7. **Repeal the public assistance resource test.**
8. **Invest a total of $2.767 million in the Managed Care Consumer Assistance Program (MCCAP) in the final budget**
9. **Maintain current eviction prevention representation by continuing to fund the Office of Temporary and Disability Assistance's Emergency Rental Assistance Program at $35 million in the final budget.**

RESTORE THE STATE LEGISLATURE'S INVESTMENT OF $1.5 MILLION IN THE DISABILITY ADVOCACY PROGRAM (DAP)

This year marks the 40th anniversary of the Disability Advocacy Program (DAP), which for four decades has been helping low income disabled New Yorkers whose federal disability benefits (Supplemental Security Income (SSI) or Social Security disability (SSD)) were denied or cut off. The disability appeals process is very complex, and DAP works to overcome the many hurdles and complications faced by claimants along the way. Financial issues, insecure housing, homelessness, and the very symptoms of a disability are some of the factors that often make it exceedingly difficult for claimants to gather evidence necessary to their claim. These obstacles have been compounded by the effects of the COVID-19 pandemic.

Since the inception of DAP in 1983 through June 2022, DAP providers, who work in every New York county:

- Assisted over 238,000 disabled low-income New Yorkers.
- Helped put approximately $895 million in retroactive benefits in their hands to be spent in local economies.
- Generated over $244 million in federal funds paid back to New York State and the counties.
- Saved over $321 million in avoided public assistance costs.

DAP services help stabilize people's incomes, which in turn helps to stabilize housing, health, and quality of life overall. For every dollar invested in DAP, at least $2 is generated to the benefit of New York's state and local governments.

Prior to this year, overall DAP funding had stayed flat for six years, while program costs increased and the process of applying for disability benefits became exponentially more difficult due to both COVID-19 as well as several new harmful regulations.[1] Pandemic-related service disruptions at the Social Security Administration (SSA) are ongoing, with the agency reopening only ten months ago with the lowest staffing level in decades. With many claimants effectively cut-off from services, there is an increased burden on DAP providers to facilitate access to SSA and its programs.

Last year, DAP funding was increased in the Executive udget for the first time since 2016, with the Executive doubling its funding of DAP from $5.26 to $10.52 million. Until then, Executive

[1] In 2019, despite strong objections from advocates and members of Congress, SSA reinstituted an additional desk review before a hearing can be held. See Social Security Advisory Board, Examination of Social Security's Reinstatement of Reconsideration, Apr. 2020, available at https://www.ssab.gov/wp-content/uploads/2020/05/2020-Reconsideration-Reinstatement-Brief.pdf. In addition, a "major overhaul" of Social Security rules in 2017 changed how evidence is accepted and evaluated, making it easier for claims to be denied, as a person's treating source is no longer given preferential weight. See Social Security Administration, Revisions to Rules Regarding the Evaluation of Medical Evidence, available at https://www.ssa.gov/disability/professionals/bluebook/revisions-rules.html.

funding for DAP had been at a net loss since being cut from $5.74 million in 2008. An investment of $2 million from the State Legislature over the Executive udget allocation resulted in a total funding level of $12.52 million last year. This amount helped rebuild program resources after years of flat funding and helped DAP confront the current crisis. To fully meet the current demands facing DAP and the increased complexity of the Social Security appeals process, the Legislature should restore its $3 million add-on of prior years, providing for a total budget of $13.52 million. Half of this cost is borne by the local counties, leaving the actual cost of the request to the Legislature at $1.5 million.

Increased Need for DAP Representation

There is a significant increased need for DAP representation. From March 2020 through April 2022, Social Security Administration (SSA) local field offices were closed to the public for almost all in-person services. The harm to disabled claimants that resulted directly from these closures has been the subject of concern among advocates and the communities that rely on the programs; in 2021 it was the subject of several press reports, as well as a hearing in the U.S. Senate.[2]

Although its local offices are now reopened, severe understaffing at SSA has led to longer delays in application and appeals processing than ever before, as well as wait times when trying to reach the office. SSA reports a drop of 7% in its staffing compared to prior to the pandemic, with an historically high number of employees leaving the agency due to unreasonable workloads.[3]

Even with the reopening of SSA offices, many aspects of the disability claims process now rely more heavily on electronic processes. However, a digital divide leaves many low-income New Yorkers lacking technology and other resources needed for access. This is especially true for claimants with limited English proficiency. Advocates continue to help claimants overcome these obstacles by increased outreach and by facilitating communication with SSA and related systems.

DAP programs have prioritized and intensely expanded their outreach methods to reach clients, including the use of several types of media, intake clinics, and partnerships with local representatives and community-based organizations. DAP programs have also continued

[2] J. Stein, D. Weaver, Half a million poor and disabled Americans left behind by Social Security, The Hill, Nov. 15, 2021, available at https://thehill.com/opinion/finance/581522-half-a-million-poor-and-disabled-americans-left-behind-by-social-security?rl=1; News10NBC Investigates: Social Security Office frustrations, WHEC.COM, available at https://www.whec.com/rochester-new-york-news/investigates-social-security-office-frustrations/6316207/; U.S. Senate, Social Security During COVID: How the Pandemic Hampered Access to Benefits and Strategies for Improving Service Delivery, 4/29/21, available at https://www.finance.senate.gov/hearings/social-security-during-covid_how-the-pandemic-hampered-access-to-benefits-and-strategies-for-improving--service-delivery.

[33] Jeffrey Nesbit, We Want to Provide You with Timely, High Quality, and Accurate Service, Social Security Administration, Nov. 22, 20122, available at https://blog.ssa.gov/we-want-to-provide-you-with-timely-high-quality-and-accurate-service/

engaging SSA with new levels of advocacy. DAP advocates meet quarterly on a regional basis with SSA regional management and other senior management to discuss issues and troubleshoot systemic issues with service at the local offices.

Historically, DAP claimants have been significantly more successful compared to general success rates in New York and nationally.[4] But each low-income individual with a disability we cannot serve is left without assistance to navigate the increasingly complex disability benefits appeals process. The inability to successfully access this essential benefit will result in more housing instability and worsening health, with a disproportionate impact on Black and brown communities.

New Claims Based on Long COVID

The current demand for services now also includes DAP clients with claims based on the long-term effects of COVID-19, including lung scarring, heart damage, and neurological and mental health issues. SSA has recognized Long COVID as a new condition and has published some preliminary, emergency guidance on how related claims will be evaluated.[5] Because medical knowledge of Long COVID is rapidly evolving and much is still unknown, there are significant challenges in pursuing a disability claim based on this condition.

The pandemic has been described as representing the "largest influx of new entrants to the disability community in modern history."[6] For New York State, the American Academy of Physical Medicine and Rehabilitation (AAPM&R) estimates there are 1,972,484 cases of Long COVID as of February 2023, based on an estimated 30% of the total acute infections.[7] A significant number of these individuals will see their ability to work greatly diminished. A study recently released by the NYS Insurance Fund (NYSIF) found that of workers who are experiencing Long COVID, 18% were unable to return to work even a year after their initial infection.[8]COVID is considered a mass-disabling event, and DAP is essential to addressing the crisis.

These claims involve many challenges, including lack of information, difficulties accessing treatment, and securing evidence that fully documents and captures some of the most common symptoms, such as extreme fatigue and brain fog. DAP has been coordinating with physicians specializing in Long COVID to provide ongoing training regarding medical aspects of

[4] NYS Office of Temporary and Disability Assistance, Disability Advocacy Program Report to the Legislature Program Period Jan. 1, 2020 to Dec. 31, 2021, available at https://otda.ny.gov/resources/reports/DAP-Report.pdf.
[5] SSA Emergency Message 21032 REV, Evaluating Cases with Coronavirus Disease 2019 (COVID-19), available at https://secure.ssa.gov/apps10/reference.nsf/links/08092022072836AM.
[6] A. Abrams, How COVID-19 Long Haulers Could Change the U.S. Disability Benefits System, Time, (7/20/21) available at https://time.com/6081876/covid-19-long-haulers-disability-benefits/.
[7] American Academy of Physical Medicine and Rehabilitation, PASC Dashboard, available at https://pascdashboard.aapmr.org/.
[8] NYSIF, NYSIF Releases Report on Long-Term Impacts of COVID-19, Jan. 24, 2023, available at https://ww3.nysif.com/en/FooterPages/Column1/AboutNYSIF/NYSIF_News/2023/20230124LongCovid

this new condition. Our advocates have also been in discussion with SSA about its policies related to Long COVID claims and the pandemic generally.

Increased Access to DAP Services

With increased funding from the Executive in the current fiscal year, DAP expanded for the first time in decades and saw the inclusion of two new legal services providers. Northern Manhattan Improvement Corporation (NMIC) is now providing DAP services in Northern Manhattan and parts of the Bronx, and Mobilization for Justice is serving all counties in New York with a focus on individuals with mental health impairments. As a result, there is now increased access to DAP representation in some of the most underserved communities in New York State.

Last year's increase in the Executive Budget resulted in a long-needed expansion across the state. When surveyed, 100% of DAP provider organizations reported the ability to hire and/or allocate additional attorneys and staff; 64% report an expansion in services. Without this increase, the DAP program would be in crisis, with dire consequences for disabled New Yorkers.

To fully meet the demand for DAP services, however, the Legislature should invest its historic $1.5 million add-on – an amount that would total $3 million when matched by the county. This would allow the program to meet the increased demand from new cases and expand the pipeline of federal dollars coming back to the State.

Recommendation: In this time of ongoing crisis, we are asking that the Legislature increase its funding for DAP by $500,00 and restore its previous $1.5 million add-on to the Executive Budget. With the county match, this would bring DAP statewide funding to $13.52 million. With a restoration of the historic Legislative investment of $3 million that had been in place since 2016, on top of the Executive's commitment, we will be able to further expand representation and bring deeper savings to the state.

ESTABLISHING A KINSHIP LEGAL NETWORK

With the pandemic, opioid crisis, housing instability, mental health, poverty, and other factors, the number of children who are unable to be with their parents has increased in recent years. The pandemic has hit people of color especially hard; Black, Hispanic, and Asian children are more likely to have lost a parent or caregiver to COVID than their white peers.

The non-parent caregivers stepping in to care for vulnerable children are faced with having to navigate a complicated and overwhelmed court system on their own. They are not entitled to

assigned counsel, and without legal representation, are effectively excluded from participating in court. More importantly, they have multiple legal needs: navigating the public benefits system, the foster care system and for children with special needs – the educational systems and the Social Security systems.

To address this, we ask that you fund $8 through the Office of Children and Family Services to establish a Kinship Legal Network, to provide legal representation, information, and advice to non-parent caregivers interfacing with New York's complex justice and social services systems.

The Kinship Legal Network will use a proven model that has been replicated in a variety of legal services areas; it will develop a network of legal services providers who will serve clients, as well as look across the state to collect data and recognize trends as a means to identify success stories, systemic challenges and solutions, and to document the benefit of the program to NY families and the State. The program will leverage the existing Kinship Navigator, a successful statewide program operated by Catholic Family Center which provides an information and referral network for kinship caregivers across all of New York State.

Along with preventing placement disruptions and mitigating barriers to placement, attorneys who represent kinship caregivers also:

- Assist in achieving permanency goals through family reunification, custody, guardianship, and adoption;
- Ensure the caregiver and children receive all benefits to which they are entitled – public assistance, SNAP, SSI, SSD and educational assistance;
- Represent caregivers in related child support, family offense, and administrative matters;
- Connect caregivers to community service partners to ensure all needs, not just legal needs, are being met.

The Kinship Legal Network would support some of New York's most vulnerable children and the family members trying to care for them, and it is in line with the Office of Family and Children's Services work in implementing the directives of the Family First Prevention Services Act.

Recommendation: Allocate $8 million to the Office of Children and Families to establish a Kinship Legal Network pilot program.

Improve Public Assistance to Reduce Housing Insecurity and Homelessness and Economic Instability for Children and New Yorkers in Deep Poverty

Governor Hochul has shared her commitment to "do the hard, necessary things to support New Yorkers and clear a path for them to realize the New York Dream."[9] Right now, New Yorkers eligible for public assistance – often due to a disability or illness, caretaking responsibilities, domestic violence, or because minimum wage work is insufficient to survive in our State – are being afforded benefits that are so low that they experience deep poverty. And with deep poverty comes housing instability and homelessness, food insecurity, and poor health and social outcomes. The severe economic scarcity generated by the inadequacy of public assistance grants and restrictive program rules makes the path to long-term economic stability and wellbeing a rocky one, if not an impassable one, for New Yorkers receiving public assistance.

I. Increase Public Assistance Grants So New Yorkers Can Meet Their Basic Needs While Working Toward a Path to Economic Wellbeing

Public Assistance grants have not been increased in over a decade. In every county of the state, the maximum public assistance grant is significantly less than 50% of the federal poverty level – what the U.S. Census Bureau defines as "deep poverty." See Table I. For instance, the 2023 federal monthly poverty level for a family of three is $2,072, while the maximum temporary assistance grant for a family of three in Erie County is only $690 – just 33% of the poverty level.

Public Assistance grants consist of several components: a shelter allowance (set by regulation), a basic needs allowance (in Social Services Law 131-a), home energy allowances, a home heating allowance, and for eligible households, various allowances based on special circumstances. The basic needs allowance has not been adjusted since 2012, and the shelter allowance has not been increased in decades.

A. Increase benefits for housing expenses to 100% of the United States Department of Housing and Urban Development's Fair Market Rent for households eligible for public assistance.

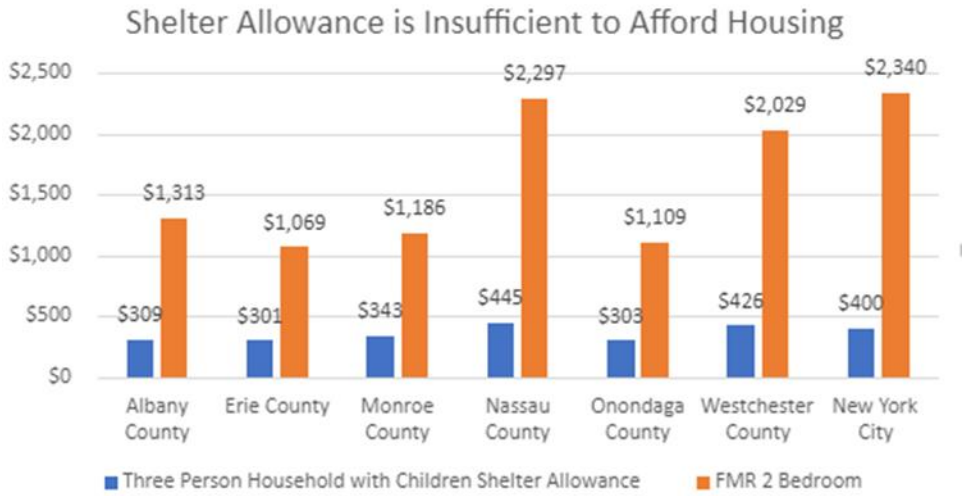
The New York State Office of Temporary and Disability Assistance (OTDA) is charged with formulating a shelter allowance schedule setting forth maximum allowances for rent for each social services district.[10] For families with children, by statute, that allowance must be adequate to provide for the child in the home.[11] Unfortunately, OTDA has failed to amend its regulations to keep up with the cost of housing, and at this point, there are no rental units in the private

[9] *See* @GovKathyHochul tweet, https://twitter.com/GovKathyHochul/status/1612887216803483676?s=20&t=pb9K_QpApx9pRrpwg4QsNg (January 10, 2023).
[10] *See* SSL 131-a; also see 18 NYCRR § 352.3 (setting rent allowances).
[11] SSL 350(1)(a).

market that meet basic health and safety standards that are priced at or below the shelter allowance. **For households with children, OTDA has not updated the shelter allowance schedule since 2003 even though rents have doubled since then. For households without children, OTDA has not increased the shelter allowance since 1988, but rents have tripled in the last 35 years.**[12]

To determine the cost of housing in New York State and nationwide, the Department of Housing and Urban Development (HUD) engages in a detailed analysis of rents in the private housing market. Using that data, HUD determines the "fair market rent" (FMR) for housing that meets basic quality standards for each jurisdiction. An area's FMR is the amount that a tenant would need to pay for privately owned, decent, and safe rental housing of a modest (non-luxury) nature with appropriate amenities (i.e., including cooking and bathing facilities).[13] **The FMR is not the average rent paid in a community – it is an estimate of the 40th percentile gross rent paid by recent movers into standard quality private market units in an area.**[14]

The shelter allowances are dramatically lower than the actual cost of decent housing – the FMR – in all counties across New York State. Shelter allowances for a family of three range from a low of $259 per month in Franklin County to a *high* of only $447 per month in Suffolk County. Comparing the shelter allowance to the FMR, as seen in the chart below, the shelter allowance leaves tenants hundreds, if not thousands, of dollars short of being able to afford a habitable apartment. For a chart containing all counties, see Table 2.



OTDA offers local districts the opportunity to request approval to provide supplements for households receiving public assistance who are experiencing or at risk of eviction if the district

[12] In Albany County, for instance, the HUD FMR for a two bedroom is $1313 as of October 1, 2022, while in 2003, it was $633, and in 1988 it was $438. *HUD FMR History 1983-Present*, US Dept. of Hous. & Urban Dev., https://www.huduser.gov/portal/datasets/fmr.html#history (last accessed Dec. 14, 2022).
[13] 24 CFR 888.113.
[14] *Id.*

can describe a justification for the need.[15] Unfortunately, only 21 districts have approved Shelter Supplement programs for households receiving public assistance, there isn't sufficient funding allocated to supplements to meet the level of need in most counties, benefits range from only 29% of FMR to a high of 86% of FMR, and some programs have additional restrictive eligibility criteria. The Shelter Supplement program available at local option fails to fill the gap left by the meager shelter allowance.

B. Revise Rental Supplement Program to Address Need

To curb the rise in homelessness and housing instability, the 2021 budget allocated $100,000,000 to fund a New York State Rental Supplement Program, and the same amount was allocated in 2022.[16] The Rental Supplement Program provides supplements, at local option, to low-income New Yorkers who are experiencing homelessness or facing imminent loss of housing.[17] But like the Shelter Supplement program, the Rental Supplement Program as currently formulated does not do enough to remedy the inadequacy of the shelter allowance. Local districts must opt into the program, and some have declined to do so. Participating counties are typically setting the supplement at only 85% of FMR when data clearly shows that 100% FMR is the most reasonable standard to get New Yorkers into safe and decent housing. Many public assistance recipients are ineligible because they are not imminently at risk of homelessness even if they are living in substandard and unsafe housing, reside in overcrowded conditions, or have yet to receive a notice of eviction from their landlord. And because OTDA required submission of local district "plans" to be approved by the agency before helping low-income households access the desperately needed benefits, implementation has been significantly delayed. And like Shelter Supplements for households receiving public assistance who are at risk of homelessness, the number of Rental Supplements available is unlikely to meet the needs of households receiving public assistance along with all other eligible individuals and families who are experiencing or at risk of homelessness. In fact, *as of October 2022, only 59 households on public assistance had received rental assistance through the Rental Supplement Program*.[18]

Due to limited funding, combined, most districts' current Rental Supplement and Shelter Supplement programs are capable of serving less than 10% of the population on public

[15] 18 NYCRR 352.3(a)(3). See also NY Off. Of Temp. and Disability Assistance, Shelter Supplements Plans and Revisions, GIS 20 TA/DC012 (Feb. 21, 2020), available at https://otda.ny.gov/policy/gis/2020/20DC012.pdf.
[16] Ch. 55 of the Laws of 2021, sec. 1, at p. 629-30. See also Ch. 53 of the Laws of 2022, sec. 1, at p. 655-58.
[17] NY Off. of Temp. and Disability Assistance, New York State Rental Supplement Program, 21 LCM-24 (Dec. 31, 2021), available at https://otda.ny.gov/policy/directives/2021/LCM/21-LCM-24.pdf.
[18] NY Off. of Temp. and Disability Assistance, Rental Supplement Program (Oct. 2022), available at https://otda.ny.gov/resources/reports/Rental-Supplement-Program-Report.pdf.

assistance. To compare the number of supplements currently available to the number of recipients on public assistance, see Table 3.

Safe and habitable rental housing is unaffordable for public assistance households due to the inadequacy of the shelter allowance, and the supplement programs currently available fail to fill the gap in need. As a result, households on public assistance who have not been lucky enough to get federal subsidies for housing are likely to be cost-burdened (putting them at risk of eviction and frequent moves), be doubled up in overcrowded housing (leading to negative health and educational outcomes), live in substandard conditions that are making them sick, or experience homelessness. New Yorkers deserve better.

RECOMMENDATIONS:

1. Expand and improve the Rental Supplement Program by:
    i. Expand eligibility to public assistance recipients who do not have federally subsidized housing or rental assistance capped at 30% of income.
    ii. Increase state funding for the supplement to 100% FMR.
    iii. Set consistent program rules and policies for all districts through regulation or OTDA guidance, eliminating the need for local districts to submit plans to OTDA and wait for approval, and eliminating the ability of districts to opt-out.
    iv. Provide due process protections for applicants and recipients.
    v. Ensure that allocations are being used to provide rental assistance to eligible households rather than administrative costs.
    vi. Increase funding for the program to cover more eligible households.
2. Increase the shelter allowances to 100% FMR, to be adjusted annually if the HUD FMR is increased.

C. Increase the Basic Needs Grant

Like the shelter allowance, the non-shelter portions of the public assistance grant have not been updated for years. Inflation has increased dramatically over the last two years, but the basic needs allowance has not been increased since 2012 despite the rising cost of living. For an individual, the maximum monthly basic needs grant for a person with no other income is only $158 – less than $6 per day.

The Home Energy Allowance (HEA) and the Supplemental Home Energy Allowance (SHEA) were last adjusted in 1981 and 1986 respectively, and as set forth below, bear no reasonable

relationship to energy costs.[19] The sum of the basic grant, HEA, and SHEA for all of New York can be found below.[20]

New York Basic Grant Schedule							
Household size	**1**	**2**	**3**	**4**	**5**	**6**	**Each add'l Person**
Basic needs	$158.00	$252.00	$336.00	$433.00	$534.00	$617.00	+$85.00
HEA	$14.10	$22.50	$30.00	$38.70	$47.70	$55.20	$7.50
SHEA	$11.00	$17.00	$23.00	$30.00	$37.00	$42.00	$5.00
Sum	$183.10	$291.50	$389.00	$501.70	$618.70	$714.20	

The stagnant basic needs allowance has ensured that poor New York families have increasingly greater difficulty paying for life's essential expenses, forcing them to focus more on their survival than on doing what needs to be done to improve their lives. They can't afford to buy cleaning supplies, personal care items, hygiene products, clothing, and transportation. And because of the enormous difference between the shelter allowance and the cost of housing, many recipients must eat into their basic needs grant to cover housing- ensuring that recipients have little to nothing left of their basic needs allowance to buy necessary goods.

Increasing the basic needs grant means that households receiving public assistance will be better able to take care of their homes, their families and themselves. It is a long overdue need and critical while our State confronts high inflation, food insecurity, and housing instability.

RECOMMENDATION: Increase the basic needs grant to reflect inflation. The projected cost to the state of increasing the basic needs allowance and HEA/SHEA as recommended is $192.5 million.

Proposed New York Basic Grant Schedule							
Household size	**1**	**2**	**3**	**4**	**5**	**6**	**Each add'l Person**
Basic needs (new)	$263.00	$420.00	$558.00	$720.00	$889.00	$1027.00	$141.00
HEA	47.00	75.00	100.00	128.00	158.00	183.00	25.00
SHEA	30.00	46.00	62.00	81.00	100.00	114.00	14.00
Sum	340.00	541.00	720.00	929.00	1,147.00	1324.00	180.00

[19]SSL § 131-a(3-c, 3-d).
[20] SSL § 131-a(2).

II IMPROVE PUBLIC ASSISTANCE PROGRAMS TO HELP NEW YORKERS IN DEEP POVERTY GET ON THE PATH TO THE NEW YORK DREAM

A. REPLACE STOLEN BENEFITS FOR VICTIMS OF SKIMMING

We commend the Governor for recognizing the harm done to low-income families whose public assistance benefits have been "skimmed" by thieves. Benefits are issued to SNAP and public assistance recipients on an Electronic Benefits Transfer card (EBT card) that lacks the basic fraud-prevention protection offered through chip cards – something that has been the industry standard for debit and credit cards for years. Because recipients of benefits are issued magnetic stripe EBT cards, they have been left uniquely vulnerable to having their benefits stolen by "skimming" devices installed by thieves at point-of-sale terminals. Skimming devices read magnetic stripes and capture PIN data. Thieves have been creating fraudulent EBT cards based on that stolen magnetic stripe data, and typically drain victims' accounts of all benefits issued (SNAP, P-EBT, and public assistance benefits, including shelter allowance and basic needs grants) at stores in other states. The federal omnibus spending bill passed in December 2022 provides for limited reimbursement of SNAP benefits stolen through skimming, but does not cover benefits stolen prior to October 1, 2022, it limits reimbursement to two months of stolen SNAP benefits, and does not cover other benefits (Family Assistance, Safety Net Assistance, Emergency Assistance, and P-EBT) at all.[21] Because the federal law limits reimbursement of skimmed benefits to situations approved through a state plan approved by the federal Food and Nutrition Service, OTDA has not commenced such reimbursements. We do not know when we will have an approved state plan, and leaving families with little to no options in the meantime, facing severe food insecurity, is not an acceptable result.

The Governor's proposed Social Services Law 152-d would require the State to provide reimbursement for Safety Net Assistance benefits and Family Assistance benefits which were skimmed on or after October 1, 2022.[22] It does not cover SNAP benefits not reimbursable using federal funds or benefits stolen prior to October 1. Further, reimbursement of stolen SNAP will be significantly delayed - before the federal reimbursement of stolen SNAP benefits can occur, New York State must submit a plan to the Food and Nutrition Service (FNS) on or before February 27, 2023, which must then be approved by FNS before it can be operational.[23]

RECOMMENDATION: We recommend that the following amendments be made to the Governor's bill:

- Amend proposed SSL 152-d to replace the full value of benefits stolen on or after January 1, 2022, including Family Assistance, Safety Net Assistance, Emergency Assistance, and P-EBT benefits.

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[21] *See* Section 501(b)(2) of the Consolidated Appropriations Act of 2023, P.L. 117-328.
[22] ELFA Article VII bill, at Part Y.
[23] USDA FNS, Replacement of SNAP Benefits in the Consolidated Appropriations Act of 2023 at 1 (Jan. 31, 2023), available at https://fns-prod.azureedge.us/sites/default/files/resource-files/state-plan-guidance-stolen-benefit-replacement-508c.pdf.

- Amend proposed SSL 152-d to reimburse victims for the full value of SNAP benefits stolen on or after January 1, 2022, allowing for the adjustment of replacement benefits or assignment of federal replacement benefits to reflect those benefits issued under federal law.
- Amend proposed SSL 152-d (3) to add the following provision: "Social services districts must issue replacement benefits no later than 10 days after a report of loss or two working days after receiving a signed household statement attesting to the loss, whichever comes later, in accordance with FNS guidance and state timely processing requirements related to issuance of emergency benefits."[24]
- As proposed in A.4096 (González-Rojas), add a new section to SSL 95 to require OTDA to issue EBT cards with chip cards rather than solely magnetic stripe cards to new applicants and current EBT card holders as soon as practicable, but no later than June 21, 2024. Allocate an appropriate level of funding to complete this essential technological upgrade.

B. EXPAND THE ABILITY OF PUBLIC ASSISTANCE RECIPIENTS TO MAXIMIZE THEIR INCOME

New York took critical steps to improve public assistance programs last session, and there is more to be done this year. We thank the Governor and the legislature for eliminating the 45-day waiting period for Safety Net Assistance recipients;[25] repealing the 185% standard of need test;[26] and other crucial changes.[27] We ask the legislature to take the following additional steps to allow public assistance applicants and recipients to maximize their income: extend the percentage earnings disregard to applicants; increase the resource limit; allow parents caretakers to exclude children with income from the public assistance household; provide access to child care assistance to all otherwise eligible immigrant children regardless of immigration status; amend SSL 106-b to eliminate the restriction on the correction of public assistance underpayments; and apply the New York City process for reducing erroneous welfare sanctions statewide.

- EXPAND THE PERCENTAGE EARNINGS DISREGARD TO APPLICANTS:

New York's percentage (currently 50%) earnings disregard only applies to recipients of public assistance; it does not apply to applicants. Amend Social Services Law § 131-a (10), Social Services Law (SSL) § 131-a(8)(a)(iii) so that the earned income disregard is applied to applicants as well as recipients.

- INCREASE THE RESOURCE LIMITS

[24] Id.
[25] SSL 158 and 153(8)
[26] SSL 131(a)(10)
[27] Increasing the $90 earned income disregard to $150 [SSL 131-(a)(8)(a)(iii)]; expanding the 50% earnings disregard to households without children as well as households with children [SSL 131-a(8)(a)(ii)]; increasing resource levels [SSL 131-n(1)]; and for changing the order in which disregards are applied to a manner which is more favorable to low income wage earners. [SSL 131-a(8)(a)(iii)].

Last year's modest increase in the public assistance resource limits [from $2000 to $2500 for applicants; $3500 if someone in the applicant household has a disability or is age 60 or over, and $10,000 for recipients] did not go far enough to allow low-income families to guard against emergencies. Asset tests should be fully eliminated.

Asset tests are counter-productive to the goal of financial independence. They do not allow households to retain a cushion against emergencies, ensuring that any given crisis will strike a devastating blow to the household's financial security. Many states have eliminated consideration of assets altogether or increased the exemptions for assets. New York[28] and 33 other states have eliminated their SNAP asset tests. Nine states have eliminated their public assistance asset tests completely: Alabama; Colorado; Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Ohio, and Virginia. An additional five states (California, Connecticut, the District of Columbia, Montana, and Vermont), expressly exempt retirement accounts.[29] Especially in this time of economic downturn, it is heartbreaking to see individuals not only having to cash in their modest retirement accounts as a condition of eligibility for public assistance, but also having to lose a portion of their accounts as a tax penalty for prematurely making these withdrawals. It is time for New York to amend Social Services Law § 131-n to conform its public assistance resource rules to its SNAP resource rules by eliminating the asset test for public assistance.

Critically, the concern that eliminating the asset test or increasing exemptions would lead to higher costs and an increase in recipients has been shown to be without merit in states that have eliminated asset rules. Since public assistance applicants generally have little or no cash, eliminating or increasing asset limits has had little impact on caseload. Louisiana eliminated its TANF asset limit in 2009 and five years later reported little to no change in the number of families receiving benefits in the years since. Ohio eliminated their asset test in 1997, and as of 2014, the state saw no increase in the number of families receiving aid.[30] Eliminating asset tests leads to an increase in bank accounts, and having a bank account helps families conduct basic financial transactions, save for emergencies, build credit history, and access fair, affordable credit.[31]

Furthermore, eliminating consideration of assets when calculating public assistance eligibility, as New York does when calculating SNAP eligibility, would provide an opportunity to relieve social services districts of burdensome administrative and fiscal responsibilities. The gathering, reproducing, investigating, and filing of paperwork concerning assets is time consuming and expensive for both applicants/recipients and the social services districts. Elimination of the asset limit would simplify and streamline the application and recertification process. Virginia

[28] New York has eliminated the SNAP asset test for nearly all recipients. An asset test remains households that include elderly or disabled members. See: OTDA General Information System Message 18 DC034, Food Stamp Categorical Eligibility Desk Aid at: https://otda.ny.gov/policy/gis/2018/18DC034.pdf

[29] J. Gehr, Center on Law and Social Policy, Eliminating Asset Limits: Creating Savings for Families and State Governments, at 4 (2018), https://www.clasp.org/sites/default/files/publications/2018/04/2018_eliminatingassetlimits.pdf.

[30] *Id.*

[31] *Id.*

found that although it spent approximately $127,000 more on benefits for 40 families, it saved approximately $323,000 in administrative staff time, resulting in a net savings of $195,850.[32] Colorado estimated a caseworker savings of 90 minutes/case.[33] By saving time in processing applications and re-certifications, districts are better able to meet their federally- and state-mandated time frames for making eligibility decisions and, further, can allocate limited staff resources to other functions, like working with families to help them identify and achieve their goals and work towards long-term economic stability.

RECOMMENDATION: Repeal the resource test entirely as proposed in A.3539 (González-Rojas)/S.4519 (Fernandez).

- ALLOW PARENTS CARETAKERS TO EXCLUDE CHILDREN WITH INCOME FROM THE PUBLIC ASSISTANCE HOUSEHOLD

One way to support struggling families is to allow children who have income from absent or deceased parents (such child support, or Social Security Survivor's or Disability benefits from the account of a deceased or disabled parent) to retain that income and have the option of not being a member of the public assistance household if it is beneficial for the family of the child to do so.

Social Services Law § 131-c (1) currently requires that when a minor is named as an applicant for public assistance, their parent(s) and minor siblings must also apply for assistance and be included in the household for purposes of determining eligibility and the grant amount. Although the statute uses the phrase "minor brothers and sisters," the law has been used to require the income of half-siblings to be applied as income against the other half-sibling to reduce the amount of the public assistance benefits of the child with no income. Under the current statute, the unearned income of any child, such as child support or social security survivor's benefits, is considered available to the entire household. As such, it reduces the entire grant of the household unless disregarded under some other provision of law.

A change in this law would particularly benefit non-parent caregivers of children who have parents who are unable to care for them due to the death, drug addiction, incarceration, or disability of the parent. These caregiver relatives are often on fixed incomes with limited resources. Studies show that children placed in care with relatives fare much better emotionally and intellectually than children who live in foster care with strangers.[34] Because current law requires the income of half siblings in a public assistance household be applied to support the income of any other half-siblings in the household, when a non-parent caregiver, who has no legal responsibility for the support of a child in their care takes in a second child with income, the public assistance grant of the first child is reduced.

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[32] *Id*.

[33] *Id*.

[34] G. Wallace and E. Lee, Diversion and Kinship Care: A Collaborative Approach Between Child Welfare Services and and NYS's Kinship Navigator, 16 J. of Family Social Work, 418-19 (2013), available at http://www.nysnavigator.org/pg/professionals/documents/Wallace__Lee_2013_Diversion.pdf

RECOMMENDATION: Amend Social Services Law 131-c as part of an Article VII budget bill to make this important change. Model language can be found in a bill that was passed by both houses in the 2019-2020 legislative session.[35]

- PROVIDE ACCESS TO CHILD CARE ASSISTANCE TO ALL OTHERWISE ELIGIBLE IMMIGRANT CHILDREN, REGARDLESS OF IMMIGRATION STATUS

The Empire Justice Center strongly supports the creation of a fund to provide child care to immigrant children regardless of their immigration status, as outlined in detail in the attached position paper of the Empire State Child Care Campaign.

- AMEND SSL 106-b TO ELIMINATE THE RESTRICTION ON THE CORRECTION OF PUBLIC ASSISTANCE UNDERPAYMENTS

SSL 106-b limits the correction of public assistance underpayments to current recipients. As a result of this law, even where a former public assistance recipient is determined through a fair hearing or court of law to have been wrongfully denied benefits they were entitled to receive, they are not compensated. This is unfair and a wrong that should be immediately corrected.

Public assistance applicants who are wrongfully denied benefits they were entitled to receive and recipients whose benefits were wrongfully terminated or reduced may be forced to rely on credit cards and borrow from family and friends, building up debt. They are unable to meet basic needs and recurring expenses and may lose their furniture upon being evicted when they are unable to pay their rent, lose their transportation if they are unable to pay a car loan, or face high reconnection fees for utilities. Because fair hearing and judicial decisions may take months or even years to find in favor of appellants, some applicants and recipients who were wrongfully denied benefits may have secured employment of disability benefits in the interim. Although the harms they suffered while benefits were wrongfully denied are often still ongoing, including debts that these households can ill-afford to pay, under SSL 106-b, they get nothing.

There is nothing in federal law barring reimbursement of public assistance underpayments to households no longer receiving benefits. Unfortunately, although OTDA was directed to identify opportunities to address concerns raised in S4540-A/A.5613-A (vetoed Dec. 28, 2022), upon information and belief, OTDA has yet to do so, and it is our perspective that amendment of state law is needed to resolve the unfairness of SSL 106-b.

RECOMMENDATION: Amend SSL 106-b to allow for compensation to former public assistance applicants or recipients whose benefits were wrongfully denied. We recommend reintroduction and passage of the attached draft bill language, to cure this unjust result.

[35] S.6017A (Persaud)/A.4256A (Hevesi) Although that bill was vetoed by Governor Cuomo, that bill was passed after that year's budget was enacted, and the Governor indicated that the bill's intent was laudable and should be considered during budget negotiations.

- A FAIR PROCESS FOR REDUCING ERRONEOUS WELFARE SANCTIONS SHOULD APPLY STATEWIDE

In 2015, Social Services Law § 341 was amended [L. 2015, c 562, § 2, eff. 12/18/15] to dramatically improve the treatment of public assistance recipients threatened with the loss of their benefits because of an allegation that they failed to comply with a welfare work requirement. Although originally proposed as a statewide bill, at the last minute it was modified to apply only to New York City, leaving out the fifty-seven counties in the rest of the state. The law provides common sense protection against the imposition of unwarranted and unduly harsh sanctions on the poorest New Yorkers and should apply statewide. For the entire state outside of New York City, those threatened with a loss of benefits for failure to comply with a work rule, in practice bear the burden of demonstrating that they either did in fact comply or had good cause for not complying. Although clients often prevail when they ask for a fair hearing, far too many individuals, but particularly those who may be disabled, have difficulty accessing the hearing process or otherwise asserting their rights.

Three powerful considerations guide our support for expansion of this law to the whole state:

(1) A disproportionate number of those who are sanctioned have disabilities or face other barriers that make it difficult for them to comply with work rules. People with serious physical or mental health limitations that are not identified by DSS are often ill-equipped to comply with work requirements and are therefore at greater risk of sanction. Individuals with lower levels of literacy, education, and skills, as well as those with domestic violence issues and limited English proficiency are also more likely to be sanctioned.
(2) Sanctions cause serious hardship. For single individuals, a sanction means the loss of an entire grant. Those in families are already struggling with a benefit that is extremely inadequate. Any reduction due to a sanction is likely to cause severe hardship. Parents and children in sanctioned families are more likely to experience hunger and food insecurity, increases in hospitalization, eviction, homelessness, loss of utility and telephone service, and the need for emergency services including emergency housing, food and clothing aid.
(3) Decisions to impose sanctions are often the result of administrative errors, inadequate notices or client disabilities. Factors include:

- Notices that do not clearly explain the clients' rights,
- Notices that are not timely sent or are not properly addressed, and
- Non-compliance that is the result of a disability that DSS failed to detect, ordetected but did not accommodate.

As a result of the 2015 amendments, in New York City, before imposing a sanction, the Human Resources Administration must determine whether the alleged failure to comply was related to a disability, a child care problem or transportation difficulties. In addition, mandatory durational sanctions, with inflexible punishment periods of reduced benefits, are eliminated. Instead, sanctions can be avoided, or lifted if already in effect, if the client demonstrates a

willingness to comply with the work requirements or establishes that they are unable to do so. Finally, a client who is otherwise satisfactorily participating in assigned work activities must not be sanctioned for a single infraction.

There is no justification for failing to apply these fair and reasonable measures statewide. They provide critical protection to clients who may be unable to comply with a work requirement for reasons beyond their control, or who have a single lapse in a system that is often rigid and punitive.

In December of 2021, Governor Hochul vetoed S. 668/A.3227, a bill that would apply the protections of SSL 341 statewide. The Governor stated that she was supportive of this bill's intent but needed time to evaluate the effect of this change on federal work participation rates. We have evaluated the effect on the federal work participation rate and are able to report that expanding SSL 341 statewide would have no negative consequences for the State as our adjusted federal work participation requirements is zero.[36] We can and should enact this bill.

RECOMMENDATION: Amend SSL 341 to remove the statutory provision that limits its application to cities of 5 million or more persons.

[36] See Off. of Family Assistance, US Dept. of Health & Human Servs., Caseload Reduction Credits Fiscal Year 2021 (2022) available at https://www.acf.hhs.gov/sites/default/files/documents/ofa/wpr2021table02.pdf.

Table 1

New York State's Public Assistance Grant Leaves Families below 45% of the Federal Poverty Level in Every County			
County	**PA Grant for a 3 Person Household**	**2023 Poverty Level for a 3 Person Household**	**PA Grant as Percentage of Poverty**
Albany County	$698	$2,072	34%
Allegany County	$662	$2,072	32%
Bronx County (NYC)	$789	$2,072	38%
Broome County	$679	$2,072	33%
Cattaraugus County	$658	$2,072	32%
Cayuga County	$679	$2,072	33%
Chautauqua County	$674	$2,072	33%
Chemung County	$672	$2,072	32%
Chenango County	$653	$2,072	32%
Clinton County	$664	$2,072	32%
Columbia County	$679	$2,072	33%
Cortland County	$670	$2,072	32%
Delaware County	$663	$2,072	32%
Dutchess County	$801	$2,072	39%
Erie County	$690	$2,072	33%
Essex County	$657	$2,072	32%
Franklin County	$648	$2,072	31%
Fulton County	$661	$2,072	32%
Genesee County	$670	$2,072	32%
Greene County	$670	$2,072	32%
Hamilton County	$656	$2,072	32%
Herkimer County	$664	$2,072	32%
Jefferson County	$665	$2,072	32%
Kings County (NYC)	$789	$2,072	38%
Lewis County	$668	$2,072	32%
Livingston County	$696	$2,072	34%
Madison County	$693	$2,072	33%
Monroe County	$732	$2,072	35%
Montgomery County	$672	$2,072	32%
Nassau County	$834	$2,072	40%
New York County (NYC)	$789	$2,072	38%

Niagara County	$683	$2,072	33%
Oneida County	$676	$2,072	33%
Onondaga County	$692	$2,072	33%
Ontario County	$697	$2,072	34%
Orange County	$810	$2,072	39%
Orleans County	$691	$2,072	33%
Oswego County	$689	$2,072	33%
Otsego County	$669	$2,072	32%
Putnam County	$830	$2,072	40%
Queens County (NYC)	$789	$2,072	38%
Rensselaer County	$685	$2,072	33%
Richmond County (NYC)	$789	$2,072	38%
Rockland County	$823	$2,072	40%
Saratoga County	$705	$2,072	34%
Schenectady County	$700	$2,072	34%
Schoharie County	$675	$2,072	33%
Schuyler County	$664	$2,072	32%
Seneca County	$677	$2,072	33%
St. Lawrence County	$670	$2,072	32%
Steuben County	$660	$2,072	32%
Suffolk County	$836	$2,072	40%
Sullivan County	$686	$2,072	33%
Tioga County	$674	$2,072	33%
Tompkins County	$706	$2,072	34%
Ulster County	$739	$2,072	36%
Warren County	$688	$2,072	33%
Washington County	$684	$2,072	33%
Wayne County	$691	$2,072	33%
Westchester County	$652	$2,072	31%
Wyoming County	$668	$2,072	32%
Yates County	$675	$2,072	33%

Table 2

Shelter Allowance for a 3 Person Household with Children Compared to HUD's 2023 2 Bedroom Fair Market Rent			
County	Shelter Allowance	FMR	Shortfall
Albany County	$309	$1,313	($1,004)
Allegany County	$273	$826	($553)
Bronx County	$400	$2,451	($2,051)
Broome County	$290	$964	($674)
Cattaraugus County	$269	$826	($557)
Cayuga County	$290	$937	($647)
Chautauqua County	$285	$826	($541)
Chemung County	$283	$1,039	($756)
Chenango County	$264	$829	($565)
Clinton County	$275	$992	($717)
Columbia County	$290	$1,107	($817)
Cortland County	$281	$947	($666)
Delaware County	$274	$826	($552)
Dutchess County	$412	$1,583	($1,171)
Erie County	$301	$1,069	($768)
Essex County	$268	$934	($666)
Franklin County	$259	$826	($567)
Fulton County	$272	$962	($690)
Genesee County	$294	$946	($652)
Greene County	$281	$1,123	($842)
Hamilton County	$267	$1,013	($746)
Herkimer County	$275	$995	($720)
Jefferson County	$276	$1,221	($945)
Kings County	$400	$2,451	($2,051)
Lewis County	$279	$899	($620)
Livingston County	$307	$1,186	($879)
Madison County	$304	$1,109	($805)
Monroe County	$343	$1,186	($843)
Montgomery County	$283	$889	($606)
Nassau County	$445	$2,297	($1,852)
New York County	$400	$2,451	($2,051)
Niagara County	$294	$1,069	($775)
Oneida County	$287	$955	($668)
Onondaga County	$303	$1,109	($806)
Ontario County	$308	$1,186	($878)

Orange County	$421	$1,583	($1,162)
Orleans County	$302	$1,186	($884)
Oswego County	$300	$1,109	($809)
Otsego County	$280	$990	($710)
Putnam County	$441	$2,451	($2,010)
Queens County	$400	$2,451	($2,051)
Rensselaer County	$296	$1,313	($1,017)
Richmond County	$400	$2,451	($2,051)
Rockland County	$434	$2,451	($2,017)
Saratoga County	$316	$1,313	($997)
Schenectady County	$311	$1,313	($1,002)
Schoharie County	$286	$1,313	($1,027)
Schuyler County	$275	$900	($625)
Seneca County	$288	$926	($638)
St. Lawrence County	$281	$909	($628)
Steuben County	$271	$844	($573)
Suffolk County	$447	$2,297	($1,850)
Sullivan County	$297	$1,008	($711)
Tioga County	$285	$964	($679)
Tompkins County	$317	$1,487	($1,170)
Ulster County	$350	$1,498	($1,148)
Warren County	$299	$1,119	($820)
Washington County	$295	$1,119	($824)
Wayne County	$302	$1,186	($884)
Westchester County	$426	$2,029	($1,603)
Wyoming County	$279	$826	($547)
Yates County	$286	$997	($711)

The United States Department of Housing and Urban Development (HUD) sets Fair Market Rents (FMR) yearly. The FMR is the 40th percentile of gross rents for typical, non-substandard rental units occupied by recent movers in a local housing market.

Table 3

The Availability of Rental and Shelter Supplements Compared to the Number of Households on Temporary Assistance				
County	**Anticipated # of Households to Receive Rental Supplements[37]**	**Estimated # of Households to Receive Shelter Supplements[38]**	**# of Households on TA [39]**	**% of Supplements Available Compared to Households on TA**
Albany	94		1,329	7%
Allegany	13		254	5%
Broome	85		2,165	4%
Cattaraugus	50		731	7%
Chautauqua	200		1,612	12%
Chemung	13		653	2%
Chenango	50		286	17%
Clinton	24	50	589	13%
Columbia	11	42	291	18%
Cortland	20		347	6%
Delaware	50		152	33%
Dutchess	50	25	935	8%
Erie	340		8,223	4%
Franklin	40		375	11%
Fulton	25		204	12%
Genesee	10		224	4%
Greene	10	10	182	11%
Herkimer	15		350	4%
Jefferson	45	61	939	11%
Lewis	10	*40	89	56%
Livingston	30		362	8%
Madison	15	4	239	17%
Monroe	300	***125	6,238	7%
Nassau		****500	2,915	17%
Niagara	67		1440	5%
Oneida	115		2,211	5%
Onondaga	250		4,390	6%

[37] Estimated number comes directly the local districts' Rental Supplement Plans which can be found at Standard of Need by County supra n 33.
[38] Estimated number comes directly from the local districts' Shelter Supplement plans which can be found at Standard of Need by County supra n 33.
[39] NY Off of Temp and Disability Assistance, Temporary and Disability Assistance Statistics December 2021 (2022), available at https://otda.ny.gov/resources/caseload/2021/2021-12-stats.pdf.

Ontario	n/a	*100	643	16%
Orange	60	*25	1,312	6%
Oswego	35		1,100	3%
Otsego	20	61	184	44%
Rensselaer	50		703	7%
Rockland	30	n/a	587	5%
St. Lawrence	32		684	5%
Saratoga	30		319	9%
Schenectady	43	*25	1,062	6%
Schoharie	15	11	114	23%
Schuyler	12		117	10%
Seneca	30		184	16%
Steuben	55		757	7%
Suffolk	103	597	4,979	14%
Sullivan	25	21	518	9%
Tioga	50		263	19%
Tompkins	38		573	7%
Ulster	40	75	756	15%
Warren	14		201	7%
Washington	15	*25	301	13%
Westchester	100	94	3,595	5%
Wyoming	25		138	18%
Yates	20	14	151	23%

In this chart, the anticipated number of Rental Supplements was determined by the local districts as indicated in their Rental Supplement plans submitted to OTDA. The number of Shelter Supplement plans listed in the chart are either estimates or established maximums as indicated in the local district's Shelter Supplement plan. The number of households on Temporary Assistance (TA) reflect the average number of households on TA in each county in 2021.

INVEST A TOTAL OF $2.767 MILLION IN THE MANAGED CARE CONSUMER ASSISTANCE PROGRAM (MCCAP)

The Managed Care Consumer Assistance Program (MCCAP), a statewide initiative run through the New York State Office for the Aging (NYSOFA), provides seniors and people with disabilities critical assistance in accessing Medicare services and reducing health care costs. We are grateful that the Executive Budget provides ongoing funding for MCCAP at its current level, $1.767 million. However, given the work necessary with the expansion of the Medicare Savings Program, we are asking that the Legislature provide an additional $1,000,000 in funding.

In addition to New York's growing aging population and changes in the health care delivery and insurance landscape, an estimated 300,000 additional New Yorkers are now eligible for a Medicare Savings Program. Each enrollment into Medicare cost-saving programs saves an individual at least $7,200 in annual out-of-pocket health care costs. Without MCCAP's efforts to provide education and combat stigma around this benefit, many will go unenrolled.

This additional investment will increase the program's capacity and respond to the increased demand for Medicare navigation assistance brought about by this expansion. This is especially critical as we continue to deal with the unprecedented global pandemic due to COVID-19. Seniors and people with disabilities deserve every bit of assistance we can provide in order to access health care services and reduce costs both during and after the public health emergency.

The six MCCAP agencies partner with the New York State Office for the Aging (NYSOFA), the New York State Department of Health (DOH) and the Center for Medicare and Medicaid Services (CMS) to provide training, technical support, and assistance to local Health Insurance Information Counseling and Assistance Program (HIICAP) offices and other nonprofit organizations working directly with Medicare consumers across New York State. Additionally, MCCAP agencies work directly with consumers to provide education, navigational assistance, legal advice, informal advocacy, and direct representation in administrative appeals. We serve clients in their communities and provide services in their native languages; consumers also increasingly reach us via internet and our telephone helplines, as well as through our educational materials and referrals from HIICAPs.

It is an essential time to shore up funding for MCCAP. As the aging population increases, so does the number of Medicare beneficiaries in New York who rely on MCCAP's assistance in understanding and accessing their health benefits. In the last few years, MCCAP remained available to assist Medicare beneficiaries during the public health emergency, helping to navigate the flood of false or misleading information related to COVID-19 testing, vaccination, and scams/fraud. Medicare beneficiaries were forced to access healthcare services in new and unfamiliar ways, such as virtual check-ins and telehealth. Even "simple" tasks such as obtaining prescription refills at their trusted pharmacy became complicated, making MCCAP assistance even more necessary. MCCAP continued its work helping individuals maximize their benefits under the highly complex Medicare Part D program, as well as assisting dual-eligible individuals and other Medicare beneficiaries with health care access issues besides Part D. In addition, MCCAP has responded to a range of new needs that have resulted from the changing health care landscape. For example, MCCAP has fielded a high volume of calls from new Medicare beneficiaries in need of assistance transitioning from other forms of insurance, including the Essential Plan, Qualified Health Plans, Marketplace Medicaid and Medicaid Managed Care plans. These transitions, which are necessary because Medicare beneficiaries are, for the most part, excluded from Marketplace products and Medicaid Managed Care, can seriously disrupt care continuity if not navigated carefully.

MCCAP is also ideally positioned to help Medicare beneficiaries understand and adapt to any changes to Medicare, and other health coverage programs that work with Medicare, that may arise out of the federal debates about the future of healthcare in America. In recent years, MCCAP was contacted by many Medicare recipients anxious to know what changes may lay ahead for them as we continue through the public health emergency and beyond, and what they could do to anticipate those changes. Uncertainty about changes to Medicare and Medicaid has undoubtedly grown since this time last year as New Yorkers, particularly older adults and people with disabilities, struggle with urgent and shifting health needs during the crisis.

Recommendation: We urge the Legislature to negotiate with the Executive to increase MCCAP funding by $1,000,000 for a total investment of $2.767 million.

CONTINUE TO FUND THE EMERGENCY RENTAL ASSISTANCE PROGRAM

The Office of Temporary and Disability Assistance's Emergency Rental Assistance Program (ERAP), provides funding to support legal services and representation for eviction cases outside of New York City.

Our Long Island Office has focused on the need of poor immigrants for representation and legal assistance since its inception in 2007. Thanks to a subcontract with Nassau Suffolk Law Services (NSLS) -- funded through the ERAP program -- we were able to open a new unit at the end of 2021 to provide direct representation and legal advice to tenants facing eviction in the many Landlord/Tenant courts throughout Long Island. Our clients are primarily undocumented immigrants who cannot be represented by NSLS due to Legal Services Corporation restrictions. Most do not speak English and have very little understanding of the court system and processes. Prior to Empire Justice's involvement, these tenants had no access to legal services when facing eviction.

ERAP has provided enormous relief for a large number of our clients. Many tenants were eligible for rent arrears payments that prevented eviction. Even in cases where the ERAP Program could not prevent termination of the rental agreement, the Program gave our clients added time to find alternative housing and money to move. Our Housing staff also offers guidance and representation to tenants who are being illegally evicted from their homes and has averted some catastrophic situations.

With the funding, we initially hired one attorney and one bilingual paralegal with litigation experience. With help from a senior supervising attorney, we established an intake process for clients referred from NSLS, the courts, and immigrant advocacy groups across Long Island. Aided by a bilingual paralegal in our Long Island office with great knowledge of local benefits

and programs that help immigrants and an attorney emeritus with vast expertise in tenant defense, we were able to ramp up the program and provide legal advice, referrals, and representation to over 100 individuals and households in 2022.

Empire Justice Center recently received an increased in the subcontract with NSLS to hire a second Housing Attorney and Bilingual Paralegal and to open a second Long Island office in Hempstead that will offer more accessible services to our Nassau County clients. The additional staff will enable to us to take on more cases and to provide more extensive legal advice and referrals for other types of assistance. In addition, we now have some resources to do outreach to immigrant communities to offer information on the rights and protections of tenants and the legal services that we can provide. The funding in this year's budget will allow us to continue these services.

The most urgent need of our clients is for safe, affordable, and stable housing. They must often live in overcrowded and unsanitary conditions because the rents in legal units are higher than they can afford. Lower cost rental units are mostly found in the poorer areas with the greatest concentration of people of color, exacerbating the huge problem of segregation on Long Island in communities and schools. Although direct service representation in housing courts cannot solve these systemic problems, with support, we could provide greater assistance to immigrant tenants on Long Island to obtain financial help, benefits, or immigrational relief that would allow them to remain secure in their homes.

Recommendation: Maintain current eviction prevention representation by continuing to fund the Office of Temporary and Disability Assistance's Emergency Rental Assistance Program at $35 million

Thank you for the opportunity to submit this testimony. We look forward to working with you to achieve positive, progressive change in this legislative session. For questions please contact Alex Dery Snider at aderysnider@empirejustice.org or 518.935.2843.