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TESTIMONY OF THE LEGAL AID SOCIETY BEFORE THE COMMITTEE ON  
GENERAL WELFARE OF THE NEW YORK CITY COUNCIL

**June 24, 2009**

The Legal Aid Society welcomes this opportunity to testify before the Council concerning the New York City Department of Homeless Services (DHS) policies regarding income contribution and potential sanctions for families with children. We appreciate the leadership of Chair Bill deBlasio on these critical issues.

Founded in 1876, the Legal Aid Society's Civil Practice is the oldest and largest program in the nation providing direct legal services to the indigent. Our legal assistance is focused on enhancing family stability and security by resolving a full range of legal problems, including immigration, domestic violence, family law, and employment, in addition to housing, public benefits and health law matters. Through our housing and community development work, we also foster the development of community-based organizations, job creation, and neighborhood revitalization. Annually, the Society's Civil Practice provides free direct legal assistance in some 30,000 individual closed cases through a network of 6 neighborhood offices in all five boroughs and 17 specialized units and projects for under-served client groups. When it is the most efficient and cost-effective way to help our clients, we provide legal representation to groups of clients with common legal problems, including those referred by elected officials.

As you know, The Legal Aid Society provides legal assistance to homeless New Yorkers as well as homelessness prevention civil legal services with support from the Council. The Society is counsel to the Coalition for the Homeless in the Callahan and Eldredge litigation in which court orders require the provision of shelter to homeless men and homeless women. Since the early 1980s, the Society has also been counsel in McCain, Boston, and other litigation on behalf of homeless children and their families. We also represent recipients of public assistance, working people, and people with disabilities in all five boroughs through our neighborhood offices.

We are here today to testify because we are very concerned about the City's plans to re-implement its disastrous "Income Contribution Requirement" program. We are also

extremely concerned about the City's announced plans to expel families with children from the shelter system to the streets and place their children in foster care.

### **The City's "Client Responsibility" Sanction Proposal**

The City's Income Contribution Requirement program is just one piece of a sweeping new "client responsibility" shelter termination plan that the City has been seeking to implement this year. Under the City's plan, homeless families with children would be ejected to the streets and children subjected to foster care for periods of 30 days or longer for violating shelter rules or for failing to keep their public assistance cases open, even though bureaucratic error is the cause of widespread case closings. All of the families who will be subjected to the shelter termination sanction have already been determined by the Department of Homeless Services -- through its extremely stringent Path eligibility process -- to have no other safe or suitable housing available, so the possibility that the families will end up on the streets, that children will end up in foster care, or that families will end up returning to batterers or abusers is all too real.

The City's shelter termination plan threatens families with loss of shelter and ejection to the streets for 30 different reasons from the moment they enter shelter, from missing curfew, to missing appointments, to improper dress, to excessive noise, to disrespectful behavior. The shelter termination plan fails to provide legally-required accommodations for disabilities and places the burden on clients to present evidence of "appropriately documented physical or mental impairment". Instead of permitting the shelter providers to address the diversity of their clients with a variety of engagement tools to assist clients to move toward independent living, DHS' plan mandates this dangerous and harsh punishment for this extremely vulnerable population in a system where errors are all too common.

While there is no question that reasonable shelter rules are necessary, it is the punishment for infractions that is at issue here. Shelter providers already have the option of transferring non-compliant families to Next Step shelters which are "bare bones" -- shelters with stricter rules and more intensive services. We urge the Council to ask DHS to work with the shelter providers and advocates to explore alternatives to the drastic sanction of ejecting families from the shelter system.

### **Income Contribution**

Failing to pay a portion of their income for shelter is one of the thirty reasons that families could be subjected to the shelter termination sanction. It is important to understand how the Income Contribution Requirement will be administered in order to evaluate it as part of the City's plan to eject families from the shelter system.

As you may know, for many years DHS has required residents of the adult shelter system who have income to participate in savings plans. These shelter residents develop a savings goal that is consistent with their abilities and needs, open a bank account, and bring proof of their savings to their case workers. With some caveats -- workers must be sensitive to public benefits and disability rules that can penalize recipients with resources, including

savings – these plans can be a productive way of helping able-bodied adult shelter residents to achieve self-sufficiency.

This is not what the City has proposed with its Income Contribution Requirement program, however. New York City recently attempted to implement a 1995 Pataki-era State regulation which requires shelter residents with income – including Social Security, federal disability payments, unemployment, alimony, and child support in addition to wages – to contribute to the cost of shelter. Contrary to published reports, the contributions required are not capped at half of the person's income, and could easily encompass all of the person's income. In counties upstate and in the brief period that New York City tried to implement the program, some working homeless people were in fact asked to pay more than 100% of their income.

The State regulations are harsh and counterproductive. They discourage homeless people from working and rather than allowing them to achieve stability, threaten to trap them in shelter or, even worse, deny them access to life-sustaining shelter if they are unable to pay. Implementing the State rules at this time is particularly short-sighted given the current economic upheaval, record job losses and unprecedented shelter entrances. As New York City Comptroller William C. Thompson, Jr. has noted, implementation of these rules would in effect tax the poorest working families to pay for the safety net that protects them.

The rules are also opposed by the not-for-profit shelter providers, who have been forced by the City to serve as collection agents for these funds, disrupting their established role as the helping hand to get shelter residents back onto their feet and into the community. Shelters in districts outside New York City closed or were harmed financially by the regulation after they found they could best serve clients by not collecting money the State withheld and absorbing the costs. Other shelters found it to be against their mission to apply the rules against SSI recipients and others who could not comply.

The City's recent attempt to implement these rules was a fiasco and is currently suspended. One shelter resident, who has never received a paycheck, was ordered to pay more than her projected monthly income at her new job, locked out of her shelter unit, and then told she could not leave the shelter until she met with shelter staff to devise a payment plan. Other residents were ordered to pay as much as two-thirds of their monthly income, without ever receiving the notices required to be issued by the City's Human Resources Administration/Department of Social Services. The notices that HRA sent out to shelter residents were defective and misleading and were eventually withdrawn under threat of litigation. Nonetheless, the City hopes to try again to implement the regulation.

The Legal Aid Society, along with Coalition for the Homeless, applaud the passage of A-8353-D in the Assembly to amend Section 131-a of social services law and urge its passage in the Senate. This legislation would prevent New York City from charging rent for shelter, without limiting the City's ability to adopt a constructive plan to assist homeless individuals or families with income, such as by requiring them to commit to a savings plan, with the funds accumulated reserved for obtaining permanent housing or other resources necessary to achieve independence. Organizations which support this legislation include:

Advocates for Children  
Audre Lord Project  
Children's Health Fund  
Citizens Committee for Children  
City-wide Task Force on Housing Court  
Coalition for the Homeless  
Community Service Society  
Concourse House  
Homeless Services United  
Housing Works  
Information for Families  
Interfaith Assembly on Homelessness and Housing  
Legal Aid Society  
New York Asian Women's Center  
New York Province of the Society of Jesus, Office of Social Ministries  
Queers for Economic Justice  
SSEU Local 371  
Welfare Reform Network  
West End Intergenerational Shelter  
Women in Need.

We urge the Council to support this legislation as well.

### **Shelter Termination Sanctions for Families with Children**

The City has also proposed expelling families with children to the streets, and placing those children in foster care, where an adult in the family is held liable for even minor infractions, such as missing an appointment or having their public assistance case closed. We are gravely concerned about the City's plan because for almost five years we have been representing homeless single adults facing ejection from the DHS shelter system. In those cases, DHS has time and again sought to eject from shelter vulnerable men and women with disabilities, and the safeguards the City claims are in place to protect them failed. Our experience representing sanctioned adults leads us to have grave concerns about the City's plan to implement shelter termination sanctions for families with children.

### **Background of Shelter Termination Sanctions for Single Adults**

State regulations promulgated in 1995 permit the New York City Department of Homeless Services to expel to the streets homeless individuals who do not comply with administrative shelter rules. Under these State regulations as implemented by the City, there are three bases for issuance of shelter termination sanctions: (1) noncompliance with a shelter Independent Living Plan ("ILP") two or more times; (2) failure to pursue permanent housing; and (3) gross misconduct. In ILP sanction cases, an individual gets a warning notice. In all other cases, the individual may be issued a shelter termination sanction for a single alleged breach of shelter rules. If a sanctioned individual does not

challenge the sanction by properly requesting a State hearing within ten days, the individual is expelled from shelter into the streets for a minimum of thirty days.

When these State regulations were initially promulgated, the Legal Aid Society argued that they conflicted with the 1981 Consent Decree entered in Callahan v. Carey, which guarantees shelter to “each homeless man who applies for it provided that (a) the man qualifies for public assistance or (b) the man is homeless “by reason of physical, mental or social dysfunction.” In 1983, the Decree’s protections were extended to homeless women in Eldredge v. Koch, 98 A.D.2d 675 (1st Dep’t 1983).

Initially, the State Supreme Court enjoined implementation of the State regulations, stating that “. . . the simple bureaucratic error which might send an individual out into the street, because he or she was unable to understand or to cooperate with these requirements, might be the error which results in that individual’s death by exposure, death by violence, or death by sheer neglect.” This risk, the court held, “is simply too great to take.” In 2003, however, the Appellate Division reversed the trial court’s determination and authorized shelter termination sanctions for homeless adults who are “unwilling,” as opposed to “unable,” to follow administrative rules.

#### **Legal Aid Experience with Shelter Termination Sanctions**

The City began issuing shelter termination sanction notices in 2004. Since then, more than 60 homeless women and men have been issued shelter termination sanction notices. Because the City has provided the Legal Aid Society with copies of all shelter termination sanction notices issued to homeless women and men, Legal Aid has been able to intervene to assist these homeless adults so that they do not lose safety-net shelter and end up on the streets of New York City as a result of erroneously issued shelter termination sanctions. The result of the Legal Aid Society’s intervention is that vulnerable women and men have won State hearings or secured permanent housing in nearly every case.

By decision dated June 4, 2009, the New York Court of Appeals determined that the City was obligated to continue to provide the Legal Aid Society copies of shelter termination sanction notices issues to homeless women and men. The continued provision of the notices, which enables the Legal Aid Society to ensure the rights of sanctioned individuals in the State administrative review process, is particularly important because the City routinely issues shelter termination sanction notices in error. Additionally, even though sanctions are lawful only if issued to homeless persons whose noncompliance is not due to a physical or mental impairment, the City has frequently issued sanctions to individuals who suffer from serious – often undiagnosed – mental disorders.

In one case, for example, the City withdrew a homeless woman’s sanction notice, conceding that it had been issued “erroneously” only after the Legal Aid Society intervened. In another, a homeless man diagnosed with schizo-affective disorder and post-traumatic stress disorder was issued a notice after its effective date. That same notice listed the telephone number for the City Department of Homeless Services’ stockroom as the number to call for “Questions, Help, Conference, Records Access or Fair hearing

Information and Assistance.” The Legal Aid Society represented this man, whose severe mental illness was well documented in the City case file, at a State hearing that resulted in a favorable decision, which, among other things, found that the City defendants had “not provided [the sanctioned individual] with sufficient time and assistance . . . to comply” with his Independent Living Plan requirements.

City procedures require evaluation of shelter residents, documentation of impairments and consideration of how physical and mental conditions impact on client abilities before shelter termination sanctions are initiated, yet practical experience demonstrates that these procedures are not followed. The City’s Sanction Recommendation form for Myra F., for example, states that she has no mental impairment. Yet after the Legal Aid Society received a copy of Ms. F.’s shelter termination sanction notice and arranged for an evaluation, Myra F. was diagnosed with paranoid delusional disorder, a diagnosis in which the City later concurred.

Similarly, Scott M., a 59-year old Vietnam veteran, was sanctioned by the City for “gross misconduct” because he allegedly smoked a cigarette in a non-smoking area of his shelter. After receiving a copy of his sanction notice, the Legal Aid Society arranged for Mr. M. to undergo a mental health evaluation, which yielded a report that found that Mr. M. had “at least one prior hospitalization for a suicide attempt.” The report also states that Mr. M. exhibits “a delusion of control and monitoring by an external force.” In describing Mr. M., the report indicated that Mr. M. believed that:

his current problem began in 1983 after the surgical insertion of sophisticated electronic monitoring and control devices in his body by government agents in collaboration with the medical profession. This has become a major preoccupation. He carries a set of radiographs that confirms his suspicion that his medical records have been modified to cover this clandestine process. . . He believes a gastric bypass operation was performed that allows his handlers to cause him to vomit at any time by remote control. He states the monitoring system allows his handlers to hear what he hears and see what he sees. He feels they have ruined his life and want him to either be hospitalized or to commit suicide. . .

The report concludes that Mr. M. suffers from “severe and persistent mental illness manifest by paranoid persecutory delusion that is fixed and full with preoccupation and some areas of functioning disrupted by the delusion.” Had the Legal Aid Society not learned of Mr. M.’s case, had not identified that Mr. M. is impaired, and had not arranged for him to be evaluated, Mr. M. would have been expelled to the streets because he was unable to defend himself in the administrative review process.

As these cases demonstrate, only the provision of shelter termination sanction notices to the Legal Aid Society has prevented homeless women and men from ending up on the streets of New York City, where they would be subject to serious injury and even death because of their inability to contest erroneous shelter termination sanctions without legal assistance.

The Legal Aid Society provided assistance to Christopher P. upon receiving a copy of his shelter termination sanction notice. Mr. P. was sanctioned for allegedly violating his shelter ILP on two occasions. Although he was entitled to challenge his First ILP Violation Notice (which Legal Aid does not receive), Mr. P. failed to do this. However, examination of Mr. P.'s City case records revealed that Mr. P. was given notice of his First ILP Violation after the effective date of the notice. This defective notice advised him that he could challenge the Notice only by requesting a hearing before the Notice's effective date. The Legal Aid Society asked the City to withdraw the defective notice, but the City declined to do so, arguing that Mr. P.'s opportunity to challenge his First ILP Notice was foreclosed because the limitations period had expired. Only after the Legal Aid Society represented Mr. P. at a State hearing was this matter resolved.

Moreover, although the City claimed that Mr. P. did not suffer from any mental impairment that would prevent him from complying with his shelter ILP, Mr. P.'s shelter case records indicated that he was impaired and unable to comply. The City case records stated that Mr. P.:

May be dysfunctional, learning disabled or unable to read . . .  
Client's reasoning skills do not appear to be functional. . .  
Appears client may need evaluation for his ability to read  
and comprehend properly. Seems client may need to be  
placed at another facility that can address his needs in the  
proper manner.

Subsequent case records for Mr. P. noted that:

Client has unrealistic views of obtaining employment and  
reasons why he has not been able to gain employment in  
over 7 ½ months. Client's views are bordering on delusion.

Although the Legal Aid Society represented Mr. P. at his hearing, at which the City withdrew Mr. P.'s sanction notice, we were not able to assist Mr. P. at a subsequent hearing because the plaintiffs' counsel was not provided with notice of the subsequent First ILP Violation and, therefore, had no knowledge that the City was again seeking to sanction Mr. P. Evidently Mr. P. did not have the capability to secure representation from plaintiffs' counsel on his own. Upon receipt of the new First ILP Violation Notice from the City, Mr. P. went to a State hearing without representation and lost that hearing.

### **Additional Dangers Faced by Homeless Families Sanctioned From Shelter**

As noted by Patrick Markee of Coalition for the Homeless, the City's attempt to expel homeless children and their families into the streets will be more dangerous than its efforts with homeless single adults. First, unlike with homeless single adults where after several years of litigation there is a final court order requiring the provision of shelter sanction notices to the Legal Aid Society, there is no such order currently in place for homeless families; and the City does not plan to provide the Legal Aid Society or anyone

else with copies of the notices it serves on sanctioned families. Experience has shown that few of these vulnerable families will know or be able to seek legal assistance before they are denied shelter, expelled to the streets, and separated into foster care. It should also be noted that unlike in the single adult shelter system, the City seeks to impose such sanctions on families who have public assistance problems. We do not need to remind this committee of the widespread errors in the public assistance system or the great difficulty that all public assistance recipients have ensuring that they are able to receive the benefits to which they are entitled.

Rather than sending needy homeless shelter residents to the streets, where the barriers to assisting them are most likely insurmountable, or threatening to place their children in foster care when they are denied shelter, social services districts should be required to work with homeless families and individuals to help them achieve independence in constructive ways that make use of their skills, talents and resources.

We appreciate the opportunity to testify before the General Welfare Committee.

Respectfully Submitted:

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