

Testimony of The Legal Aid Society

on

**THE CITY'S ADVANTAGE NY, HOME BASE,
AND SHELTER RENT PROGRAMS**

Presented before

The New York City Council

Presented by:

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The Legal Aid Society welcomes this opportunity to testify before the New York City Council concerning the impact on our clients of three programs of the New York City Department of Homeless Services (DHS) and the New York City Human Resources Administration (HRA) – Advantage NY, HomeBase and a proposed new shelter rent program.

As you know, The Legal Aid Society is class counsel in litigation in which court orders require the City to provide lawful shelter and services to homeless children and their families and to homeless women and homeless men. The Society is also counsel to the Coalition for the Homeless.

Against a backdrop of record family homelessness, the worst economic downturn since the Great Depression of the 1930s, high unemployment, and high housing costs, the City has proposed three extremely counterproductive public policies: 1) limiting City rental assistance programs for relocating families from shelter to permanent housing to only those few families who are able to secure employment in the exceedingly tight job market or those few families in which every adult is actually in receipt of federal disability benefits or approved by HRA to care for a disabled child, and then cutting off such rental assistance at arbitrary time limits regardless of whether these families can pay the rent; 2) charging the limited number of homeless families who are employed rent for their shelter placements, thereby prolonging their shelter stays at increased cost to the taxpayers by depriving these families of the ability to fully apply their meager wages to obtain permanent housing; and 3) reducing homelessness prevention services available through the HomeBase program. These three misguided policies will certainly have the effect of exacerbating the current crisis in the family shelter system and increasing City shelter expenditures.

Earlier this week, the City announced that it will soon implement a 1995 Pataki-era State regulation which requires some shelter residents to pay rent to the City. This proposal would discourage homeless people from working and, rather than allowing them to achieve stability, would 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.

Likewise, the City has substantially abandoned its laudable prior commitment to preventing homelessness and helping families in shelter achieve stability and self-sufficiency. The changes that DHS and HRA have proposed in the Advantage program will make it much harder for families in shelter to move out, thereby creating a bottleneck in the shelter system as a whole which will create an ever increasing need to add shelter space at an increased cost to the taxpayers. These changes in the Advantage program will also make it harder for families who have moved out or will move out of shelter to remain in their apartments – with the predictable result that increasing numbers of families will have no choice but to return to the shelter system.

Moreover, the City's reductions in the HomeBase program's homeless prevention services will mean that fewer resources are available to keep New Yorkers threatened with eviction in their communities, causing disruptions in school attendance, medical care,

employment and family ties. Reducing prevention services will certainly result in increased costs for shelter because increasing numbers of families will lose their housing and need to seek shelter.

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 850 of the brightest legal minds. These 850 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

Shelter Rent: Last year, the City attempted to implement an “Income Contribution Requirement” that had been part of a harsh and counterproductive Pataki-era regulation which had never been enforced in New York City. The 2009 shelter-for-rent program was a fiasco. Almost immediately following its implementation, the program was suspended after the Legal Aid Society informed the City that it was prepared to file a lawsuit to prevent further harm to homeless families. As then-New York City Comptroller William C. Thompson, Jr. noted at that time, implementation of the shelter-for-rent rule in effect taxes the poorest working families to pay for the safety net that protects them. The rule discourages homeless New Yorkers from working and rather than allowing them to achieve stability, threatens to trap them in shelter or, even worse, denies them access to life-sustaining shelter if they are unable to pay.

For many years, DHS has helped 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 savings plans can be a productive way of helping able-bodied adult shelter residents to achieve self-sufficiency.

Despite the track record of these shelter savings initiatives, the Administration now says that it will try again to require some shelter residents to pay rent. This time HRA will be solely responsible for implementing the program. While we have not seen any proposed notices to clients, the notices that HRA sent out to shelter residents last year were defective and misleading and were eventually withdrawn under threat of litigation. We understand that City officials have admitted to shelter providers that they do not understand how to calculate the rents due from individual shelter residents.

The City has not retreated from its plans announced last year to seek to terminate families from shelter who are not paying their assessed rent – regardless of their ability to pay. Under the same Pataki-era rule pursuant to which the City is seeking to collect rent from shelter residents, DHS has also implemented a plan to expel from shelter families who it claims are not complying with rules, including payment of assessed shelter rent.

The City's plan to try again to implement its rent-for-shelter program is a disaster waiting to happen – again. Fortunately, pending State legislation would prevent the City from forging ahead with this plan a second time. The Legal Aid Society, along with Coalition for the Homeless, applauds the Assembly's passage of A-8353-D to amend Section 131-a of the Social Services Law and the Senate's inclusion of a prohibition on the City's rent-for-shelter plan in the Senate's budget resolution. 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 helping them to establish a savings plan, with the funds accumulated reserved for obtaining permanent housing or other resources necessary to achieve independence.

Advantage NY: The economic downturn has hit low income New Yorkers the hardest. We continue to see record numbers of families seeking shelter from the City's Department of Homeless Services. For example, in January 2010, 1544 families sought shelter, which is over 150 families more than in the prior January. On Monday night, 9,721 families – including nearly 15,000 children – slept in the DHS family shelter system. In contrast, in April 2005, there were 8,075 families – including 13,558 children – in the DHS family shelter system.

In the early years of the Bloomberg Administration, the City achieved record results in reducing the number of families in the shelter system in a positive way: it moved out more families from shelter into permanent housing than any other Administration had since the current era of mass family homelessness began in the 1980s. However, for ideological or philosophical reasons, the City has stopped using its two most effective tools for restoring families to stability: NYCHA apartments and Section 8 vouchers. Although many studies have shown that federal housing assistance is the most effective means of helping families achieve stability in their housing, the Administration will not prioritize federal housing assistance, including public

housing, for homeless families because it believes it will discourage applications for shelter by doing so. In fact, shelter applications have increased steadily since the City cut off priority for these federal housing programs for homeless families five years ago.

In place of the proven success of the New York City Housing Authority and Section 8 relocation programs, DHS introduced “Housing Stability Plus” or HSP, which even the DHS Commissioner later conceded was a failed program. The City then replaced HSP with Advantage, which presumed that people would achieve stability in one of two ways: employment or, for those unable to work, Section 8. There are, of course, not enough jobs available at this time in New York City for the Advantage families who need them, and, in the past few months, we have seen NYCHA rescind pending Section 8 vouchers that it had promised to families, stop issuing new ones, and threaten to cancel over 10,000 vouchers which are already in use.

The Advantage program was designed to last for the one to two years DHS expected the family would need to find work or obtain Section 8. The first families to enroll in the program have now finished the maximum two years allotted for the program, with no clear path to self-sufficiency. In fact, although these families now face a depressed job market and no new Section 8 resources, DHS and HRA have chosen to revise the Advantage programs to reinstate some of the worst features of the failed HSP program.

First, under the plan announced by DHS and HRA this week, the Advantage program will now have even more limited availability. To be eligible, a family will have to show 35 hours of work income, of which only 15 hours can be HRA-approved non-work activities. Families will only be exempt from this requirement if all the adults are disabled or a family member is so disabled that the adults cannot work because they are providing care to that person. Shelter residents who are unable to find jobs or convince a federal hearing officer that they are disabled will remain trapped in shelter. Shelter providers will also be harmed, because DHS is imposing financial penalties on them based on family’s length of stay – which, in turn, will leave providers with insufficient resources to continue to make necessary supportive services available to shelter residents.

Second, the program will require recipients to contribute half the rent for the apartment in the second year. It is as if the entire five-year “step-down” period of the HSP program – under which the amount of the subsidy was reduced by 20 percent per year over the five years of the program – were implemented at once. As we saw with the HSP program, this will cause families to be evicted when they are unable to meet the rent payments required under the terms of the Advantage lease, let alone the extra unlawful “side deal” payments landlords often demand. For families with a “fixed income” from federal disability payments, this will mean paying most if not all of their subsistence level income toward rent.

Many families will never even be eligible for a second year of benefits, however, because under the changes proposed by DHS and HRA a family will only be eligible for a second year of the program if they have worked 10 of the past 12 months and are currently working 35 hours per week. In these economic times, very few families will be able to meet that test.

Since Advantage began in FY08, through November 2009, the last month for which we have data, the City had moved out 13,536 families through the Advantage program. According to the City, about 10 percent of families with prior shelter stays are returning to DHS to seek shelter again. We learned from a Freedom Of Information Law request that families formerly in Advantage apartments re-applied at the DHS Path intake office nearly 1,000 times between September, 2007 and November, 2009. Those figures are sure to increase as DHS and HRA begin to apply the new, completely unrealistic Advantage standards to those families.

In our experience, many of the families in the Advantage program are forced to make illegal “side deal” payments to landlords in excess of the maximum rents permitted and paid by the Advantage program. Families agree to pay these improper rents demanded by landlords because they are unable to find apartments at the rent levels set for the program, and because they are often counseled by shelter workers that there is no other way to move out.

Families who currently have these leases will not be able to meet the burdens of the new Advantage rules and will lose their homes. Families in shelter will continue to be pressured to accept these inappropriate side deals, however, because of the Pataki-era State rule DHS recently implemented which permits the City to terminate shelter for families who do not seek and accept permanent housing.

DHS has not offered any other solutions for families who are already losing Advantage benefits. As you know, NYCHA has recently revealed that it has a potentially catastrophic deficit in its Section 8 program. We know that at least 2,600 families who had been told they would get Section 8 vouchers had them recalled by NYCHA, and now NYCHA is threatening to terminate another 10,000 vouchers for New Yorkers who already have them. In response to this crisis DHS has offered only a \$1 million “flex fund” to help these families achieve permanency. We have not seen any public description of this fund or how it may be accessed, but even if a family with Advantage were only paying \$1,000 per month – and many are paying much more than that -- the DHS “flex fund” would only cover 80 such leases for a year.

In summary, the flaws in the current Advantage program are already threatening to cause substantial numbers of formerly homeless families to have to seek shelter again, and the City’s proposed changes will only make the situation worse. We are very concerned that as a result DHS will soon be facing a shelter population well in excess of the current, record numbers of homeless families.

HomeBase: Likewise, the City’s HomeBase program was designed to find solutions for families facing homelessness to enable them to remain in their apartments. Recently, however, HomeBase workers have been diverted from their mission of diverting families from applying for shelter to replace City housing workers at hotels for homeless families. Those workers were laid off by the City last year, but State regulations require the City to provide those services to shelter residents. By replacing this necessary City staffing with HomeBase workers, DHS is reducing the resources available to prevent families from becoming homeless in the first place. This will only exacerbate the problems DHS will face in terms of increasing numbers of families seeking shelter because of the defects in the revised Advantage program.

With me today is K.N., who like thousands of other New Yorkers in the Advantage program faces eviction because the program will not enable her family to remain in their apartment. Ms. K.N. is a survivor of domestic violence who became homeless because the Administration for Children's Services told her that her apartment was not big enough to accommodate her four nieces and nephews, all of whom have special needs, who she had to take in when their mother became unable to care for them. She eventually found a new apartment through the Children Advantage program – which the City announced this week it will discontinue – but her family has now reached the City imposed two-year time limit for the program and Ms. K.N. has no other way to pay her rent. The HomeBase program also proved unable to help her.

We thank the Council for your continuing support for effective prevention and permanent housing programs that keep families in their homes and out of the shelter system. We will continue to update you about the needs of homeless New Yorkers and New Yorkers living on the brink of homelessness who seek our legal help to obtain access to justice.

Submitted by,

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