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TESTIMONY OF THE LEGAL AID SOCIETY BEFORE THE COMMITTEE ON  
GENERAL WELFARE OF THE NEW YORK CITY COUNCIL – October 24, 2007

We welcome this opportunity to testify before the Council concerning the impact of the Department of Homeless Services' new policy to deny shelter from the elements to homeless children and their families.

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. Since the 1980s, the Society has been counsel in the McCain litigation in which court orders require the provision of shelter, services, and permanent housing to homeless children and their families. The Society is also 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.

For more than two decades, appellate and trial court orders in the McCain litigation have required the City to provide safety-net shelter to children and their families who are homeless and have no other housing that is actually available to them. Last year, the Department of Homeless Services commenced litigation to vacate and dismiss these long-standing appellate and trial court orders that have been in place to protect homeless children and their families from harm. That litigation is currently pending while discovery and document production has proceeded.

While the Department of Homeless Services is permitted to deny shelter to families who have other housing options, the Department is legally obligated to make sure that alternative housing is available. McCain v. Bloomberg, N.Y. Co. Sup. Ct., September 7, 2005 Order. Unfortunately, the Department's own website has revealed that the Department initially denies shelter to one-third of the families who are eventually found eligible for shelter and relegates these families to apply multiple times before they are finally found eligible for shelter. Typically, these families re-apply on the same day or the day following the denial and so the eventual ineligibility reversals in their cases cannot credibly be attributed to changed circumstances as the Department has claimed.

In January 2007, represented by The Legal Aid Society, homeless families went back to Court in the McCain litigation because significant numbers of families were being improperly found ineligible for shelter and a number of the families brought before the Court had been relegated to sleeping in public spaces of the City before they were eventually found eligible for shelter. Based on the record evidence before the Court in this litigation, it is undisputed that the Department of Homeless Services has found hundreds of class member families with children to be ineligible for shelter and relegated them to apply and re-apply multiple times before ultimately finding them to be eligible for shelter from the elements.

After this litigation was commenced and The Legal Aid Society had highlighted the cases of re-applicant families who had been denied shelter outright, the Department of Homeless Services began to tell re-applicant families that they could receive “overnight” shelter if they applied after 5 PM. Under this Departmental procedure, many families were relegated to repeated “overnight” shelter placements made after 5 PM. While the Department has recently referred to this process as a “loophole” that families discovered, the Department itself implemented the post-5 PM placement procedure which often involved the provision of shelter on a night-to-night basis over a period of weeks without the acceptance of applications for more stable shelter. In fact, the Department informed the Court in August 2007 that: “Families seeking shelter after [5:00 PM] are provided with a placement for that night and are returned to PATH the following day for prompt processing of their applications. This practice provides all families with shelter, regardless of whether they are re-applicants or could demonstrate an immediate need for shelter.” August 10, 2007 Department of Homeless Services’ Attorney’s Affirmation at ¶12.

This litigation challenging the Department of Homeless Services’ denial of shelter to one-third of the families eventually found eligible for shelter was submitted to the Court on September 19, 2007. A ruling from the Court is pending. However, three weeks after this case was submitted to the Court, on October 12, 2007, the Department implemented a new plan to withhold shelter from re-applicant families, including the one-third of eligible families who are initially found ineligible and must apply multiple times before eventually being found eligible. Beginning on the night of October 12, 2007, pursuant to the new policy, children and families have been denied shelter based on erroneous eligibility determinations. After these shelter denials, a number of children and their families have ended up sleeping on the floor of St. Ann’s Church near the Department’s Path intake office. Photographs of the grim circumstances which these families have endured after they were denied shelter and sought refuge at the church are presented to this Committee for your consideration.

Since the Department’s implementation of this new policy on October 12, 2007, The Legal Aid Society has been providing legal assistance to children and their families who have been improperly denied shelter and have no alternative housing. Representative families include:

The Y.M. Family: On October 12, 2007, under its new policy, the Department denied shelter to the family of Ms. Y. M. and her two-year old daughter, who suffers from

asthma. Ms. M. and her daughter became homeless in July 2007 when they were evicted from their Housing Stability Plus apartment because they could not pay the rent. The Department found the family ineligible for ongoing and immediate needs shelter on the ground that they could stay in Ms. M.'s grandmother's Housing Authority apartment. Without any alternative housing, the M. family slept on the floor of the church near the Path office on the nights of October 12 and 13, at Lincoln Hospital on the night of October 14, and again on the floor of the church on the night of October 15. The Department denied shelter to the M. family even though on August 3, 2007 the State had issued a hearing decision reversing the Department's underlying ineligibility finding and directed the Department to provide stable shelter to the family. The Legal Aid Society advised the Department on the night of October 13 that this family had been improperly denied shelter and was sleeping on the floor of a church. The Department did not agree to provide stable shelter to the family until the night of October 16 after the Society uncovered the State hearing decision. The family had not received a copy of the State decision and the Department had continued to provide them with overnight and short-term placements until October 12 despite the decision.

The D.A. Family: Since Friday, October 12, 2007, the Department has denied shelter to Mr. D.A. and his two sons, ages 20 and 11. Because the D.A. family has no alternative housing, for nearly two weeks, this family has been sleeping on the floor of St. Ann's Church. The Department claims that the D.A. family can live with Mr. D.A.'s mother in her New York City Housing Authority apartment. Mr. D.A. has two rods in his back and uses a cane; his mother suffers from multiple medical conditions, including diabetes, high blood pressure, cancer, and Parkinson's disease. She is wheelchair bound, and Mr. D.A. submitted a letter to the Department from his mother's physician stating that "It is NOT recommended that she be asked to accept NOR care for any of her relatives including her son..." and that a return of the D.A. family "will unduly burden her and DOUBTLESS be detrimental to her health." The Department's own files reveal that Ms. A. refused to allow Mr. D.A. and his sons to return, and that she feared that their unauthorized presence might jeopardize her New York City Housing Authority tenancy. The Department's files also document that Mr. D.A. had gained custody of his eleven-year-old son only two days before seeking shelter, but the Department completely ignored the effect the arrival of the additional child had on Ms. A.'s health and her willingness to continue to house Mr. D.A.'s family. Last week, a not-for-profit shelter outreach team accompanied Mr. D.A. and his sons to his mother's apartment where they tried and failed to negotiate their re-entry. Mr. D.A.'s mother began shaking and told them that "under no circumstances" will she allow the family back in her apartment. The shelter outreach staff then accompanied Mr. D.A. and his sons to the Department's Path office where Path staff told the family that they could not enter the building, even for a review of the new facts of what had occurred when the family tried, with the assistance of the shelter outreach staff, to gain access to the housing where the Department of Homeless Services says that the D.A. family can stay.

The J.A. Family: From October 12, 2007 until the night of October 19, 2007, the Department denied shelter to J.A. and his 15-year-old son on the ground that they had

two available housing "options" – a dangerous basement apartment which is a firetrap and not a lawful living space, and Mr. J.A.'s mother's overcrowded house in Puerto Rico which, even if the family could stay there, they could not travel to in the middle of the night when they were denied shelter. Mr. J.A.'s son suffers from epilepsy, chronic asthma, hyperactivity, and other developmental delays. Mr. J.A.'s mother sent the boy to live with Mr. J.A. because she was having surgery for her rheumatoid arthritis, for which she is still in a wheelchair, and could no longer house this child who suffers from multiple developmental problems. In addition, she has twelve people living in her three-bedroom apartment. Mr. J.A. had been residing in New York City for two years when his mother sent his son to live with him. They initially resided in a basement apartment with exposed wires, sewage water that leaked from the ceiling, and severe mold. After Mr. J.A. and his son had slept on the floor of the church for a week, the Department only relented and provided the family with shelter after Legal Aid Society staff presented pictures of the dangerous and unlawful basement apartment to Path staff. However, the Department has only agreed to shelter the family on a temporary basis and, under the new policy, could deny shelter to the family again.

The A.P. Family: On the night of October 13, 2007, the Department denied shelter to A.P. and her 13-month-old toddler and told Ms. P. to return to her father's home. Ms. P. is 21; she was placed into foster care at age 12 from the home of her father and a previous girlfriend. Ms. P.'s father beat her when she was a child, once so hard that she could not sit down. Ms. P. remained in foster care until she aged out in February 2007 and was brought to Path by her Administration for Children's Services-contracted foster care agency at that time and found eligible for shelter. In the spring of 2007, Ms. P. attempted to reconcile with her father who was then living with a different girlfriend and moved into their home until they kicked her and her baby out in July. When Ms. P. lived with her father, he would scream every time her son was around, so she never let her son out of her sight, even taking him to the bathroom with her. When Path staff spoke with Ms. P.'s father on October 13, her father refused to take her back, but Path staff told Ms. P. there was nothing he could do. Ms. P. has a high risk pregnancy and is due in June. She was hospitalized for the last three months of her pregnancy with her son. A baby daughter born after 24 weeks gestation died. Ms. P. is employed part-time as a security guard and through ACS has a Section 8 voucher. Before seeking shelter, Ms. P. had located an apartment to relocate to, but it was not ready for occupancy because it had not passed a Section 8 program inspection yet. After the Department had denied the Ms. P. and her child shelter on October 13, a Legal Aid Society staff member accompanied Ms. P. back to Path to renew her request for shelter due to the serious risk of child abuse at the father's home. Despite this threat, Ms. P. had never been referred to ACS at Path. As a result of the Legal Aid staff member's intervention just before midnight on October 13, the Department reversed its shelter denial and provided the family with a ten-day shelter placement. The P. case, however, illustrates the extreme danger of the Department's erroneous eligibility findings which are now being compounded by the new shelter denial policy. The P. family only needs shelter for a brief period of time because the apartment Ms. P. located before the P. family became homeless has finally passed a Section 8 inspection.

The E.F. Family: Ms. E.F. and her one-year-old daughter spent the night of October 12 - 13, 2007 sleeping on the floor of a church near the Path office in the Bronx. The Department of Homeless Services found them ineligible for shelter and denied them a place to sleep on the night of October 12, 2007 on the grounds that they could return to Ms. F.'s ex-boyfriend's step-parents' overcrowded apartment. Not only do Ms. F.'s ex-boyfriend's step-parents' refuse to house the family since Ms. F. and her boyfriend separated, but Ms. F. is not safe living there. When Ms. F. was living at this apartment, there were constant disputes between her, her ex-boyfriend, and other members of his family. One of these verbal disputes occurred after Ms. F. ex-boyfriend's step-sister's eight year-old son pushed Ms F.'s daughter down the stairs. On a separate occasion, Ms. F.'s ex-boyfriend pushed her into a wall while she was holding her daughter. In doing so, Ms. F.'s ex-boyfriend injured Ms. F.'s daughter, and Ms. F. had to bring her daughter to the emergency room to be treated. After Ms. F. was initially found ineligible for housing assistance, she attempted to return to her ex-boyfriend's step-parents' apartment; however, they refused to open the door and told her not to come back. After sleeping on the floor of the church on the nights of October 12 and October 13, Ms. F. and her daughter spent the night of October 14 at the Living Room drop-in center where they slept on a chair. On October 15, the Department only relented and provided the family with a ten-day shelter placement after a Legal Aid staff member accompanied Ms. F. and her daughter to Path and insisted that Path staff properly assess the domestic violence threat in the family's case.

The cases of these representative families illustrate the harm that the new Department of Homeless Services policy is causing children and their families. Indeed, under this policy, children and their families who the Department eventually concedes are eligible for shelter can be denied even "overnight" shelter beds when they re-apply to overturn erroneous ineligibility findings. We are gravely concerned that this policy will result in severe and irreparable injury to homeless children and their families who are actually eligible for emergency housing. Children and families who have been improperly denied shelter since October 12 – and who have had no alternative but to seek refuge on the floor of a nearby church – have already suffered great harm. However, eligible families who are improperly denied shelter and cannot seek refuge in St. Ann's Church are exposed to even more extreme harm – exposure overnight to the cold and rain in public places or unsafe housing; they can become victims of criminal activity or violence as a result of their lack of a secure place to sleep; they can develop sickness and disease; in short, they can experience all the irreparable harms that appellate rulings and orders in the McCain litigation were issued to prevent.

As The New York Times has concluded, this new shelter denial policy is "especially harsh" and should be stopped. "No Room for Homeless Families," The New York Times, October 21, 2007 at CY17. We urge the Council to take action through its oversight of the Department so that this result can be achieved and additional children and their families can be spared the harm suffered by the families whose circumstances we have presented to this Committee – or potential greater harm with even more dire consequences for vulnerable children or adults.

Thank you again for this opportunity to testify and we welcome any questions that you may have.

Respectfully Submitted,

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