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SSI Eligibility for Refugees and Other Humanitarian Based Immigrants Extended From Seven to Nine Years

By Barbara Weiner

Under the "SSI Extension for Elderly and Disabled Refugees Act", H.R. 2608, the eligibility of refugees, asylees, victims of trafficking and other classifications of humanitarian immigrants for Supplemental Security Income (SSI) benefits is now nine years rather than seven. Humanitarian based immigrants are among the very few immigrants entering the United States after August 22, 2008 who are eligible for SSI benefits.

Humanitarian immigrants whose SSI benefits have already been terminated because of the seven year limitation on eligibility will now have the opportunity to receive an additional two years of benefits. The rationale behind the extension is to give the humanitarian based immigrant an additional two years in which to attain citizenship. The new law is effective October 1, 2008. Implementation of the law by the Social Security Administration, however, remains to be worked out.

To be eligible for an additional two years of SSI benefits, the immigrant must meet one of the following conditions:

- Be under 18 years old or over 70, OR
- Have been a lawful permanent resident (green card holder) for

less than 6 years, OR

- Have applied for lawful permanent resident status within four years after beginning to receive SSI benefits, OR
- Have been receiving benefits under the status of Cuban/Haitian entrant, OR
- Have been receiving SSI as an immigrant granted withholding of deportation, OR
- Have a pending application for citizenship.

With the exception of SSI recipients who are under 18 years old, those immigrants whose benefits were terminated or suspended and who are seeking the two year extension must certify to the Social Security Administration that they are making a good faith effort to pursue citizenship. If when the second year of extended eligibility expires the SSI recipient has still not naturalized, benefits can be extended into a third year provided that the SSI recipient has an application for citizenship pending.

While the details of the implementation of the SSI extension amendments have not yet been finalized,

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NYS DOH Clarifies “PRUCOL” Status for The Establishing of Medicaid Eligibility

By Barbara Weiner

To establish Medicaid eligibility, an immigrant must provide evidence that he or she is either a “qualified alien” as defined in federal law (8 U.S.C. § 1641) or is “permanently residing under color of law,” commonly referred to as “PRUCOL”. The term is meant to include non-citizens who, although not lawful permanent residents (“green card” holders), are considered to be in the country for an indefinite period either with the permission of the Department of Homeland Security (DHS) or with its acquiescence. Generally, the acquiescence of DHS can be assumed when an application for an immigration benefit (such as an application for permanent resident status) has been filed with the United States Citizenship and Immigration Service (USCIS) and is pending before it.

Historically, the determination of what constitutes PRUCOL was specific to the particular federal benefit program and varied between programs. These distinctions have carried over to the New York’s definition of PRUCOL in its benefit programs. Thus the Office of Temporary and Disability Assistance (OTDA) has a substantially narrower definition of what constitutes PRUCOL in the context of eligibility for the Safety Net program than does the Department of Health (DOH) in the context of Medicaid. Essentially, each agency has carried over and refined the federal AFDC and Medicaid program rules in use in the 1980’s and 1990’s. With respect to the federal programs, the federal welfare reform legislation of 1996 eliminated the PRUCOL category entirely as an eligibility classification for federal public benefits.

The answer to the question of who is to be considered PRUCOL is relatively straightforward in both the Safety Net and the Medicaid program when USCIS has actually given permission to someone to remain in the country for an indefinite period, for example a grant of deferred action. It is a more difficult question when an individual has made his or her presence known to

USCIS, generally by filing a request to be allowed to stay in the country under one or another category, but has not yet received a response from USCIS to the request. It is this question that a recently issued GIS, 08 OHIP/INF-4, is meant to answer. The GIS is available at <http://onlineresources.wnyc.net/pb/docs/08inf-4.pdf>.

However, in contrast with OTDA, it is and has been for some time, DOH policy that any formal application or petition that is filed with USCIS for an immigration benefit that is pending before the agency also confers PRUCOL eligibility while the application is pending. This would include such applications as for asylum, for cancellation of removal, for permanent resident status or for a U visa (available to victims of crime who cooperate with law enforcement). To establish Medicaid eligibility under these circumstance, an applicant for Medicaid would have to provide evidence that the application was submitted to USCIS either through an acknowledgement by USCIS of its receipt or, if such acknowledgement was not yet available, through proof of mailing, such as a return receipt.

The GIS reiterates this long standing policy of DOH but also answers another question that had long been troublesome. This question revolves around how DOH will treat applications to USCIS for discretionary relief for which there is no formal application process, for example, requests for deferred action or for voluntary departure. These requests are made simply by letter to USCIS or Immigration and Customs Enforcement (ICE) and generally must put forward a strong case for humanitarian consideration, for example, evidence that the person is severely ill and basically would suffer great harm if not permitted to remain in the US for some indefinite period.

With this GIS, DOH sets out its policy for conferring Medicaid eligibility on someone who has

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PRUCOL Status—continued

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filed such a request for discretionary relief with USCIS or ICE to which the agencies have not responded after a period of time. In order to establish PRUCOL status under these circumstances, the applicant for Medicaid must show:

- Proof that a request for discretionary relief was made to USCIS or ICE and a summary of the pertinent facts upon which the request was based (in most cases this will be evidence of the severe medical condition or extremely exigent circumstances of the applicant).
- That at least six months have passed since the request was made, during which time there has either been no response to the request for humanitarian relief or USCIS/ICE has referred the request to another agency, which also has not responded within the six month period, or ICE or USCIS has responded and the response can reasonably be “interpreted as indicating the agency does not contemplate enforcing the alien’s departure at this time.” (08 OHIP/INF-4, page 7)

- That during the six month period that the request has been pending, at least one or more attempts were made to contact USCIS or ICE to inquire about the status of the request.

A request to USCIS or ICE for discretionary relief based solely on humanitarian grounds is

obviously a measure to be taken in only the most extreme circumstances, where the condition of the non-citizen is so serious that a move to deport him or her would result in extreme harm or even death. The request will call the attention of USCIS or ICE to the individual’s presence in the U.S. and lack of legal status and could put the person at risk of being deported unless the circumstances are so dire that ICE or USCIS is not likely to initiate deportation. Such a request should be made only with the assistance of an experienced immigration attorney.

SSI Eligibility for Refugees—continued

it is expected that for those who lost benefits within the preceding twelve months prior to the application for extension will have their benefits reinstated the following month. Those immigrants 65 or older whose benefits were terminated or suspended for more than

12 months will likely have to file a new application but their benefits should be expedited. Immigrants who had received SSI based on a disability and whose benefits were terminated

more than 12 months earlier will not only have to file a new application but will also probably have to prove that they are still disabled.

Training Advisory Board Ten Initiatives for the Year Ahead

By Jerry Wein

The Training Advisory Board (TAB) invites all legal assistance staff to work with us in pursuing the training and support initiatives described in this article. For more information about any of the initiatives or if you are interested in volunteering to work on any of them please contact Jerry Wein (585) 295-5721 or Michelle Peterson (585) 295-5729 at Empire Justice or your TAB representative listed at the end of this article.

1. Provide Traditional Statewide Training for New Lawyers

In the next year we will deliver a state-wide Basic Lawyering Skills Training (BLST) at a centrally located conference facility. The training will provide necessary transition CLE credits for new attorneys and cover topics such as: Role of Legal Services Advocates, Interviewing and Counseling, Case Planning, Discovery, Negotiation, Trial Planning, Trial Advocacy, Survival Tips for New Attorneys.

Volunteers Needed: Experienced attorneys to review materials and serve as BLST trainers.

2. Provide Low Cost/No Cost Regional Training in Basic Paralegal Skills, Negotiation Skills and Administrative Hearing Skills

In order to reduce travel and overnight expenses, we will provide two and three day skills training in regional settings. For training sites we will use local offices in centralized locations. Materials and trainer training, training coordination, CLE accreditation where appropriate, will be provided by Empire Justice.

Volunteers Needed: Experienced attorneys or paralegals to serve as trainers in Basic Paralegal Skills, Negotiation Skills and Administrative Hearing Skills.

3. Provide Train the Trainer Training (T³) to Support In-house Delivery of Training

Train the Trainer trainings (generally one day in duration) will be scheduled in four or five regional locations. This training will identify trainers throughout legal services projects in New York and prepare them to deliver **Modular Trainings** developed by the Advisory Board.

Volunteers Needed: Staff willing to attend T³ and serve as lead trainers in delivering modular training.

4. Create Modular Training for In-House and Regional Training Focusing on Case Handling and Discovery

Modular training will provide materials and trainer guides to allow legal services projects to conduct in-house training. Case Planning and Discovery is a high priority for staff based on our training survey conducted earlier this year.

Modular training will develop "free standing" two hour training packets. These modular trainings will be recorded for use at all local delivery sites and will be made available through the Internet. CLE credits may also be included.

Volunteers Needed: Experienced advocates to assist in developing modules on **Case Planning and Discovery** topics (Developing a Theory of the Case, Legal and Factual Analysis, Formal and Informal Discovery, Conducting Depositions, Compelling Discovery, Evidentiary Issues, Using A Trial Notebook, etc.)

5. Replicate In-House Training Developed by New York Legal Services Organizations

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Training Initiatives—continued

(Continued from page 4)

Does your organization have materials that you use for in-house training? If so, we'd like to review the materials and see if we can put them into a standard format and make them available to legal services groups throughout New York.

Volunteers Needed: Advocates to identify existing in-house training materials and assist in reviewing materials and developing modules.

6. Build an “On Demand” Web Training Library

With the assistance of WNYLC, we hope to record New York legal services staff on the things they know well -- basic subjects such as introductions, overviews, things every advocate should know about -- in the substantive and skills areas our offices cover. We also want to record practice tips and learning from recent litigation efforts and advocacy projects while they are fresh in mind.

Recording these topics will allow us to present staff members' area of expertise to individuals and groups around the state without leaving the office. This will free staff from the expense of travel to central locations to receive training and will allow all staff access to knowledge at a time best suited to their learning needs. These recordings can also be used for new staff orientations as well as for experience staff who need to revisit a specific topic.

Volunteers Needed: Advocates who have expertise and willingness to share their thoughts for web presentations. Please note: Advocates who volunteer to make presentations will have help from Empire Justice and WNYLC staff in preparing and presenting their work.

7. Build on Existing Task Forces and/or Create New Ones to Provide Substantive Training and Identify Emerging Issues

We are asking TAB members to survey their organizations to determine whether task forces should be revitalized, strengthened or created as a vehicle to deliver substantive trainings.

Volunteers needed: Experienced advocates willing to assist in development of task forces.

8. Explore Social Networking Applications to Determine Their Usefulness in Supporting the Development and Delivery of Training to Legal Services Personnel

We want to explore Social Networking applications and determine how useful they may be in supporting the development and delivery of training to legal services personnel.

Volunteers Needed: Staff willing to share their experience and expertise with Social Networking.

9. Develop A Supervisors' Forum to Discuss Issues and Concerns of Supervisors and Provide a Place Where Supervisors Can Learn and Get Help From Other Supervisors

We plan to develop a “Supervisors' Forum” that meets electronically three or four times a year. The forum will discuss issues and concerns of supervisors, providing a place where supervisors can learn and get help from other supervisors.

Volunteers Needed: Supervisors willing to participate in and possibly help organize the forum.

10. Create a Litigators Network to Train Attorneys and Provide Mentors

We plan to create a Litigators' Network to identify training areas, develop training responses, and provide mentors to younger

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Training Initiatives—continued

(Continued from page 5)

lawyers to meet individual learning needs. The Litigators' Network will meet electronically three to four times a year and members of the network will take responsibility for the training content. Creation of a Litigators' Listserv is possible. Development and coordination of the mentoring program will be provided by Empire Justice Center.

Volunteers Needed: Attorneys willing to help organize the network and serve as mentors.

Please give us a call or contact your TAB representative if any of these initiatives interest you. Thanks.

Training Advisory Board Members

Name	Organization
Lew Papenfuse	Farmworkers Legal Services of New York
Susan Griffith	Frank H. Hiscock Legal Aid Society
David C. Schopp	Legal Aid Bureau of Buffalo
Sam Young	Legal Aid Society of Mid New York
Anne Malak	Legal Aid Society of Northeastern New York
Cindy Carroll	Legal Aid Society of Rochester
Alex Bursztein	Legal Aid Society of Rockland County
Marty Roberts Ellen Heidrick	Legal Assistance of Western New York
Dennis Kaufman	Legal Services of Central New York
Barbara Finkelstein	Legal Services of the Hudson Valley
Maria Dosso	Nasau/Suffolk Law Services Committee
William J. Hawkes	Neighborhood Legal Services
Susan Patnode	Rural Law Center of New York
Joe Keleman	Western New York Law Center

On-line Resource Center Featured Trainings

By Michelle Peterson

Many advocates who are familiar with the wealth of information available on Western New York Law Center's On-Line Resource Center (ORC) and what a valuable resource it is know that new resources are added almost every day. The ORC has recently added a new training and two new presentations available for viewing over the web by attorneys and advocates. In most cases, there is no charge for viewing these trainings, and anyone who wishes to view these trainings must register.

To view new trainings and presentations recently added to the ORC, go to <http://onlineresources.wnylc.net> and click "Online Training" on the left side of the screen. Click on the desired presentation, complete the registration form and click "submit". A link to the presentation will be sent to the email address provided in the registration form.

If you are an attorney and wish to receive Continuing Legal Education (CLE) credits, download and complete the course evaluation and attorney affirmation forms and mail to the address listed on the bottom of the form along with payment for processing of CLE credit.

Recently added to the ORC Training Center

Kinship Care: Rights, Authority, Assistance & Resources

This course covers kinship caregiver legal issues. Originally presented in partnership with the Woman's Bar Association of Orange and Sullivan Counties (a chapter of the Woman's Bar Association of the State of New York) on May 14, 2008, featured speakers are Gerald Wallace, Esq., Director of Kin Care Support Project at Albany Law School Government Law Center, Susan Antos of the Empire Justice Center, and Taynya Briendle of Pace Woman's Justice Center, the program offers extensive practical infor-

mation about legal issues facing grandparents and relatives raising children.

Topics covered in this training include grandparents rights, distinction between legal custody and guardianship, third party custody disputes, becoming a kinship foster parent, standby guardianship recent legal developments, informal care and eligibility for public assistance, social security and other assistance programs. Viewing time: 2 hours and 38 minutes. To register for this course, go to <http://onlineresources.wnylc.com/Kinship/>. CLE Credit: 3 Professional Practice

New Approaches to Stabilizing Home Owners and Communities in Western New York

Co-sponsored by the New York State Coalition for Excellence in Homeownership Education and the Empire Justice Center, this taped broadcast is geared towards housing counselors, legal services organizations, lenders, public officials, community-based organizations, and anyone who is concerned with the impact of the foreclosure crisis on homeowners and neighborhoods in the western part of the State. Discussion topics include information about housing counseling standards, specialized foreclosure trainings, state programs addressing the foreclosure issue, and successful approaches to reducing foreclosures, among other topics. Panelists: Lynn Morris, Upstate Outreach Coordinator, State of New York Mortgage Agency; Steven Banko III, Buffalo Field Office Director, U.S. Department of Housing and Urban Development; Michael Hanley, Senior Attorney, Empire Justice Center; Kathleen Lynch, Attorney, Western New York Law Center; Rebecca Case Grammatico, Attorney, Empire Justice Center. Viewing time is 2 hours and 50 minutes. To register for this presentation go to http://onlineresources.wnylc.com/New_Approaches/

The American with Disabilities Amendments Act of 2008

By Michael Mulé

On September 25, 2008, the President signed the Americans with Disabilities Amendments Act of 2008 (ADAA).¹ The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of Equal Employment Opportunity Commission's (EEOC) regulations under the Americans with Disabilities Act of 1990 (ADA).²

When Congress passed the ADA, it expected the definition of disability would be interpreted consistently with how courts had applied the definition of handicap under the Rehabilitation Act of 1973. In the last decade, that expectation has not been fulfilled. The decisions of the Supreme Court in *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999), and in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) narrowed the broad scope of protection intended to be afforded by the ADA, eliminating protection for many individuals.³

Mitigating Measures

The ADAA rejects the requirement articulated by the Supreme Court in *Sutton v. United Airlines, Inc.*, and its companion cases that the decision whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures. To correct this, the ADAA states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability."⁴

'Substantially Limits' and 'Major Life Activities'

In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Supreme Court reasoned that the terms 'substantially and major' in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under

the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives."

Congress has directed the EEOC to revise the portion of its regulations defining the term "substantially limits" and to provide a new definition to indicate the departure from the strict and demanding standard applied by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* and numerous lower courts. The ADAA defines the term "substantially limits" to mean materially restricts.⁵

Also in response to *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Act expands the definition of "major life activities" by including two non-exhaustive lists.⁶ The first list includes many activities that the EEOC has previously, recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating). The second list includes major bodily functions (e.g., functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).⁷

'Regarded As'

The ADAA also provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation.⁸ An individual meets the requirement of being regarded as having such an impairment if the individual establishes that he or she has been subjected to an action prohibited because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This protection does not apply to impairments that are transitory and minor, defined as those with an actual or expected duration of 6 months or less.⁹

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OGS Language Services Contract: Meaningful Access for Legal Service Programs

By Michael Mulé

Legal services programs and non-profit organizations may be eligible to use translation and interpreter services under an existing New York State Office of General Services (OGS) contract. Many entities can use the language service vendors under the contract to ensure limited English proficient (LEP) individuals have meaningful access to their programs and services.

OGS issued a language services contract in May 2002 to provide “translation, interpretation, over-the-telephone interpretation, and sign language and transcription services.”¹ Vendors under this contract are “full service language companies, offering support in more than 160 languages.”² The current contract, effective until August 2012, includes many of the same services with the exception of sign language interpreters.³

Under the current OGS contract, translating services include document translation, formulating lexicons, localizing, proofreading and formatting.⁴ Interpreting services include consecutive interpreters, simultaneous interpreters, and over the phone interpreter services which are provided on-site or over-the-phone 24 hours a day, 7 days a week.⁵

Translation rates vary from \$.05 to a maximum of \$.27 per word with discounts for documents over 15,000 words.⁶ Interpreter rates vary from \$30 to \$110 an hour for in person consecutive and simultaneous interpreter to \$45 to \$75 for over the telephone services.⁷ These rates are competitive when compared to the private contract rates for each provider.

An “authorized user” of the language services contract is “any department, agency, board, commission, office or institution of the State of New York and shall also include public authorities, local governments and not-for-profit organizations of the State of New York.”⁸ This broad definition includes many legal service programs and community based organization.

If your organization uses OGS service and has a Customer ID, it may already be eligible to use these translating and interpreting services contractors. Contact the procurement officer for the language services contract to determine if you are eligible.⁹ Upon request, all eligible non-State agencies must furnish language service contractors with the proper tax exemption certificates and documentation certifying eligibility to use this and other State contracts.

Endnotes

1. OGS Contract Award Notification, Group 73005 Translating and Interpreting Services, Award Number: PGB-02318, 5/9/2002 to 11/30/06.
2. Id.
3. OGS Contract Award Notification, Group 73005 Translating and Interpreting Services, Award Number: 20487 (replaces PGB-02318), August 10, 2007 – August 9, 2012, Date of Issue : August 10, 2007 (Revised October 2, 2007), available at: <http://www.ogs.state.ny.us/purchase/snt/awardnotes/7300520487can.HTM>. full text of the contract is available at: <http://www.ogs.state.ny.us/purchase/snt/awardnotes/7300520487can.pdf> (PDF), (OGS Contract).
4. See OGS Contract pg.19-20 for a full description of the translation requirements.
5. See OGS Contract pg. 20-22 for a full description of the interpreter requirements including confidentiality.
6. See OGS Contract pg. 9-10 for a complete rate chart by language.
7. See OGS Contract pg. 11-16 for a complete rate chart by language.
8. OGS Contract pg. 17.
9. Contact information is available at: <http://www.ogs.state.ny.us/purchase/snt/awardnotes/7300520487can.HTM>

ADA Act Admendments—continued

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Endnotes

1. The Americans with Disabilities Amendments Act (ADAA), Public Law 110-325, is available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h3195pcs.txt.pdf.
2. See EEOC, Notice Concerning The Americans With Disabilities Act (ADA) Amendments Act Of 2008, <http://www.eeoc.gov/ada/>

[amendments_notice.html](#). (EEOC Notice).

3. ADAA Section 2 (4)-(5).
4. ADAA Section 3 (5)(D)(i).
5. ADAA Section 3 (2).
6. See ADAA Section 3 (3).
7. See ADAA Section 3, EEOC Notice.
8. See ADAA Section 6, EEOC Notice.
9. See ADAA Section 3 (4).

Regulatory Roundup

By Susan C. Antos

Regulatory Round Up reports on administrative rule making of interest to public benefits specialists. The rulemaking described below appeared in the New York State Register from July 30, 2008 to October 15, 2008. All references are to 18 NYCRR, unless otherwise indicated. If you are interested in reading the text of a proposed rule or the summaries of public comment and the response regarding an adopted rule, please contact Connie Wiggins (cwiggins@empirejustice.org). Any comments submitted by Empire Justice Center on proposed regulations, are available at www.empirejustice.org. From the "Issue Areas" bar, click on the "Public Benefits" section, go to "Cash Assistance" and then "Comments on Regulations."

Notice of Proposed Rule Making

Date of Filing	Last Day to Comment	Regulations Affected	Summary
10/15/08	11/29/08	347.10(a)	<p>Self-Support Reserve: This proposed regulation adjusts the self-support reserve to \$14,040 which is 135% of the poverty level for one person. The self-support reserve is an important protection for low income respondents. If a support order reduces a non-custodial parent's income below the self-support reserve, the child's support order can only be the greater of \$50 per month in child support or the difference between the non-custodial parent's income and the self-support reserve. Family Court Act §413 (1)(d).</p> <p>Further, local support collection units may not impose "add-ons" to collect arrears which would reduce an obligor's income below the self-support reserve. 18 NYCRR 347.9(e)(2).</p>
10/01/08	11/15/08	387.9	<p>Finger Imaging: This proposed regulation would permit the Office of Temporary and Disability Assistance (OTDA) to exempt certain categories of applicants for and recipients of food stamps, from the requirements to participate in finger imaging, as a condition of eligibility for such benefits.</p> <p>Currently local districts must submit an Automated Finger Imaging System (AFIS) plan to OTDA for approval and districts may choose to exempt the elderly, disabled, homebound, employed and those with transportation difficulties.</p>

Notice of Proposed Rule Making

Date of Filing	Last Day to Comment	Regulations Affected	Summary
09/03/08	04/18/09	352.3(d)(1)	<p>Shelter Allowances: This proposed rule sets forth the new calculations of shelter allowances for individuals and families who receive public assistance in and reside in public housing. The regulation implements chapter 598 of the Laws of 2007 which will increase the maximum shelter allowances for public housing in three incremental steps (50% / 75% / 100% of shelter maximum), to be fully implemented by August 15, 2009.</p>

Notice of Adoption

Date of Filing	Effective Date	Regulations Affected	Summary
09/16/08	10/01/08	357.16(e), (f)	<p>Group Home Standard Benefit (GHSB) for Food Stamps: These regulations provide a standardized food stamp benefit amount to persons living in group homes.</p> <p>A previous group home standard benefit, which New York implemented in 2005 as part of a waiver obtained from the United States Department of Agriculture, was enjoined after litigation in the case of <i>Graves v. Doar</i> (the papers in this case are available in the Online Resource Center Benefits Law Database, which is available at www.onlineresources.wnyc.net/welcome.asp?index=Welcome).</p> <p>The court in <i>Graves</i> ruled that the GHSB had not been promulgated by notice and comment rulemaking and thus violated the State Administrative Procedure Act. This proposed regulation will eliminate the differences between the food stamp benefits for residents who receive public assistance (PA) and those who receive Supplemental Security Income (SSI), which makes sense because group home providers are paid the same regardless of whether the recipient receives PA or SSI.</p>

Notice of Adoption

Date of Filing	Effective Date	Regulations Affected	Summary
09/16/08	10/01/08	393/3(c)(3), (5)	<p>Home Energy Assistance Program: This program regulation establishes a new Home Energy Assistance Program Benefit Level. Although the benefit level is only \$1, household that receive this benefit will be entitled to a standard utility allowance (SUA) deduction when their eligibility for food stamps is calculated. This deduction will increase the number of households in public housing eligible for food stamps and will significantly increase food stamp benefits for other households.</p> <p>The regulation provides this new benefit to those in public, non-profit residential drug or alcohol treatment facilities, enriched housing, residential group living arrangements and state operated community residences.</p> <p>This regulation is expected to increase the food stamp allotment of 114,182 households (89,426 in New York City and 24,756 in the rest of the state) and will bring approximately \$150 million new food stamp dollars into New York each year.</p> <p>Because this benefit applies to residents in subsidized housing, it will mitigate the unintended consequence of the recent New York City Housing Authority rent increase. See related article in the August 2008 Legal Services Journal (pg. 36) by Barbara Weiner.</p>
07/10/08	07/30/08	3044.3(a) 301.2(a)(c)(d) 301.5(a)(1), (b) (1)	<p>Veterans Assistance: This regulation updates references to names of benefits programs and also clarifies that incapacitated children may be eligible for Veteran's Assistance if one of their parents is a deceased veteran.</p>

Advocate Alert! Make Sure Your Clients Aren't Losing Out On This Year's HEAP Renters Benefit

By Cathy Roberts

We learned from OTDA recently that almost \$1 million dollars in HEAP renters benefits were expunged last year because households had failed to access the benefit within the required 90-day time period. That translates into approximately 20,000 low-income households losing out on their \$50 HEAP benefit!

A big reason may be that these households were unaware that they had gotten the benefit, since they had not applied for HEAP. Temporary assistance and food stamp recipient households are issued a regular (non-emergency) HEAP benefit through OTDA's HEAP autopay system – these households do not have to go through the “normal” HEAP application process.

Even households who read their HEAP acceptance notice and realized they had gotten the renters benefit may not have understood what to do, especially if they were food stamp-only households and had never redeemed cash benefits on their EBT card.

Accordingly, we wanted to ask advocates to help ensure that no one is losing out on their \$50 HEAP renters benefit this winter! Here are some pointers, courtesy of OTDA (GIS message 04 TA/DC 030):

- the \$50 HEAP renters benefit will be automatically issued to food stamp recipient households who live in private housing (not public or subsidized) AND whose heat is included in their rent.
- It is provided as a \$50 cash payment and can be accessed through the household's EBT benefit card, using the same PIN the household uses to redeem their food stamp benefits.
- While the \$50 payment is a HEAP benefit, it does not have to be applied toward heating or utility expenses. The money may be used in the same manner as any other EBT cash benefit.
- As with any other public assistance cash benefit, households can get or use the cash HEAP benefit at any ATM or store where EBT cash benefits may be redeemed. Look for the QUEST logo, like the one on the back of the EBT benefit card, to identify such stores and ATMs.
- Some QUEST ATM locations impose a surcharge of a \$1.00 or more for EBT cash withdrawals. Before withdrawing any cash, look for a sign or message on the ATM that informs you about the surcharge. To find the location of surcharge-free ATMs and POS (point-of-sale) devices in your area, call 1-800-289-6739.
- Most ATMs dispense cash in \$20 increments, which means that the entire \$50 may not be withdrawn from an ATM. Withdrawing the cash at an in-store customer service desk or check-out line POS device probably is the best option.
- The \$50 benefit must be at least partially redeemed within 90 days of its issuance or it automatically will be expunged from the EBT cash account.
- Households whose HEAP benefits are expunged due to non-redemption can request to have the benefits restored, as long as the request is made before September 1, 2009.
- Call the customer service number on the back of the card, 1-888-328-6399,

(Continued on page 14)

HEAP Renters Benefit—continued

(Continued from page 13)

for any questions or problems related to using the benefit card or PIN.

- Households who aren't sure whether they got a HEAP renters benefit should check the balance on their EBT benefit card, either by calling the EBT customer service hotline (1-888-328-6399) or checking the EBT cardholder account website at www.ebtaccount.jpmorgan.com/JPM%5FEFS/. Additionally, if the person is using their food stamp benefits at the grocery store, they can check their receipts to find the remaining balance in their EBT account – the HEAP payment would show up as \$50 cash benefit.
- OTDA has an updated EBT brochure, available in 9 different languages, which may also be helpful to clients. You can download the brochure at <http://www.otda.state.ny.us/main/ebt/publications.htm>

Also, OTDA will be issuing a new \$1 HEAP cash renters benefit this year, to food stamp households in public/subsidized housing who don't pay separately for heat, and also to group home residents receiving food stamps. The \$1 HEAP payment allows these households to receive the level 1 heating/cooling food stamp standard utility allowance which in turn maximizes their food stamp monthly benefit. The same pointers listed above about the \$50 HEAP renters benefit would also apply to the \$1 HEAP renters benefit.

Questions? Contact Cathy Roberts at croberts@empirejustice.org, or call her at 518-462-6831, x 112.



SSAB Recommends Changes to the SSI Program

By Kate Callery & Louise Tarantino

The Social Security Advisory Board (SSAB), a seven-member bipartisan Board created by Congress to advise the President, the Congress, and the Commissioner on matters relating to the Social Security and Supplemental Security Income (SSI) programs, has recommended that Congress re-examine the SSI program - now more than 35 years old. The SSBA has begun its own review of several aspects of the program. In May, it released Issue Brief #4, in which it considers three aspects of the program that need “a fresh look as part of a comprehensive legislative review”:

- Benefit levels in household with more than one SSI beneficiary
- Benefit levels for disabled beneficiaries and
- Asset limits and excluded amounts of income

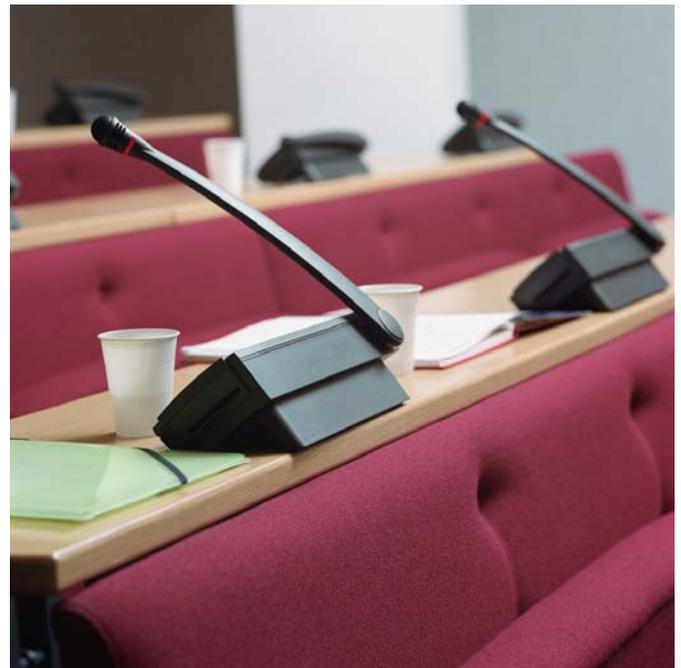
The Board concluded that while it agrees with Congress’s initial premise that two can live more economically than one, SSI’s “couple’s rate” gives beneficiaries an incentive not to marry and gives married couples an incentive to dissolve their marriages. It recommends “equivalence scales” - to be applied to households of all sizes and compositions.

The SSAB also raised the issue of the additional household costs associated with the disability of a beneficiary. Recognizing that setting rates that vary based on disability would make a complicated program more complicated, it suggests that further research is needed to set appropriate benefits rates.

Finally, the SSAB addressed the question of “frozen income and resource limits.” The Board questioned whether Congress’s original goal of ensuring minimum income for eligible beneficiaries is still being met in light of the fact that the

\$20 general and \$65 earned income exclusions have not been increased in 35 years. If they had been indexed to reflect increases in wages using the Average Wage Index, they would now be about \$105 and \$342, respectively. Similarly, the asset limit of \$2,000 for an individual and \$3,000 for a couple has not been increased since 1989. Adjusted for inflation, those figures would now be \$3,500 for an individual and \$5,250 for a couple.

The SSAB’s Issue Brief #4 is available at <http://www.ssab.gov/documents/SSI.pdf>.



Banking Alternatives for Dedicated Savings Accounts

By Kate Callery & Louise Tarantino



As DAP advocates know, retroactive benefits for children's SSI cases must be put into a Dedicated Savings Account (DSA) and used for extraordinary items related to the child's disability. Since SSA will not pay any retroactive benefits until the DSA is established, what can representative payees do if they have a bad bank history and cannot find a financial institution that will accept their account?

This question showed up on the DAP list serve recently, and the responses provided a tremendous source of information. Read on!

As we reported in the March 2008 *Disability Law News*, SSA started a pilot project in four Southern states that offers the option of claimants receiving their Social Security or SSI benefits in the form of a prepaid debit card instead of a paper check. The targeted audience for the debit card use is beneficiaries who do not have or cannot open bank accounts. <https://secure.ssa.gov/apps10/poms.nsf/lnx/0202402006>. Claimants can call 1-(877)-212

-9991 or go to www.USDirectExpress.com for more information. The Consumers Union has also put together a FAQ sheet, available at http://www.consumersunion.org/pub/core_financial_services/005733.html. Although this program is not yet available in New York, SSA expects nationwide rollout later in 2008.

Another option is to open an Electronic Transfer Account ("ETA") at an ETA Provider bank. An ETA is a low-cost bank account where a recipient can receive Federal payments each month by direct deposit. The claimant's credit worthiness is not an issue. To find an ETA Provider bank in a claimant's area, call 1-(888)-382-3311 or go to www.eta-find.gov for more information.

It was recommended that a claimant should open two accounts as above: (a) one as a dedicated savings account used exclusively for the retroactive award in and (b) one for the ongoing monthly payments.

Lastly, Credit Union accounts can also be used for setting up a DSA.

Now we are all a lot wiser about advising our clients on the options available to them in setting up a DSA.

Food Stamp News Briefs

Food Stamp (aka "SNAP" updates)

Reminder about interview requirements

The New York State Office of Temporary and Disability Assistance (OTDA) recently reminded local social service districts about federal food stamp requirements governing the scheduling of interviews, as well as the notice procedures for households who miss their interview.



"packet" which includes a recertification [application] form, and a notice which lists the recert interview date and time.) If the household submits a completed recertification form but misses their interview, the district must send a NOMI. And if the household responds to the NOMI, the district must reschedule the interview. However, households who fail to send in their recertification form and miss their interview will not receive a NOMI.

OTDA released GIS message, 08 TA/DC018 ("Food Stamp Notice of Missed Interview (NOMI) Issuance") in July 2008. The GIS reiterates that:

1. All households not interviewed on the day they submit their applications must be given a **scheduled date and time** at initial application. Districts should not advise households to come back and be interviewed on a "first come, first serve" basis, nor can they advise households who qualify for a phone interview to wait for a phone call "some time" during the 30-day processing period. Households who are recertifying must also be given a **scheduled date and time** for their recertifications.
2. Districts are **required** to send a NOMI to all households who have filed an initial or recertification application and have missed their interview. The NOMI informs the household of their responsibility to reschedule the eligibility interview.
3. For **applicant** households who miss their initial eligibility interview, the district must send out the NOMI and then hold the application for 30 days to give the household an opportunity to reschedule their appointment. If the household *responds* to the NOMI, the district must reschedule the interview. If the household *does not respond* to the NOMI, the district can deny the application at the end of the 30-day period.
4. For **recipient** households, the NOMI procedures are slightly different. (Remember that households are mailed a recertification

You can get the GIS at <http://www.otda.state.ny.us/main/gis/2008/08dc018.pdf>.

New eligibility guidelines beginning October 1, 2008

GIS message 08 DC019, released by OTDA in August 2008, lists the updated food stamp standards for October 1, 2008, including the new payment matrix for the New York State Nutrition Improvement Project (NYSNIP), which provides standardized food stamp benefits to single SSI live-alone recipients. The GIS message also incorporates the changes to the standard and dependent care deductions (no more dependent care cap!) enacted as part of the 2008 federal reauthorization. You can access the GIS message at

<http://www.otda.state.ny.us/main/gis/2008/08dc019Upstate.pdf>

The Empire Justice Center has updated its food stamp budget worksheet to incorporate the October 1st changes. You can download our budget worksheet at

<http://www.empirejustice.org/New/PublicBenefits/FSWorksheet908.pdf>

Questions??

If you have questions about this article or any other food stamp-related questions, please contact **Barbara Weiner** (bweiner@empirejustice.org) or **Cathy Roberts** (croberts@empirejustice.org) at Empire Justice's Albany office, or give them a call at 518-462-6831.

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