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**NEW YORK STATE**  
**OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**  
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## Administrative Directive

### Section 1

<b>Transmittal:</b>	03 ADM 11
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Temporary Assistance
<b>Date:</b>	December 22, 2003
<b>Subject:</b>	Emergency Assistance to Families (EAF): Changes to Part 372 of 18 NYCRR 372 and to the TANF State Plan
<b>Suggested Distribution:</b>	Temporary Assistance Staff Staff Development Coordinators Services Directors
<b>Contact Person(s):</b>	Temporary Assistance: DTA Central Team at 1-800-343-8859, extension 4-9344 Medicaid: Upstate Local District Liaison at (518) 474-8216 New York City Liaison at (212) 268-6855
<b>Attachments:</b>	None
<b>Attachment Available On – Line:</b>	<input type="checkbox"/>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
97 ADM-20 00 INF-21		Part 372 361.1c	SSL 350	TASB Chapter 2-C	GIS 03 TA/DC005 02 TA/DC030

### Section 2

#### Purpose

The purpose of this release is to inform districts about changes to Emergency Assistance to Families (EAF), Part 372 of Office Regulations and to New York's TANF State Plan.

#### A. The regulatory changes include:

1. The addition of language to Office Regulation 372.2(a)(4) that appears in Social Services Law (SSL) but which was not included in the regulatory language requiring that the emergency situation must be one that was sudden, could not have been foreseen, and was beyond the applicant's control;
2. The removal of the \$500 cap for the cost of repairs to recipient-owned homes;

3. Technical changes to remove language that is inconsistent with the categorical rules of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA); and
  4. The addition of subdivision (f) to Office Regulation section 372.4 clarifies that EAF categorical eligibility as was in effect on September 30, 1995 shall apply to those children's services that qualify for EAF claiming only because those services were included in New York's approved ADC State Plan on that date. This clarification applies only to certain foster care cases that would not otherwise be eligible for EAF under federal welfare reform.
- B. The TANF State Plan change established an income standard for the determination of financial eligibility for EAF. GIS 02 TA/DC030 dated November 19, 2002 informed districts about this change. GIS 03 TA/DC005 updated the poverty levels.

## **Background**

### **A. Regulatory Changes**

1. SSL 350-j(e) provides the requirements for eligibility for EAF, including that the emergency needs resulted from an occurrence or situation that could not have been foreseen by the applicant and was not under his or her control. This language was not previously contained in the Office Regulations even though this standard was applied by districts and upheld in fair hearings. The change to Office Regulation 372.2(a)(4) adds the language contained in SSL.
2. Office Regulation 372.4(b) set a five hundred dollar limit on the amount that could be authorized under EAF for the repair of client owned homes. This limit is not found in SSL, and was found to be insufficient to meet required costs in most cases. The removal of the limit will allow the district to make necessary repairs when, in their judgment, that would be the most cost effective way to meet the family's emergency need.
3. Informational Letter 00 INF-21 "Policy Clarification of TANF Funded Assistance" informed districts about certain provisions in Office Regulations and SSL that were inconsistent with the federal PRWORA. Inconsistent policies were changed by that INF prior to regulatory changes being filed, since SSL 350-j(1) authorized EAF "... so long as federal aid is available ...". The required technical changes to the regulation are included in this package of changes.
4. The addition of Office Regulation 372.4(f) does not change existing policy in any way. This addition to the regulation was done to codify policy in effect since federal welfare reform. If a state did not have an approved ADC state plan prior to federal welfare reform that included the use of EAF for certain foster care cases, EAF could not have been used for those cases after federal welfare reform. Since New York's approved ADC State Plan in effect on September 30, 1995 did include the use of EAF for those certain foster care cases, the State may use EAF for those cases. The authority for this is found in section 404(a)(2) of the Social Security Act. Office Regulation 372.4(f) clarifies that the determination of eligibility for EAF for

certain children's services cases is based on the categorical eligibility criteria in effect on September 30, 1995.

#### B. State Plan Change

In order for New York's TANF State Plan to be deemed complete by the Department of Health and Human Services (DHHS), the Office was required to include a financial eligibility standard for EAF. The long existing standard that the family lacked the income or resources to meet the emergency was not deemed satisfactory by DHHS. Therefore, the Office determined that a family shall not be eligible for EAF if the family has gross available income, on the date of application in excess of 200% of the federal poverty level for that household size.

### III. Program Implications

#### A. Regulatory Changes

1. Sudden occurrence or situation, unforeseen and beyond the individual's control (372.2(a)(4)): Applicants for EAF will be ineligible to have their emergency need met by EAF when the district determines that the emergency did not arise from a sudden occurrence or situation that was unforeseen and beyond the individual's control.

If the family is denied EAF due to this provision, then the district must consider the family's eligibility for Emergency Safety Net Assistance or for referrals to other programs or resources.

2. Removal of the \$500.00 cap on the cost of repairs to client owned property: When the local district determines that an applicant is eligible for EAF for the cost of repairs to client owned property, the district must pay for repairs and claim the full cost as EAF. Reimbursement is no longer limited to amounts of \$500.00 or less.
3. Technical changes: There are no current implications since local districts were previously informed about the policy changes by 00 INF-21.
4. 18 NYCRR 372.4(f): There are no implications for Temporary Assistance since this section applies only to certain foster care cases. Local district workers who make categorical eligibility determinations for children in foster care already apply the September 30, 1995 rules to the appropriate foster care cases.

#### B. State Plan Change

The EAF financial eligibility standard that looks at gross available income on the day of application must be applied to applicants for EAF.

## IV. Required Action

### A. Regulatory Changes

1. Sudden occurrence or situation, unforeseen and beyond the individual's control (372.2(a)(4)): Applicants for EAF will be ineligible to have their emergency need met by EAF when the district determines that the emergency did not arise from a sudden occurrence or situation that was unforeseen and beyond the individual's control.

If the family is denied EAF due to this provision, then the district must consider the family's eligibility for emergency Safety Net Assistance, or for referrals to other programs or resources.

**This change is expected to have no effect on an applicant's eligibility for a diversion payment.**

**This change will not have an effect on the determination of EAF eligibility to pay utility emergencies. This is because SSL 131-s requires payment.**

**This change will not cause an effect on determination of EAF eligibility to pay for residential programs for victims of domestic violence.**

Examples will illustrate the district's determination of EAF after considering if the emergency arose from a sudden occurrence or situation that was unforeseen and beyond the applicant's control. All examples assume that the family is otherwise eligible for EAF.

- a. In late April, a woman applied for payment of rent arrears for March and April to avoid eviction. The worker determined that the woman is employed full time and was so for the period that the arrears accrued. However, the worker also determined that the woman was ill, missed nearly three weeks of work in February and was not paid for those sick days.

The sudden and unforeseen occurrence was the applicant's illness. While she was able to maintain her family with her earnings normally, she was not able to recover financially from the loss of three weeks of income.

The family is found eligible for EAF.

- b. After an applicant exhausted eligibility for HEAP benefits, he applied for EAF for payment of a past fuel oil bill. The family had been paying their fuel bills but as the unusually cold weather continued and the cost of fuel increased, the family could not pay the bill.

The extended unusually cold weather and the increased fuel prices are sudden occurrences beyond the applicant's control. The family is found eligible for EAF.

- c. An applicant for rent arrears to avoid eviction stated that she did not pay her rent because she was saving to get a better apartment. However, she then used most of the rent savings to pay for school tuition for the children and for school clothes.

The need to pay tuition for children in private school is not an unexpected occurrence beyond the applicant's control. Therefore, she is not eligible for EAF. The applicant must be evaluated for emergency Safety Net Assistance (ESNA). Since the applicant's income is below 125% of the poverty level for her size family, but above the TA limit, the applicant must sign a shelter arrears repayment agreement in order to qualify for an ESNA rent arrears payment.

- d. An applicant filed for emergency assistance for rent arrears. The family used the income usually reserved for rent to pay back oil bills. Because of the extended cold weather and the increase in oil prices, even after the family had exhausted HEAP eligibility and made payments on the fuel oil bill, arrears accrued. The oil company threatened to refuse further deliveries until the arrears was paid in full. The family used the rent money to pay the fuel arrears.

The extended unusually cold weather and the increased fuel prices are sudden occurrences beyond the applicant's control. The family is EAF eligible.

- e. An individual applied for emergency assistance for himself and his family to prevent an eviction. The individual receives Social Security Disability benefits but he did not receive his full benefit for several months due to a recovery of a prior overpayment by SSA. The reduction in household income during that period caused the rent arrears to build.

EAF cannot be denied on the basis that the client should have foreseen and known that an overpayment would result in a reduction in benefits and in the resulting inability to pay the rent. Therefore, the district need not try to make a determination of who was at fault for the overpayment, the client or SSA.

- f. A family was denied EAF for rent arrears after the determination that the emergency did not arise from a sudden and unforeseen occurrence. The family was determined to be ineligible for emergency SNA because the family income exceeds the 125% ESNA limit.

Two weeks later, the family applies for temporary housing. Although still ineligible for EAF, with the cost of temporary housing in the standard of need, the family is eligible for ongoing TA in the appropriate category (FA or SNA). If children in the family need transportation to school, that need could only be met by DSS through EAF. Since the family is not EAF eligible, the district cannot pay the cost of transporting the children to school.

- g. A family needed assistance to meet an eviction threat. The caretaker mother had been working and paying rent on the family's apartment. After the mother was laid off from her job, she collected UIB. The apartment was not affordable on only the UIB income and arrears accrued. Mom found another job and the apartment will be affordable in the future. However, she has no means to pay the arrears.

The sudden and unforeseen occurrence is the job lay-off. The district determines that the family is eligible for EAF to pay the arrears.

2. Removal of the \$500.00 cap on the cost of repairs to client owned property. When the district determines that an applicant is eligible for EAF for the cost of repairs to client owned property, the district must pay for repairs and claim the full cost to EAF.

The removal of the \$500.00 cap does not change how the district makes a decision about eligibility for repairs to meet the family’s emergency. The district could still determine that the repair is not the most cost effective way to meet the emergency and choose instead to help the family to relocate.

Every reasonable attempt should be made to keep the family in their home unless the home is unsafe or unaffordable.

3. Technical changes. There are no additional required actions since social services districts were previously informed about the policy changes by 00 INF-21.
4. Section 372.4(f). There are no required actions for Temporary Assistance since this section applies only to certain foster care cases. Local district workers who make categorical eligibility determinations for children in foster care already apply the September 30, 1995 rules to the appropriate foster care cases.

- B. State Plan Change. When determining financial eligibility for EAF, districts must evaluate the gross available income of the applicant on the date of application to determine if it is at or below 200% of the federal poverty level for that household size.

The 200% of the federal poverty level gross available income standards do not apply to households receiving child protective, child preventative or other child welfare services paid for under EAF. These households must continue to meet the requirement that the household include one member in receipt of TA or Supplemental Security Income SSI.

When considering EAF as the category of payment, districts must continue to look first at all income or resources immediately available to meet the need of the household. Additionally, districts must now also look to see if that available income is at or below 200% of the federally established monthly poverty level for the month of application.

Size of Family Unit	Federal Poverty		200% Federal Poverty Guideline	
	Annual	Monthly	Annual	Monthly
1	\$8,980	\$748	\$17,960	\$1,497
2	12,120	1,010	24,240	2,020
3	15,260	1,272	30,520	2,543
4	18,400	1,533	36,800	3,067
5	21,540	1,795	43,080	3,590
6	24,680	2,057	49,360	4,113
7	27,820	2,318	55,640	4,637
8	30,960	2,580	61,920	5,160
Additional	+3,140	+262	+6,280	+523

If the applicant's available gross income on the date of application is above the appropriate federal poverty guideline based on family size, the district must not make the payment under EAF and alternative solutions must be sought.

Examples will illustrate the policy:

1. The head of an EAF categorically eligible family of three lost his job last year. The family had been living on savings after UIB ran out. When the family's savings were depleted, they were unable to pay the rent. The family filed an application for help to meet an eviction emergency on April 10<sup>th</sup>. The eviction is set for April 15<sup>th</sup>. The head of household has returned to work and will receive his first paycheck on April 25<sup>th</sup>. The paycheck represents a full month's salary of \$3,200 gross.

The worker verifies that the back rent must be paid by April 15<sup>th</sup> or the sheriff will evict the family. The monthly conversion of 200% of the federal poverty for a family of three in the month of application (April, 2003) is \$2,543.00. Since the family does not have available gross income in excess of 200% of the poverty level for three on the date of application, and since the expected income will not be available in time to avoid the eviction, the family is found eligible for EAF for the rent arrears.

2. A family applied for EAF on April 4<sup>th</sup> for help to deal with homelessness and other needs related to a catastrophic fire. Although no family members were injured, the family home and all belongings were destroyed. The family of four has available income on the date of application of \$3,200. This represents Social Security benefits and earnings. The applicant knows that this will not be enough to house the family temporarily, replace clothing, find permanent housing, etc. while waiting for the insurance settlement. However, since this is more than 200% of the monthly federal poverty limit, the family is ineligible for EAF today.

Although the ESNA 125% limit does not apply to a fire, flood or other catastrophe, the district will not make a separate ESNA determination, since the family currently has financial resources to pay for temporary housing and to start to replace clothing and is not eligible for an emergency payment.

The district provides the LDSS-4002 "Notice of Action Taken on Your Request for Assistance to Meet an Immediate Need or a Special Allowance" telling the applicant that the application is denied since there is currently no unmet emergency need.

Ten days later, on April 14<sup>th</sup>, the same family reapplied for EAF. The family used its financial resources to pay for temporary housing and to begin to replace clothing and other personal items. The family located a new apartment and paid the first month's rent and a security deposit. The family needs help with the moving expenses. On the new application date, April 17<sup>th</sup>, the family does not have available gross income in excess of 200% of the federal poverty level. For that reason and because they are without the resources to meet the emergency need, the family is EAF eligible for help with moving expenses.

C. Food Stamp Implications:

Receipt of EAF does not confer categorical eligibility for food stamp benefits. Districts must separately determine food stamp eligibility for EAF applicants who also apply for food stamp benefits.

D. Medicaid Implications:

EAF applicants/recipients are not eligible for Medicaid unless Medicaid eligibility has been determined under usual processes. EAF applicants who have also applied for Medicaid must be referred to Medicaid for a separate eligibility determination.

**V. Systems Implications**

None.

**VI. Effective Date**

Immediately, retroactive to March 12, 2003, the filing date of the regulation. However, most provisions were effective prior to the regulation filing date as noted above.

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**Issued By**

**Name: Patricia A. Stevens**

**Title: Deputy Commissioner**

**Division/Office: Division of Temporary Assistance**