George E. Pataki
*Governor*

**NEW YORK STATE**
**OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

**Robert Doar**
*Commissioner*

# Informational Letter

**Section 1**

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| **Transmittal:** | 06-INF-21 |
| **To:** | Local District Commissioners |
| **Issuing Division/Office:** | Division of Employment and Transitional Supports |
| **Date:** | June 22, 2006 |
| **Subject:** | Temporary Assistance Questions and Answers |
| **Suggested Distribution:** | Temporary Assistance Directors; Food Stamp Directors; Medical Assistance Directors; Staff Development Coordinators; Transitional Opportunities Program Coordinators; Child Assistance Program Coordinators |
| **Contact Person(s):** | Temporary Assistance Bureau: 1-800-343-8859, extension 4-9344.<br>Food Stamp Bureau: 1-800-343-8859, extension 3-1469<br>Medical Assistance: Upstate Regional Representative at (518) 474-8216; New York City Representative at (212) 268-6855 |
| **Attachments:** | Temporary Assistance Questions and Answers |
| **Attachment Available On – Line:** | X |

## Filing References

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|---|---|---|---|---|---|
| 97 INF-6<br>99 ADM-5<br>99 ADM-7<br>00 INF-2<br>00 INF-3<br>00 INF-6<br>01 INF-23<br>01 ADM-4<br>03 ADM-10 | | Part 311<br>§ 349.4(a)(i)<br>§ 352.7<br>§ 352.23<br>§ 352.29(h)<br>§ 352.30<br>§ 352.31<br>Part 359<br>§ 369.2(b)<br>§ 369.4(d)<br>Part 372 | SSL § 62(5)<br>SSL § 131-a(2)(b)<br>SSL § 132-a<br>SORA, § 168-L(6)(b)&(c) | TASB Chapt. 9<br>TASB Chapt. 11<br>TASB Chapt. 13<br>TASB Chapt. 19<br>TASB Chapt. 22<br>TASB Chapt. 29<br>TASB Chapt. 31<br>TA Energy Manual<br>WTW Employment Policy Manual | |

**Section 2**

**Purpose**

The Division of Employment and Transitional Supports (DETS) is charged with responding to inquiries from SSDs on a variety of Temporary Assistance (TA) issues. This release contains the most recent set of questions and answers on TA issues.

**Background**

The questions and answers attached to this document relate only to TA and do not include questions and answers from Food Stamps (FS) or the Home Energy Assistance Program (HEAP), although DETS continues to be responsible for all issues and questions relating to TA, FS and HEAP. If you have questions regarding this release, please contact the Temporary Assistance Bureau directly at the referenced number. Policy issues relating to FS and HEAP should continue to be directed to the appropriate policy bureau.

**Program Implications**

Medicaid policy may differ from TA policy. Sanctions or requirements applying to cash programs may not apply to Medicaid. Any questions about Medicaid policy should be referred to the county's local district Medicaid Liaison.

**Issued By:** _____

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| **Name:** | Russell Sykes |
| **Title:** | Deputy Commissioner |
| **Division/Office:** | Division of Employment and Transitional Supports |

# Temporary Assistance Questions and Answers

## Index

## Budgeting

1. **Q. In a three-generation household, can the parent of a minor dependent child charge the minor dependent child rent?**

   A. No, the parents of the minor dependent child are legally responsible for their child, for TA purposes, up to the age of 21 (TASB–Chapter 13, Section L. Budgeting, "Three Generation Households").

2. **Q. Is the personal needs allowance (PNA) of a Congregate Care recipient prorated when a TA case is opened?**

   A. No, PNAs are not prorated at case opening for any type of living arrangement.

## District of Fiscal Responsibility (DFR)

3. **Q. Can a social services district (SSD) hold another state responsible under the DFR rules?**

   A. No, DFR rules do not apply when someone relocates from another state.

4. **Q. A recipient moves from one SSD to another and subsequently the case is closed during the two-month transition period for a noncompliance issue. If the person reapplies after the closing but during the initial two-month transition period, which SSD is responsible for TA during the remainder of the transition period?**

   A. Social Services Law 62(5)(a) governing out of district moves is intended to provide a smooth uninterrupted transition when a recipient moves from one SSD to another. This section provides that the former SSD will continue to be responsible during this transition period as long as the recipient is eligible. Accordingly, once the case has been properly closed by the former SSD for noncompliance, the former SSD is no longer responsible for the remainder of the two-month period if the recipient reapplies in the new SSD. Although the relevant section of law cited above does not specifically refer to the Food Stamp (FS) program, if the reason for the TA closure also resulted in the FS case being closed, the same policy would apply for the re-applying household's FS case. The intent of 01-ADM 01 was and is to bring the TA and FS policy regarding such issues into alignment.

5. **Q. Which SSD is responsible when an out of state domestic violence victim enters a residential program in NYS SSD A, but subsequently moves to another residential program in NYS SSD B?**

A. The district of fiscal responsibility rules for victims of domestic violence are established by Social Services Law (SSL) § 62(5)(f). This section of the SSL applies only to residents of New York at the time of the domestic violence incident. Therefore, these rules do not apply to out-of-state residents who enter domestic violence residential programs in New York. However, the "where found" and TA transitional rules do apply to this situation and the applicable county would pay from TA or Title XX, as appropriate.

   If the victim has filed an application in County A and is found to be eligible for TA, the "where found" rule applies and County A is responsible for the shelter payment and any other appropriate assistance while the victim is in the County A shelter. If the victim subsequently moves to another domestic violence residential program in County B, then the transition rule is applied and County A is responsible for the shelter payment in County B for the transition period. After the transition period and upon compliance with an application in County B, the victim would receive benefits from County B.

   If the victim had not applied for TA in County A; or had applied but left the shelter before a face-to-face interview was done, before the victim could comply with the necessary requirements; or was determined ineligible, then the "where found" rule is applied and the victim would have to apply in County B and have eligibility determined there.

## Diversion

**6. Q. May an Emergency Assistance to families (EAF) or diversion payment be used to pay current rent?**

A. Yes, an EAF or a diversion payment can be used to pay current rent for a non-recipient, if there is a threat of eviction. The EAF category or a diversion payment type code for non-recipients is used so the case is not pulled into the participation rate denominator.

**7. Q. What Welfare Management System (WMS) diversion payment type should be used when a renter has moving expenses?**

A. "F5 - Diversion Payment" (Upstate WMS); "D5 - Diversion Payment" (NYC WMS) should be used for homeowners or renters who have moving expenses. As with all diversion payment types, this diversion payment type may be issued only for applicants who have an emergency or immediate need that, if resolved, would enable the family to avoid the need for ongoing assistance. To receive this benefit as a diversion payment, the household must be categorically eligible for EAF and meet all EAF income and resource requirements.

## EAF

**8. Q. What is the reimbursement rate for EAF payments?**

A. The reimbursement rate for EAF is 50% Federal, 25% State, and 25% Local.

**9. Q. Is the applying EAF household's monthly or annual income subject to the available income test of 200%?**

A. Unlike the SNA 125% income test, the EAF test is only applicable to income that is actually available to the EAF household on the date of application, not the household's anticipated or past income. For example, an applying household may have received income exceeding 200% but on the day of EAF application has less than 200% of that income available, therefore passing the income test and any available income is applied to the emergency need. Income guidelines are updated annually.

## Energy

**10. Q. A TA recipient was subject to a utility restricted payment but the restriction was later terminated because there was not enough in the grant to pay the utilities. A utility disconnection notice includes the restricted and unrestricted period. Does the SSD have to pay both arrears to avoid a shut-off?**

A. Yes, regardless of whether the shut-off includes restricted and/or unrestricted periods, the SSD must make a utility arrears payment under SSL § 131-s, if the TA recipient is otherwise eligible and no alternative payment or living arrangement is available. The SSD must deduct any payments, excluding HEAP, made by the SSD and/or TA household during the arrears payment period from the amount in arrears. The entire payment is recoupable if the recipient fails the management test. If an SSL § 131-s payment is made on behalf of a TA recipient, the account must be guaranteed by restriction, letter of guarantee or a combination, for six months or until the TA case is closed, whichever occurs first.

**11. Q. When a determination of mismanagement has been made for a utility arrears payment, what is the period of time that the Home Energy Allowance (HEA) and Supplemental Home Energy Allowance (SHEA) (if less than the monthly average) are restricted for domestic energy?**

A. The HEA and SHEA are restricted only during the guarantee period. If the restriction continues after the guarantee period, the average monthly domestic energy billing is used to determine the restricted amount. The utility account of

the TA or SSI recipient who received an SSL § 131-s utility arrears payment is guaranteed for six-months or until the recipient's TA or SSI case is closed, whichever is sooner.

**12. Q. May a household that received a utility shut-off payment with one household member signing a repayment agreement and subsequently defaulting on the agreement, receive another utility shut-off payment based on the signing of another repayment agreement by the other non-legally responsible relative (NLRR) household member?**

A. Yes, if the NLRR is the customer and tenant of record for the shut-off period and agrees to sign a repayment agreement.

## IV-D

**13. Q. May a TA parent of a 19-year-old non-temporary assistance (NTA) child be sanctioned for non-compliance with IV-D requirements for not establishing the 19-year-old's paternity, even though the 19-year-old is not required to be on the parent's case and has "chosen" not to?**

A. Pursuant to SSL § 132 and 132-a, a TA applicant or recipient who is the mother of a child born out of wedlock must cooperate to establish paternity and secure support for the child. Failure to do so will result in the 25% TA sanction, pursuant to 18 NYCRR § 352.30(d)(4).

**14. Q. Do IV-D requirements apply to both FA and SNA cases?**

A. Yes, pursuant to 18 NYCRR § 369.2(b). No comparable requirement exists for FS cases. Please see 99 ADM-5(E)(2)(c) for further information on how to budget the FS portion of a non-cooperative FA or SNA case.

## General

**15. Q. When an aunt is applying for TA for her sister's child, may the SSD use a notarized letter proving relationship or is a birth certificate required?**

A. Birth certificates are the primary and preferred documentation to verify relationship. In the absence of primary documentation, two forms of secondary documentation are acceptable. Secondary documentation includes school records, hospital records and signed attestations (See 00 INF-6). There is no requirement that signed attestations be notarized.

**16. Q. When a recipient complies with a closing notice for "failure to recertify-on/by", but the recipient fails to provide documentation, may the SSD close the case immediately or must a closing notice for "failure to provide documentation" be provided?**

A. The SSD may not close the case for the "failure to recertify" notice because the recipient did comply with the requirements in that notice. The SSD must send a timely and adequate closing notice for "failure to provide documentation." A TA household being closed for "failure to provide documentation" would be eligible for transitional (TBA) FS benefits. An SNA household would be entitled to a separate determination of continuing food stamp eligibility.

**17. Q. May a TA applicant, who has acted as an interpreter for other TA applicants, request an interpreter for himself or herself?**

A. Yes, there is no authority to deny a client an interpreter. Some people may be able to speak the language but not read it and vice versa. The SSD must take the client's word if they are requesting an interpreter, even if they have interpreted for others

**18. Q. A child in a TA case appeared on the SSD's WINR 5126 report: "Individuals With Incorrect or No Social Security Number on WMS." The child is in the care of a non-parent caretaker who has attempted to secure an SSN for the child and has cooperated with the SSD's attempts to assist in securing the SSN. The caretaker and the SSD have been told by the Social Security Administration (SSA) that the non-parent must have custody in order to apply for and receive an SSN for the child. Is the child eligible for TA without an SSN? Must the SSD require that the non-parent secure legal custody of the child?**

A. SSA policy is similar to OTDA's. SSA does not require the non-parent to have legal custody, but does require the non-parent to have physical custody. For children age 12 and above, who have never had an SSN, an interview with the child is mandatory to determine why the child never had an SSN. Ways that the non-parent can prove that they have physical custody of a child` include the following:

- Letter from a SSD that the agency placed the child with the non-parent
- Some type of documentation of why they have the child
- School records indicating that the child resides with the non-parent and the non-parent is the responsible person for the child's educational needs
- Rental agreement listing the child as residing in non-parent's household
- Identity documents are also needed---original birth certificate, school ID, health card, including MA card.

OTDA also does not require that a non-parent caretaker have legal custody of a child. The child is TA eligible if the caretaker has attempted to secure an SSN but has been unable to do so, despite cooperating with SSA rules as far as he or she can. A copy of the denial letter from SSA should be put in the case record and SSN code "3-SSN Applied For and Denied" must be entered on screen 2 of the LDSS 3209.

**19. Q. Are three-generation households eligible for a 24-month certification period? For example, a case has a grandparent as the payee for her 2-year-old grandchild, but also in the house is the grandparent's 17-year-old SSI child who is also the 2-year old's parent.**

A. No. This case is not be eligible for a 24-month certification period since the grandparent is only the payee (not the caretaker) and the child's parent is in the household. Even if the grandparent were the caretaker, the case is not eligible for the 24-certification period since the child's parent would in the household.

**20. Q. May an SSI recipient who is living in a shelter and receiving SNA due to the higher standard of need, be required to comply with alcohol and drug screening, assessment and rehabilitation?**

A. Yes, individuals applying for or eligible for SNA must comply with all SNA eligibility factors.

**21. Q. Is an individual "living on the streets" entitled to a restaurant allowance?**

A. Yes.

**22. Q. May a dependent child receive TA while living in a residence owned by his or her parent(s)?**

A. Yes, if the parent's home is not available to the child. However, the child must pursue parental support and will not be provided a shelter allowance.

**23. Q. What is the correct acronym for Safety Net Assistance?**

A. "SNA": the specific components of SNA are known as: cash-SNA (CT 16); non-cash SNA-FP (CT 12); and non-cash SNA-FNP (CT17).

**24. Q. May a lien be taken against the real property of an SSI parent?**

A. Yes, SSL § 360 provides that a real property lien may be taken on the property of parents; when TA is given to the child for whom they are responsible. A lien also may be taken when SSI parents are in receipt of SNA, emergency assistance for themselves (other than Emergency Assistance to Adults (EAA)) or EAF for the

children. No lien may be placed against such property for the provision of EAA since EAA is not TA.

**25. Q. May a relative or non-relative caretaker grantee of a child-only case have a separate TA case should the caretaker apply?**

A. No, the caretaker and child would be one assistance unit.

## Lump Sum

**26. Q. Does a Social Security Benefit lump sum payment, received by a minor dependent child in a TA case, count against the entire filing unit?**

A. Yes (See 03 ADM-10).

**27. Q. How does the receipt of a lawsuit settlement by an SSI parent affect the TA case of the children?**

A. The settlement is not a "lump sum" since the SSI parent is not in receipt of TA. Therefore, the settlement has no effect on the children's TA case. If the settlement exceeded the SSI resource limit and the SSI case was closed, the parent would become a required filing unit member and the parent's resources would be applied against the entire filing unit.

**28. Q. When TA children of an SSI parent receives a lump sum, is the SSI parent's resources subtracted from the lump sum to determine the amount of resource "set aside" applicable to the TA filing unit?**

A. No. The case would be able to retain $2,000 minus any resources the children had in their own names. The SSI parent's resources are not countable and, therefore, not considered.

**29. Q. If a parent turns over a TA child's lump sum to the SSD in the month that it was received, is an overpayment calculated for that month?**

A. No. However an SSD must allow recipients turning over a lump sum to keep the difference between the resource limit and any non-exempt resources they may have (e.g. $2000 limit-only asset $300 bank account = keep $1700). A recipient may only repay assistance granted and any remainder, depending on the amount, must be considered under ordinary budgeting rules (income/lump sum).

## Overpayments

**30. Q. Is an EAF eviction payment recoverable?**

A. The amount of rent arrears exceeding the local agency maximum monthly shelter allowance is an overpayment subject to recovery, or recoupment should a member of the household who received the EAF payment later become eligible for ongoing TA, in accordance with 18 NYCRR § 352.7.

**31. Q. When an Emergency Safety Net Assistance (ESNA) shelter arrears repayment agreement is suspended during the receipt of recurring TA, may the amount exceeding the local agency maximum monthly shelter allowance be recouped from the recurring grant?**

A. No, any unpaid balance, including the excess amount, is suspended until such time that the person is no longer receiving recurring TA.

## Resources

**32. Q. Would a $13,000 401K which has been rolled over to an IRA be exempt as a resource for recurring TA?**

A. No, the 401K is a countable resource and would put the family over the resource limit for recurring TA from the month in which the resource is accessible. The family would have to supply the SSD with a statement from the bank confirming that the IRA is accessible and the duration of time it would take to obtain it.

**33. Q. Would an applicant be denied TA for excess resources if the applicant owns a home in which he is not living, but relatives are living and paying no rent but paying the taxes? The applicant lives elsewhere and pays rent.**

A. No, the SSD must allow an applicant up to six months to sell the property provided that he makes a good faith effort to sell the property and agrees in writing to repay the public assistance granted during that period, in accordance with 18 NYCRR § 352.23(b)(7).

**34. Q. Is a vehicle used for medical transportation for a TA household member excluded from the resource limit?**

A. No, there is no authority in 18 NYCRR § 352.23 to exclude an automobile being used for medical purposes. However, any special apparatus for the handicapped (e.g. lift gate, hand controls, etc.) is exempt from consideration when determining the fair market value of a vehicle.

## Sanctions

**35. Q. If an SNA individual is sanctioned resulting in case closing and then his spouse and children return to the household and apply for FA, does the sanctioned individual have to serve out his SNA sanction prior to being eligible to receive FA?**

A. No. Federal rules do not permit the State to apply State program rules to individuals who become eligible for federal benefits. Therefore, an individual who becomes eligible for federal benefits may be required to comply with applicant work requirements as assigned by the SSD and all program requirements in order to establish his/her eligibility for federal benefits, but would not be excluded from receiving federal assistance, if otherwise eligible. Failure to comply with applicant assessment or applicant job search would result in denial of the TA application for the household. Additionally, SSDs must ensure that SNA sanctions are not considered when determining the progression of an FA sanction.

**36. Q. Regarding (IPV) disqualification periods, 18 NYCRR § 359.9(b) provides "the sanction in subdivision (a) of this section is in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved. However, the social services official or court official assessing penalties against a public assistance recipient for an act of fraud or misrepresentation may consider whether to impose such penalties based upon the existence of the penalties described in subdivision (a) of this section."**

**Does this provision provide the discretion to impose any disqualification period he wants? For example, a one day disqualification period, a lifetime disqualification or "the period of disqualification shall remain in effect until restitution is paid in full".**

A. No, this regulation does not provide such authority. The length of an IPV TA disqualification is set forth in 18 NYCRR § 359.9(a) as follows:

1) for six months for the commission of a first public assistance-IPV; or
2) for 12 months for the commission of a second public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount between one thousand dollars and three thousand nine hundred dollars; and
3) for 18 months for the commission of a third public assistance-IPV) or when the offense results in the wrongful receipt of benefits in an amount in excess of three thousand nine hundred dollars; and
4) for five years for the commission of a fourth or subsequent public assistance-IPV.

Additionally, 18 NYCRR § 359.9(b) provides that these disqualification periods should be in addition to, not a substitution for, any other penalties that could be imposed in relation to this offense.

## Temporary Absence

**37. Q. Is an individual on active military duty (e.g. boot camp, deployed overseas) deleted from the TA case?**

A. Although 18 NYCRR § 349.4(a)(i) provides that an individual may not be considered temporarily absent when he/she leaves the United States, this Office has considered individuals on active military duty, in or outside of the United States, as temporarily absent from the household and their needs, income and resources are counted in full against the TA household. This remains true as long as the absent individual expresses intent, and the facts are consistent with the expressed intent, not to establish residence elsewhere.

**38. Q. May an individual vacationing or taking care of personal business outside of the United States or its territories be considered temporarily absent?**

A. No, since they have left the United States or its territories [18 NYCRR § 349.4(a)(i)].

**39. Q. Are temporarily absent individuals eligible only for the shelter and fuel allowances?**

A. No, temporarily absent individuals are budgeted as if they are physically in the household and are eligible for Basic, HEA, SHEA, Shelter, Fuel and any appropriate additional allowances. For individuals who are temporarily absent but are residing in a living situation that requires a PNA, the PNA is authorized in lieu of their share of Basic, HEA and SHEA. Temporary absence for children placed in Foster Care is defined and governed by SSL § 131-a(2)(b) which provides only for shelter and fuel allowances for eligible children.

## Time Limits

**40. Q. If an individual who is required to or has applied for SSI reaches the State sixty-month time limit, what medical documentation is needed for a TANF time limit exemption?**

A. Time limit exemptions may be granted for a case when the FA, CAP or non-cash SNA-FP head of household reaches the State sixty-month time limit and exemption requirements are met. Cases in which the adult head of household has employability code “43- Incapacitated (SSI Application filed)” are granted a

time limit exemption when the SSI applicant has a medically verified physical or mental health problem expected to last more than six months that makes him/her unable to work. In two parent families, both parents must have an appropriate time limit exemption in order for the case to receive FA, CAP or non-cash SNA-FP for more than sixty-months. The individual must provide written medical documentation from his/her health care practitioner and/or the SSD's certified health care practitioner that verifies the individual's inability to work due to a physical and/or mental impairment. There is no mandated form that an SSD must use. The SSDs may use the State medical examination form (LDSS-4526).

**41. Q. When are medical reports considered current for time limit exemption purposes?**

A. The SSDs must have documentation (normally a medical report) that would reasonably support that the condition that supported the time limit exemption will exist when the individual actually reaches the State sixty-month time limit and will continue for at least six months thereafter. The continuing eligibility for the time limit exemption must be reviewed and documented every six months at recertification, except when the nature of the individual's disability is of such a nature that the incapacity will obviously continue for at least the next six months.