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OFFICE OF TEMPORARY AND DISABILITY  
ASSISTANCE  
40 NORTH PEARL STREET  
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**Administrative Directive**

**Section 1**

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| <b>Transmittal:</b>             | 09-ADM-09  |
| <b>To:</b>                      | Local District Commissioners   |
| <b>Issuing Division/Office:</b> | Center for Employment and Economic Supports  |
| <b>Date:</b>                    | May 20, 2009   |
| <b>Subject:</b>                 | Essential Persons  |
| <b>Suggested Distribution:</b>  | Temporary Assistance Directors<br>Employment Coordinators<br>Food Stamp Directors<br>Medicaid Directors<br>Staff Development Coordinators  |
| <b>Contact Person(s):</b>       | Temporary Assistance Bureau (TA): 1-800 343-8859, extension 4-9344<br>Food Stamp Bureau (FS): extension 3-1469<br>HEAP Bureau: extension 3-0332<br>Metropolitan Field Support Bureau: (212) 961-8207<br>For Medicaid: Local District Support Upstate (518) 474-8887;<br>New York City (212) 417-4500 |
| <b>Attachments:</b>             | None   |

**Filing References**

| <b>Previous ADMs/INFs</b>  | <b>Releases Cancelled</b> | <b>Dept. Regs.</b>                                       | <b>Soc. Serv. Law &amp; Other Legal Ref.</b> | <b>Manual Ref.</b>   | <b>Misc. Ref.</b> |
|--|---------------------------|--|--|--|-------------------|
| 85 ADM-9<br>91 ADM-29<br>97 ADM-7<br>97 ADM-20<br>99 ADM-7<br>93 INF-48<br>00 INF-15<br>02 INF-22<br>09 INF-03 | 91 ADM-29                 | 351.22(e)<br>352.32(e)<br>369.3(c)(2)<br>339.3(d)<br>385 | 45 CFR<br>233.20(a)(2)(vi)                   | TASB<br>Chap 9 – P<br>Chap 9 – Q<br>Chap 18 – F<br>Chap 22 – E<br><br>TA and FS<br>Employment Policy<br>Manual<br>Section 385.6<br>Section 385.9<br>Section 385.11<br>Section 385.12 |                   |

## Section 2

### I. Summary

This Administrative Directive (ADM) informs local districts of the policy related to persons designated as an essential person (EP) and addresses the impact that EP status has on program areas including: Temporary Assistance, Employment, Food Stamps and Medicaid. The release of this directive cancels 91 ADM-29, “Essential Persons”.

### II. Purpose

The purpose of this ADM is to provide clarification and additional information in a consolidated format to local districts of the policy related to EPs and to provide instructions on the designation of EP status and the requirements and implications once a local district grants this status.

### III. Background

On January 24, 1989, the federal Department of Health and Human Services (HHS) published final rules on EPs. These rules imposed a restrictive definition that excluded many individuals from EP status. As a result of legal challenges, HHS issued new instructions in 1991, which removed the restrictions that an EP must perform one of a small number of specific services to the household with whom they resided, and restored the determination of who is essential to the head of household, without requiring that the EP perform a specific service.

### IV. Program Implications

18 NYCRR § 369.3(c)(2) mandates the designation of EP status, if appropriate. Therefore, all applicants and recipients who are not Family Assistance (FA) or Safety Net Assistance – federally participating (SNA-FP) eligible, but who are residing in the same home as an FA or SNA-FP household, must be assessed to determine if the applicant or recipient can be designated as an EP on a FA or SNA-FP case.

### V. Required Action

Local district staff must explore EP status for all applicants and recipients who are not FA or SNA-FP eligible and residing in the same home as an FA or SNA-FP household to determine if EP status can be designated. Local districts may presume that an individual is an EP except when:

- the head of household does not agree to it;
- the individual designated as the EP indicates that he/she does not wish to be designated as an EP; or
- if granting the status to the EP **negatively** impacts the FA or SNA-FP case.

#### A. Eligible for Essential Persons Designation

In order for an individual to be designated as an EP, the following conditions must be met:

- The individual must apply and be eligible for, and comply with all Safety Net Assistance (SNA) eligibility requirements;
- The individual must be living with an FA or SNA-FP dependent child who is an applicant or recipient; and
- The individual’s designation as an EP does not negatively impact the FA or SNA-FP household’s benefits or cause ineligibility.

NOTE: This includes, but is not limited to, step-parents, step-siblings and siblings over the age of 18 who are themselves no longer categorically eligible for FA or SNA-FP.

## **B. Essential Persons Requirements**

Although there are no age restrictions for EP designation, any adult age 18 or older who is included in the FA or SNA-FP case as an EP must comply with all eligibility requirements and must also:

- Sign an application, unless the EP is in receipt of assistance. EPs who are applicants are subject to a 45-day application period;
- Sign all subsequent recertification applications, unless there is a good reason for not signing; for example, the worker failed to notify the EP of the requirement;
- Appear for the face-to-face eligibility interview and recertification interviews, unless there is a good reason for not appearing; for example, the EP is working or in school;
- Comply with employment requirements. If an EP fails to comply with employment requirements, without good cause, the appropriate employment sanction must be imposed solely against the individual and cannot impact the FA or SNA-FP household. Further detail of such actions is provided below in “Section D Negative Actions”; and
- Be screened for drug and alcohol abuse. In the event of noncompliance, the appropriate sanction must be imposed solely against the individual and cannot impact the FA or SNA-FP household.

## **C. “Danks” Essential Persons on FA or SNA-FP Case**

When budgeting cases with an EP, no special budgeting procedures apply unless the EP is considered a “Danks” EP. A “Danks” EP case exists when an FA or SNA-FP case contains an EP who has no legal lines of responsibility to the case members and also declares to be a separate economic unit. A child under the age of 18 cannot be a “Danks” EP because he/she cannot be a separate economic unit. For instructions on budgeting “Danks” EPs see the Temporary Assistance Source Book (TASB), Chapter 9, Sections P and Q or the NYC PA Budgeting Manual, Appendix A.

A “Danks” EP can request that the portion of the TA grant that represents the EP’s needs be sent directly to the EP. In order to do so, the head of household must agree to the restriction. This agreement must be in writing and documented in the case file. If the head of household does not agree to the restriction, the EP designation must be removed. When an EP in a case with restricted rent requests a separate grant, the rent shall remain restricted. This includes the EP’s share that is included in his/her

separate grant. For instructions on budgeting “Danks” EPs who request a separate grant, refer to WMS ABEL Reference Manual, Section G – Budget Limitations, pages 100 and 101.

**D. Negative Actions**

The addition of an EP must never negatively impact the cash grant. If the EP designation negatively impacts the cash grant of the other members of the case or the EP, the EP must be removed from the FA or SNA-FP case. A separate SNA application must then be registered on WMS and an eligibility determination must be made for the former EP. The SNA eligibility determination for the EP must be made within 30 days from the date the EP is removed from the FA or SNA-FP case.

The following are some, but not all, of the factors that could cause the addition of an EP to negatively impact a case.

**i. Child Support**

When an FA or SNA-FP case includes an EP, local districts must not apply the support collected on behalf of the case members against the needs of the EP. Conversely, local districts also must not apply the support collected on behalf of an EP against the needs of the other case members.

**ii. Income**

If the EP has earned or unearned income, the addition of the income must not negatively impact the FA or SNA-FP case. EPs under the age of 21 are considered dependent children for the purpose of applying the dependent student income disregard.

**iii. Time Limits**

When an EP in an FA or SNA-FP case reaches the State 60-Month Limit first, the local district must remove the EP from the case and establish a separate non-cash SNA-FNP case for the individual.

**iv. Sanctions**

If an EP is on an FA or SNA-FP case, the individual is subject to FA or SNA-FP case work requirements and sanction rules. However, OTDA policy continues to be that sanctioning an EP cannot negatively impact the FA or SNA-FP case. Therefore, the EP must be deleted from the FA or SNA-FP case prior to imposing the sanction. For example, a nonexempt EP who is noncompliant with assigned work activities must be offered conciliation as a member of an FA or SNA-FP case, and may be subject to an employment sanction for a household with dependent children in accordance with 18 NYCRR 385.11 and 385.12. Consistent with OTDA policy of not negatively impacting the FA or SNA-FP case, the EP must be removed from the FA or SNA-FP case, and then subjected to a prorata employment sanction for a household of one which ultimately results in case closure of the individual's SNA non-MOE case.

**v. Resources**

If an EP has resources that, when combined with the FA or SNA-FP household's resources, would make the case ineligible due to excess resources, the local district must remove the EP from the FA or SNA-FP case. If the individual, once removed, is determined resource eligible on his/her own, the local district must establish an SNA case for that individual. If not, the individual's SNA case is closed.

**vi. Recoupments**

The categorical change of the EP from SNA to FA or SNA-FP must not negatively impact any of the other recipients. Such a situation may arise if either (or both) cases incur an overpayment or recoupment prior to the EP's inclusion in the FA or SNA-FP case. The addition of the EP to an existing FA or SNA-FP case increases the total needs of the case, Initiation or continuation of a recoupment at the same percentage level of total needs would result in a greater amount being recouped, thus creating a negative impact.

If either or both of the cases had a recoupment prior to the categorical change, the continuation of each recoupment must be at a level not exceeding 10% of what the respective total needs would be if budgeting had continued on a separate case basis. The total combined monthly recoupment amount must not exceed 10% of the total needs of the FA or SNA-FP case.

If an overpayment occurs and recoupment is initiated after the EP has been added to a FA or SNA-FP case, the monthly recoupment amount must not exceed 10% of the total needs. The recipients and the EP share in the recoupment as they did in the overpayment.

Instructions for budgeting recoupments for cases with EPs can be found in the TASB, Chapter 22, Section E.

**VI. Notice Implications**

Notices that are required to be sent as a result of an action taken on a case that includes an EP will be sent to the head of household. If an action is taken that would negatively impact the case, the EP must be removed from the case and a separate eligibility decision must be made. In these instances, EPs would be the head of household of their case and any required notices would be sent to them.

**VII. Systems Implications**

**Rest of State**

Upstate, budgeting instructions for EPs can be found in the Temporary Assistance Source Book (TASB), Chapter 9, Sections P and Q. Proper identification of EPs is important. When adding an EP to a case, local district staff must use relationship code "12 - Essential Person"

and individual categorical code “09 - FA/SN/LIF Child (No Deprivation) or SCC Single Individual or Childless Couple (Not Aged or Disabled)”.

When it is necessary to remove an EP from an FA or SNA-FP case, Client Notice System (CNS) individual reason code “F61-No Longer Essential To The Household” must be used to generate a notice via CNS to inform the FA or SNA-FP household that the EP has been removed from the FA or SNA-FP case. On the LDSS 3209: Authorization Change Form, the Individual Disposition Code for the EP must be changed to “08 – Inactive-non applying household member”, and the MA coverage code must be changed to “04 – No Coverage – Ineligible”.

A separate SNA application must then be registered on WMS and a separate eligibility determination must be made for the former EP. Use of the correct CNS case reason code, and individual reason code if needed, will provide proper notice of TA eligibility.

**Example** - An EP has willfully and without good cause refused or failed to comply with employment requirements.

1. Remove the EP from the FA or SNA-FP Case. Client Notice System (CNS) individual reason code “F61-No Longer Essential To The Household” must be used to generate a notice via CNS to inform the FA or SNA-FP household that the EP has been removed from the FA or SNA-FP case.
2. Register an application for the EP. The district must use the most recent application from the FA or SNA-FP case and cannot require the EP to complete a new application.
3. Determine TA eligibility for the former EP. In this example, the TA worker must process a denial and impose a sanction. Information to identify the specific instance of noncompliance with employment requirements must be entered into CNS to issue the correct notice of intent to the former EP. Districts should use PA case level reason code “I92-No Eligible Individual” and an individual reason code of “WE1”, “WE2” or “WE3” based on the instance of noncompliance with employment requirements. A response of “Yes” should be entered to the question “Does the household include a dependent child?” which appears when completing an employment related sanction notice on CNS for case types 16 and 17.
4. The PA case level reason/rejection code and individual reason code must be entered in the corresponding fields on WMS to complete the transaction to impose the employment sanction and generate the CNS notice to the former EP.

### **New York City**

Downstate, budgeting instructions for EPs can be found in the NYC PA Budgeting Manual, Appendix A. Proper identification of EPs is important. When adding an EP to a case, local district staff must use relationship code “12 - Essential Person” and individual categorical code “09 - FA/SN/LIF Child (No Deprivation) or SCC Single Individual or Childless Couple (Not Aged or Disabled)”.

When it is necessary to close an EP from a suffix, the steps the worker must take are dependent upon the reason for closing the EP. If the EP is being sanctioned, follow the steps in number one below. If the EP is being removed for any reason other than a sanction, follow the steps in number two below.

### 1) **Imposing a Sanction on an EP**

Step 1. Sanction the EP's line with the appropriate PA sanction code. If the EP is being sanctioned for FS also enter the appropriate FS sanction code. An M3E of "T" should be data entered in this Undercare transaction to sanction the line. The M3E of "T" will suppress the CNS notice, but the sanction action will clock down (timely notice). A manual notice should be mailed with "F61 – No Longer Essential to the Household" language and "Failure to Comply with Employment Requirements" language.

Step 2. After the lockdown period (13-16 days later), the worker must close the EP line with PA reason code "F61 – No Longer Essential to the Household". The EP's FS line will remain in sanction "SN" status. An M3E indicator of "A" should be entered which will suppress the notice (timely notice has already been provided in step 1) and the line will lockdown.

**NOTE:** If Step 2 is not completed immediately after the sanction lockdown, the case must be reviewed to determine if the household is entitled to a cash supplement.

### 2) **Removal of an EP**

Close the EP's line with the appropriate PA/FS closing code (for example, N17-Failure to Comply with Eligibility Process). An M3E of "T" should be data entered in the Undercare action to close one line. The M3E of "T" will suppress the CNS notice, but the closing action will clock down (timely notice). A manual notice should be mailed to the client with "F61-No Longer Essential to the Household" language and the "Failure to Comply with Eligibility" language.

## VIII. **Additional Information**

### A. **Food Stamps**

The presence of an EP does not alter the method for determining food stamp household composition. That is, food stamp household composition is based on which members residing together purchase and prepare their meals together. Special household determination rules regarding relationship as defined in FSSB Section 5 Household Concept also must be applied. Budgeting procedures for PA/FS cases with EPs appear in the FSSB Section 10 Budgeting Essentials Persons.

### B. **Employment**

As noted above, adult EPs are subject to work requirements and must comply with employment requirements. EPs who fail to comply with employment requirements, without good cause, are subject to the appropriate employment sanction which must

be imposed solely against the individual and cannot impact the FA or SNA-FP household.

**C. Medicaid**

Essential Person status is not recognized in the Medicaid Program for MA-only cases. If the assistance of an individual identified as an EP in a TA case is denied or discontinued, a Medicaid separate determination must be completed for this individual, as many TA requirements do not apply to eligibility for Medicaid.

**IX. Effective Date**

This ADM is effective immediately upon release.

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**Issued By:**

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**Title:** Center Director  
**Division/Office:** Center for Employment and Economic Supports