



# NEIGHBORHOOD LEGAL SERVICES, INC.

EQUAL JUSTICE FOR ALL

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## PRESENTATION BY DIANA PROSKE

### BASICS OF PUBLIC BENEFITS LAW

#### I. Background:

- A. Public benefits are what was traditionally called “welfare.” In the 1990s, the traditional Aid to Families with Dependent Children (AFDC) was replaced with Temporary Assistance to Needy Families (TANF). TANF is a block grant to states. States accepting the money must meet basic requirements but have a great deal of freedom to structure their benefit programs, including benefit levels, who is eligible, how work requirements will be managed, and substance abuse treatment. TANF also expanded work requirements (increasing who must participate, what work activities can be counted, and adding sanctions for non-compliance), restricted immigrants' eligibility for benefits, and limited the amount of time a family could receive federally funded benefits to 60 months in an adult's lifetime.
- B. Benefits are administered by local county departments of social services. In Buffalo it is the Erie County Department of Social Services (ECDSS). The local departments are overseen by the New York State Office of Temporary and Disability Assistance (OTDA).

#### II. What benefits are available in New York? There are basically four (4) “categories” of public benefits: emergency assistance, SNAP (Food Stamps), Medicaid, and Temporary (cash) Assistance (TA).

##### A. Emergency assistance benefits

**What is an emergency?** An emergency is defined as little or no food; no shelter; threat of eviction, pending eviction or homelessness; no fuel for heating during cold weather; utility disconnect with shut-off scheduled within 72-hours; or lack of items necessary for health or safety.

1. What can the ECDSS do to help with an emergency?

Social Services offices may provide food pantry referrals and expedited SNAP; emergency shelter placement; rent arrears; moving and storage; utility assistance; and home repairs.

2. Where do you apply? For emergency housing (shelter) and ongoing benefits (SNAP, Medicaid, Temporary Assistance) go to the Rath Building at 158 Pearl Street. For rent arrears, utility assistance, moving and storage, home repairs, and HEAP go to 460 Main Street, 2<sup>nd</sup> floor.
3. In general, the agency must accept and process ALL applications. Emergency benefit applications must be processed and a notice must be issued the same day as the application.

#### **B. SNAP**

1. Expedited SNAP screenings take place at the time of application. If the applicant is at the social services office, a worker will screen the application and notify clients of their eligibility for expedited SNAP benefits. If expedited benefits are granted, the client will most likely get a "call back" or "pend" sheet telling them what documentation they need to return to get ongoing SNAP. If the applicant fails to return that documentation, the benefits will **STOP** after the initial allotment. If the person applies by mail, fax, or online, the screener may call to ask additional questions for expedited benefits and then set up a phone interview. If the applicant needs an in person interview because they do not have a phone they **MUST** notify ECDSS, because SNAP interviews are by default telephone interviews. If the worker does not call around the time they are supposed to, contact the local department of social services. The SNAP office phone number for Erie County is **(716) 858-7239**.
2. SNAP is generally not available for full time college students, unless the student is caring for a child under six (6), receives SSI for a disability, has federal work study as part of their financial aid, or works an average of 20 hours per week throughout the year.

### **C. Medicaid**

1. New York has expanded Medicaid eligibility to 138% of the Federal Poverty Level for most of the population and does not process applications for regular Medicaid. It is best to apply through the online **NYS Marketplace at <https://nystateofhealth.ny.gov/>** or with a Navigator.
2. Local districts of social services do still handle Medicaid applications and benefits for people who have been determined disabled, are part of one of the Medicaid waiver programs, or are in long term care either in the community or in a nursing home.

### **D. Ongoing Temporary Assistance**

1. There are different categories of cash assistance primarily based on the funding for the program.
  - a. Family Assistance is the traditional “welfare” program for families with children. Local districts get federal and state reimbursement for benefits paid on those cases, usually limited to 60 months in an adult’s lifetime.
  - b. Safety Net is the general category for single adults and childless couples. Benefits are issued as a cash grant for those who have received fewer than 24 months of benefits in their adult lives.
  - c. Non-cash Safety Net is the program used for adults and childless couples who have either exceeded the 24 months (or families who have exceeded the 60 months) or who are required to have rent and utilities issued as restricted payments due to substance abuse. These benefits are funded entirely from state and local money.
  - d. Most people do not know which program they are in. The biggest difference, aside from the requirement to “voucher” rent and utilities, is the waiting period. Family Assistance cases must be opened as soon as all documentation is received and processed but no later than 30 days after application. Safety net applicants, including families who have exceeded the 60 month limit, **MUST** wait 45 days from the application date before

the case will be opened. All emergency and immediate needs must be met by the social services district during the waiting period.

2. Basic budgeting & budgeting of earned income is tricky. For Temporary Assistance, the budget is comprised of a basic grant, an allowance for housing, and an allowance for additional utilities if heat is the recipient's responsibility.
  - a. The maximum grants are **VERY** low and do **NOT** meet the needs of most recipients, especially without a housing subsidy. Grants are adjusted as circumstances change, for example if someone moves, but still remain within the state designated allowances.
  - b. Earned income is budgeted differently than unearned income. All households get a \$90 disregard per month before the income is counted against the grant. Families with children then get an additional 52% of their earned income disregarded. These disregards are only given if income is reported within 10 days of receipt. It is therefore **VITAL** that recipients report their income, preferably by faxing a paystub to their worker, within 10 days of receiving their first paycheck. Unearned income, such as unemployment benefits, workers' compensation payments, and non-SSI social security benefits are counted against the grant dollar for dollar. The only exception is SSI. If a household member receives SSI, their needs AND income are invisible for TA purposes.
3. All adults who are able to work must comply with employment requirements. This includes seeking employment during the application period and attending an educational (usually high school equivalency program or ESL class), training, and/or work assignment. Failure to attend will result in a sanction and benefits will either be reduced or stopped.
  - a. Waivers are available for people unable to work due to medical or psychiatric conditions, for people needed in the home to care for a disabled family member, and for survivors of domestic violence. Applicants should ask their employment counselor for a form for the

doctor to complete. DV survivors should be assessed for waivers by the district's Domestic Violence unit.

- b. People unable to work due to substance abuse will be referred to an outside agency for treatment, either outpatient or in some cases detox and/or long term inpatient care. Failure to comply will result in a sanction. Recipients cannot choose the level of care or treatment program they want if it conflicts with the treatment recommendation, but if someone is already enrolled in a program when they apply they should ask their worker if they can continue getting treatment there.
- c. Sanctions are imposed when recipients fail to comply with either employment or substance abuse treatment programs. The sanctions vary in duration, starting with 45 days and increasing up to 180 days. If a recipient gets a notice stating they are being sanctioned and they feel they had a good reason for missing their program, they should request a hearing immediately and then give the worker whatever documentation they have to see whether they will withdraw the sanction. If the worker refuses the person can (and should) still go to the hearing. Sanctions are not lifted for adults without children until the adult serves the time period, reapplies for Temporary Assistance, and agrees to comply with employment or substance abuse requirements.

#### **E. How do you apply for benefits**

- 1. The universal application is used for most benefits and is available at the information window on the 1<sup>st</sup> floor of the Rath Building in Erie County. It is also available here <http://otda.ny.gov/programs/applications/> in several languages.
- 2. Applying for ongoing benefits is somewhat different than applying for emergency benefits. Ongoing benefits (particularly for Temporary Assistance) usually require several visits to or contacts with the local district for interviews, assessments, and to submit documents. Emergency

benefits generally only require one or two contacts with the district and result in an immediate decision on eligibility.

3. Appointments are very, very important. Missing an appointment will almost always result in denial of an application. It is important to not only contact your worker if you cannot attend an appointment but to also document that call with either a follow-up fax or email or at least a note of the date, time, number, and message left. Even if someone ends up needing to reapply this information may be helpful if the applicant wants to request a hearing.
4. Documentation requirements are sometimes burdensome. If the worker requests any documents an applicant or recipient cannot get, that person should tell the worker why they cannot get the document and ask the worker to help them. The worker must then help the applicant, either by requesting the document, paying the relevant fee, or finding another way to confirm that aspect of eligibility. That may include asking the applicant to either write a statement or request statements from other people. When returning documents it is preferable to fax them and save the fax confirmation. If they are being dropped off at the district in person, always ask for a copy of the document (never give them originals of vital documents) and ask for a receipt showing it was submitted.

#### **F. Fair Hearings**

1. An applicant or recipient has the right to a hearing whenever the district denies an application, reduces or discontinues benefits, or fails to accept or process an application. If it is a discontinuance or reduction, the recipient should get a notice in advance of the disco / reduction (minimum of 10 days) and can request a hearing *before* their benefits are actually changed. In those cases the recipient should continue getting their original benefits while they wait for a hearing.

2. Applicants and recipients are almost always entitled to a notice telling them what action the district is taking (even if it is to increase benefits), why they are taking that action and what law/regulation it is based on, how they came up with the budget if there is a budget issue, how the client can request a hearing if they disagree, the time limit for requesting a hearing with and without Aid Continuing, and the name and phone number of the worker who took the action. There are more requirements but these are the most important ones for clients. The notice may be a computer – generated typed notice or a manual notice, depending on the type of benefit.
3. Hearings can be requested by phone **(800)342-3334**, fax **(518)473-6735**, by mail, or online at <http://otda.ny.gov/hearings/request/#online>. The forms are all available in multiple languages and include space to request a home hearing for homebound clients or an interpreter in whatever language is needed.
4. In Erie County, hearings take place in the Rath Building. They are conducted by Administrative Hearing Officers who work for the state. The hearings are recorded on the phone and are rather informal. The agency will present their evidence packet (clients have a right to request and receive this in advance as well as review their full file and get any policy documents that may be involved) and the judge will ask them questions. The judge will then ask the applicant/recipient (called the Appellant) why they disagree with the worker's decision and take any relevant documents the Appellant may have. All decisions are mailed.

#### **G. Applicant and Recipient Rights**

1. Everyone has the right to apply and have their application processed.
2. Everyone has the right to ask for help getting documents or other verification to which they do not have access. 18 NYCRR § 351.
3. Everyone has the right to a written decision on their application, regardless of which benefit they are applying for. If it is a denial, the

decision must include the reason for the denial and the regulation on which the decision is based. *See* 18 NYCRR § 358 *et seq.*

4. Everyone has the right to review their file.
5. Everyone has the right to request a conference and a Fair Hearing if they disagree with a decision. *See* 18 NYCRR § 358 *et seq.*
6. At a hearing, everyone has the right to request and receive documents the agency will present before the hearing. They also have the right to present testimony and evidence.
7. Everyone has the right to reasonable accommodations in every step of the process from filling out the application to attending a Fair Hearing. *See* Title II, Americans with Disabilities Act.

#### **H. What are the Agency's Rights?**

1. The Agency (Department of Social Services) has the right to interview you and investigate whether you are eligible. The interview may be in person (cash assistance) or over the phone.
2. The agency has the right to ask you to verify relevant facts, including as part of the "fraud prevention" program.
3. The Agency has a right to time to process your case. The amount of time depends on the benefit.

#### **Sources of authority:**

New York Social Services Law, primarily § 131

18 NYCRR Part 300

New York State Office of Temporary and Disability Assistance policy documents:

<http://otda.ny.gov/policy/directives>

Current as of 01/2020

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