



## BRIEFING PAPER

# **New York's Homeless Shelter Ejection and Denial Rules: Summary of Needed Changes to Protect Homeless New Yorkers**

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This summer, at the urging of the Bloomberg administration, New York State officials approved punitive new rules that will result in many homeless children and adults in New York City being ejected from shelter to the streets for 30 days or more, and that require many homeless families to make payments for the cost of shelter.

Under the new rules recently implemented by the City of New York with the approval of State officials, many homeless children and adults will be ejected from shelter to the streets for 30 days or more for missing appointments, for failing to pay shelter "rent," or if a homeless family's welfare case is suspended or closed – something that happens routinely due to bureaucratic error. And even though the rules requiring shelter "rent" payments were temporarily suspended in May due to "technical issues," City and State officials plan to enforce the rules again in the near future.

The punitive shelter ejection and "rent" rules are based on a State regulation (18 NYCRR 352.35), issued in 1995 by the Pataki administration at the strong urging of then-New York City Mayor Giuliani. An additional NYS Office of Temporary and Disability Assistance administrative procedure (05 ADM 07), issued in 2005 by the Pataki administration at the strong urging of the Bloomberg administration, has also resulted in the denial of shelter to homeless children and families.

Since 2007, Coalition for the Homeless and the Legal Aid Society have repeatedly urged State officials to revise the Pataki-era shelter-ejection regulation and shelter-denial procedure in order to protect homeless children and adults – in particular people living with disabilities – from loss of shelter. To date, State officials have failed to change the Pataki-era rules.

On August 24th, the Legal Aid Society and Coalition for the Homeless submitted a formal petition to the Governor's Office of Regulatory Reform asking for modification of the shelter-ejection regulation and shelter-denial procedure. Following is a summary of the key changes that the Paterson administration should make in order to protect homeless families and individuals from harm:

### **Revisions to 18 NYCRR 352.35:**

#### **1. Protect homeless people living with disabilities and impairments:**

- Currently the regulation has only a limited exemption for homeless people living with physical or mental impairments, and places the burden on homeless people to show that their impairment was the cause of their alleged non-compliance with shelter rules.
- The regulation should be changed to clearly show that the social services district has the obligation to investigate and establish that the alleged non-compliance was not caused by a disability or impairment.

#### **2. Include a cure provision:**

- The current regulation offers no opportunity for homeless people to regain access to shelter even when their non-compliance has ceased. It now requires that homeless families and individuals be ejected from shelter for 30 days or until non-compliance ceases, *whichever is longer*.
- The regulation should be changed to allow homeless people to regain access to shelter when their non-compliance ceases, and in no instance to lose shelter for more than 30 days.

### **3. Protect family integrity:**

- Currently the regulation and the City of New York's implementing procedure allow for children in ejected families to be separated from their parents and placed in foster care.
- The regulation should be changed to reflect court rulings that children cannot be separated from their parents solely due to the family's poverty or lack of housing.

### **4. Do not require ejection from shelter due to loss of welfare benefits:**

- Currently the regulation and the City of New York's implementing procedure permit the ejection of homeless children and adults from shelter if the household's welfare case is closed or suspended, something which occurs with alarming frequency due to bureaucratic error.
- The regulation should be changed to eliminate the provision permitting or requiring loss of shelter as a result of the loss of welfare benefits.

### **5. Do not require homeless people to pay for the cost of shelter:**

- Currently the regulation requires many homeless families and individuals to pay for all or part of the cost of shelter, and to be ejected from shelter if they do not make such payments.
- The regulation should be changed to eliminate this requirement.

### **6. Ensure legal assistance for families and individuals threatened with ejection from shelter:**

- The City of New York provides shelter termination notices for homeless single adults to the Legal Aid Society, which serves as class counsel to homeless adults in *Callahan v. Carey*. This protection ensures that vulnerable individuals threatened with loss of shelter – including people living with disabilities – have legal assistance in order to challenge erroneous ejection cases, and has prevented dozens of homeless adults from unlawfully losing shelter. However, the City does not provide class counsel with shelter termination notices for homeless families.
- The State and City should also provide shelter termination notices for homeless families to the Legal Aid Society, which also serves as class counsel to homeless families in the final judgment in *Ebony Boston v. City of New York*.

### **Revisions to 05 ADM 07:**

#### **1. Revise the stated purpose and background for the rule:**

- The current procedure does not conform to court orders which clearly state that the City and State must provide shelter to all homeless families who do not have alternate housing that is suitable and available.
- The procedure should be revised to emphasize this fundamental purpose, and to emphasize that it does not require local social services districts to deny shelter to re-applicant families.

#### **2. Protect re-applicant families from bureaucratic error:**

- Currently the procedure requires the denial of shelter to re-applicant families when there has been no subsequent change in circumstances but there was an error in the initial denial.
- The procedure should be changed to protect families from bureaucratic errors.

#### **3. Ensure that alternate housing is genuinely suitable and available:**

- Currently the procedure fails to ensure that alternate housing is truly suitable and available, resulting in numerous erroneous denials of shelter.
- The procedure should be revised to ensure that alternate housing is genuinely suitable and available by, among other things, requiring districts to consider threats to health and safety; to consider circumstances in which the person in control of the proposed alternate housing is unwilling to provide housing to the re-applicant family; and failure by the district and/or the family to gain access to the proposed alternate housing.
- In the limited number of cases in which re-applicant families denied overnight shelter immediately re-apply, the social service district should deploy staff to accompany the family to the identified housing resource to verify that it is available.

For more information, please visit [www.coalitionforthehomeless.org](http://www.coalitionforthehomeless.org).