



Empire Justice Center

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Joint Legislative Public Hearings on 2020-2021 Executive Budget Proposal

Human Services

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INTRODUCTION

We appreciate the opportunity to submit this testimony on behalf of Empire Justice Center. This testimony addresses issues in the Executive Budget that pertain to human services.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip (Long Island). The organization provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low-income individuals, as well as classes of New Yorkers in a wide range of areas including civil rights, health, public assistance, domestic violence, and SSI/SSD benefits.

The New York State economy has again been relatively robust this past year. But circumstances have nevertheless conspired to produce a looming budget deficit that jeopardizes the State's support for human services. But the need to sustain and even increase that support is unabated and as urgent as ever. One need only look at, for example, record-breaking homelessness and the chronic inability of low and modest income New Yorkers to meet their child care needs to confirm that there is much to be done. We cannot succumb to artificial constraints that would deny adequate funding to address these needs. We have the opportunity and the capacity to take action in behalf of those most in need, to expand and solidify the safety net and to enact and provide funding for dramatic, progressive change. We urge the Legislature to decisively affirm its Constitutional commitment to aid and support the most vulnerable New Yorkers.

This testimony touches on the work of the New York State Office for the Aging, the Office of Children and Family Services, the Office of Temporary and Disability Assistance, the Office of New Americans, the Department of State, and the Department of Health. We will discuss the positions set forth below:

1. **Invest a Total of \$2.767 Million in the Managed Care Consumer Assistance Program (MCCAP)**
2. **Provide Level Funding for the Disability Advocacy Program (DAP)**
3. **Improve the New York State Supplement to the Federal SSI Program for New Yorkers with Disabilities**
4. **Support Home Stability Support (HSS) as an effective approach to Rapidly Reducing Homelessness and Stabilizing the Lives of Low-Income New Yorkers**
5. **Support Immigrants by Providing Sufficient Funding for Immigration Legal Services and the Office for New Americans**
6. **Invest in Child Care to Provide Equitable Access to Working Parents and Adequate Reimbursement to Providers**
7. **Expand Statewide a Fair Process for Reducing Erroneous Welfare Sanctions**
8. **Adopt the Treating Practitioner Rule – A More Just and Accurate Means to Determine Employability and to Identify Disabilities for Recipients of Public Assistance**

INVEST A TOTAL OF \$2.767 MILLION IN THE MANAGED CARE CONSUMER ASSISTANCE PROGRAM (MCCAP)

The Managed Care Consumer Assistance Program (MCCAP), a statewide initiative run through the New York State Office for the Aging (NYSOFA), provides seniors and people with disabilities critical assistance in accessing Medicare services and reducing health care costs. We are grateful that the Executive Budget provides ongoing funding for MCCAP at its current level, \$1.767 million. However, given that the funding has been at a reduced level for several years, we are asking that the Legislature provide an additional \$1,000,000 in funding. This additional investment will increase the program's capacity and respond to the increased demand for Medicare navigation assistance brought about by New York's growing aging population and changes in the health care delivery and insurance landscape.

The six MCCAP agencies partner with the New York State Office for the Aging (NYSOFA), the New York State Department of Health (DOH) and the Center for Medicare and Medicaid Services (CMS) to provide training, technical support and assistance to local Health Insurance Information Counseling and Assistance Program (HIICAP) offices and other nonprofit organizations working directly with Medicare consumers across New York State. Additionally, MCCAP agencies work directly with consumers to provide education, navigational assistance, legal advice, informal advocacy and direct representation in administrative appeals. We serve clients in their communities and provide services in their native languages; consumers also increasingly reach us via internet and our telephone helplines, as well as through our educational materials and referrals from HIICAPs.

Now is a critical time to shore up funding for MCCAP. As the aging population increases, so does the number of Medicare beneficiaries in New York who rely on MCCAP's assistance in understanding and accessing their health benefits. In the last year, MCCAP continued its work helping individuals maximize their benefits under the highly complex Medicare Part D program, as well as assisting dual-eligible individuals and other Medicare beneficiaries with health care access issues besides Part D. In addition, MCCAP has responded to a range of new needs that have resulted from the changing health care landscape. For example, MCCAP has fielded a high volume of calls from new Medicare beneficiaries in need of assistance transitioning from other forms of insurance, including the Essential Plan, Qualified Health Plans, Marketplace Medicaid and Medicaid Managed Care plans. These transitions, which are necessary because Medicare beneficiaries are, for the most part, excluded from Marketplace products and Medicaid Managed Care, can seriously disrupt care continuity if not navigated carefully.

MCCAP is also ideally positioned to help Medicare beneficiaries understand and adapt to any changes to Medicare, and other health coverage programs that work with Medicare, that may arise out of the federal debates about the future of healthcare in America. In the past year, MCCAP was contacted by many Medicare recipients anxious to know what changes may lay ahead for them and what they could do to anticipate those changes. Uncertainty about changes to Medicare and Medicaid has, if anything, grown since this time last year.

Recommendation:

- We urge the Legislature to negotiate with the Executive to increase MCCAP funding by \$1,000,000 for a total investment of \$2.767 million.

RESTORE THE INVESTMENT IN THE DISABILITY ADVOCACY PROGRAM (DAP)

For over three and a half decades, the Disability Advocacy Program (DAP) has been helping low income disabled New Yorkers who were denied or cut off federal disability (SSI/SSD) benefits. Since the inception of DAP in 1983 through June 2019, DAP providers, who work in every New York county:

- Assisted over 230,000 disabled New Yorkers.
- Helped put over \$839 million in retroactive benefits in their hands to be spent in local economies.
- Generated over \$233 million in federal funds paid back to New York State and the counties.
- Saved approximately \$310 million in avoided public assistance costs.

Consistently successful in about 72% of all cases, DAP services help stabilize people's incomes, which in turn helps to stabilize housing, health and quality of life overall.

For every dollar invested in DAP, at least \$2 is generated to the benefit of New York's state and local governments.

In last year's final budget, the DAP program was funded at \$8.26 million, which included an additional investment of \$3 million from the State Legislature over the Executive Budget allocation of \$5.26 million. With this continued investment, DAP providers have helped address the increased need for representation among vulnerable New Yorkers involved in a disability appeals process that has become more challenging. New rules and procedures have made it more difficult to obtain and maintain Social Security benefits. As a result, the demand for DAP services and the importance of representation remains high. Each low income individual with a disability we cannot serve is left without assistance to navigate the increasingly complex Social Security Administration (SSA) disability benefits appeals process.

In 2019, applicants for disability benefits in New York began facing a new addition to the appeal process, reinstatement of a mandatory "reconsideration" step before a hearing can be held. This desk review of rejected applications for federal disability benefits presents an additional hurdle in an already daunting process. It results in few successful appeals, with only about 17% of claimants being approved at this stage. It also has the additional negative impact of discouraging disabled New Yorkers from pursuing valid claims. SSA data shows that 71% of people denied disability benefits initially do not request reconsideration. Reconsideration is one of several new obstacles faced by Social Security claimants. Recent changes to Social Security rules about how evidence is accepted or considered have also served to make the process of obtaining and maintaining disability benefits increasingly difficult.

Thus, while DAP is once again funded in the Executive Budget at \$5.26 million, that funding level is insufficient to respond to the ever growing demand for DAP services. Clearly, without a restoration of the \$8.26 million funding level, DAP providers will be unable to address the new challenges faced by Social Security claimants in New York.

Recommendation:

- We urge the Legislature to once again invest in DAP by restoring last year's level of funding, by investing a \$3 million add-on to the Executive Budget level to bring statewide funding to a total of \$8.26 million. Half of this cost is borne by the local counties, leaving the actual cost of the request to the legislature at \$1.5 million. The additional funding will go a long way towards stabilizing the long term future of DAP services and will allow providers to address the additional obstacles faced by claimants with disabilities while continuing to chip away at the unmet need for services.

**IMPROVE THE NEW YORK STATE SUPPLEMENT TO THE FEDERAL SSI PROGRAM
FOR NEW YORKERS WITH DISABILITIES**

The Federal Supplemental Security Income program for very low-income elderly and disabled individuals authorizes states, at their option, to provide a state supplement to the Federal benefit. New York has provided that supplement for many years, but it was administered by the Federal government until 2014. In that year, New York State took over the administration of the state supplement and created SSP, the state supplement program.

When a person becomes eligible for SSP benefits, their benefit amount is determined, in part, by what is known as their "Living Arrangement." The person's SSP benefit amount can vary depending on whether they are determined to be "Living Alone," "Living with Others" or living in "Congregate Care." For purposes of this testimony we focus on two categories, "Living Alone" and "Living with Others." The Living Arrangement categories can be somewhat misleading and are often confusing for recipients. New York currently provides an SSP benefit of \$87.00 per month for persons determined to be "Living Alone" and \$23.00 per month for persons determined to be "Living with Others." These rates have remained unchanged since the program was taken over nearly five years ago, and even for several years before when the federal Social Security Administration issued the SSP payments on the State's behalf. The SSP benefit provides a modest but important bump in income to some of our State's most vulnerable residents. For this reason, correctly determining the living arrangement that sets the benefit is of the utmost importance to securing a fair and valuable benefit.

Recommendation:

- We urge the legislature to increase SSP benefit by 12.5%. While the amount sounds higher than many increases, the benefit itself has not been raised in more than half a decade and the amounts are modest. A 12.5 % increase for "Living Alone" households will provide an additional \$11 per month, and a mere \$3 increase for single individuals who are categorized as "Living with Others."

- We urge the legislature to make application assistance widely available. As noted above, the living arrangement categories and criteria can be quite confusing. But it is essential – because of the benefit implications – that correct determinations of living arrangement categories are made. In order to ensure that SSI recipients are able to complete the necessary SSP enrollment and secure the correct benefit level, Empire Justice Center supports the creation of a network of application assisters who would be available to SSI recipients to ensure that their living arrangement forms are completed and submitted correctly. The application assisters would be available to help SSI recipients complete relevant forms, gather documentation, and identify barriers to recipients seeking to access their benefits. This would provide a critical tool to a recipient population that is predominately comprised of disabled individuals with very limited access to resources.

SUPPORT FOR THE HOME STABILITY SUPPORT (HSS) IS THE MOST EFFECTIVE APPROACH TO RAPIDLY REDUCING HOMELESSNESS AND STABILIZING THE LIVES OF LOW-INCOME NEW YORKERS

The time has come for the Legislature to effectively combat the devastating impacts of homelessness and housing instability by adopting and funding the Home Stability Support program. Homelessness in our State continues to break records on an annual basis, with current estimates exceeding 90,000 homeless people each night and more than 150,000 children experiencing homelessness over the course of a year. And a rising number of New York households are at serious risk of homelessness because of their limited ability to pay the rent.

Over time, research has confirmed what we perhaps have intuitively known all along about the harm that is caused by homelessness and housing insecurity. Acute stress and hardship accompany the loss or the risk of loss of a secure place to live. The consequences are manifold: Children do less well in school and are more likely to drop out, parents are less able to secure and retain employment, mental and physical health are in jeopardy and the general well-being of the family suffers.

Empire Justice fully supports proposals to expand the supply of affordable housing, supportive housing and emergency shelter. But most of these proposals are costly, and will take years to bring to fruition. The inability of lower-income New Yorkers to meet the costs of even the most modest housing represents a crisis that cannot await the implementation of these proposals. Particularly for people who must rely on public assistance to enable them to pay the rent, the absurd disconnect between their rent allowances and the actual cost of housing must be addressed immediately.

The housing portion of the public assistance grant (the “shelter allowance”) has not remotely kept pace with the relentlessly increasing cost of housing. More than two-thirds of public assistance recipients living in private housing have rent costs that exceed – that often far exceed – the amount they receive for rent. For many households, chronic housing instability – and the accompanying trauma and stress – are virtual certainties in their lives. At the same time, the cost of emergency shelter, of emergency medical needs, of diminished educational

attainment and employment outcomes must be borne in large measure by the State and localities. These costs are prohibitive. The cost of emergency shelter for a family in, for example, New York City and the surrounding suburbs, ranges from \$3,000 to more than \$4,000 per month. By contrast, the cost of providing a family with rent sufficient to secure modest but decent housing would likely be one-third or less than the emergency shelter cost, while offering an opportunity for stability and security that simply cannot be offered in the emergency shelter system.

A brief sample comparison of the shelter allowance provided to families on public assistance with the “Fair Market Rents” (FMR) established by the Federal Department of Housing and Urban Development reveals the inadequacy of the shelter allowance. And it should be noted that the FMR approximates the cost of decent but modest housing. In Albany County, the monthly FMR for a two-bedroom unit is \$1,054, while the maximum shelter allowance for a household of three is \$309 per month, or about 29% of the FMR. In Erie County, the two-bedroom FMR is \$843, while the shelter allowance for a household of three is \$301, or about 36% of the FMR. The disparity is even greater in, for example, the suburban counties near New York City. There is no county in New York where the shelter allowance provides enough money to cover even half of the Fair Market Rent.

A few counties do provide rent supplements, but there are significant eligibility restrictions on these grants, they are generally available only to families with children and even the supplements often fall short of the actual rents. The eligibility rules for these supplements notably disadvantage those living with hazardous conditions or fleeing domestic violence.¹ This fact has taken on particular significance because domestic violence is now recognized as a leading cause of homelessness. Indeed, Senior Attorney Don Friedman recently wrote a report about services provided within the welfare system for domestic violence survivors. In talking with local DSS staff, domestic violence non-profit providers and other advocates around the state, he consistently was told that the inadequacy of public assistance rent allowances poses a nearly insurmountable barrier to the ability of survivors to move out of emergency shelters and move on with their lives.

The Court of Appeals has stated that “A schedule establishing assistance levels so low that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard.” *Jiggetts v. Grinker*, 75 NY.2d 411 (1990). New York State is clearly failing to meet its statutory obligations under the Social Services Law.

One final consideration that must be addressed. Many New York households outside of New York City and the suburbs must pay for heat separately from their rent. There is a fuel-for-heating allowance provided to public assistance households who must pay for heat, but this allowance has not seen an increase since its creation more than 30 years ago. During that time span, the cost of heating oil has increased four-fold, and the cost of natural gas has doubled.

¹ These groups are disadvantaged because most of the supplements require that the person be facing a legal eviction from the home, and victims of domestic violence or those living with hazardous conditions are not technically facing eviction.

The inability to meet heating costs may mean that the family must relocate or must endure hazardous living conditions – another manifestation of housing instability.

The inevitable consequence of these grossly inadequate shelter and heating allowances is that too many low-income households in New York State are in a constant state of housing insecurity and homelessness. In many parts of the state, the only affordable living quarters may be overcrowded, unsafe and perhaps illegal.

Adoption of the Home Stability Support program will make stable housing a reality for thousands of individuals and families. Keeping families in their homes will, in turn, save millions of dollars currently needed for emergency housing and other expenses – health care, emergency food programs, remedial education, court costs – associated with unstable housing and homelessness. At the same time, significant positive outcomes will be reflected in education, health, employment and family well-being.

Recommendation:

- We urge the Legislature to allocate \$40 million to the Home Stability Support initiative (HSS) with additional annual appropriations in subsequent years. HSS will create a new statewide rent supplement program for families and individuals facing eviction, homelessness, or loss of housing due to domestic violence or hazardous conditions. The HSS rent supplement would enable a household to pay up to 85% of the HUD Fair Market Rent. To account for the inadequacy of the current fuel allowance, HSS will also include a fuel supplement for those households that pay for heat separately from their rent:
- We believe that HSS would achieve significant savings throughout the State by preventing evictions and reducing shelter utilization while limiting the costs of additional homeless services. HSS would provide mandate relief to the localities by not only reducing the costs associated with emergency housing but by replacing all existing optional rent supplement programs. Furthermore, the rent supplements would be funded with State and federal dollars.
- Finally, to encourage employment and avoid creating a “benefits cliff,” HSS will include a one-year transitional benefit for households, which will increase their earnings enough to leave public assistance.

**SUPPORT IMMIGRANTS BY PROVIDING SUFFICIENT FUNDING FOR
IMMIGRATION LEGAL SERVICES AND THE OFFICE FOR NEW AMERICANS**

New York must continue to lead the nation by example against the backdrop of federal anti-immigration policies focused on removal and intimidation. Providing legal services to immigrants facing deportation, seeking asylum, or needing basic legal assistance remains essential in the 2020-21 budget year.

Beginning in 2018, Empire Justice was funded to provide legal services to immigrants in Westchester County, and then on Long Island as part of the Liberty Defense Project in the

Department of the State, Office of New Americans. Across the state, and especially outside of New York City, the demand for legal services remains insurmountable, and far exceeds available funding. We urge the legislature and the Governor to increase funding for immigration legal services, including the Liberty Defense Project, to \$15.3 million, an increase from last year's \$10 million level to meet current needs in deportation, removal, and status adjustment proceedings.

Since the beginning, we have strongly supported Governor Cuomo's efforts in creating the first state Office for New Americans (ONA) in the country. ONA supported a network of 27 Opportunity Centers and five Legal Counsel offices across the state that provide English classes, citizenship exam preparation, support for new immigrant business owners and legal assistance in naturalization efforts. The office is both a symbol of New York state's commitment to immigrants, and is essential in helping people adjust to life in the United States.

For 2020-21, we urge the legislature to increase the budget of the Office for New Americans to \$9.1 from its current \$6.4 million to restore full funding to the ONA Opportunity Centers. This would allow ONA to prepare an additional 400 citizenship applications, host an additional 48 intake days, and restore English classes for approximately 3,000 New Yorkers a year.

Recommendations:

- We urge the legislature and the Governor to increase funding for immigration legal services, including the Liberty Defense Project, to \$15.3 million, an increase from last year's \$10 million level to meet current need in deportation, removal, and status adjustment proceedings.
- We urge the legislature to increase the budget of the Office for New Americans to \$9.1 from its current \$6.4 million to restore full funding to the ONA Opportunity Centers.

INVEST IN CHILD CARE TO PROVIDE EQUITABLE ACCESS TO WORKING PARENTS AND ADEQUATE REIMBURSEMENT TO PROVIDERS

Empire Justice Center joins Winning Beginning New York and the Empire State Child Care Campaign and asks the State to invest new dollars to restore and increase child care subsidies. As child care costs have increased (the average child care subsidy per child has risen from \$7,200 to nearly \$8000 since 2013).² To compensate for virtually no increased investment, in 2016, New York passed some costs on to providers by dropping provider reimbursement from the 75th percentile of the market rate to the 69th percentile³ a cut which has continued each year since that date. Increasing costs mean that significant numbers of eligible children go

² Emails dated 1/27/2020 and 10/7/2013 from Melinda Dutton and Janice Molnar of the Office of Children and Family Services to Susan Antos, on file with the Empire Justice Center.

³ 19 OCFS-LCM-23 at 6, available at: https://ocfs.ny.gov/main/policies/external/OCFS_2019/; 16 OCFS INF-06, p2, available at: http://ocfs.ny.gov/main/policies/external/OCFS_2016/INFs/16-OCFS-INF-06%20Child%20Care%20Market%20Rates%20Advance%20Notification.pdf

unserved because of the lack of subsidy funding.⁴ In New York City, only 14% of eligible infants and toddlers receive subsidies due to lack of funding.⁵ In the rest of the state, the number of eligible children who are unserved is equally low.⁶ The number of unserved eligible children could drop even further as the State implements the federal child care Development Fund Block Grant (CCDBG) regulations without increased investment. To keep vulnerable children in child care, we urge the legislature to

- Invest at least \$60 million to take meaningful steps toward achieving universal access to quality, affordable child care by 2025 by incrementally increasing the guaranteed eligibility levels and decreasing the co-payment multiplier so that no family receiving a child care subsidy contributes more than 20% of its gross income exceeding the poverty level as the parent share.
- Invest at least \$40 million to create a fund to increase workforce compensation and improve child care quality. Low compensation for child care educators leaves many educators living in or near poverty. It also leads to high workforce turnover rates, causing instability for infants and young children who need consistency in caregivers in order to establish healthy and secure attachments. Priority should be given to programs that serve low-income families and care for infants and toddlers and the subsidy reimbursement rate should be returned to the 75th percentile formula.
- Provide the modest \$30,000 investment necessary to develop statewide Self-Sufficiency Standard; and
- Provide the modest \$200,000 investment to develop a cost estimation model for determining the true cost of child care.

A. Child care is in crisis

The statutory eligibility level for child care funded under New York State's Child Care Block Grant (NYSCCBG) is 200% of poverty.⁷ Counties are running out of money, even as the need grows.⁸ Some counties have closed intake, refusing to accept new applications. Others, in an

⁴ CLASP 2016 Disparate Access report which reports that only 17% of eligible children in New York State in families up to 175% of poverty received subsidies, using 2013 Office of Child Care Administrative data and U.S. Census American Community Survey three-year estimates (2011-2013) at: <http://www.clasp.org/resources-and-publications/publication-1/Disparate-Access.pdf> Appendix IV. Methodology at pages 7-8 and Appendix I.

⁵ See *Overlooked and Undercounted 2018: The Self Sufficiency Standard for New York City*, at 18 at https://action.unitedwaynyc.org/page/-/NYC18_KeyFindings_102518LMa.pdf.

⁶ P. Nabozny, *The Children's Agenda, Declining Options for Young Children: Pre-K expansion and the Birth-3 Gap in Rochester, New York* (January 2020), available at https://thechildrensagenda.org/wp-content/uploads/2020/01/Declining-Child-Care-Options-for-Young-Children-01_09_20-Final.pdf.

⁷ Social Services Law § 410-w(1)(c).

⁸ See: S. Antos and L. Pickett, Empire Justice Center, *Shouldering the Strain; How Counties Cope with Inadequate Child Care Funding* (January 2020), available at: <https://empirejustice.org/wp-content/uploads/2019/12/REPORT-Shouldering-the-Strain-January-2020.pdf>.

effort to cope with limited funds, are reducing financial eligibility levels for NYSCCBG funded child care. As indicated below:

- The eligibility level in **Delaware County** is **125%** of poverty (\$25,975 for a family of three).
- **Niagara County** only serves those at or below **130%** of the federal poverty level (\$27,014 for a family of three).⁹
- Although **New York City** has technically retained its eligibility levels at 200% of poverty, data show that few families over **135%** of poverty are being served.
- Three social services districts have lowered eligibility to **150%: Clinton, Oneida, and Orange Counties;**
- **Livingston and Rensselaer Counties** have lowered eligibility to **160%** of poverty.
- **In Monroe County, eligibility is at 165% of poverty.**
- **In Albany, Ontario, Saratoga and Schenectady and Suffolk Counties** eligibility is at **175%** of poverty (Once in receipt of a subsidy, Suffolk allows families to retain them until they reach 200% of poverty).

(Note: Select counties including Monroe, Oneida and Saratoga receive special targeted Facilitated Enrollment Funds¹⁰ which allow them to serve families up to 275% of poverty. In these counties, some families over the reduced NYSCCBG eligibility levels receive subsidies funded by the facilitated enrollment program).

Adequate funding for child care is critical to the success of New York's economic development initiatives and for working families with young children who are trying to pay the rent and pay for child care. For those families that leave welfare for work, it makes no sense to guarantee a child care subsidy for one year, and then remove that benefit when the family's wages remain below the county eligibility level, when research shows that without assistance, most families below 200% of poverty cannot pay for both child care and rent.¹¹

B. Investing in child care is critical to economic development for parents

⁹ These numbers are calculated based upon the 2018 poverty level which for child care, is in effect until June 1, 2019. 2018 OCFS-INF-01, available at: https://ocfs.ny.gov/main/policies/external/OCFS_2018/

¹⁰ Outside of New York City, these funds are administered by the Workforce Development Institute. See: <https://wdiny.org/Explore-Our-Work/Child-Care-Subsidy-Program>

¹¹ In 2010, the New York State Office of Children and Family Services commissioned a report that developed a self-sufficiency wage for every county and 72 family types in New York State D. Pearce, *The Self Sufficiency Standard for New York State 2010*, at <http://www.fiscalpolicy.org/SelfSufficiencyStandardForNewYorkState2010.pdf> Even under this dated standard, New York's child care eligibility levels and subsidies fail to support working families that are below the self-sufficiency wage. New York City updated its self-sufficiency analysis in 2018, showing that affording child care has only become more difficult for working families. See *Overlooked and Undercounted 2018: The Self Sufficiency Standard for New York City*, at https://action.unitedwaynyc.org/page/-/NYC18_KeyFindings_102518LMA.pdf

As a result of the 1996 Federal welfare reform, with its emphasis on “work first,” public assistance rolls have plummeted as families left welfare for low wage jobs. In 1995, there were 1.5 million recipients of cash public assistance in New York State; 1.2 million received Aid to Families with Dependent Children (AFDC, the cash public assistance program before welfare reform). 803,000 of these recipients were children.¹² By October 2019, the number of persons on Temporary Assistance had dropped to 469,024 (227,386 of those recipients were children)¹³.

However, without assistance in paying for child care, low wage workers cannot make ends meet. The 2010 report on the Self-Sufficiency Standard for New York concludes that in order meet basic needs, including child care, a family of three with a preschooler and a school age child needs the following hourly wage:¹⁴

- NYC (Northern Manhattan): \$27.38 per hour
- Westchester/Yonkers: \$32.38 per hour
- Erie: \$22.33 per hour
- Suffolk: \$37.37 per hour

The updated 2018 New York City Self Sufficiency Standard reports that a working family in the Bronx needs an income **four times the poverty level** to meet their basic needs, including child care.¹⁵ Without a subsidy, the cost of child care is out of reach to low wage families, and that without assistance, they face the bleak choice between paying the rent and paying for child care.

C. Investing in child care is critical to economic development for providers

Market rates are inadequate as providers struggle to comply with increased costs as minimum wages increased yet again at the end of December as follows:

NYS Minimum Wage – December 31, 2019
New York City - \$15/hr
Long Island & Westchester - \$13/hr
Rest of State: \$11.80/hr.

At the very least, the legislature should reinstate the 75th percentile formula for establishing provider reimbursement rates. The legislature must allocate additional funds to assist child

¹² *New York State Department of Social Services, Social Statistics*, December 1995 Table A (p.27), Table B (p.33), on file at the Empire Justice Center.

¹³ *New York State Office of Temporary and Disability Assistance Monthly Caseload Statistics*, October 2019, Table 5, p. 8, available at <https://otda.ny.gov/resources/caseload/2019/2019-10-stats.pdf> [accessed January 25, 2020].

¹⁴ D. Pearce, *The Self Sufficiency Standard for New York State 2010*, <http://www.selfsufficiencystandard.org/docs/New%20York%20State%202010.pdf>

¹⁵ *Overlooked and Undercounted 2018: The Self Sufficiency Standard for New York City*, at https://action.unitedwaynyc.org/page/-/NYC18_KeyFindings_102518LMa.pdf.

care centers and group family day care providers that receive child care subsidies to cover increased wage costs as the new minimum wage standard is implemented across the state.

D. Child care must be affordable

The commentary to the federal child care regulations states that to assure equal access to child care, child care must be affordable, and recommends that parent copayments not exceed 7% of household income.¹⁶ As set forth more fully below, a 35% copayment is not an affordable copayment, especially for families with incomes over 150% of poverty. In twenty counties families at 200% of poverty pay 17.5% of their income as a copayment. As indicated by the chart below, for lower income families the percentages are slightly better, but even families at 150% of poverty pay nearly 12% of their income if they reside in counties with 35% multipliers. Only six counties have parent copayments requiring that families at 200% of poverty pay no more than 7.5% of their income.

This disparity exists because the Office of Children and Family Services (OCFS) regulation at 18 NYCRR 415.3 [e] [3], which sets forth the formula for calculating copayment amounts, gives social services districts total discretion to choose a multiplier between 10% and 35% that is then applied to the family's income above the state income standard (the equivalent of the federal poverty level) to determine the household's copayment amount. The result is that the larger the multiplier chosen by the county, the smaller the child care benefit received by the family. The inequity in the child care benefit offered to similarly situated families (same family size, same income) varies by as much as 300% depending on the county in which a family resides.

It's time to address this inequity. Despite clear guidance in New York's Social Services Law 410-x(2)(a) requiring that families be provided "equitable access" to child care funds, and that the copayment should be "based upon the family's ability to pay" [SSL 410-x(6)], this standardless formula has been in place, unchanged, since at least June 29, 1987, when the New York State Department of Social Services, the OCFS predecessor agency, directed all social services districts to adopt the methodology by June 1, 1988. Because OCFS authorizes each district to select a multiplier without further guidance, child care subsidies and copayment policies vary dramatically across the state. A county can opt to issue child care benefits that are approximately one-third of what the same family would receive in a neighboring county.

The inequity is vast across New York. As indicated by the chart below, in three social services districts parents pay 10% of their income over the poverty level as their child care copayment; in three districts parents pay 15% of their income over poverty; in thirteen districts, parents pay 20% of their income over poverty; in sixteen districts, parents pay 25% of their income over poverty; in one district parents pay 27% of their income over poverty; in two districts, parents pay 30% of their income over poverty; and in twenty districts, parents pay 35% of their income over poverty.

¹⁶ 81 Fed.Reg. 67438, 67516 (9/30/16).

**COPAYMENT DISPARITIES BY COUNTY FOR A FAMILY OF THREE WITH AN INCOME OF
\$42,660/year¹⁷
(200% of poverty)**

COUNTY	COUNTY MULTIPLIERS	ANNUAL/WEEKLY FEE
<i>In Cattaraugus, Livingston and Steuben counties</i>	<i>parents pay 10% of their income over the poverty level for a child care subsidy</i>	<i>this means they pay \$2133 per year, or \$41 per week (5% of their income)</i>
<i>In Oswego, Schuyler and St. Lawrence counties</i>	<i>parents pay 15% of their income over the poverty level for a child care subsidy</i>	<i>this means they pay \$3200 per year, or \$62 per week (7.5% of their income)</i>
<i>In Allegany, Cayuga, Chautauqua, Clinton, Columbia, Essex, Nassau, Niagara, Ontario, Putnam, Saratoga, Suffolk and Tompkins counties</i>	<i>parents pay 20% of their income over the poverty level for a child care subsidy</i>	<i>this means they pay \$4266 per year, or \$82 per week (10% of their income)</i>
<i>In Albany, Broome, Chemung, Delaware, Franklin Hamilton, Jefferson, Lewis, Madison, Monroe, Oneida, Rensselaer, Rockland, Schenectady, Ulster, Warren, Washington and Wayne counties</i>	<i>parents pay 25% of their income over the poverty level for a child care subsidy</i>	<i>this means they pay \$5333 per year, or \$103 per week (12.5% of their income)</i>
<i>In Westchester County</i>	<i>parents pay 27% of their income over the poverty level for a child care subsidy</i>	<i>this means they pay \$5759 per year, or \$111 per week (13.5% of their income)</i>
<i>In Dutchess, and Otsego counties</i>	<i>parents pay 30% of their income over the poverty level for a child care subsidy</i>	<i>this means they pay \$6399 per year, or \$123 per week (15% of their income)</i>
<i>In Chenango, Cortland, Erie, Fulton, Genesee, Greene, Herkimer, Montgomery, New York City, Niagara, Onondaga, Orange, Orleans, Schenectady, Schoharie, Seneca, Sullivan, Tioga, Wyoming and Yates counties</i>	<i>parents pay 35% of their income over the poverty level for a child care subsidy</i>	<i>this means they pay \$7466 per year, or \$144 per week (17.5% of their income)</i>

In response to recommendations made by the New York State Assembly Child Care Workgroup¹⁸ in the 2015-16 legislative session, the Assembly passed A. 8928 (Russell), which

¹⁷. The Office of Children and Family Services utilizes the 2019 poverty levels until May 31, 2020.
https://ocfs.ny.gov/main/policies/external/ocfs_2019/INF/19-OCFS-INF-02.pdf

would do much to curb copayment disparities among counties and improve affordability by amending Social Services Law § 410-x to limit child care copayments to 20% of a family's income in excess of the corresponding poverty level.¹⁹ This bill was re-introduced in the 2017-18 session as A.1438 (Jenne)/S.6061 (Kennedy), and has been reintroduced this session as A.3110 (Jaffee)/S.1546 (Kennedy). We urge its passage to assure equity and fairness in the distribution of child care subsidy funds. Under this bill copayments would be calculated as follows:

<i>Cost of Child Care</i>	<i>Annually/Weekly Now</i>	<i>Under A.3110/S.1546</i>
Cattaraugus, Livingston, and Steuben	\$2133/\$41	\$2133/\$41
Oswego, Schuyler and St. Lawrence	\$3200/\$62	\$3200/\$62
Allegany, Cayuga, Chautauqua, Clinton, Columbia, Essex, Nassau, Niagara, Ontario, Putnam, Saratoga, Suffolk & Tompkins	\$4266/\$82	\$4266/\$81
Albany, Broome, Chemung, Delaware, Franklin, Hamilton, Jefferson, Lewis, Madison, Oneida, Rensselaer, Rockland, Ulster, Warren, Washington and Wayne	\$5333/\$103	\$4226/\$81
Westchester	\$5759/\$108	\$4226/\$81
Dutchess and Otsego	\$6399/\$123	\$4226/\$81
Chenango, Cortland, Erie, Fulton, Genesee, Greene, Herkimer, Monroe, Montgomery, New York City, Niagara, Onondaga, Orange, Orleans, Seneca, Sullivan, Tioga, Wyoming and Yates	\$7466/\$144	\$4226/\$81

The OCFS copayment regulation has resulted in a system that unequally distributes an important benefit and puts the cost of child care out of reach of some low income working families, but not others. As a consequence, the system is not equitable and not based upon a family's ability to pay.

Recommendation:

- We urge the legislature to make copayments equitable and pass the A.3110 (Jaffee)/S.1546 (Kennedy) to assure that all parents can afford child care in New York State.

E. New York Needs Accurate and Current Data to Access Child Care Need and Cost

¹⁸ *Child Care in Crisis: A Report from the Assembly Child Care Workgroup*, NYS ASSEMBLY, p. 4, <http://assembly.state.ny.us/comm/ChildCare/20131220/index.pdf> (last accessed February 2, 2018).

¹⁹ A.8928 (Russell) passed the New York State Assembly on March 5, 2014, was delivered to the Senate and referred to the Children and Family's Committee there.

1. Fund the Self-Sufficiency Study

Empire Justice Center strongly supports the funding of a study that would provide New York State with an updated self-sufficiency standard. The Self-Sufficiency Standard defines the amount of income necessary to meet basic needs (including taxes and tax credits) without public or private assistance, and provides information for 700 kinds of family configurations (number of adults, ages of children) based on their geographic location. The Self-Sufficiency Standard considers housing, utility and transportation costs, child care, taxes and tax credits, as well as food costs. Currently, 41 states and the District of Columbia, including New York State use the Self-Sufficiency Standard for evaluating and planning social and economic policy.

New York City updated the standard for its five boroughs in 2018.²⁰ However, the Self-Sufficiency Standard for counties outside New York City has not been updated since 2010²¹, thereby disadvantaging residents and counties in the rest of state because policies and decisions are being based on outdated (and, therefore, inaccurate) data. The Self-Sufficiency Standard is equally critical to all the counties outside of New York City, so that policies and decisions are based on accurate and current data.

For a modest investment of \$30,000,²² the counties and localities in the rest of the State can benefit from a detailed state study of the CURRENT cost of meeting basic needs in their respective jurisdictions, thereby having an opportunity to use their limited public and private dollars more effectively.

Recommendation:

- We strongly support inclusion of funding for an updated Self-Sufficiency Standard study in the one-house budget bills.

2. Fund a Cost Estimation Study

Payment rates for subsidized child care must be sufficient to support high quality early care and learning. The federal government has encouraged states to use methods other than the market rate survey to determine the cost of providing quality care. 42 USC 9858C(c)(4)(B)(i),(ii); 45 CFR 98.45(c)(2). New York State must take the first step in this process by implementing a cost estimation study which would gather information that establishes the actual cost of providing high quality child care to New York's most vulnerable children. The state will then have data to assess the cost of quality, and to set goals for future reimbursement rates. The cost of doing a modest initial study in a state the size of New York should be reasonable and cost between no more than \$300,000. Additionally, the National Center on Early Childhood Quality Assurance [<https://eclkc.ohs.acf.hhs.gov/nceqqa>] is available to provide modest technical assistance to states on cost studies upon the request of the state child care administrator. Both houses of the

²⁰ "Overlooked and Undercounted 2018: Defining Self – Sufficiency in New York City" Available at: https://www.cityharvest.org/wp-content/uploads/2018/11/NYC18_Brief1_102518LMa.pdf

²¹ Available at: <http://fiscalspolicy.org/the-self-sufficiency-standard-for-new-york>

²² New York State Self-Sufficiency Standard Project list (January, 2019) Diana Pearce, Director, Center for Women's Welfare, School of Social Work, University of Washington. On file at the Empire Justice Center.

legislature passed legislation that would require such a study in New York last year but the bill was vetoed by the Governor.

Recommendation:

- We urge the legislature to implement a cost estimation study to determine the true cost of high quality child care to New York's most vulnerable children.

**APPLY A FAIR PROCESS FOR REDUCING ERRONEOUS WELFARE SANCTIONS
STATEWIDE**

In 2014, a new state law dramatically improved the process by which public assistance recipients can respond to an allegation that they have failed to comply with a welfare work requirement. But before passage, the bill was modified to apply only to New York City. The law provides common sense protection against the imposition of unwarranted and unduly harsh sanctions on the poorest New Yorkers. Empire Justice Center strongly supports the expansion of this law statewide.

For the entire state outside of New York City, a local Department of Social Services' (DSS) belief that a person has failed to comply with a work rule triggers a sanction process. In that process, the individual essentially has the burden to demonstrate that they either did in fact comply, or had good cause for not complying. Although clients often prevail when they ask for a hearing, far too many individuals, particularly those who may be disabled, have difficulty accessing the hearing process or otherwise asserting their rights.

At the heart of this bill is the right of the public assistance recipient to cure an alleged failure to comply with the work rules by demonstrating their willingness to come into compliance, or to establish that they are currently unable to engage in work activities.

Two powerful considerations guide our support for expansion of this law to the whole state:

(1) A disproportionate number of those who are sanctioned have disabilities or face other barriers that make it difficult for them to comply with work rules. People with serious physical or mental health limitations that were not identified by DSS are often ill-equipped to comply with work requirements and are therefore at greater risk of sanction. Individuals with lower levels of literacy, education, and skills, as well as those with domestic violence issues and limited English proficiency are all more likely to be sanctioned.

(2) Sanctions cause serious hardship. The full welfare benefit is extremely inadequate. Any reduction due to a sanction is likely to cause severe hardship. Parents and children in sanctioned families are more likely to experience hunger and food insecurity, increases in hospitalization, eviction, homelessness, loss of utility and telephone service, and the need for emergency services including emergency housing, food and clothing aid.

In the 2019-20 session, the legislature clearly understood the importance of these factors, and the unfairness of imposing harsh and punitive sanctions on some of the most vulnerable New

Yorkers. They therefore passed the bill to expand the much more just and balanced sanctions law statewide by substantial margins, 94-50 in the Assembly and 42-20 in the Senate. Unfortunately, the Governor vetoed the bill.

The Governor's veto message declared that the bill would "...create new financial obligations and operational challenges..." The message further suggested that time should be given to analyze how the law functions in New York City before expanding it statewide, and the extent to which it reduces homelessness and promotes employment.

These arguments might seem reasonable. Here is why they are not:

- New York City has more than two-thirds of the public assistance population. Thus, the large majority of costs that can conceivably be attributed to this change in the law will be incurred with or without this law.
- New York City imposed virtually no sanctions for about three years before implementing the new law. This was due to litigation and logistical considerations with the new law. The Governor would have been able to site the huge expense incurred due to that reduction in sanctions. But no such claim is made.
- There is something deeply troubling about the veto of a law – a law that would protect people with disabilities and serious barriers to employment – in order to avoid the expense. Stated more directly, the veto exposes opposition to a new law that will ensure that at least subsistence benefits continue to people in urgent need of aid.
- Waiting to see how implementation of the law works in New York City might seem sensible, but in the meantime, many of the poorest New Yorkers will go without aid, face homelessness and hunger without the opportunity to simply re-engage with the state's work programs.

There is no justification for failing to apply these fair and reasonable measures statewide. They provide critical protection to clients who may be unable to comply with a work requirement for reasons beyond their control, or who have a single lapse in a system that is often rigid and punitive. This bill will afford all public assistance recipients in New York the opportunity to participate in appropriate activities and limit the risk of unwarranted punishment.

Recommendation:

- We urge the Legislature to again pass the sanctions bill (A.9066)²³. We question the assumption that there is a net cost associated with this legislation, when uninterrupted receipt of benefits is balanced by reduced homelessness, fewer health crises and less reliance on emergency food. But to the extent that it will improve the prospects for this important legislation, reasonable funding should be appropriated to address the Governor's concerns.

²³ The sanctions bill is A.9066 (Hunter), and has not yet been reintroduced in the Senate.

ADOPT THE TREATING PRACTITIONER RULE AGAIN AS A MORE JUST AND ACCURATE MEANS TO DETERMINE PUBLIC ASSISTANCE EMPLOYABILITY AND TO IDENTIFY DISABILITIES

Under the public assistance work rules, every adult client's employability must be determined. Clients have the right to bring in evidence from their treating health care practitioner, and the local Social Services District may refer the client for an evaluation by their own medical unit or by a private agency under contract with them. Until recently, the law gave the district nearly unfettered discretion regarding the weight given to the evidence. Even after some changes, the law continues to allow agency doctors wide latitude in making the employability determination.

Within this context, there is a scenario that is all too familiar to advocates and welfare recipients: Their client has been sanctioned for allegedly failing to comply with a work activity assignment. But in many cases, the sanction stemmed from an inadequate evaluation of the client's employability. In the doctor's one, often brief, examination of the recipient, evidence of mental or physical disability had been missed, the doctor was unimpressed by the evidence from the client's treating practitioner, and the person was assigned to activities that were beyond their capacity or that might jeopardize their health. When they were unable to engage in or even make it to the assigned activity, they were punished for noncompliance. This bill modifies a deeply flawed process for determining employability, making it much more balanced and medically sound.

The proposed amendment to the law would require that the treating practitioner's opinion would be "generally controlling" in the determination of employability. However, a number of factors would have to be considered with regard to the treating practitioner's opinion, including the length and frequency of treatment, the consistency of that opinion with the "record as a whole," the treating practitioner's specialty and the concrete evidence that supports that opinion.

As with the sanctions bill discussed above, the treating practitioner bill was passed by large margins last session, 107-34 in the Assembly, 50-11 in the Senate. But the Governor vetoed the legislation, stating that there are already sufficient safeguards in the law to ensure that "due weight" is given to the treating practitioner's opinion. He also cites the risk of fraud and erroneous decisions by treating practitioners without appropriate expertise. We disagree. We know that the incidence of mental illness and other disabilities among adults receiving welfare is significantly greater than in the general population. We also know that welfare recipients with these conditions are more likely to be sanctioned for alleged noncompliance with work requirements. But the brief evaluations conducted by agency practitioners are certain to miss conditions, especially mental impairments, that might present differently from day to day, that might depend on the momentary effectiveness of medications and that might be denied by the individual. Only a health care provider who has seen the patient over an extended period of time can fairly assess such conditions and their impact on employability. And that provider's opinion should be controlling, subject to the criteria set forth in the law, discussed above.

Despite the Governor's assertion that there are already sufficient safeguards in the current law regarding the weighing of the medical evidence, the experience of clients and advocates tells a different story. Repeatedly, clients with disabilities, particularly less visible mental impairments, are found able to work, when the reality and the treating physician's diagnosis make clear that the individual will not be able to comply with inappropriate work mandates. This unfairness must be remedied.

Recommendation:

- We urge the legislature to again adopt a treating practitioner law, now A. 8994/S.7207. This system can be dramatically improved by simply requiring appropriate consideration of the opinion of the client's treating health practitioner in determining employability.

Thank you for the opportunity to submit this testimony. We look forward to working with you to achieve positive, progressive change in this legislative session. For questions please contact eforsythe@empirejustice.org or 518-935-2843.