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Joint Legislative Public Hearings on 2022-2023 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). Empire Justice 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 poverty law areas including health, public assistance, domestic violence and SSI/SSD benefits.

Support for New York State's human services remains urgent during this very difficult time. COVID-19 has laid bare deep disparities in health and income security vulnerabilities and in our social safety net. The pandemic has been devastating to those who are low income, elderly, or who have medical conditions, most especially in Black and brown communities. Strengthening access to health care and other benefits will be a critical part of this State's recovery from this crisis.

We urge the Legislature to decisively affirm its Constitutional commitment to aid and support the most vulnerable New Yorkers in this very difficult time.

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

1. **Maintain the State Legislature's Investment of $3 Million in the Disability Advocacy Program (DAP)**
2. **Reduce Homelessness and Child Poverty by Reforming Public Assistance Budgeting Rules**
3. **Invest a Total of $2.767 Million in the Managed Care Consumer Assistance Program (MCCAP)**

MAINTAIN THE STATE LEGISLATURE'S INVESTMENT OF $3 MILLION IN THE DISABILITY ADVOCACY PROGRAM (DAP)

For nearly four decades, the Disability Advocacy Program (DAP) has been helping low-income disabled New Yorkers whose federal disability benefits (Supplemental Security Income (SSI) or Social Security disability (SSD)) were denied or cut off. The disability appeals process is complex, and DAP works to overcome the many hurdles and complications faced by claimants along the way. Financial issues, insecure housing, homelessness, and the very symptoms of a disability are some of the factors that often make it difficult for claimants to gather evidence necessary to their claim. These obstacles are now compounded by the effects of the COVID-19 pandemic.

Since DAP's inception in 1983 through June 2021, DAP providers, working in every New York county:

- Assisted over 236,000 disabled low-income New Yorkers.
- Helped put approximately $880 million in retroactive benefits in their hands to be spent in local economies.
- Generated over $241 million in federal funds paid back to New York State and the counties.
- Saved over $318 million in avoided public assistance costs.

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.

For the past 6 years, DAP funding has stayed flat while program costs increased and the process of pursuing a disability appeal became exponentially more difficult due to both the COVID-19 pandemic and also several new harmful regulations.[1] 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.

Because of the unprecedented challenges faced by DAP claimants, much more investment is needed. This year's Executive Budget recognizes this by increasing its DAP funding to $10.52, inclusive of the county match. To fully meet the demands facing DAP, the Legislature should maintain its $3 million add-on to this year's allocation, providing for a total budget of $13.52 million.

[1] Since 2017, several new harmful regulations made it more difficult to obtain and maintain disability benefits. This includes the reinstitution of an additional desk review before a hearing can be held, and changes to rules about how evidence is accepted or evaluated. These obstacles were greatly exacerbated by COVID, which has seen almost every function of the appeals process slowed to a crawl, while clients struggle with the financial and logistical obstacles brought on by the pandemic.

Increased Need for DAP Representation

There is a significant increased need for DAP representation. Since March 2020, Social Security Administration (SSA) local field offices have been closed to the public for almost all in-person services, and available for only a limited number of appointments. These local offices provide a range of services, answer questions from the public, accept initial SSI/SSD applications, and carry out the necessary steps to effectuate payment after an award of benefits.

For anyone who may qualify for one of the few appointments based on dire need, it is still extremely difficult to reach the office to obtain such an appointment.[2] For many, it is virtually impossible to do without assistance. The backlogs with hearings and logjams in communication mean that there is also a great amount of difficulty obtaining decisions. Even when a fully favorable decision is issued, it is difficult to effectuate benefits and close cases.

As of October 2021, there were 586,289 SSI recipients in New York, a drop of 34,991 from the level in December 2019. Advocates and members of Congress have been concerned that such significant drops in awards and number of recipients are the result of SSA's closures and logjams.[3] The U.S. Senate held a hearing in April 2021 discussing some of the service failures and harm to beneficiaries.[4]

The demand for DAP services and the importance of representation remains as high as ever and unrepresented claimants are simply less likely to receive the benefits they need. Each low-income individual with a disability we cannot serve is left without assistance to navigate the increasingly complex disability benefits appeals process. The inability to successfully access this essential benefit will result in more housing instability and worsening health, with a disproportionate impact on Black and brown communities.

Historically, DAP claimants are more successful compared to general success rates. While SSA has neglected to maintain and publish data regarding race, a report by the GAO demonstrated that among claimants without attorney representation, Black claimants fared significantly worse.[5] More than half of the clients served by DAP statewide are individuals of color.

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[2] *News10NBC Investigates: Social Security Office frustrations*, WHEC, Nov. 29, 2021, available at https://www.whec.com/rochester-new-york-news/investigates-social-security-office-frustrations/6316207/

[3] J. Stein, D. Weaver, *Half a million poor and disabled Americans left behind by Social Security*, THE HILL, Nov. 15, 2021, available at https://thehill.com/opinion/finance/581522-half-a-million-poor-and-disabled-americans-left-behind-by-social-security?rl=1.

[4] U.S. Senate, *Social Security During COVID: How the Pandemic Hampered Access to Benefits and Strategies for Improving Service Delivery*, Apr. 29, 2021, https://www.finance.senate.gov/hearings/social-security-during-covid_how-the-pandemic-hampered-access-to-benefits-and-strategies-for-improving--service-delivery.

[5] U.S. Gen. Accounting Off., GAO 04-14, *SSA Disability Decision Making: Additional Steps Needed To Ensure Accuracy And Fairness Of Decisions At The Hearings Level* (Nov. 2003).

New Claims Based on Long COVID

The demand for services now also includes DAP clients with claims based on the long-term effects of COVID-19, including lung scarring, heart damage, and neurological and mental health issues. These include claims that are only COVID-related, or they could also be claims involving pre-existing conditions which in combination with the impact of COVID are disabling.

Long COVID has been found to be a disability under the Americans with Disabilities Act.[6] SSA has also recognized it as a new condition and has published some preliminary, emergency guidance on how related claims will be evaluated.

Researchers have estimated between 10% and 30% of COVID patients develop long-term COVID. Last year, prior to the Omicron-related surge, a Time article noted that the pandemic represents the "largest influx of new entrants to the disability community in modern history ….While it's not clear precisely how many new people will need these benefits, if 10% of the 34 million Americans who have had COVID-19 applied for disability, that would mean 3.4 million applicants—which doesn't include spouses or children who might be eligible as well."[7]

In New York State, there were 4.75 million recorded cases of COVID as of the end of January, 2022.[8] If only 5% of them apply for benefits, it would mean 237,500 claims at whole or in part due to COVID. These claims involve many challenges, including the difficulties accessing treatment and securing evidence that captures some of the most common symptoms, such as extreme fatigue, brain fog, and chronic pain.

DAP is creating new systems to help clients during COVID

DAP has been rising to the challenge of helping clients access SSA and its benefits programs. DAP helps clients who would otherwise lose their cases due to SSA closures and other obstacles.

The ability of DAP advocates to retrieve medical evidence necessary to support a client's claim for disability benefits has always been instrumental. It has been nearly impossible for clients to access these records without legal representation during the pandemic – as it is a difficult task even in "normal" circumstances. One strategy to best help clients during COVID has been to maximize participation and enrollment with electronic medical records systems.

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[6] U.S. Dep't Health and Human Svcs., *Guidance on "Long COVID" as a Disability Under the ADA, Section 504, and Section 1557*, Jul. 26, 2021, available at https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html

[7] Abigail Abrams, *How COVID-19 Long Haulers Could Change the U.S. Disability Benefits System*, TIME, Jul. 20, 2021, available at https://time.com/6081876/covid-19-long-haulers-disability-benefits/.

[8] N.Y.S. Dep't of Health, *N.Y.S. Dep't of Health COVID-19 Tracker*, https://coronavirus.health.ny.gov/covid-19-testing-tracker.

DAP programs have also prioritized and intensely expanded their outreach methods to reach clients who would normally have been referred directly to DAP programs after walking into SSA or county Department of Social Services offices. In the last contract year, DAP cases openings were down only 16%, due largely to SSA closures. DAP programs mitigated the impact of closures through expansive outreach efforts that included use of various types of media, intake clinics, and partnerships with local representatives and community-based organizations.

DAP programs have also been engaging SSA with new levels of advocacy such as with frequent outreach to SSA's regional Public Affairs Specialists when the local field offices have been non-responsive or when a client's circumstances are especially dire. Advocates have also been raising numerous issues with SSA senior management, such as improper issuances of case closings for lack of contact, improper dismissals, mail issues, and the need for guidance regarding "long COVID."

The many new systems and strategies for helping clients during COVID also include:

- Acting as SSA's de facto reception: Clients who cannot reach anyone at SSA rely on DAP to file appeals, respond to all notices, obtain necessary appeal paperwork and SSA forms, receiving retroactive payments and even get new benefits started.
- Helping clients navigate SSA by phone – which often involves 30-minute wait or more – by arranging a 3-way call.
- Increased help to clients filing online appeals, many with good cause requests since SSA is not open. Many would be unable to do so because of language barriers, digital divide and learning disabilities or reading comprehension.
- Enrolling in SSA's secure email program to facilitate communication with the agency.
- Increased mailings for items that clients once were able to come in and sign or drop off.
- Changes to office space to accommodate remote hearings where client and advocate are in same room.
- Increased use of alternative communication methods to contact clients, including email and text messaging.
- Extra steps in preparing clients for hearings, especially for those conducted by video.
- Increased coordination with case managers and other resources to reach clients at their homes.

These methods have helped DAP continue reaching and serving as many clients as possible. But to fully meet the need for services, more funding is necessary.

SSA recently announced that it expects to reopen its local field offices to the public in the spring and has also begun planning to offer in-person hearings for the first time. There is expected to be a surge of new applications, as access to the agency is increased and as existing cases also begin to move more quickly.

The increase in the Executive Budget will help DAP face these challenges. It is crucial that the Legislature maintain its investment with a $3 million add-on so that DAP can meet the increased demand of new cases and expand the pipeline of federal dollars returning to New York.

Recommendation: In this time of ongoing crisis, we are asking that the Legislature continue investing a $3 million add-on to the Executive Budget. This year, it would bring DAP statewide funding to a total of $13.52 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. This would help providers to meet the many new, significant, and unprecedented challenges faced by low-income New Yorkers with disabilities seeking disability benefits during this difficult time.

REDUCE HOMELESSNESS AND CHILD POVERTY BY REFORMING PUBLIC ASSISTANCE BUDGETING RULES

New York State has one of the largest populations of homeless people in the country, second only to California, accounting for 16% of all homeless people in the United States.[9] Many of the homeless are children - there are over 148,000 homeless students in the state. [10] New York State's public assistance (PA) eligibility and budgeting rules need dramatic reform because they do not support families who are struggling to pay their rent. Earnings disregards, designed in 1997 to allow people to earn up to the federal poverty level before they lost eligibility for public assistance, do not function effectively for two reasons. First, all but one minor disregard ever applied to applicants or adults without children. Second, because of a rule called the "185% cap," working families lose eligibility for cash assistance in most counties when their earnings reach 70% of the federal poverty level (already an extremely low standard for the cost of living in New York State). To make matters worse, eligibility rules require that families spend down nearly all their resources, including retirement savings before they are eligible for assistance, so that when they get back on their feet they have no cushion for emergencies as they transition off public assistance. Finally, income meant for the support of children such as social security survivors' benefits from a deceased parent, must be applied to support other members of the household for whom this support was not intended. This rule keeps families with children needlessly below the poverty level.

Public assistance grants are meagre, in amounts significantly below deep poverty, defined by the Census Bureau as 50% of the federal poverty level.[11] Over 226,00 children under the age of nine live in deep poverty in New York State, with black and Hispanic children disproportionately affected. [12] The racial and ethnic disparities among the poorest children are startling. As indicated in the chart appended as Table 1, in all social services districts public assistance grants do not reach even deep poverty, and in all but seven districts, public assistance grants are at or below 40% of poverty.

We support the proposals in Governor Hochul's Article VII budget bill referenced below, and urge the legislature to expand the Governor's initiatives as follows:

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[9] U.S. Dep't Hous. & Urb. Dev., *The 2020 Annual Homeless Assessment Report (AHAR) To Congress* 10, https://www.usich.gov/homelessness-statistics/ny/#:~:text=As%20of%20January%202020%2C%20New,and%20Urban%20Deveopment%20(HUD).

[10] U.S. Interagency Council on Homelessness, *New York Homelessness Statistics,* https://www.usich.gov/homelessness-statistics/ny/#:~:text=As%20of%20January%202020%2C%20New,and%20Urban%20Development%20(HUD).

[11] In most counties, the total public assistance grant for a household of two, meant to cover shelter, utilities, heating, and all other needs is under $650 per month. 18 N.Y.C.R.R. 352.2, 352.3. The poverty level for a household of two is $1451 per month. 86 Fed. Reg. 7732,7733, 1168 (Feb. 1, 2021).

[12] S. Smith, M. Granja, U. Nguyen, National Center for Children in Poverty, *New York State Profile of Young Children in Deep Poverty*, at 2, http://www.nccp.org/wp-content/uploads/2017/11/text_1190.pdf; U. Nguyen, S. Smith, M. Granja, National Center for Children in Poverty, at App. B, *Young Children in Deep Poverty: Racial/Ethnic Disparities and Child Well-Being Compared to Other Income Groups,* https://www.nccp.org/wp-content/uploads/2020/10/Deep-Poverty-Report-11.11.20_Final.pd;

- Increase the earnings disregard proposals so that they apply to applicants and recipients and allow families to reach 200% of poverty before losing financial support;
- Expand the resource levels to provide a blanket exemption of all resources. Alternatively, exempt all retirement accounts and raise the resource limit to $10,000 for applicants as well as recipients.

We also urge the legislature to endorse Governor Hochul's proposed repeal of the 45 day waiting period for Safety Net Assistance. Finally, we seek the legislature to adopt two additional initiatives:

- Increase the public assistance shelter allowance which has not been increased in nearly 20 years for households with children, and 36 years for adults without children;
- Modify the filing unit rule, so that children with unearned income such as child support, do not have to apply that income to the support of other household members.

I. EXPAND THE PUBLIC ASSISTANCE EARNINGS DISREGARDS

In 1997 New York State promised working families on public assistance that they could earn their way to the poverty level while on public assistance. Although the state expanded earned income disregards at Social Services Law (SSL) § 131-a(8)(a)(iii), the promise was seriously flawed. First, except for one $90 disregard, New York's more generous percentage disregard never applied to applicants for assistance or adults without children; and second, because Social Services Law § 131-a (10), provided a gross income ceiling of 185% of the standard of need, working families become ineligible for any assistance long before they ever earned up to the poverty level.

A. Increase the disregard in Social Services Law 131-a(ii)

Two disregards are applied to earned income when calculating public assistance eligibility. The first disregard of $90, applies to all applicants and recipients, including adults without children as well as adults with children. We strongly support Governor Hochul's proposal increasing this disregard to $150. The second disregard is a percentage that varies based on a formula. It does not apply to applicants, and only applies to recipients in households with children. This second disregard is a variable percentage disregard, currently 55% and is adjusted every year on June 1.[13] Governor Hochul would propose to standardize the disregard and freeze it at 50% of poverty. We address this proposal in Part C, below.

[13] N.Y.S. Off. of Temp. and Disability Assistance, 21 ADM-02, *Temporary Assistance Budgeting: 2021 Earned Income Disregard and Poverty Level Income Test,* available at https://otda.ny.gov/policy/directives/2021/ADM/21-ADM-02.pdf

B. Repeal the 185% of the Standard of Need test - SSL 131(a)(10)

Because New York imposes a gross income test that provides that no family can have gross income over 185% of the standard of need and be eligible for public assistance, most families in New York are disqualified from the receipt of public assistance before their earnings reach even 70% of poverty.[14] Repealing Social Services Law 131-a (10), as proposed by the Governor, will help assure the success of families leaving welfare, easing their transition to work, by allowing them to earn their way to poverty before losing cash assistance. Because about one of every two dollars earned will continue to be applied to reduce the public assistance grant, the cost of enacting this change will be minimal and will end up saving the state money as vulnerable working families are stabilized.

C. Apply the percentage earnings disregard to adults without children

The earnings disregard in Social Services Law § 131-a(8)(a)(iii), currently at 55%, only applies to recipient households with children. This provision should be amended to include applicants for assistance and adults without children as well. The exclusion of applicants and adults without children from the enhanced earnings disregard leads to increased homelessness and deep poverty. It is especially cruel because the public assistant grant is markedly lower for individuals without children, who were excluded from the public assistance shelter allowance increases in 2010. A single adult is provided less than $200 per month for housing in most social services districts; with 15 districts providing grants between $200 and $237; four districts providing between $257 and $288, and two districts with grants of $302 and $309 per month. Allowing single individuals to disregard a portion of their earnings would support their ability to maintain employment and would alleviate homelessness caused by insufficient income.

II. INCREASE THE RESOURCE LIMITS

Asset tests were put in place to ensure that limited dollars for public assistance would go to the neediest. Contrary to expectations, over time it became apparent that many families would cycle back on to assistance as soon as they experienced some expense out of the ordinary – missed work due to illness or a car repair, for example. States began to recognize that the “asset test” was, in fact, counter-productive to the goal of financial independence, as it didn’t allow households to save up for emergencies, thus ensuring that any given crisis would strike a devastating blow to the household’s financial security. An increasing number of states have eliminated consideration of assets or increasing the exemptions for assets. New York and 33 other states have eliminated their SNAP asset tests. Eight states have eliminated their public assistance asset tests completely: Alabama; Colorado; Hawaii, Illinois, Louisiana, Maryland, Ohio, and Virginia. An additional five states (California,

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[14] The 185% cap results in families in most counties losing public assistance eligibility when they are near or just above 70% of the poverty level. *See Standard of Need by County,* Empire Justice Center, https://empirejustice.org/resources_post/standard-need-charts/. In a handful of counties (Dutchess, Nassau, Orange, Putnam, Rockland) where the standard of need is higher because of higher housing costs, families lose eligibility at about 80% of the poverty level.

Connecticut, the District of Columbia, Montana, and Vermont), expressly exempt retirement accounts.[15] Especially in this time of economic downturn, it is heartbreaking to see individuals not only having to cash in their modest retirement accounts as a condition of eligibility for public assistance, but also having to lose a portion of their accounts as a tax penalty for prematurely making these withdrawals. It is time for New York to amend Social Services Law § 131-n to conform its public assistance resource rules to its SNAP resource rules.

Governor Hochul's budget would expand resource exemptions, and we support this effort. Her budget would amend Social Services Law 131-n to increase the resource limits for applicants for public assistance to $2500 (from the current $2000) or $3750 if a household member is elderly or disabled (from the current $3000) and allow recipients of public assistance to accumulate up to $10,000 before they lose public assistance eligibility. These resource limits apply to both liquid and non-liquid resources, except automobiles, which have their own resource levels, and select other items. These proposals are a good start, but do not go far enough. We urge the legislature to repeal the resource test entirely, or at the very least apply the $10,000 limit to both applicants as well as recipients, so that families can have a "crisis fund" for emergencies. Further, we encourage New York to join the thirteen states that exempt retirement accounts from consideration when determining public assistance eligibility.

Critically, the concern that eliminating the asset test or increasing exemptions would lead to higher costs and an increase in recipients has been shown to be without merit in states that have eliminated asset rules. Since public assistance applicants generally have little or no cash, eliminating or increasing asset limits has had little impact on caseload. Louisiana eliminated its TANF asset limit in 2009 and five years later reported little to no change in the number of families receiving benefits in the years since. Ohio—the first state to eliminate its asset limit, in 1997— saw no increase in the number of families receiving aid as far forward as 2014. The Urban Institute found that eliminating asset tests leads to an increase in bank accounts, and to the amount of savings. Having a bank account helps families conduct basic financial transactions, save for emergencies, build credit history, and access, fair, affordable credit.

Furthermore, eliminating consideration of assets when calculating PA eligibility, as New York does when calculating SNAP benefits, would provide an opportunity to relieve social services districts of burdensome administrative and fiscal responsibilities: It would simplify and streamline the application and recertification process. The gathering, reproducing, investigating, and filing of paperwork concerning assets is time consuming and expensive for both applicants/recipients and the social services districts. Virginia found that although it spent approximately $127,000 more on benefits for 40 families, it saved approximately $323,000 in administrative staff time, resulting in a net savings of $195,850. [16] Colorado

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[15] J. Gehr, Center on Law and Social Policy, *Eliminating Asset Limits: Creating Savings for Families and State Governments*, at 4 (2018), https://www.clasp.org/sites/default/files/publications/2018/04/2018_eliminatingassetlimits.pdf

[16] Id.

estimated a caseworker savings of 90 minutes/case. [17] By saving time in processing applications and re-certifications, districts are better able to meet their mandated time frames for making eligibility decisions and, further, can allocate limited staff resources to other functions.

III. ELIMINATE THE 45 DAY WAITING PERIOD FOR SAFETY NET ASSISTANCE (SNA)

We strongly support Governor Hochul's proposal to amend SSL §§ 153 and 158 to eliminate the 45 day waiting period for Safety Net Assistance applicants. Safety Net Assistance is the category of assistance that includes not only single adults, but also families with children who were receiving Family Assistance households but have reached the five year time limit required by the federal Temporary Assistance to Needy Families (TANF) block grant. Not only would this change in the law align Safety Net Assistance with Family Assistance rules, but it would also serve to protect individuals and families when they are most in need.

IV. ALLOW PARENTS CARETAKERS TO EXCLUDE CHILDREN WITH INCOME FROM THE PUBLIC ASSISTANCE HOUSEHOLD

One way to support struggling families is to allow children who have income from absent or deceased parents (such child support, or Social Security Survivor's or Disability benefits from the account of a deceased or disabled parent) to retain that income and remain off of the public assistance grant if it is beneficial for the family of the child to do so.

Social Services Law § 131-c (1) currently requires that when a minor is named as an applicant for public assistance, his or her parents and minor brothers and sisters must also apply for assistance and be included in the household for purposes of determining eligibility and grant amount. Although the statute uses the phrase "minor brothers and sisters," the law has been used to require the income of half-siblings to be applied as income against the other half-sibling to reduce the amount of the public assistance benefits of the child with no income. Under the current statute, the unearned income of any child, such as child support or social security survivor's benefits is considered available to the entire household, and reduces the entire grant of the household accordingly, unless disregarded under some other provision of law.

A change in this law would particularly benefit non-parent caregivers of children who have parents who are unable to care for them due to the death, drug addiction, incarceration, or disability of the parent. These relatives are often on fixed incomes with limited resources. Studies show that children placed in care with relatives fare much better emotionally and intellectually than children who live in foster care with strangers.[18] Current law requires the income of half siblings in a public assistance household be applied to support the income of any other half-siblings in the household. This means that when a non-parent caregiver, who

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[17] Id.

[18] G. Wallace and E. Lee, *Diversion and Kinship Care: A Collaborative Approach Between Child Welfare Services and and NYS's Kinship Navigator*, 16 JOURNAL OF FAMILY SOCIAL WORK, 418-19 (2013), available at http://www.nysnavigator.org/pg/professionals/documents/Wallace__Lee_2013_Diversion.pdf

has no legal responsibility for the support of a child in their care takes in a second child with income, the public assistance grant of the first child is reduced. For example:

> *Mary Smith, a grandparent caregiver, lives on a fixed income of Social Security Retirement benefits, and is taking care of her grandchild, Daniel. She receives a "child only" grant from her social services district, which is calculated without taking Mary's income into consideration. If Mary takes in Daniel's half-sibling, Peter, who receives Social Security Survivor's benefits because his father has died, that income will be applied against the amount of public assistance that Mary receives to support Daniel, resulting in either the reduction or elimination of Daniel's benefit.*

This unfair result would be avoided if caregivers could choose to apply for public assistance only for the half-sibling with no income. That child would remain eligible for the child only grant,
and the grandchild with income would continue to be supported with his own income.

We urge the legislature to amend Social Services Law 131-c as part of an Article VII budget bill to make this important change**.** Model language can be found in a bill that was passed by both houses in the 2019-2020 legislative session [S.6017A (Persaud)/A.4256A (Hevesi)]. Although that bill was vetoed by Governor Cuomo, he indicated that its intent was laudable and should be considered during budget negotiations.[19]

V. INCREASE THE PUBLIC ASSISTANCE SHELTER ALLOWANCE TO RENT AS PAID, UP TO THE FAIR MARKET RENT

Currently, the New York's Social Services Law does not provide a schedule of shelter allowance levels. Rather, the New York State Office of Temporary and Disability Assistance (OTDA) is charged with formulating a schedule of adequate levels for each district. [20] Unfortunately, the current schedule of rent for adult-only households was last updated in 1988. The last increase to the schedule of shelter allowance schedule for families with minor children was updated nearly 20 years ago in 2003. Shelter allowances for a family of three range from a low of $259 per month in Franklin County to a *high* of $447 per month in Suffolk County. Outside of New York City, almost 41,000 households receiving public assistance pay rent that is *one and a half times more* than their monthly shelter allowance, including 12,000 households that are paying *two and a half times their shelter allowance for rent*. This means that they have to use most of their living allowance meant to cover other basic needs to pay their rent.

While some jurisdictions such as New York City have established rent supplements, outside of New York City, only 21 of the 58 social services districts have shelter supplements, the amount provided is significantly below Fair Market Rent (FMR) as designated by the U.S.

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[19] Veto Message No. 164 (2019-2020),
http://www.nystatewatch.net/www/NY/19R/pdf/NY19RSB04809VET.pdf.
[20] *See* 18 N.Y.C.R.R. § 352.3 (setting rent allowances).

Department of Housing and Urban Renewal (HUD), and only six counties have plans that serve families with children. In New York City, the supplement is limited to households with minor children. In all cases, eligibility is unnecessarily conditioned on already facing eviction, when a family is already in an emergency situation due to lack of rent.

RECOMMENDATION: The legislature should incorporate the provisions of A.8900 (Rosenthal) into the budget. This bill would set shelter allowances to rent as paid, with a maximum payment of up to 100 percent of the FMR applicable to each Social Services District and updated each year. The FMR is the standard used by numerous housing subsidy and benefits programs in New York City, including most recently State FHEPS; City FHEPS (108 percent of FMR); NYCHA (110 percent of FMR); and HPD Section 8 (108 percent). As indicated in Table 2 below the current shelter allowances provide only between 11 percent and 35 percent of the 2022 FMR.[21]

[21] Fair Market rents are set by geographic area and are set at the 40th percentile of rent charged for a unit of standard quality not built within the last two years and not subsidized. *See* 24 C.F.R. § 888.113.

Table 1

New York State's Cash Assistance Grant Leaves Families Below 46% of the Poverty Level in Every County			
County	**CA Grant for a 3 Person Household (including Shelter Allowance)**	**Poverty Level for a 3 Person Household**	**PA Grant as Percentage of Poverty**
Albany County	$698	$1,830	38%
Allegany County	$662	$1,830	36%
Broome County	$679	$1,830	37%
Cattaraugus County	$658	$1,830	36%
Cayuga County	$679	$1,830	37%
Chautauqua County	$674	$1,830	37%
Chemung County	$672	$1,830	37%
Chenango County	$653	$1,830	36%
Clinton County	$664	$1,830	36%
Columbia County	$679	$1,830	37%
Cortland County	$670	$1,830	37%
Delaware County	$663	$1,830	36%
Dutchess County	$801	$1,830	44%
Erie County	$690	$1,830	38%
Essex County	$657	$1,830	36%
Franklin County	$648	$1,830	35%
Fulton County	$661	$1,830	36%
Genesee County	$670	$1,830	37%
Greene County	$670	$1,830	37%
Hamilton County	$656	$1,830	36%
Herkimer County	$664	$1,830	36%
Jefferson County	$665	$1,830	36%
Lewis County	$668	$1,830	37%
Livingston County	$696	$1,830	38%
Madison County	$693	$1,830	38%
Monroe County	$732	$1,830	40%
Montgomery County	$672	$1,830	37%
Nassau County	$834	$1,830	46%
Niagara County	$683	$1,830	37%
Oneida County	$676	$1,830	37%
Onondaga County	$692	$1,830	38%

Ontario County	$697	$1,830	38%
Orange County	$810	$1,830	44%
Orleans County	$691	$1,830	38%
Oswego County	$689	$1,830	38%
Otsego County	$669	$1,830	37%
Putnam County	$830	$1,830	45%
Rensselaer County	$685	$1,830	37%
Rockland County	$823	$1,830	45%
Saratoga County	$705	$1,830	39%
Schenectady County	$700	$1,830	38%
Schoharie County	$675	$1,830	37%
Schuyler County	$664	$1,830	36%
Seneca County	$677	$1,830	37%
St. Lawrence County	$670	$1,830	37%
Steuben County	$660	$1,830	36%
Suffolk County	$836	$1,830	46%
Sullivan County	$686	$1,830	37%
Tioga County	$674	$1,830	37%
Tompkins County	$706	$1,830	39%
Ulster County	$739	$1,830	40%
Warren County	$688	$1,830	38%
Washington County	$684	$1,830	37%
Wayne County	$691	$1,830	38%
Westchester County	$652	$1,830	36%
Wyoming County	$668	$1,830	37%
Yates County	$675	$1,830	37%
New York City	$789	$1,830	43%

Empire Justice Center
11/10/2021
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Table 2.

Shelter Allowance for a 3 Person Household with Children Compared to HUD's 2022 Fair Market Rent Rates				
County	Current Shelter Allowance for 3 Person HH w/ Children	HUD 2022 FMR For 2 Bedroom HH	Dollar Insufficiency of Current shelter v. FMR	Percent of FMR that current allowance represents
Albany County	$309	$1,207	($898)	25.60%
Allegany County	$273	$757	($484)	36.06%
Bronx County (NYC)	$400	$2,026	($1,626)	19.74%
Broome County	$290	$855	($565)	33.92%
Cattaraugus County	$269	$757	($488)	35.54%
Cayuga County	$290	$846	($556)	34.28%
Chautauqua County	$285	$757	($472)	37.65%
Chemung County	$283	$944	($661)	29.98%
Chenango County	$264	$767	($503)	34.42%
Clinton County	$275	$884	($609)	31.11%
Columbia County	$290	$1,012	($722)	28.66%
Cortland County	$281	$867	($586)	32.41%
Delaware County	$274	$757	($483)	36.20%
Dutchess County	$412	$1,412	($1,000)	29.18%
Erie County	$301	$963	($662)	31.26%
Essex County	$268	$844	($576)	31.75%
Franklin County	$259	$780	($521)	33.21%
Fulton County	$272	$862	($590)	31.55%
Genesee County	$294	$833	($539)	35.29%
Greene County	$281	$1,030	($749)	27.28%
Hamilton County	$267	$897	($630)	29.77%
Herkimer County	$275	$863	($588)	31.87%
Jefferson County	$276	$1,183	($907)	23.33%
Kings County (NYC)	$400	$2,026	($1,626)	19.74%
Lewis County	$279	$838	($559)	33.29%
Livingston County	$307	$1,039	($732)	29.55%
Madison County	$304	$966	($662)	31.47%
Monroe County	$343	$1,039	($696)	33.01%

Montgomery County	$283	$820	($537)	34.51%
Nassau County	$445	$2,065	($1,620)	21.55%
New York County	$400	$2,026	($1,626)	19.74%
Niagara County	$294	$963	($669)	30.53%
Oneida County	$287	$863	($576)	33.26%
Onondaga County	$303	$966	($663)	31.37%
Orleans County	$302	$1,039	($737)	29.07%
Oswego County	$300	$966	($666)	31.06%
Rockland County	$434	$2,026	($1,592)	21.42%
Saratoga County	$316	$1,207	($891)	26.18%
Schenectady County	$311	$1,207	($896)	25.77%
Schoharie County	$286	$1,207	($921)	23.70%
Schuyler County	$275	$792	($517)	34.72%
Seneca County	$288	$851	($563)	33.84%
St. Lawrence County	$281	$827	($546)	33.98%
Steuben County	$271	$769	($498)	35.24%
Suffolk County	$447	$2,065	($1,618)	21.65%
Sullivan County	$297	$987	($690)	30.09%
Tioga County	$285	$855	($570)	33.33%
Tompkins County	$317	$1,365	($1,048)	23.22%
Ulster County	$350	$1,364	($1,014)	25.66%
Warren County	$299	$1,065	($766)	28.08%
Washington County	$295	$1,065	($770)	27.70%
Wayne County	$302	$1,039	($737)	29.07%
Westchester County	$426	$1,883	($1,457)	22.62%
Wyoming County	$279	$757	($478)	36.86%
Yates County	$286	$860	($574)	33.26%

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. This is especially critical as we continue to deal with the unprecedented global pandemic due to COVID-19. Seniors and people with disabilities deserve every bit of assistance we can provide in order to access health care services and reduce costs both during and after the public health emergency.

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.

As we enter a third year living under the shadow of the public health emergency, it is an essential time to shore up funding for MCCAP. With prices increasing everywhere from grocery stores to gas stations, vulnerable New Yorkers are having to make their household budgets stretch like never before. As individuals and families make decisions about where to cut back on expenses, it should never be at the expense of accessing necessary healthcare services. If an individual's prescription drug cost suddenly increases, MCCAP is there to help them understand why. If a plan premium is increasing, MCCAP will help the enrollee find more affordable options. While the public health emergency continues to adversely affect our most vulnerable populations, these services are indispensable. 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 remained available to assist Medicare beneficiaries during the public health emergency, helping to navigate the flood of false or misleading information related to COVID-19 testing, vaccination, boosters, and scams/fraud. Medicare beneficiaries were forced to access healthcare services in new and unfamiliar ways, such as virtual check-ins and telehealth. Even "simple" tasks such as obtaining prescription refills at their trusted pharmacy became complicated, making MCCAP assistance even more necessary. MCCAP continued its work helping individuals maximize their benefits and minimize their expenses 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.

During the most recent Medicare Annual Enrollment Period, due to staffing shortages and office closures as a result of the public health emergency, seniors and people with disabilities had very limited – if any – opportunity to seek local in-person assistance with their Medicare questions and plan changes. Navigating the Medicare and Medicaid landscape is an extremely complex process. Not only are enrollees required to follow tight deadlines and confusing regulations, but seniors and people with disabilities are also facing technological and financial challenges. Seniors and low-income families are less likely to have access to reliable internet or phone service and, even without that barrier, expecting someone to find the tailored information they need via a general website or customer service number can be vastly insufficient. MCCAP funding is critical in order to increase access to quality health insurance advocacy to the most vulnerable New Yorkers. We regularly received feedback that the time we were able to spend with individuals on the phone - reviewing their information and needs together and following up as necessary– was invaluable in helping Medicare beneficiaries understand their options. It also helped alleviate any concerns about not having access to their “normal” in-person assistance during the public health emergency.

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 as we continue through the public health emergency and beyond, and what they could do to anticipate those changes. Uncertainty about changes to Medicare and Medicaid has undoubtedly grown since this time last year as New Yorkers, particularly older adults and people with disabilities, struggle with urgent and shifting health needs during the crisis.

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.

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.