

NEW YORK STATE OFFICE OF INDIGENT LEGAL SERVICES

**PUBLIC HEARINGS ON ELIGIBILITY
FOR ASSIGNMENT OF COUNSEL**

Prepared for the
6th Judicial District Public Hearing

Testimony of

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August 20, 2015
Binghamton, New York

TESTIMONY OF JAMES T. MURPHY

Good morning. I am Jim Murphy, an attorney with a civil legal services program here in the Sixth Judicial District. I have worked in this district since April, 1978. I'd like to thank you for the opportunity to appear before you this morning as you address the task of establishing eligibility guidelines for the assignment of counsel in New York State. As some of you may know, I have had occasion to seek the assistance of your office in addressing assigned counsel issues, and I have always found those occasions to be positive experiences. I do wish, however, that the Legislature, in creating your office, had selected a name that avoided the use of "indigent," a word which has, for all too long, created misunderstandings with regard to the eligibility of individuals for assigned counsel in New York State, whether it be in a criminal or civil context.

In February, 1977, I was admitted to the bar in New York State in the Third Department. On the 15th day of that very month, Richard J. Comiskey, as the "Director of Administration" of the Third Judicial Department issued a memorandum to "All Third Department County, Family and City Court Judges, those Town and Village Justices in Municipalities over 10,000 in Population, County Magistrates Associations, Public Defenders, County Bar Associations and Administrators of Assigned Counsel Plans." The

memorandum addressed the "Assignment of Attorneys to Represent Individuals who are Financially Unable to Obtain Counsel."

Director Comiskey's memorandum was prepared at the instruction of the then presiding justice in the Third Department, Harold E. Koreman. The memorandum advised, "At the present time the Office of Court Administration is making a study of the assignment of counsel on a State-wide basis. This study may, at some future time, result in the promulgation of State-wide rules or guidelines which, of course, would supplant our guidelines."

Director Comiskey's memorandum consisted of a one page explanatory cover page; eligibility standards consisting of four pages; and a six page form affidavit to be completed by an applicant for assigned counsel in the courts of the Third Department. A copy of that memorandum is annexed to my written testimony.

Judge Koreman died in 2001. Richard J. Comiskey has passed as well. The task that they had thought would fall to the Office of Court Administration, has now fallen to you. I've been waiting for that directive to issue for over thirty-eight and a half years. I eagerly await the standards you will establish.

When your office announced these hearings and invited testimony, I was thrilled. I sat down and began preparing an outline of what I would like to address in my testimony, and recognized that it would take a book. Fortunately, Jonathan Gradess and the New York State Defenders Association has provided that book in his testimony before this Committee on August 12th in

the 10th Judicial District hearing in Central Islip. That testimony, and the events of the past two weeks have lead me to focus my testimony elsewhere. I'd like to tell you about two cases.

At lunch time on Tuesday of this week, my office received a telephone call from a very distraught young woman. She was scheduled to appear in a local justice court at 4:00 p.m. that day with regard to a charge of harassment in the 2nd degree. Due to the nature of the charge, a conviction could have additional consequences for her because of the disposition in a previous matter in that court. This woman, Dorothy, had appeared in court two weeks earlier, on August 4, 2015 and been advised by the judge that she was entitled to assigned counsel if she could not afford an attorney. She was directed to apply for assigned counsel through the county public defender's office if she could not afford her own attorney. On the morning of August 5, 2015 she went to the public defender's office and completed her application.

On the morning of August 18, not having heard from that office, she called and was informed that her application for assigned counsel had been denied by the public defender's office. The letter advised that the public defender's office had determined that she was part of a 3 person household, and that the gross income of that household was \$679.00 per week, which exceeded the \$483.00 per week gross income standard used by that office. The letter did not advise of any appeal rights. By comparison, the eligibility standards under the Office of Court Administration's

Civil Legal Services Program for a three person household is \$773.00 per week, and for a two person household is \$613.00 per week.

Dorothy, who is 32 years old, and her 13 year old son, resided with Dorothy's boyfriend. Her boyfriend is not the father of Dorothy's child. Dorothy and her son contribute to the shelter costs in the home. The only sources of income that Dorothy and her son have are Dorothy's Social Security disability and SSI benefits (based upon the Dorothy's disability), which total \$766.00 per month, or \$176.77 per week. She and her son also receive \$357.00 per month in SNAP (previously known as Food Stamp) benefits, and Medicaid coverage. They are treated as a separate household from Dorothy's boyfriend for both programs. Dorothy was denied assigned counsel based upon the income of the non-legally responsible boyfriend of \$400.00 to \$500.00 per week. Dorothy's boyfriend could not, and would not, provide an attorney for her. The denial of assigned counsel was made despite the fact that by definition the woman has inadequate income to meet her needs for food, shelter, and medical care.¹ It is incomprehensible that a defender office, or, for that matter, a court, could believe that despite Dorothy's inability to afford those items, she should be considered to be capable of affording an attorney.

After meeting with Dorothy, I assumed that a phone call to the public defender's office would resolve the matter. I was sorely mistaken. The receptionist advised that the public

¹ See Social Services Law §207, et seq.

defender's office would not review the matter and that Dorothy's only option was to appeal to the Court. When I then spoke with the public defender himself, he advised that he thought that the issue of counting the non-legally responsible individual's income was an open issue in New York. He did agree that he would take a look at the case after he completed work on a memorandum of law due within two hours.

I then appeared at 4:00 that afternoon in justice court with Dorothy where we explained some of these issues. The town justice explained that he "relies" on the public defender's office to make eligibility determinations. When I explained that the ultimate responsibility for assigning counsel was on him, he acknowledged that was true, but advised that he looked to the public defender's office to set the eligibility guidelines. The matter was adjourned until September 1, 2015.

I should note that the evening before her court appearance Dorothy and her boyfriend became involved in an argument and he "threw her out." Dorothy was transported to the local hospital by the police, and spent the evening in the hospital. She was temporarily staying with her mother, together with her son. We were advised by the public defender's office that though they made the eligibility determination on Dorothy's application, they are precluded from representing her because of a conflict of interest.

From this fact pattern, I would hope that you would come away with an understanding that individuals who are eligible for public need-based benefits should be automatically eligible for

assigned counsel. This should include recipients of Temporary Assistance (TANF and Safety Net), Supplemental Security Income (SSI), State Supplement Program (SSP) benefits, SNAP (Food Stamps) and Medicaid.² Folks determined to have too little income to afford food, shelter and medical care certainly cannot afford an attorney.

I would also hope that it should be clear that the standards which you adopt must define "a household"; that the income of non-legally responsible relatives should not be included in the eligibility determination; and that the income of non-legally responsible, unrelated individuals should never be included in eligibility determinations.

The third thing that I would hope your office takes from this fact pattern is the need for a written notice which specifies the reason for the denial of assigned counsel and which provides notice of the right to seek "review" or "appeal" of the determination if the determination is made by anyone other than the judge or magistrate. Successful implementation of the standards you develop will require training for all offices performing eligibility screenings, as well as judges and magistrates, and particularly lay judges.

That was this week. Last week, on August 7, I was contacted by Alana. Alana is a twenty-five year old woman. She is

² It should be noted that Temporary Assistance, SSI, and SNAP each permit ownership of a home, an automobile, and generally liquid resources, including cash of \$2,000 to \$3,000. (See, e.g., 18 N.Y.C.R.R. §352.23, 20 C.F.R. §§416.1205, 416.1210, 416.1212, 18 N.Y.C.R.R. §387.9, etc.)

disabled and confined to a wheel chair. She takes a number of medications for her assorted disabilities. Alana has no income of her own, but she has applied for Supplemental Security Income (SSI) and Medicaid. On June 26, 2015 she gave birth to a child, who, because of the medications Alana takes, was required to remain in the Neonatal Intensive Care Unit at the hospital. Upon being discharged from the hospital Alana resided with her mother. In late July, 2015, when the child was ready to be released from the hospital, the local department of social services initiated an Article X proceeding against Alana in Family Court, alleging that because of Alana's disability and her medication treatment history she was not capable of caring for her child. Alana has been denied custody of her child since the initiation of that proceeding. Alana applied for assigned counsel through the public defender's office.

Her application for assigned counsel was denied because her mother was included in her household and her mother's income was considered available to Alana. This determination was made by the public defender's office despite the fact that Alana's mother is not liable for Alana's support. Her mother's liability ended when Alana turned twenty-one years of age.³ Even more troubling,

³ Family Court Act §413 provides in pertinent part:

Parents' duty to support child.

1. (a) Except as provided in subdivision two of this section, the parents of a child under the age of twenty-one years are chargeable with the support of such child and, if possessed of sufficient means or able to earn such means, shall be required to pay for child support a

Alana's mother had retained an attorney to represent herself in a custody proceeding she was filing to seek custody of the child herself, so that she was actually an adverse party.

Despite this state of affairs, when Alana appeared in Court and advised that she had been denied assigned counsel, the Court failed to appoint counsel for her. After speaking with our office, Alana was able to obtain a letter from her mother explaining that she would not provide counsel for Alana. Following the submission of this letter to the public defender's office, and a telephone call from me to that office, Alana was afforded assigned counsel. Of course, in the interim, Alana was deprived of even visitation with her child until this week. Who can value the loss of that time for bonding with her infant child?

While this scenario reinforces the need for each of the eligibility protections which were set forth in Dorothy's case, this case illustrates the need in determining eligibility for assigned counsel to avoid considering as available the income or resources of adverse parties. This is a problem which frequently raises its head in situations involving domestic violence.

I do not want to leave you with impression that these are the only issues I see with regard to assigned counsel on a regular basis. Within the past several months my office has been involved in addressing assigned counsel cases in which:

- a. a county which included the amount of SNAP

fair and reasonable sum as the court may determine.

(previously know as food stamps) benefits as income in the calculation of financial eligibility. This was done despite the federal and state statutory prohibitions on such consideration.⁴ (This was one of the Hurrell-Harring counties.)

b. a county which included child support payments received by the household as income for assigned counsel purposes, but does not provide a deduction from income for child support which household members are required to, and do, pay for children outside the household.

c. a county which includes income tax refunds (and earned income credits) as income while using gross income figures.⁵ (Special details addressing refunds and credit

⁴ The federal statute, 7 U.S.C. §2017(b) provides:

"The value of benefits that may be provided under this Act shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of benefits under this Act."

While the New York State statute, Social Services Law §95(5) provides:

"Any inconsistent provision of law notwithstanding, the value of any SNAP benefits provided an eligible person shall not be considered income or resources for any purpose, including taxation."

⁵ Income tax refunds and earned income credits are expressly disregarded as either income or resource under New York's Temporary Assistance, SNAP and Medicaid programs. (See, e.g., 15 INF-05, copy annexed hereto.) These monies are also excluded as income under the federal Legal Services program as well. 45 C.F.R.

are required in the application form.)

d. counties which fail to provide any written notice identifying a reason for denial of assigned counsel, so that applicants cannot identify errors or provide needed verification.

e. a city court and a justice court which did not recognize the entitlement to assigned counsel with regard to "violations" as required by Criminal Procedure Law §170.10.

Over a more extended period of time, we have addressed assigned counsel issues in situations where:

a. a number of counties treat ownership of a home as precluding the assignment of counsel, irrespective of equity, value, or ability to access that equity.⁶

b. a county which was denying assigned counsel to litigants who did not reside in the county, despite the fact that the proceeding was pending in a court in that county.

§1611.2. And, of course, in counties looking at "gross" income, counting tax refunds results in double counting income.

⁶ See Matter of DeMarco v. Raftery, 242 A.D.2d 625; 662 N.Y.S.2d 138 (2d Dept. 1997) and the February, 1977 memo annexed hereto. Matter of DeMarco held that it was:

"error to presume, in the absence of any proof, that the appellant's half-interest in certain real property rendered him able to retain counsel. There is no basis in this record to conclude that this asset is susceptible to **immediate disposition**, and there is no competent proof in the record establishing the value of this asset." (Emphasis added.)

c. a county in which the public defender's office was applying to courts in which counsel had been assigned to SSI recipients for orders against the SSI recipient and requiring payments under those orders.

d. counties using gross income figures for eligibility as opposed to net income.

e. a county denying assigned counsel to SSI recipients based upon resources within the resource exclusions of the SSI program.

f. counties denying assigned counsel based upon assets owned or controlled by adverse parties or estranged legally responsible relatives, including, in some cases, situations in which attempts to access resources would likely result in domestic violence consequences.

g. counties refusing to provide assigned counsel to parents being deprived of custody of children in the context of PINS proceedings initiated by third parties.

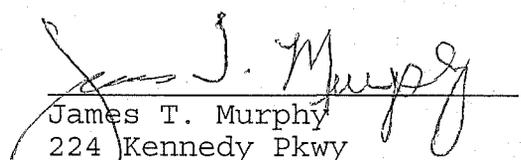
h. counties denying assigned counsel to individuals between the ages of 18 and 21 unless the individual's parents provided income information, even if the individual and the parents were estranged, or the parents refused to either provide income information, or provide a letter refusing to provide counsel.

Sadly, we seem to face these issues time after time in

some counties, and even when it appears that county policies have changed, we end up litigating these issues in the same county years later. I eagerly await the standards that you are charged with developing, which hopefully will encompass the positions urged by the New York State Defenders Association. The Third Department's efforts in establishing standards in 1977 were not far from the mark. With a few exceptions, such as "partial liability" payments and parental liability, they came very close to "getting it right." Hopefully your efforts will be equally successful in establishing appropriate standards. I am also hopeful that with the powers now conferred on your office, you will be able, with appropriate training for administrative staff and the courts, to implement and enforce those standards. Some of us have been waiting for thirty-eight years.

Thank you for your consideration and efforts.

Respectfully Submitted,


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THIRD JUDICIAL DEPARTMENT

JUSTICE BUILDING - EMPIRE STATE PLAZA

ALBANY, NEW YORK 12223

AREA CODE 518
474-3603 - 474-3604



OFFICE OF THE
DIRECTOR OF ADMINISTRATION

RICHARD J. COMISKEY
DIRECTOR

EDWARD J. HEHLICHY
DEPUTY DIRECTOR
BUDGET AND ACCOUNTS OFFICER

February 15, 1977

MEMORANDUM

TO: All Third Department County, Family and City Court Judges; those Town and Village Justices in Municipalities over 10,000 in Population; County Magistrates Associations; Public Defenders; County Bar Associations; and Administrators of Assigned Counsel Plans.

FROM: Richard J. Comiskey

SUBJECT: Assignment of Attorneys to Represent Individuals who are Financially Unable to Obtain Counsel.

The enclosed standards and questionnaire were prepared by this office in accordance with Presiding Justice Koreman's instructions to respond to concern expressed by judges, attorneys, local and state legislators, and others, as to how attorneys were assigned to represent indigents. We have, therefore, prepared the attached guidelines in the hope that they will be of some assistance to you. Conversely, there have been many who, upon request, contributed their thoughts and ideas to us so that this project could be completed and we thank each of you for such assistance.

We will not be able to supply copies of the questionnaire in quantity, therefore I suggest that you make arrangements locally to have it reproduced.

At the present time the Office of Court Administration is making a study of the assignment of counsel on a State-wide basis. This study may, at some future time, result in the promulgation of State-wide rules or guidelines which, of course, would supplant our guidelines.

If you have any questions concerning the standards or their implementation, please contact Peter Ryan at (518) 474-3603. Mr. Ryan assisted in their preparation and should be able to answer your inquiries.

Standards of Eligibility for the Assignment of
Attorneys to Represent Individuals who are
Financially Unable to Obtain Counsel.

These standards are to be used as guidelines in determining who is "financially unable to obtain counsel" under section 722 of the County Law.

The attached questionnaire must be completed by, or for, each person requesting assignment of counsel in a criminal or family court matter. The court may delegate the responsibility for assisting the defendant with completion of the questionnaire to nonjudicial court employees, administrators of assigned counsel plans, the public defender's office, court appointed counsel, or other suitable individuals. However, it should be reviewed and acted upon by the court.

Financial inability to afford counsel is not synonymous with destitution or a total absence of means. Nor are the standards used to determine indigency for other purposes controlling.

Financial inability must be determined on a case by case basis in the context of the charges against the individual, the services required, and the cost of private representation. The key test for determining eligibility is whether or not the defendant, at the time need is determined, is financially unable to provide for the full payment of adequate counsel and all other necessary expenses of representation.

These standards shall be construed to obtain equitable and consistent determinations of eligibility for counsel, to limit the expenditure of public funds to cases where justice so requires, to

obtain contribution from those able to pay part of the cost of their defense, to safeguard the rights of individuals to an adequate defense, and to insure the effective and efficient functioning of the family court and criminal justice system in the Third Judicial Department.

A person charged with a crime, or before the family court and otherwise entitled to assigned counsel, is eligible for assigned counsel when the value of his present net assets and his current net income are insufficient to enable him promptly to retain a qualified attorney, obtain release on bond and pay other expenses necessary to an adequate defense, while furnishing himself and his dependents with the necessities of life.

In determining "present net assets" the emphasis should be placed upon available liquid assets. Items such as a house used for a residence, reasonable household furnishings, or an automobile reasonably necessary for the individual's employment should normally be excluded.

"Current net income" should be determined on the basis of net disposable income available to the individual, (i.e., "take-home pay").

If more than one member of the family domiciled at the same residence is working, total family income should be considered. If the defendant is estranged and domiciled separately from other family wage earners, individual income only should be considered. If the defendant is a college student, inquiry should be made as to the

source of his support. HOWEVER, THE SIXTH AMENDMENT RIGHT TO COUNSEL IS PERSONAL, THEREFORE, ASSIGNMENT OF COUNSEL CANNOT BE DENIED IF OTHER FAMILY MEMBERS REFUSE TO CONTRIBUTE TOWARD THE COST OF COUNSEL.

The cost of living and the amount required to enable an individual to retain a qualified attorney varies greatly from county to county within the Third Department. Therefore, locally determined standards should be established where warranted. However, the following minimum living allowances should generally be applied:

- 1) \$75.00 per week for an individual (net).
- 2) \$100.00 per week for an individual with one dependent (net).
- 3) \$15.00 per week for each additional dependent (net).

An individual whose net liquid assets are insufficient to retain a qualified attorney and whose income does not meet the minimum allowances should automatically qualify for appointed counsel. Other individuals may also be eligible in certain situations.

In determining income eligibility the following points should be kept in mind:

- 1) The cost of private counsel normally increases with the seriousness of the charges. (Each judge making assignments should obtain local data sufficient to allow him to estimate the amount required to enable a person to retain a qualified attorney for the types of charges routinely placed against individuals appearing before him.)
- 2) The above standards should not be applied mechanically. Discretion must always be exercised in determining eligibility.

- 3) Unusual, necessary, recurring expenses can make an otherwise ineligible individual, eligible. (E.g., child care expenses, recurring medical expenses, alimony, or child support.)
- 4) In a questionable case of eligibility, the following additional factors should be considered:
 - a) Type of prior employment or special skills.
 - b) Unusual types of assets, particularly luxury items.
 - c) Actual amount spent by the defendant on the necessities of life.
 - d) Family background and contacts with family (particularly relevant in determining college student eligibility).
 - e) Income during the past two years.
 - f) Age.
 - g) Nature of the charge.
 - h) Whether or not he is in jail.

Whenever it appears that an individual to whom counsel has been assigned is financially able to retain a private attorney or to make partial payment for representation by counsel or other services, counsel may report this fact to the court and the court may terminate the assignment of counsel or authorize payment, as the interests of justice may dictate, pursuant to section 722-d of the County Law.

In questionable cases of eligibility, particularly where justice requires immediate representation or authorization of services, counsel should be appointed or services authorized, with the contribution order being entered at a later date if funds are available.

In Support of Request to be Assigned
Counsel Without Payment of Fee

STATE OF NEW YORK

COUNTY OF _____

I, _____, being duly sworn,
voluntarily depose and state that I am financially unable to
employ an attorney to represent me in regard to the charge or
charges against me and furnish the following information for the
purpose of enabling the court to determine whether or not I am
entitled to the appointment of an attorney to represent me.

PERSONAL INFORMATION

- 1) Full Name: _____
- 2) Date of Birth: _____
- 3) Home Address: _____

- 4) Telephone Number: _____
- 5) Marital Status: Single _____ Married _____
Separated _____ Divorced _____
- 6) Husband's or wife's full name: _____

- 7) Names and ages of children or other dependents supported:

EMPLOYMENT

- 8) Occupation (if a student, indicate the school attended and the name, relationship, and address of any person who is helping you pay tuition, room and board): _____

- 9) Name, address and telephone number of present employer:

- 10) Amount of pay taken home \$ _____;
The above amount is paid weekly _____
Every two weeks _____ Monthly _____
(Check one).
- 11) How much did you earn in each of the two previous calendar years?
\$ _____ (19__)
\$ _____ (19__).
- 12) If you are not presently working, indicate where you last worked _____;
when _____; and how much you were earning at that time \$ _____.
- 13) If you are unemployed, indicate how you are meeting living expenses: _____

14) If your spouse is employed, supply weekly take-home pay
\$ _____ and the name and address of employer

15) If you are not living with your wife or children, what are
their addresses and how much do you contribute to their
support? _____

OTHER INCOME

16) Income from rental property, stocks, and bonds \$ _____;
source(s) _____;
and frequency of payment _____.

17) Miscellaneous Income (unemployment compensation, social
security, workmen's compensation, welfare, pension, support
payments, trust fund) \$ _____;
source(s) _____;
and frequency of payment _____.

18) Income from other sources \$ _____;
source(s) _____;
and frequency of payments _____.

PROPERTY

19) Real Property

a) Do you or your spouse own your home? _____

b) If so, indicate the approximate market value
\$ _____; present amount owed on mortgage
\$ _____; name of the bank to which payments
are made _____.

20) Other Property:

a) Automobile: Make _____ Model _____
Year _____ Present Value _____
Amount Owed \$ _____ Owed to _____
Is use of this automobile critical to your employment?
_____ Explain: _____

b) Cash on hand, including balance of checking and savings
accounts \$ _____.

c) Total value of any other assets such as insurance
policies, stocks, bonds, trust accounts or similar
investments owned in your name or jointly with any other
person \$ _____. Explain: _____

21) Have you sold, given, or otherwise transferred any real
property or other asset to any other person (including your
spouse) during the past six months? _____ If so,
explain: _____

22) Total monthly income from all sources, including wages
\$ _____

23) Monthly Expenses:

a) Rent or mortgage payment (including taxes)
\$ _____

b) Food \$ _____

c) Installment payments \$ _____
(Indicate to whom paid) _____

d) Loan Payments \$ _____ (Indicate to whom
paid) _____

e) Utilities (Heat, Telephone, Water, Electric)
\$ _____

f) Automobile Expenses (including payments) \$ _____

g) Premiums on insurance policies \$ _____

h) Other significant expenses \$ _____
(Specify) _____

Total Monthly Expenses \$ _____

24). Have you been represented by retained counsel at any time
while the charges currently in question have been pending?

_____ If you have, please state the attorney's
name and address and the amount he was paid. _____

- 25) Have you tried to hire an attorney? _____
Who? _____
- 26) If you have been released on bail, please indicate the amount
\$ _____; How posted _____;
and give the name and address of the person who furnished the
cash or collateral for your bail bond _____

NOTICE: IF AN ATTORNEY IS ASSIGNED TO YOU, YOU MAY BE REQUIRED TO
REPAY THE COUNTY FOR ALL OR PART OF THE COST OF YOUR DEFENSE.

Under the penalties of perjury, I declare that I have examined
the above statements made by me and to the best of my knowledge and
belief, they are true and correct. I hereby authorize the Court, or
its representative, to verify the answers given in this affidavit.

Signed: _____

Subscribed and sworn to before me
this _____ day of _____ 19 ____

Judge, Justice or Notary Public

Reviewed by: _____

Title: _____

Recommendation: _____

Reason(s): _____

GENERAL INFORMATION SYSTEM
Center for Employment and Economic Supports

February 1, 2011

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TO: Commissioners; Temporary Assistance (TA) and Food Stamps (FS) Directors;
Staff Development Coordinators

FROM: Russell Sykes, Deputy Commissioner, Center for Employment and Economic
Supports

SUBJECT: The Treatment of Tax Refunds and Credits: TA and FS Policy Implications
of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of
2010."

EFFECTIVE DATE: Immediately

CONTACT PERSON: TA Program Questions: Bureau of Temporary Assistance at
(518) 474-9344; FS Program Questions: FS Bureau at 1-800-343-8859 Extension 3-
1469.

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 signed into law in December 2010 included a provision exempting all tax refunds and credits as income and further exempting them as a resource for a period of 12 months. Outlined below are the policy implications of this change for TA and FS.

Temporary Assistance Implications

TA policy for Family Assistance (FA), Safety Net Assistance Federally Participating (SNA-FP) and Safety Net Assistance Not Federally Participating (SNA-FNP) is the following:

Tax Credits Exclusive of Earned Income Tax Credit (EITC)

Prior Policy: These were exempt as income in the month received and as a resource for one or two months depending on the type of credit.

New Policy: Now, all tax credits are exempt as income in the month received and for the following twelve months as a resource.

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Earned Income Tax Credit

There is no change in the treatment of EITC. This continues to be exempt as income when received and as resource thereafter. This policy applies to any EITC issued including federal, state, and city.

Income Tax Refund

Prior Policy: They were exempt as income in month received, but countable towards the \$2,000 resource limit.

New Policy: Now, they are exempt as income in month received and as a resource for the following twelve months.

Food Stamp Implications

Described below are the changes in Food Stamp Program policy for tax credits.

Tax Credits Exclusive of Earned Income Tax Credit (EITC)

Prior Policy: Previously, these credits were excluded as income. For those relatively few FS households still subject to a resource test under expanded categorical eligibility, the credits were excluded as a resource for one or two months following receipt of the credit, depending on the type of credit.

New Policy: All tax credits still are excluded as income. For those few FS households still subject to a resource test, the amount of the credit or any unspent balance is excluded as a resource for twelve months following receipt of the credit.

Earned Income Tax Credit

There is no change in the treatment of EITC. This continues to be excluded both as income and as a resource. This policy applies to any EITC issued including federal, state and city, and it applies whether the credit is paid as a lump sum or whether included in a pay check as a recurring estimated credit.

Income Tax Refund

Prior Policy: Excluded as income. For those few FS households still subject to a resource test, Income Tax Returns were countable as a resource.

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New Policy: Still excluded as income. For those few FS households still subject to a resource test, Income Tax Returns are excluded as a resource for twelve months following the month of receipt. Any remaining, identifiable balance of an Income Tax return would be considered to be a resource after twelve months.