

Testimony of
Coalition for the Homeless
and
The Legal Aid Society

on

**Proposed Shelter Eligibility Rules for
Homeless Single Adults**

Presented before

The New York City Council
Committee on General Welfare

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Coalition for the Homeless and the Legal Aid Society welcome this opportunity to testify before the New York City Council regarding the enormous dangers of the City's proposed new shelter eligibility rules for homeless single adults.

About the Coalition and The Legal Aid Society

The Coalition for the Homeless: The Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which now continues past its third decade. The Coalition also protects the rights of homeless people through litigation around the right to emergency shelter, the right to vote, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates 12 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers, and demonstrate effective, long-term solutions. These programs include supportive housing for families and individuals living with AIDS, job-training for homeless and formerly-homeless women, rental assistance which provides rent subsidies and support services to help working homeless individuals rent private-market apartments, and permanent housing for formerly-homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen distributes 900 nutritious meals each night to street homeless and hungry New Yorkers. Finally, our Crisis Intervention Department assists more than 1,000 homeless and at-risk households each month with eviction prevention assistance, client advocacy, referrals for shelter and emergency food programs, and assistance with public benefits.

The Coalition also represents homeless men and women as plaintiffs in Callahan v. Carey and Eldredge v. Koch. In 1981 the City and State entered into a consent decree in Callahan in which it was agreed that, "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The Eldredge case extended this legal requirement to homeless single women. The Callahan consent decree and the Eldredge case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults.

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 900 of the brightest legal minds. These 900 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides

comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the Callahan and Eldredge cases. The Legal Aid Society is also counsel in the McCain/Boston litigation in which a final judgment requires the provision of lawful shelter to homeless families with children.

Proposed New Shelter Eligibility Rules for Homeless Single Adults in New York City

Amidst all-time record homelessness, high unemployment, the ongoing and increasingly acute affordable housing shortage, and the lingering effects of the economic crisis, the Department of Homeless Services offers nothing in the way of solutions to address New York City's historic homelessness crisis.

Instead, the Department proposes to implement new shelter eligibility rules that are in violation of the consent decree in the landmark case Callahan v. Carey and that will have the effect of denying emergency shelter to some of the most vulnerable New Yorkers.

To make matters worse, the Department plans to implement this radical and unlawful restriction on access to shelter only days before Thanksgiving and as the winter cold approaches – thus putting homeless adults who would inevitably be denied shelter under the new rules at enormous risk of injury or death on the streets.

We want to thank the City Council for convening this hearing on such a short notice, given the emergency nature of the Department's precipitous action. The Department announced its plan to upend 30 years of homeless policy last Thursday night, without giving any notice to the City Council or the public and in violation of the New York City Charter, which was adopted by a direct vote of the people of New York City and requires a period of notice to the public and interested parties, who might have offered comments on the dangers this rule change presents.

The Department made no attempt whatsoever to solicit input from Councilmembers, community organizations, or individuals who have such a high stake in how the City treats homeless individuals. Had there been ample time, we have no doubt that they too would be here to raise

their voices, insights and critical appraisals of the plans announced less than one week ago. The Department's failure to follow the notice and comment provisions of the law cuts to the heart of participatory democracy in New York City: whether the Executive Branch has unbridled authority to make such dramatic changes in local rules that will harm thousands of New Yorkers without regard to lawful procedures.

There is no question that the Department's proposed shelter eligibility rules will sharply restrict access to shelter for homeless men and women, particularly people living with mental illness and other disabilities. And there is no question that the new rules will result in more homeless New Yorkers sleeping on the streets, in the subway system, and in other public spaces. We urge the City immediately to withdraw the rules, and failing that, we urge the New York City Council to take every step to halt the implementation of the rules.

Background on Callahan v. Carey and the Legal Right to Shelter

When modern homelessness first emerged in the late 1970s, thousands of homeless New Yorkers were forced to fend for themselves on the streets, and many died or suffered terrible injuries. In 1979 co-founders of the Coalition for the Homeless brought a class action lawsuit in New York State Supreme Court against the City and State called Callahan v. Carey, arguing that a constitutional right to shelter existed in New York. In particular, the lawsuit pointed to Article XVII of the New York State Constitution – an amendment which was enacted in the midst of the Great Depression – which declares that "the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions...."

The lawsuit was brought on behalf of all homeless men in New York City. The lead plaintiff in the lawsuit, Robert Callahan, was a homeless man suffering from chronic alcoholism who lived on the streets in the Bowery section of Manhattan.

On December 5, 1979, the New York State Supreme Court ordered the City and State to provide shelter for homeless men in a landmark decision that cited Article XVII of the New York State Constitution.

In August 1981, after nearly two years of intensive negotiations between the plaintiffs and the government defendants, Callahan v. Carey was settled as a consent decree (please see copy attached to this testimony). By entering into the decree, the City and State agreed to provide shelter and board to all homeless men who met the need standard for public assistance or who were homeless "by reason of physical, mental, or social dysfunction."

Thus the decree established a right to shelter for all homeless men in New York City, and also detailed the minimum standards which the City and State must maintain in shelters, including basic health and safety standards. In addition, Coalition for the Homeless was appointed monitor of shelters for homeless adults. (A companion lawsuit, Eldredge v. Koch, extended the right to shelter to homeless single women, who are now protected by the consent decree.)

One tragic footnote to the history of the litigation is the fate of Robert Callahan himself. The autumn before the consent decree bearing his name was signed, Mr. Callahan died on Manhattan's Lower East Side while sleeping rough on the streets. Thus Robert Callahan himself was one of the last homeless victims of an era with no legal right to shelter.

DHS' Proposed New Eligibility Rules Violate the Callahan v. Carey Consent Decree

Over three decades, the Callahan v. Carey consent decree has formed the bedrock of New York City's approach to homelessness, and has literally saved the lives of countless homeless New Yorkers. Unlike in other cities, where homeless people are routinely turned away from emergency shelter due to bureaucratic barriers or insufficient capacity, in New York City homeless adults by and large have been able to secure shelter from the elements thanks to the legacy of Robert Callahan.

Now the Department of Homeless Services seeks to undermine one of the fundamental protections of New York's longstanding legal right to shelter.

The first paragraph of the 1981 consent decree in Callahan v. Carey states:

The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program [i.e., public assistance] established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter.

The Department's proposed new shelter eligibility procedure for homeless single adults (see copy attached to this testimony) fails to comply with this core provision of the consent decree. Under the proposed eligibility rules, homeless adults with mental, physical, or social dysfunction can and would be denied emergency shelter in multiple ways.

For instance, under the new eligibility rules the Department can and would deem a homeless person "ineligible" for shelter:

- Even when a family member with whom the homeless person lived in the past states verbally and in writing that the person can no longer live in their home;
- Even when an outreach worker or police officer escorts the homeless person to an intake shelter but the Department claims the person has "not cooperated" with an eligibility investigation;
- Even when the homeless person is unable to provide a complete one-year "housing history";
- Even when the homeless person attempts to document his or her one-year housing history, but the family or friend with whom s/he resided refuses to cooperate with the Department's eligibility investigation;
- Even when the homeless person, who may suffer from a mental or physical impairment, fails to undergo an evaluation for such an impairment;
- Even when the Department claims that the homeless person's other "housing option" is another person's public housing apartment (or some other subsidized housing) and the homeless person's residency jeopardizes the primary tenant's subsidized housing;

- Even when DHS investigators have never visited an alleged “housing option” to see if it is actually available and/or suitable to meet the needs of the homeless person;
- Even when the homeless person is unable to produce documentation of their income or past housing history;
- Even when DHS makes a mistake in determining the homeless person’s eligibility for shelter but the homeless person cannot re-apply for shelter because s/he cannot produce “new evidence”; and
- Even when the “housing option” identified by DHS is unsafe but the homeless person has allegedly failed to provide evidence of the safety hazards.

The proposed eligibility rules are flawed and dangerous enough on their face, but even more when one considers that the population that would be affected – homeless single men and women – is characterized by very high incidence of mental illness and other serious health problems. Indeed, numerous research studies – including some commissioned by the City itself – have found high rates of serious and persistent mental illness, addiction disorders, HIV infection, and other serious health problems among homeless adults residing both in shelters and on the streets. In addition, a large percentage of homeless women have been victims of domestic violence.

Thank you for the opportunity to share this testimony. And, as always, we look forward to working with the Committee and the City Council in the coming months and years on efforts to reduce New York City’s homeless population and help homeless children and adults.

Submitted by,

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