

**Testimony of The Legal Aid Society, Coalition for
the Homeless, and Legal Services NYC**

on

**HOW DHS AND NYCHA COORDINATE IN
DETERMINING ELIGIBILITY FOR SHELTER**

Presented before

The New York City Council

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The Legal Aid Society, the Coalition for the Homeless, and Legal Services NYC welcome this opportunity to testify before the New York City Council concerning the impact of the failure of the New York City Department of Homeless Services (DHS) to recognize the rules of other City agencies – including the New York City Housing Authority (NYCHA), the Department of Housing Preservation and Development (HPD), the HIV/AIDS Services Administration (HASA) as well as the Section 8 program -- on our clients.

Although the City has stated a goal of promoting interrelationships between different branches of municipal government, for homeless children and families applying for emergency shelter, it is not “One City.” The City’s Department of Homeless Services routinely denies shelter to families on the basis that they have other housing available to them at particular addresses identified from the family’s housing history, even when the rules of other City agencies would prohibit residents of those apartments from taking in the homeless family. The rules are published and could easily be followed by DHS, but instead DHS requires desperate shelter applicants to re-prove, on a case-by-case basis, that these rules exist and apply to residents of other City-supported housing. It would require virtually no additional effort for DHS staff to ascertain and follow the rules of the other, parallel City agencies whose mandate is to preserve safe and affordable housing for New Yorkers.

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 850 of the brightest legal minds. These 850 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.

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,000 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 struggles to protect the rights of homeless people through litigation around the right to emergency shelter, the right to vote, and appropriate housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates twelve direct-services programs that both 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, a job-training program for homeless and formerly-homeless women, a Rental Assistance Program which provides rent subsidies and support services to help working homeless individuals rent private-market apartments, and apartment buildings in Manhattan which provide 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 more than 900 nutritious meals to street homeless and hungry New Yorkers each night. 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 to physical, mental or social dysfunction is in need of temporary shelter." The Callahan consent decree and 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.

Legal Services NYC: Legal Services NYC is the nation's largest provider of free legal services to the poor. For nearly 40 years, Legal Services NYC has provided critical legal help to low-income residents of New York City. The nineteen neighborhood offices of Legal Services NYC operate in diverse communities throughout the city, representing thousands of low-income tenants annually in disputes involving their rights to remain in their homes.

DHS failure to consider the rules of other agencies:

As of last Thursday, there were 36,136 New Yorkers living in City shelters, including 14,514 children and 9,649 families. As you know, pursuant to the New York State Constitution,

every New Yorker who has no other place to stay is entitled to decent, habitable shelter. These rights were established in the class actions Callahan v. Carey (for homeless single adults) and McCain v. Koch and Boston v. City New York (for homeless families). The Legal Aid Society is counsel in these actions and also counsel for Coalition for the Homeless, who testifies with us today.

When families apply for shelter, DHS staff interview them about their resources and housing history and evaluate whether they have another place to stay. If they do, and that location is not overcrowded or unsafe, the family is not homeless, and the City has no legal obligation to provide them with shelter. The process DHS uses to assess eligibility is broken, however, and every day the City rejects the applications of families who should have been eligible for shelter. Many of these families are later denied shelter placements when they re-apply. The City's own statistics on the DHS website show that about 40% of the families who are eventually found eligible for shelter have to file between two and six (or even more) applications.

One major flaw in the eligibility process is that DHS routinely erroneously determines that a particular address is available to a family when the primary tenant at the address in question receives a rent subsidy from another City agency. Many of these programs – such as those administered by NYCHA, HPD and HASA, and including the Section 8 program – have rules restricting occupancy of the tenant's apartment. In these programs, rules restrict the number of people who can reside in an apartment, as well as barring people with certain convictions, prior history with the Housing Authority, or, in the case of senior residences, people below a certain age.

Under those rules, the applicant homeless families could not reside in the primary tenant's apartment without jeopardizing that tenancy, potentially creating another homeless household. In such cases, the residence of the primary tenant cannot be considered to be "available" to the applicant family. According the Final Judgment in the Boston case, the City must provide shelter to families with children who "lack adequate housing." Boston v. City of New York, Index No. 402295/08 (Sup. Ct. N.Y. Co), par 3.

As the Department of Homeless Services outlined in a letter to the Legal Aid Society earlier this month, DHS refuses to ask primary tenants if they are willing to request that NYCHA add the applicant family to their leases, taking the position that a primary tenant's statement that the applicant family cannot stay (or is not wanted) is not sufficient to establish that the housing is no longer available.

Furthermore, applicants who say they cannot live with a friend or relative in a NYCHA or Section 8 apartment due to lease restrictions are required to provide documentation from NYCHA or the landlord to that effect. Not only that, those who assert that the primary tenant is in danger of eviction due to the applicant's stay at a residence are instructed to provide proof of imminent eviction, such as a Marshal's Eviction Notice.

As DHS is aware, it is often impossible, for applicant families – the vast majority of whom are unrepresented – to obtain the magic document establishing that their friend or relative asked NYCHA or their Section 8 landlord for permission to add the applicant family to their household and that permission was denied.

First, usually when a homeless family has had to leave a friend or relative's home, the two families are no longer on good terms. Disputes, exacerbated by overcrowding, and even domestic violence are not uncommon among these formerly doubled up families. The last thing the primary tenant family wants to do is request permission for the homeless family to live with them – they just threw the family out, after all.

Second, even in cases where the primary tenant family might be willing to help the applicant family out in other ways, the primary tenant family is typically unwilling to get the required documentation from the NYCHA or HASA management office or the Section 8 landlord because they would be admitting that they previously broke rules or violated their lease by letting the homeless family stay with them. Making the request might therefore jeopardize their Section 8 voucher or put the family at risk of being evicted, especially if they already feel vulnerable because, say, they are behind in their rent or have previously been warned about having too many people in their apartment.

Third, it is often difficult for experienced lawyers to negotiate these documents with housing management offices and landlords, and it is all but impossible for shelter applicants to figure out how to obtain them. For example, last week the Homeless Rights Project advised a four-person family who became homeless after the primary tenant with whom they were living died, so they had to leave the apartment. DHS denied the family – which includes an autistic child as well as a pre-schooler who was receiving home services for learning delays until he became homeless -- on the ground that the family could double up with a relative in a NYCHA apartment. When the primary tenant contacted her management office, she was informed by the Assistant Manager of her project that under no circumstances would NYCHA allow four more people in her apartment because that would cause overcrowding and that she would be in breach of her lease and could lose her apartment if she let them return. The NYCHA manager, however, refused to put this in writing. Obviously, however, DHS staff could obtain the same information by reviewing NYCHA's written policies or by contacting NYCHA directly, which they only do when the applicant presents a NYCHA document.

Finally, as a matter of public policy, it is absurd that DHS requires a Marshal's Eviction Notice in order for an applicant family to prove that a primary tenant family is in danger of eviction due to the applicant's stay. DHS is virtually requiring that two families become homeless in order for the non-lease-holding family to get shelter. Obviously, most primary tenants are going to kick out guest families well in advance of a Marshal's Notice in order to preserve their apartments, but the homeless family has no way to prove that they can't return to the place where they previously doubled up in the absence of a Marshal's Notice.

The City raises the specter that thousands of families who are safely doubled up in NYCHA or Section 8 housing will enter the shelter system if DHS is required to abide by

NYCHA, HPD, HASA, and Section 8 housing restrictions. There is simply no evidence to support that claim. Those restrictions on doubling up are in place for a purpose: because those government agencies have determined that overcrowding those apartments leads to excessive wear and tear on the buildings; increased noise, conflict, and violent incidents; heightened fire hazards as rooms are subdivided and electrical systems overloaded; and a deterioration in community life. Indeed, in a front page article published just yesterday, the *New York Times* reports on the severe backlog of repairs needed for NYCHA's aging housing stock and the impact of funding shortfalls to make those repairs. ("Public Housing Repairs Can't Keep Pace with Need," *New York Times*, October 25, 2010.) And what are the consequences and the costs when families are denied shelter on the ground that they can double up in NYCHA or other government-regulated housing in violation of agency rules?

- DHS found the Doe family ineligible on the ground that they could return to live with Mr. Doe's sister in her two-bedroom NYCHA apartment. The Doe family had slept in the living room, making it eight people in the two-bedroom apartment. Mr. Doe, who is disabled, reported to DHS that his sister would no longer have his family, that the apartment was overcrowded, and that his family was not on the NYCHA lease. A DHS lawyer claimed that "there has not been a request to NYCHA to have the applicants added to the lease, so the applicant not being on the lease is of no consequence in this case." After DHS denied the Doe family "immediate needs" shelter, they attempted to return to their sister's NYCHA apartment, but she slammed the door in their faces. They then spent two nights in a hospital waiting room with their one-year-old child, and Mr. Doe and his wife subsequently slept in parks and on rooftops. Even after the Legal Aid Society submitted documentation to DHS detailing the severe overcrowding, the NYCHA lease restrictions, Mr. Doe's multiple disabilities, the fact that the Doe family had been sleeping in public spaces after being denied "immediate needs" shelter, and severe discord between the primary tenant sister and Mr. Doe's wife, the family was again found ineligible for shelter. Eventually, more than a month after they applied for shelter, the family won a State administrative hearing on the ground a two-bedroom apartment with four children and four adults was overcrowded, a conclusion that DHS would have reached weeks earlier had it considered and abided by NYCHA's occupancy restrictions or the Boston Final Judgment.
- Another family, who we will call the Lees, was found ineligible for shelter over a period of two months on the ground that they could double up in Ms. Lee's mother's NYCHA apartment. Ms. Lee and her two boys, ages 6 and 4, suffer from asthma, and her newborn baby had colic. Ms. Lee presented to DHS a letter from NYCHA that stated:

It would be against housing policy and standards to allow 6 individuals to reside in this dwelling unit causing an overcrowded situation. We would not approve a request of this nature.

Nevertheless, DHS found the family ineligible on the grounds that they could live in Ms. Lee's mother's apartment. A couple weeks later, Ms. Lee was able to get a second letter from NYCHA which stated:

[The primary tenant] requested permission for her daughter [] and **3 children** to reside in her apartment which has been **denied** due to **creating an over crowding situation** which is against housing policy and will cause **immediate lease termination** if found in violation.

(Emphasis in original.) Even with this unequivocal documentation, DHS continued to find this family ineligible for shelter on the ground that they could double up in the NYCHA apartment. Two State administrative hearings did not change that result. During the shelter re-application process, the family was placed in a roach-infested shelter unit. All four family members required emergency room treatment as their health conditions deteriorated, and the four-year-old was admitted to the hospital after suffering a severe asthma attack. Ms. Lee missed work repeatedly and was in danger of losing her job. Her son, previously an excellent student, had to miss days of school while the family applied and re-applied at Path, and his school performance suffered.

Finally, after being found ineligible for shelter for two months, Ms. Lee gave up applying. Because her mother would not take her back into her NYCHA apartment, Ms. Lee had no choice but to double up her family in a single room with two adult relatives. In that room, two adults sleep in one bed, while Ms. Lee shares the other bed with her three children. The family eats their meals in that room, which also contains their refrigerator. Not surprising, Ms. Lee's son's asthma has continued to worsen while living with five other people in a single room, and he has again required hospital treatment. Nevertheless, based on her two-month experience of being denied shelter, Ms. Lee has determined that it is better for her family to live in the severely overcrowded conditions where she is than to subject her family further to the grueling shelter application process.

DHS succeeded in driving this family away. But the City will pay in terms of the increased hospital costs for this family and the foreseeable long-term effects that this traumatic and unsafe experience will have on the medical conditions and developmental and educational outcomes for these children.

These terrible stories are occurring against a backdrop of DHS continuing, in the words of a former DHS Commissioner, to screw the front door of the shelter system tighter. As the graph attached to this testimony shows, based on the City's own data, the percentage of families applying for shelter who are found eligible has steadily dropped from 45.3% in February 2010 to just 34.9% in August 2010. In these difficult economic times, DHS is actually finding a lower percentage of families eligible for shelter than it did two years ago, when the recession began and when Legal Aid entered into the Boston lawsuit settlement with the City, a settlement that was supposed to make real the New York State Constitution's guarantee of aid and care to these needy homeless families.

It would not be unduly burdensome on DHS to incorporate the occupancy rules of other, parallel City agencies into its own decision-making process. Each City agency that administers housing subsidies maintains such rules in writing for its own staff. For example, NYCHA has two sets of rules: one for the developments it owns and manages, and one for Section 8 households whose vouchers it administers. For each program, NYCHA specifies a process for applying to add someone to a household, the rules governing whether such a request can be granted, and the penalties to the primary tenant if such rules are not followed, which may include termination. See NYCHA Management Manual, Chapter IV, Subdivision IV (“Changes in Family Composition”); NYCHA Section 8 Administrative Plan, Addendums 2 and 5. Under NYCHA rules, some applicants are categorically ineligible to join a household, including individuals with certain kinds of criminal records and people who NYCHA believes are in debt to it. See NYCHA Department of Housing Applications Manual, Chapter 5, Subdivision F; NYCHA Section 8 Administrative Plan, Addendum 3. In buildings restricted to senior citizens, no one who is below the minimum age for the building can reside there, even temporarily. See NYCHA Management Manual, Chapter IV, Subdivision IV(F)(4)(a)(1)(a). Other City agencies, such as HPD and HASA, have similar occupancy rules to NYCHA’s. Homeless children and their families, who have a Constitutional right to shelter, should not be denied shelter and left to sleep in parks, on trains and in other public spaces because DHS will not acknowledge the rules of other City agencies.

Recommendations:

1. Pursuant to the Boston Final Judgment, DHS should stop deeming that homeless families applying for shelter have housing available to them in NYCHA, Section 8, HASA, or other subsidized housing where the applicant family’s presence in the home would jeopardize the tenancy of the primary tenants.
2. Consistent with the due process and the Boston Final Judgment, if the addition of the applicant family would jeopardize the primary tenant’s housing, or if the housing would be overcrowded with the addition of the applicant family, DHS must consider and abide by the rules and regulations of parallel government agencies including NYCHA, Section 8, or HASA as well as any lease restrictions.
3. If a primary tenant family refuses to request that an applicant family be granted permission to stay in their apartment as required by their lease or by NYCHA Section 8, HASA or other agency rules, the housing cannot be deemed to be “available” under the Boston Final Judgment, and DHS cannot deem that they can stay there.

We thank the Council for your continuing support for fair and effective treatment of families applying for shelter. We will continue to update you about the needs of homeless New Yorkers so that we can serve clients who depend on the Legal Aid Society to provide access to justice.

Submitted by,

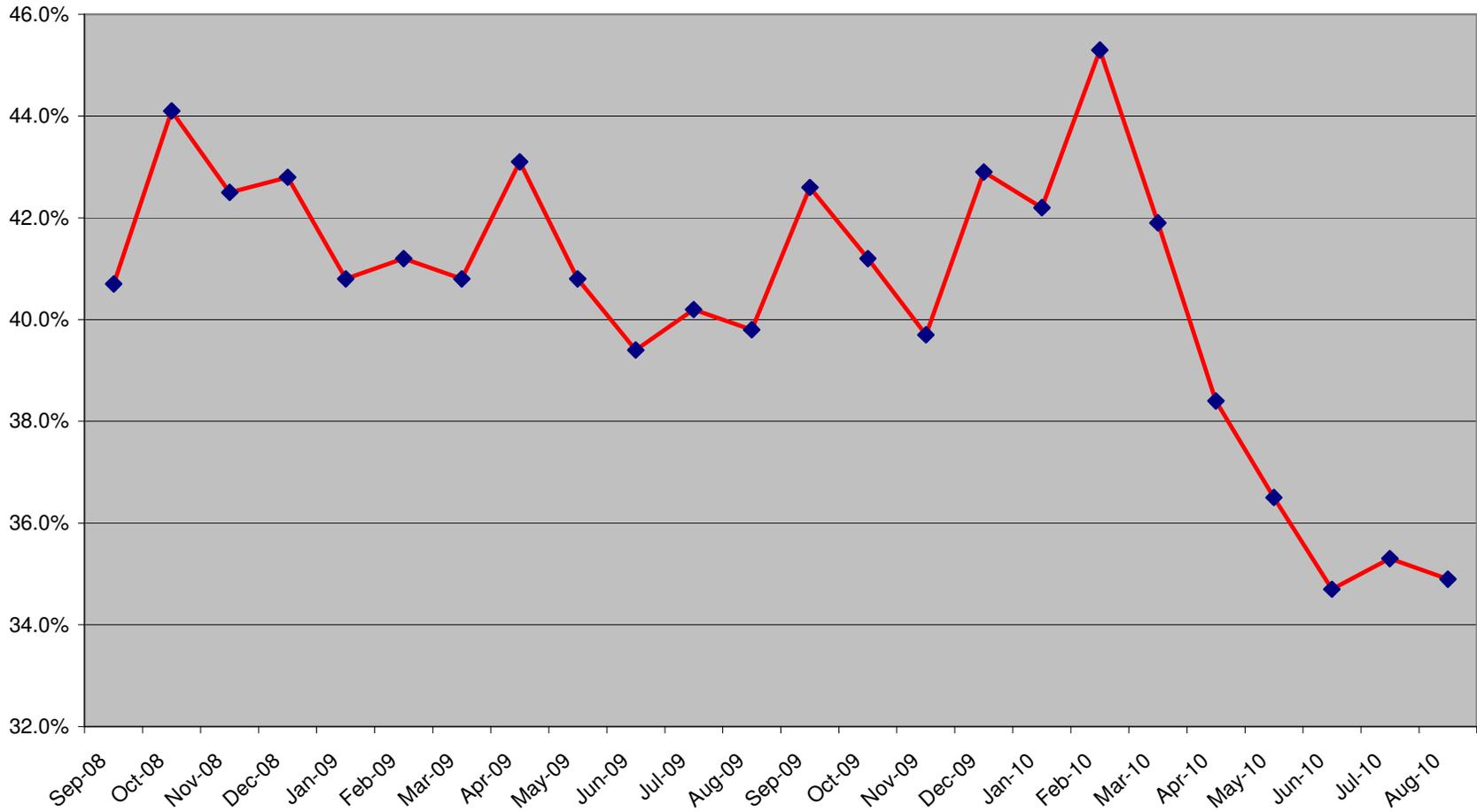
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**Eligibility Rate for Homeless Family Applications (Unduplicated)
September 2008 - August 2010**



Source: DHS/OTDA Monthly Report produced by the New York City Department of Homeless Services