



Testimony of

Coalition for the Homeless

And

The Legal Aid Society

On

Oversight – Shelter Accommodations and Services for Those with Disabilities

Presented before

New York City Council

Committee on Mental Health, Disabilities & Addiction

And

Committee on General Welfare

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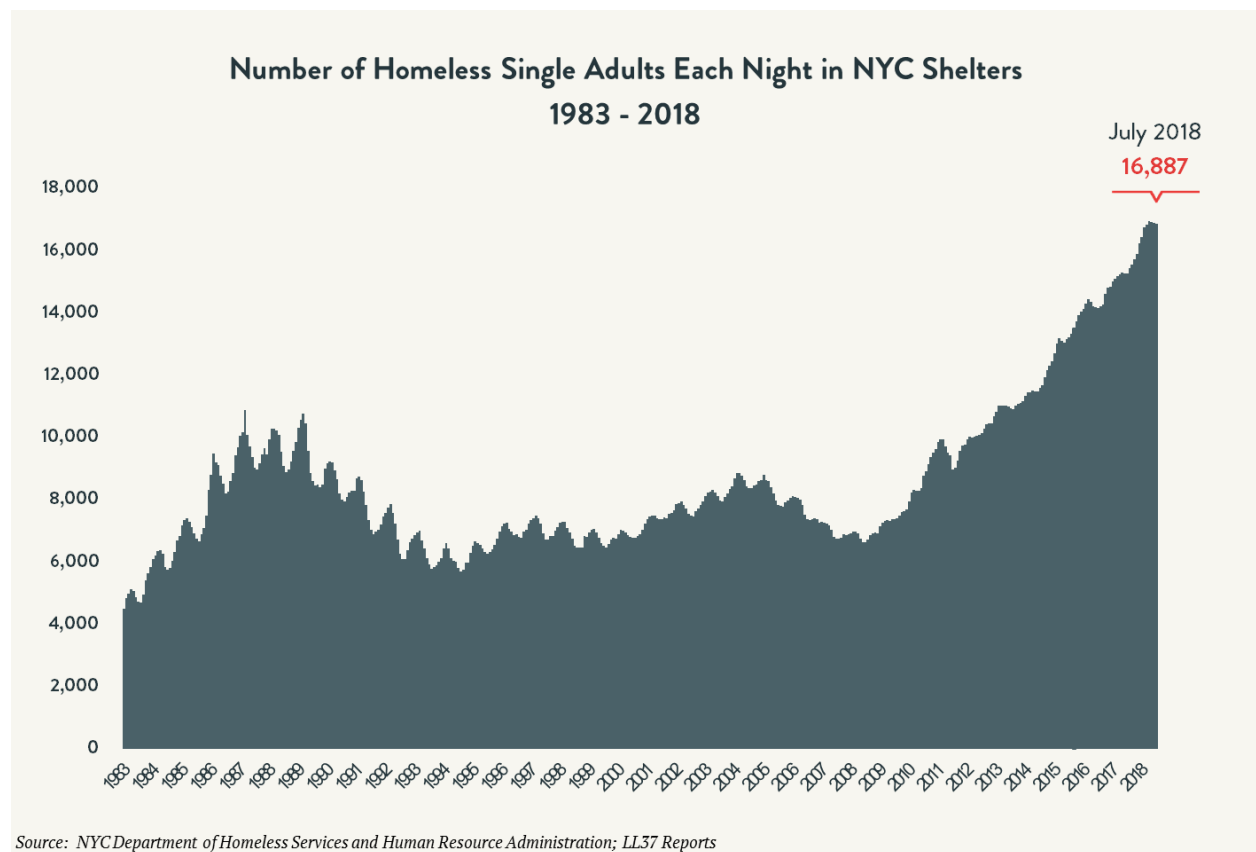
The Legal Aid Society

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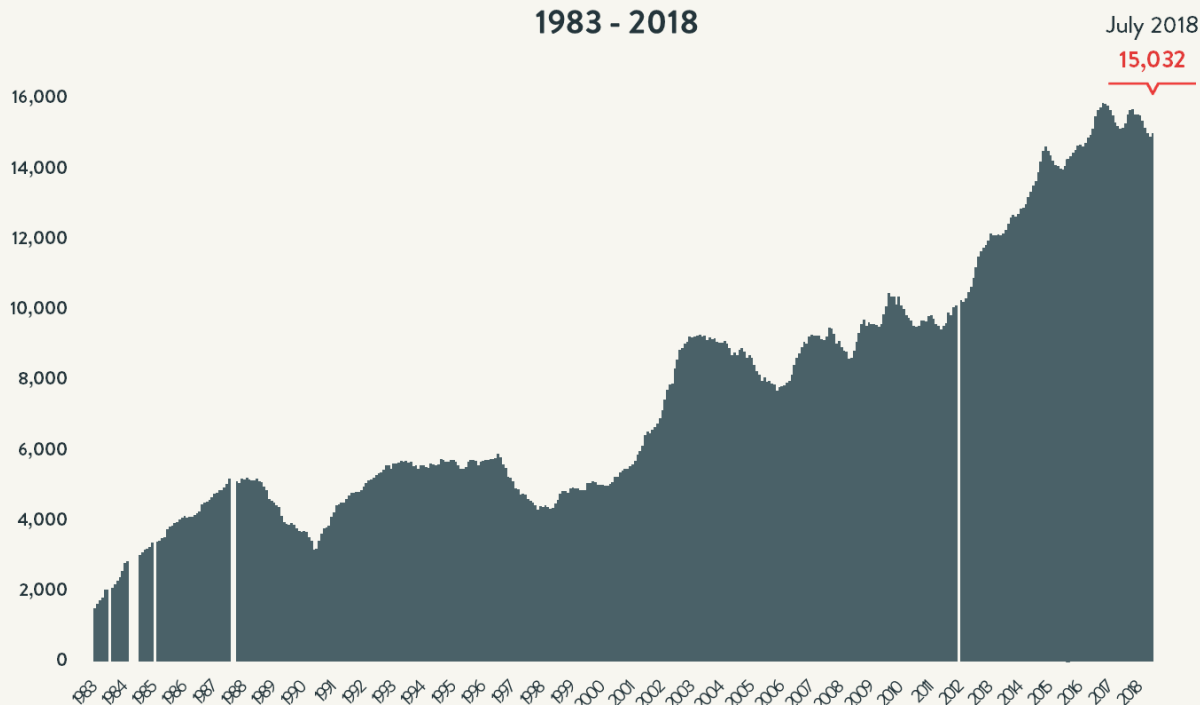
The Coalition for the Homeless and The Legal Aid Society welcome this opportunity to testify before the New York City Council Committees on General Welfare and Mental Health, Disabilities, and Addiction regarding shelter accommodations and services for people living with disabilities.

Record Homelessness in NYC

New York City remains in the midst of the worst homelessness crisis since the Great Depression, but recent trends have not impacted homeless families and adults evenly. Even as the number of homeless families in shelters has levelled off, the situation for homeless single adults is dire. The number of homeless single adults in shelters hits new records on a daily and weekly basis. In July 2018, there were 16,887 homeless single adult men and women sleeping in shelters each night, up 11 percent from the year before and 154 percent from a decade ago.



Number of Homeless Families Each Night in NYC Shelters 1983 - 2018



Source: NYC Department of Homeless Services and Human Resource Administration; LL37 Reports

The reasons for the drastic increase in the number of single adults are not well understood, but data from the City and State indicate large increases in the number adults being released from State prisons directly to the shelter system; increases in the number of adults discharged from medical, psychiatric, or other institutions; and increases in the number of adults being forced into homelessness from tenuous housing situations, such as overcrowded or unsafe living environments.¹

The Coalition’s ongoing monitoring of and nightly visits to the City’s shelters have elicited ample anecdotal evidence suggesting that a significant number of individuals with disabling conditions – medical, psychiatric, and cognitive – currently reside in shelters. Many of these adults have not been properly accommodated in the shelter system for *years*, and some of DHS’s current policies and practices actually exacerbate the problems experienced by these vulnerable men and women. While these problems are not limited to the shelter system for single adults – many homeless people in the shelter system for families also have disabilities that are not being accommodated – the Coalition has encountered more widespread and systemic problems in the shelter system for single adults. While the Coalition, The Legal Aid Society, Center for Independence of the Disabled New York (CIDNY), and other advocates have worked for years to ensure that individual clients are accommodated on a case-by-case basis, the need for significant systemic change is imperative.

¹ Source: NYC Department of Homeless Services, via FOIL, and NYS Department of Corrections and Community Supervision.

Butler v. City of New York

In May 2015, The Legal Aid Society sued the City of New York and DHS on behalf of two clients who were attempting to enter an adult family shelter but were unable to do so because DHS did not accommodate their respective disabilities. On August 3, 2016, Legal Aid amended the complaint to include five additional named plaintiffs as well as the Coalition for the Homeless and Center for Independence of the Disabled New York (CIDNY) as institutional plaintiffs.² The case was also converted to a class action on behalf of all disabled New Yorkers who were residing in or had attempted to enter shelters. After extensive settlement negotiations and a Fairness Hearing before Judge Sweet in the Southern District of New York, the Stipulation of Settlement³ was signed and became effective on December 7, 2017, and will remain under the Court's jurisdiction for at least five years.

The *Butler* settlement mandates the City to retrofit existing facilities and include these accommodations at future shelters to ensure accessibility for homeless New Yorkers with disabilities, and to ensure that accessible shelters are not segregated in any one part of the city. In order to comply with the agreement, the City will likely have to replace many older, non-compliant shelters and offices with new facilities, providing a further rationale for Mayor de Blasio's proposed citywide shelter plan. The *Butler* settlement was designed to accommodate the various stages of a complex, large-scale, systemic overhaul of New York City's shelter system. The various stages of the plan build upon one another over a five-year period, and the settlement includes specific milestones and deadlines that dictate how and when the changes are made.

Generally, the settlement requires the City to:

- Provide reasonable accommodations to ensure meaningful access to homeless shelters;
- Survey existing shelters and offices to identify barriers to access;
- Make accessible shelters available where people need them, so that people with disabilities are not segregated from the general population;
- Ensure that emergency plans recognize the particular needs of people with disabilities;
- Develop procedures to secure the shelter placements of residents who are hospitalized;
- Retrain staff consistent with the City's legal obligations;
- Provide communication accommodations for individuals who are seeing- or hearing-impaired;

² The Butler Amended Class Action Complaint can be viewed at http://www.coalitionforthehomeless.org/wp-content/uploads/2017/08/FiledComplaint_Aug2017.pdf.

³ The Butler Stipulation of Settlement can be viewed at <https://www1.nyc.gov/assets/dhs/downloads/pdf/butler-settlement-agreement.pdf>.

- Modify existing procedures to ensure they do not discriminate against people with disabilities; and
- Assess the expected demand for shelter by people with disabilities and develop a plan to provide sufficient shelter to meet that demand.

As Legal Aid continues to monitor the City's compliance with the settlement over the coming years, Plaintiffs have the ability to assist advocates when their clients are unable to access shelters or obtain reasonable accommodations at all, or in a timely manner. Advocates should contact us at ButlerCase@legal-aid.org to receive the form for clients to obtain informal relief as the settlement period continues.

Exclusion from Shelter for Single Adults with ADL Assistance Needs

In the meantime, Coalition and Legal Aid continue to advocate for DHS to meet the needs of people with disabilities. A current pressing concern relates to how DHS accommodates individuals in shelters who require assistance with activities of daily living (ADLs) in order to live independently. This may include assistance transferring from a wheelchair to a bed, or assistance bathing and toileting. There are individuals who may require such assistance, but who do not have such severe or acute medical needs that they require placement in a medicalized setting. They are thus able to live independently with assistance – such as from a home care attendant.

A recent DHS policy issued in June 2018 governing discharges by healthcare facilities explicitly states that any single adult who needs any basic assistance with his or her ADLs is deemed not appropriate for shelter, with no alternative independent setting offered. The policy allows for limited personal assistance of short duration, such as for wound care or injections, but has a strict threshold for ADL independence beyond short-term assistance. It is worth noting that this policy does not apply to families with children or adult families (families with no minor children) – thus, household composition is the only barrier to an individual in need of shelter who also requires assistance with ADLs.

EC is paralyzed from the waist down and uses a wheelchair to ambulate. She is unable to bathe or transfer to bed on her own and, per her doctor's orders, is in need of a home health aide. Coalition for the Homeless monitors have met her on several occasions and have been documenting her needs to DHS since mid-June. DHS has not provided appropriate accommodations to her and maintains that she is inappropriate for shelter, despite her ability to care for herself with assistance.

AP requires a home health aide per her doctor's orders for multiple health-related issues, including a history of stroke and a seizure disorder among other conditions. She is currently living in a DHS shelter without necessary home care, despite Coalition monitors notifying DHS of her needs in mid-June.

Access Control Searches of People who Use Mobility-Assistance Devices

To date, DHS does not have a finalized and comprehensive policy for allowing search procedure accommodations for people who use mobility-assistance devices, such as wheelchairs, motorized

scooters, walkers, or canes. Current search procedures, for which guidance was only sent in April 2018, require all individuals entering a shelter to walk through a magnetometer or be searched with a handheld magnetometer. DHS requires that mobility-assistance devices also be searched and requires the individuals using them to transfer to a separate chair – but has no policy ensuring the appropriateness of the chair made available for transfer, or ensuring that transfers are done without creating discomfort or pain for the individual.

Permanent Housing Needs

The largest underlying and unmet need remains the lack of permanent, affordable housing for homeless individuals and families, particularly for those with disabilities. Without an adequate housing supply or meaningful pathway into permanent housing, individuals living with disabilities will continue to experience challenges within the shelter system. The dearth of permanent affordable housing is evidenced by the increasing amount of time people stay in shelters before finding permanent housing, with single adults staying in shelters for an average of 401 days in fiscal year 2018 – 18 days longer than the prior year’s average length of stay.⁴ Many homeless New Yorkers with disabilities experience even longer stays in the shelter system due to the limited supply of housing that is both accessible and affordable. The City must bring affordable housing solutions to scale. The Coalition and Legal Aid continue to call on the Mayor to allocate at least 10 percent of his *Housing New York 2.0* plan to homeless New Yorkers, including 24,000 units to be created through new construction. Newly built units have a much greater likelihood of appropriately accommodating the needs of individuals with disabilities, particularly those with physical disabilities and mobility-assistance devices. With our recommendations, the Mayor’s housing plan has the potential to make a real and meaningful impact in reducing homelessness and related trauma and suffering.

Conclusion

We thank Chairs Diana Ayala and Stephen Levin, as well as Speaker Corey Johnson, for allowing us to testify regarding these important issues. We welcome the opportunity to answer any questions.

⁴ Source: Fiscal 2018 Mayor’s Management Report.

About The Legal Aid Society and Coalition for the Homeless

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 more than 1,100 lawyers, working with some 800 social workers, investigators, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 26 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 more than 1.7 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 uniquely positioned to speak on issues of law and policy as they relate to homeless New Yorkers. 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. The Society, in collaboration with Patterson Belknap Webb & Tyler, LLC, filed *C.W. v. The City of New York*, a federal class action lawsuit on behalf of RHY in New York City. Our goal in litigation is to ensure that the City creates and maintains enough youth-specific beds to meet the needs of *all* youth seeking shelter. The Society, along with institutional plaintiffs Coalition for the Homeless and Center for Independence of the Disabled – NY, settled *Butler v. City of New York* on behalf of all disabled New Yorkers experiencing homelessness.

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 3,500 homeless New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness, which is now in its fourth decade. The Coalition also protects the rights of

homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term solutions and include: Supportive housing for families and individuals living with AIDS; job-training for homeless and formerly homeless women; 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 over 900 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx. Finally, our Crisis Intervention Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries.

The Coalition was founded in concert with landmark right to shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "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, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws.