

Defendant's Remedial Plan

Definitions

1. "Finality" shall mean the date all appeals of the August 3, 2005, Order entered in this action are finally determined by the Court of Appeals or any other applicable appeals.
2. "Social services districts" shall mean the Human Resources Administration (HRA) in the City of New York (NYC) and the local social services districts in each of the other counties of New York.
3. "Rest of State (ROS) districts" shall mean all local social services districts outside NYC.
4. "Public assistance" shall mean ongoing cash benefits, granted under the Family Assistance or Safety Net Assistance programs as provided in the New York Social Services Law.
5. "Remedial class members" and "Doe cases" shall mean all families with children residing in the same dwelling unit, consisting of at least one individual who received or will receive Supplemental Security Income (SSI) and at least one individual who receives, has applied for or will apply for ongoing cash benefits under the Family Assistance and/or Safety Net Assistance programs in New York, and against whose public assistance benefit the proration under 18 N.Y.C.R.R. §352.2(b), as amended July 7, 2004, was applied.
6. "Active NYC Doe cases" shall mean the cases of NYC class members currently receiving ongoing public assistance, including cases of class members no longer receiving public assistance so long as said class member was receiving ongoing public assistance at any time on or after July 7, 2004, and also is receiving ongoing public assistance at the time of the first Mass Reauthorization (MRA) referred to in paragraph 14(B) below.
7. "Closed NYC Doe cases" shall mean the cases of NYC class members no longer receiving ongoing public assistance at the time of the first MRA referred to in paragraph six (6) above, so long as said class member was receiving ongoing public assistance at any time on or after July 7, 2004.

8. "Active ROS Doe cases" shall mean cases of class members outside the City of New York currently receiving ongoing public assistance on the date of issuance of the General Information System (GIS) referred to in paragraph 10 below.

9. "Closed ROS Doe cases" shall mean cases of class members outside the City of New York no longer receiving ongoing public assistance at the time referred to in paragraph 8 above.

Timing and issuance of directives

10. OTDA will issue a General Information System (GIS) message within five (5) business days following finality informing all local social services districts of the July 14, 2005, Decision and Order of Supreme Court and:

- A. directing said districts to immediately cease performing proration of grants pursuant to 18 NYCRR §352.2(b) prospectively with regard to applications for public assistance and recertification of eligibility for public assistance; and
- B. providing procedures that OTDA will require ROS local social services districts to revise the budgeting of Doe cases prospectively, and procedures that OTDA will require ROS and NYC local social services districts to make retroactive payments to Active Doe cases and eligible class members as defined in paragraph 21 below.

11. OTDA will issue an Administrative Directive (ADM) within (8) eight weeks following finality informing local social services districts of:

- A. the procedures that OTDA and the local social services districts will be required to follow with respect to Closed Doe cases that were closed after the challenged amendment to 18 NYCRR §352.2(b); and;
- B. the information that local social services districts will have to provide to OTDA.

Fair Hearings

12. The Office of Administrative Hearings will distribute a copy of the GIS message and the ADM described in paragraphs 10 and 11 to all Administrative Law Judges (ALJs) and Supervising ALJs within five (5) business days of their issuance, and instruct them to immediately cease enforcement of 18 NYCRR 352.2(b), as amended on July 7, 2004, in all pending and future fair hearings.

Issuance of prospective and retroactive benefits to Active Doe cases

13. The procedures for restoring benefits to class members will differ between NYC and in ROS.

14. Procedures for restoring public assistance benefits to Active NYC

Cases:

- A. OTDA will identify all cases that have been identified with a "Doe" code;
- B. Within two (2) months of finality, OTDA will commence an MRA for Doe cases based upon the current household composition that will calculate and adjust the prospective budget for all Active NYC Doe cases.
- C. Within ten (10) days after completion of the MRA referred to in (B) above, OTDA will send or cause to be sent to such cases notices which inform Active NYC Doe cases of the effective date of their prospective level of benefits, including a copy of the prospective budget or the basis for the computation, and which advises them that they will receive retroactive benefits no later than six (6) months from the dates of such notices.
- D. Within six (6) months of finality, a second MRA calculating retroactive relief will be run for all NYC Doe cases which, based upon the household composition at the time that prospective budgeting was revised in the first MRA referred to above, will calculate the difference between the ongoing public assistance grant before and after pro-ration and multiply that amount times the number of payment cycles that the person received reduced payments

attributable to prorationing in effect after the July 7, 2004, amendment to 18NYCRR § 352.2(b). This will constitute the amount of retroactive benefits. Thereafter, such cases will receive written notice advising them of the amount of retroactive benefits that they will receive and how the retroactive relief was calculated. The retroactive benefits will be paid or made available within 15 days of the written notice.

E. The notices described in paragraphs (C) and (D) will advise each class member referred to in (B) and (D) above, of his or her rights under 18NYCRR § 358-2.2 if he or she believes that the prospective or retroactive benefits were improperly calculated.

15. Procedures for restoring public assistance benefits to ROS Active Doe cases:

A. Within one (1) month of finality Doe, OTDA will provide each ROS district with a list of all Active Doe cases in its district that are coded as pro-rated. These cases will include Doe cases as the substantial subset of cases coded for proration.

B. Each ROS district will be instructed to review its list of active cases, identify all Doe cases on said list, and revise the budgeting in all cases prospectively at the earlier of next client contact or next recertification, but no later than six (6) months from the date that OTDA provides the local social services district with the list.

C. The retroactive relief will be calculated using the formula used by OTDA for the NYC cases.

D. The ROS districts will be instructed to provide Active Doe cases with written notice advising them of the amount of prospective, and retroactive benefits, and a description of how retroactive relief was calculated. These notices will advise each class member of his or her rights under 18NYCRR § 358.2.2 if he or she believes that the retroactive benefits were improperly calculated.

E. OTDA will review the lists which have been processed by the ROS districts no later than seven (7) to eight (8) months after the lists are sent, to assure that all cases have been identified, benefits issued and notices sent.

Procedures for Active Cases That Have Moved

16. OTDA will develop a process to identify Active Doe cases that have moved from one social services district to another and OTDA will develop a procedure to assure that they receive the retroactive benefits to which they are entitled under this Remedial Plan.

Notices Generally

17. All notices, unless otherwise specified, sent to Plaintiff class members will be adequate notices as described in 18 NYCRR 358-2.2.

18. OTDA will identify all Remedial Class members whose ongoing public assistance cases were closed since July 7, 2004, and OTDA will check the computerized databases of Food Stamp and Medicaid cases to assure that the address of each closed public assistance case used to send the letter referred to in paragraph 20 is the most current address available.

19. OTDA will resend notices and letters that are returned with a sticker affixed by the United States Postal Service (USPS) indicating a new address for the addressee but stating that the time period that the USPS will forward such mail has expired.

Procedures for issuance of prospective and retroactive Benefits to eligible NYC and ROS Closed Doe cases

20. Within four (4) months of finality, OTDA will send a letter (not an “adequate notice” as specified in paragraph 17, above), in a format to be commented on by counsel for the Plaintiffs, to each class member with a Closed Doe case. Said letter will offer the household the opportunity to have its eligibility for public assistance evaluated. The letter will inform each such class member that he or she has 60 days from the date the letter was mailed to said class member to respond in writing to the letter from OTDA. Such time limit for response is without prejudice to any right such class member has under any provision of law to claim good cause for failure to have timely asserted his or her right to respond to the letter timely.

21. Application Process for Closed NYC and ROS Doe cases:

A. In NYC and ROS, those Closed Doe cases that respond timely to the letter from OTDA referred to in paragraph 20 above, and keep the appointment scheduled by the local social services district or the appointment rescheduled by the local social services district at the request of such person will need only to verify information relevant to the calculation of benefits; they will not be required to re-verify items already on file if applying in the local social services district with the file, and will not be required to participate in orientation or other “up front” activities (they may be finger imaged for purposes of verifying identity) until after a decision is made on their eligibility. The district shall reschedule the appointment at the request of any such person who contacts the local social district within 60 days of the date of the letter from the local social services district scheduling said appointment.

B. In ROS, for those with Closed Doe cases that are found eligible for ongoing public assistance, the local social services district will be required to open the case, and issue retroactive benefits within 30 days (Family Assistance) or 45 days (Safety Net Assistance) of the appointment referred to in 21(A), above.

C. In NYC, for cases that meet the definition of a closed case as set forth in paragraph seven, above, an MRA will be conducted no later than 180 days following the issuance of a list by OTDA to HRA of the last of the closed cases to respond to the letter referred to in paragraph 20, above. The MRA will calculate the underpayment for each case that has reapplied and the determination of eligibility or ineligibility for public assistance has been made. Such calculations of retroactive benefits will be based on the same formula as set forth in paragraph 14(D), above, except that when no “before” and “after” figure can be found, the retroactive payment will be based on an average monthly amount.

D. The calculation of ROS Closed Doe cases retroactive benefits referred to in paragraph (B) immediately above will be based on the same formula described in paragraph 14(D).

E. If such a Remedial Class member is eligible for ongoing public assistance, he or she will receive a payment for the months that the household would have been eligible for benefits except for application of the budgeting method required by the July 7, 2004, amendment to 18 NYCRR 352.2(b).

G. If such a Remedial Class member is not eligible for ongoing public assistance, he or she will receive a letter advising him or her of the amount of the retroactive payment, how it was calculated and that the payment will be made should he or she become eligible for public assistance in the future.

22. One-hundred and eighty (180) days after OTDA mails the letters referred to in paragraph 21 to Closed Doe cases in ROS districts, OTDA will review the closed case lists for each local social services district, and for those cases that responded to the OTDA letter pursuant to this remedial plan, will investigate whether benefits or a notice denying eligibility for benefits have not been issued.

23. OTDA will direct local social services districts to provide notice as defined in 18 NYCRR 358-2.2 to all Closed Doe class members whose public assistance cases were closed since July 7, 2004, who apply for public assistance pursuant to the terms of this Remedial Plan, and who are denied such assistance. In NYC, a notice to such class members regarding the calculation of the retroactive amount will be sent within 10 days following the MRA to compute such amount. In ROS, the notice regarding the retroactive amount will be provided as part of the denial of public assistance notice. The notice regarding the retroactive calculation will inform such class members of their right to receive such retroactive amount only if they apply and become eligible for ongoing public assistance in the future.

24. OTDA will direct local social services districts to provide adequate notice as defined in 18 NYCRR 358-2.2 to all Doe class members whose public assistance cases were closed since July 7, 2004, who apply for public assistance pursuant to this Remedial Plan and who are determined eligible. In NYC, a notice regarding the calculation of the retroactive

amount owed to such class members will be sent within 10 days following the MRA to compute the retroactive amount.

25. Should OTDA, up to and including 12 months after finality, become aware of Remedial Class members who would have been entitled to relief under this Remedial Plan had they been identified as class members under paragraphs 14 (A) and 15 (A) and were inadvertently not identified, or should OTDA identify such class members who are entitled to relief under this Remedial Plan but who have not received the relief to which they were entitled, OTDA will determine why the class members were not identified and whether the cause was a systemic error or an individual error. If OTDA discovers a systemic error, it will correct the error for all class members affected by it. OTDA will, as appropriate, provide or direct districts to provide the notices and/or benefits to any class members identified under this paragraph that they would have received if they had been identified at the times specified in paragraphs 14(A) or 15 (A). Additionally, OTDA will notify counsel for the plaintiffs within 30 working days of the discovery of any systemic errors of the following: the nature of the error; the approximate number of cases affected; the social services district(s) to which the error applied; the corrective action that has been or will be taken to correct the error. OTDA will notify plaintiffs' counsel of completion of the corrective action.

“Fast Track” Relief

26. OTDA will direct ROS districts to expeditiously restore benefits and revise the underpayments of all class members identified in the list attached as Exhibit A within 60 days of the issuance of the GIS; provided, however, that in no instance shall any payment be made to any such case identified in the list whose public assistance case is closed on the date of the issuance of the GIS if said household would be ineligible for public assistance with corrected budgeting applied to the case. All ineligible class members on this list shall be provided with a letter as set forth in Paragraph 21 F of this remedial plan advising the class member how to obtain a retroactive payment in the event that he or she becomes eligible for public assistance in the future

Rent supplements and Doe Pro-ration

27. OTDA will identify all Doe Remedial Class members in which the household has received a shelter supplement that is actively being recouped for the payment of rent arrears which were calculated based on Doe proration prior to the receipt of the rent supplement. OTDA will revise the overpayment of recoupable rent arrears paid, and adjust the recoupment that was based on the amount of such arrears accordingly. In the event said recoupment has been repaid, OTDA will restore any excess amount recouped to Active Doe cases. Each of these Doe class members will receive an adequate notice as defined by 18 NYCRR 358-2.2 indicating the adjusted amount of said recoupment.

Income/Resource Exclusion

28. In the event an Active NYC or ROS DOE case receives restoration of public assistance (i.e. cash assistance) as provided for this remedial plan, such assistance will not be considered as income or as a resource for public assistance purposes.

Calculation of retroactive awards for SSI recipients

29. Within six months of finality, the Defendant will develop and implement a process to identify ROS Active Doe cases that have received retroactive awards of Supplemental Security Income (SSI) covering periods back to July 7, 2004, while receiving Family Assistance. Defendant will develop and implement a process for determining if said class member was underpaid by the Social Security Administration (SSA) because the social services district reported to SSA that the class member received a prorated rather than an incremental amount of Family Assistance as a result of Doe prorationing while his or her SSI application was pending. Defendant agrees to restore the underpayments of SSI benefits to such class members, and to provide an adequate notice as defined by 18 NYCRR § 358-2.2 to each class member so affected indicating the among of such restoration, the manner of it's calculation and the class member's right to a fair hearing to challenge the calculation of the restoration.

Local Contact information

30. OTDA will require each ROS district outside of NYC to identify a “Doe implementation” contact person. OTDA will require NYC to identify at least two “Doe implementation” contact persons. OTDA will provide a list of said contact persons to counsel for the Plaintiffs within 30 days of finality.

Restoration of Recouped Aid Continuing

31. OTDA will direct local social services districts to restore to Active Doe cases any aid continuing that was recouped as the result of an adverse Doe fair hearing decision, provided the retroactive payment (see paragraphs 14(D) and 15(C)) does not or has not effectively restored such aid continuing. Said restored benefits will not be used to offset any other public assistance overpayments which may be owed by the Doe class member.

32. Where any Active or Closed Doe Remedial Class member has an outstanding overpayment as a result of aid continuing provided pending the outcome of an adverse decision after a fair hearing challenging the budgeting at issue in this litigation, said class member will receive an adequate notice as defined by 18 NYCRR 358-2.2 advising said class member that said overpayment is being terminated and the amount of such overpayments provided that retroactive payment (see paragraphs 14D and 15C) does not or has not effectively restored such aid continuing.

Notices to be in Spanish and English

33. All notices sent to Remedial class members pursuant to this Remedial Plan will be in Spanish as well as English, unless otherwise agreed upon by the parties; and provided it sets no precedent whatsoever.

Monitoring: Active Cases

34. OTDA will provide a written report to counsel for the Plaintiff class providing the following information for each local social services district:

- A. For NYC - the number of Doe class members identified;

- B. For ROS Districts - the number of pro-rated cases provided to each district and the number of cases that were identified as Doe cases from that list;
- C. For NYC and ROS, the number of cases revised prospectively; the number of cases provided retroactive benefits, and the aggregate amount in retroactive benefits paid.
- D. For NYC, the report described in this paragraph will be issued within one week after the retroactive benefits are issued.
- E. For ROS, the report will be issued six (6) months after OTDA provides the lists of potential Doe class members to the districts.
- F. OTDA will report to counsel for the Plaintiff class on the number of unpaid cases per district and the reasons for any cases not paid, within seven (7) months of finality.
- G. Fifteen (15) days after the report referred to immediately above, OTDA will direct ROS districts to perform all corrections and issue payments within thirty (30) days.
- H. OTDA will repeat the process in paragraphs F and G until all identified class members are paid.
- I. OTDA will maintain a list of such cases for inspection, if necessary.

Monitoring: Closed Cases:

35. OTDA will provide a written report to counsel for the Plaintiff class providing the following information for each local social services district:
- A. The number of Closed Doe cases identified;
 - B. The number of persons who were sent a letter inviting them to apply for ongoing public assistance;
 - C. The number of persons who applied for ongoing public assistance and were determined eligible;
 - D. The number of persons who applied and were determined ineligible;
 - E. The aggregate amount of retroactive benefits paid;

F. The number of letters sent to closed cases and returned as undeliverable; the number resent after new address was provided by a USPS, and the number of those letters returned as undeliverable.

G. The report described in this paragraph will be issued within eight (8) months of finality.

H. The timeframe set forth in G above shall be extended by the number of additional months that may be added if OTDA determines to stagger the letters to closed cases to allow for a more orderly application process.

36. OTDA also will provide a written report to counsel for the Plaintiff within six (6) months of finality, providing the following information for each local social services district:

The number of class members who received a shelter supplement and had their rent arrears paid in recoupable amounts which were based on pro-rated budgeting, as described in paragraph 9. OTDA will provide the number of households for which corrective payments were made, the number of households for which recoupments were adjusted, and the aggregate amount of such payments made in each district.

Continuing Obligation to Provide Information

37. The parties will continue to provide counsel for one another with information about any unforeseen circumstances that would impair timely performance of OTDA's obligation under this plan.

Exhibit A

Class Members Covered By Paragraph 26

To be Filed Under Seal