



**GIMME SHELTER
SHARE: How to
Challenge a DSS Shelter
Share Requirement**

Presented by
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House Keeping

Please keep your microphone muted.

Please put questions in chat or raise your hand.

Thank you!



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- Direct representation, phone consultations
- Brief service or referrals
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- Case handling staff includes attorneys, paralegals, and social workers
- Partnerships with Community Agencies



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- Education Debt Consumer Advocacy Project
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- Adult Care Facility Unit
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- Pro Bono Project (Suffolk)
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WHAT IS SHELTER SHARE?

- Shelter share, or shelter contribution, is the “rent” that a homeless client must pay to the local Department of Social Services (DSS) to receive Temporary Housing Assistance (THA)
- 16-ADM-11 advises local districts that a homeless person who has available income, either earned or unearned, must budget the income using temporary assistance (TA) budgeting rules. As a result, a homeless client with income will be paying some of their income towards the cost of temporary housing.
- DSS must inform the homeless client in writing how much the household must pay per month, as well as when, how and where to make the payments.



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HOW IS SHELTER SHARE CALCULATED?

- TA budgeting rules apply except DSS must use the actual cost of the temporary housing rather than the maximum shelter standards established by regulations.
- As a result, some households with income may be eligible for THA but would not be eligible for TA if they were residing in permanent housing. (16-ADM-11)
- DSS has the right to ask for the full amount (16-ADM-11)



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SHELTER SHARE BUDGET EXAMPLE 1

- A mother and two children under the age of 18 are residing in a homeless shelter in Nassau County. Meals are not included, and the family is not able to prepare meals in the shelter.

Basic Needs - \$336
 Home Energy/Supplemental Home Energy - \$53
 Shelter - \$3,500
 Restaurant allowance - \$ 264 (\$64 + \$100 for each child)

Total: \$4,153

The family will receive a cash grant of \$653.



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SHELTER SHARE BUDGET EXAMPLE 2

- Same example, but the mother receives \$1,500 per month in Social Security Disability benefits. She will be required to contribute to the cost of THA.

Basic Needs - \$336
 Home Energy/Supplemental Home Energy - \$53
 Shelter - \$3,500
 Restaurant allowance - \$ 264

Total: \$4,153
SSD (\$1,500)

\$2,653 (vendor to shelter)

The shelter will receive \$2,653 from DSS but the cost of the shelter is \$3,500. The mother will be expected to contribute the difference. In this case, her shelter share will be \$847.



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WHEN CAN DSS DISCONTINUE THA

- The shelter share is part of the independent living plan (ILP)
- When a client unreasonably fails to comply with the ILP, DSS can discontinue the clients THA.
- If the client unreasonably fails to comply with the ILP two or more times, DSS may place a 30-day sanction until the failure ceases.
 - 18 NYCRR 352.35(c)(2).



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CONSEQUENCE FOR NOT PAYING SHELTER SHARE

- The penalty for failure to pay the shelter share is not the same as penalties for non-compliance with ILP. Meaning there is no disqualification period. The client can immediately reapply and agree to pay the full share.
- If the client fails to pay again, the client must demonstrate compliance in the second instance of failure.
- The problem with this, when clients go to reapply at DSS, the window workers will often refuse to reopen their case. It often takes the advocate reaching out to the DSS supervisor for the client to be seen.
 - 16 ADM 11, FH# 9042958Z



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WHAT HAPPENS WHEN CLIENT IS NOTIFIED THAT THEIR THA IS BEING DISCONTINUED

- DSS must issue a notice of discontinuation
- Client must request a fair hearing within 10 days of the notice to obtain aid to continue (ATC). 60 days deadline to request a fair hearing.
- Fair hearing will be given on an emergency basis- so date may be 2 weeks out
- ATC continues until decision is issued



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STEPS DSS MUST TAKE BEFORE DISCONTINUING THA

Determine if there is a need for an APS or CPS referral

- 18 NYCRR 352.35(d); FH# 9042958Z

THA assessment must be conducted

- Assessments need to be conducted prior to the determination to discontinue THA (FH# 9010173Y; 16 ADM 11 pg. 2).
- A referral to APS or CPS has been included in the THA assessment, from what we have seen in DSS case comments. But this goes to the same point that the assessment/referral has to happen pursuant to failure to comply with the rules.
- DSS cannot rely on an assessment done at an earlier time FH# 9017578Q



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STEPS DSS MUST TAKE BEFORE DISCONTINUING THA CONT.

Provide adequate and timely notice

Under 18 NYCRR 358-2.2, an adequate notice must contain:

- For reductions, the previous and new amounts of assistance or benefits provided;
- The effective date of the action;
- The specific reasons for the action;
- The specific laws and/or regulations upon which the action is based;
- The recipient's right to request an agency conference and fair hearing;
- The procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- Among many other requirements



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STEPS DSS MUST TAKE BEFORE DISCONTINUING THA CONT.

- Under 18 NYCRR 358-2.23, a timely notice must be mailed at least 10 days before the proposed action becomes effective.
- DSS has tried to give clients an LDSS-4002 (action taken on request to meet immediate need; usually used for one-shots) to discontinue THA. Under FH# 9010173Y, this notice is not timely nor adequate because it does not meet the specifications of 18 NYCRR 358-2.2



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STEPS DSS MUST TAKE BEFORE DISCONTINUING THA CONT.

- If DSS is simply moving the client from one shelter/hotel to another, and they are still providing THA, they do not need to provide a timely notice, but an adequate notice must be provided to challenge the adequacy of the new accommodation (94 ADM 20, page 36, 39)
- A timely and adequate notice, and an opportunity for a FH is required when the transfer to another temporary housing accommodation would result in a change in the PA grant provided directly to the family. (pg. 39).
 - Ex: when someone is in a shelter that does not serve meals, and is eligible for the RMP, but then they are moved to a shelter that serves food. Timely notice is required here unless the person signs a statement providing that they no longer need the PA.



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DEFENSES

Mental or physical impairment- no assessment done or inadequate assessment

- Can still argue that client may not be discontinued, because they have an impairment, even if an assessment was completed.
- THA will not be denied or discontinued for failure of the individual or family to comply with the ILP when such failure is due to the physical or mental impairment of the individual or family member
- Claims that a mental or physical impairment was the cause of noncompliance, must never be dismissed outright, but must be given serious consideration and investigated further.
16 ADM 11, pg. 12



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DEFENSES CONT.

Examples of mental impairment:

- Severe anxiety/nervousness
- Acting out/hallucinations
- Disorientation/confusion
- Inappropriate responses/reactions
- Non-responsiveness
- Mood/depression
- Agitated, disruptive, or hostile behavior
- Poor concentration or attention span
- Multiple/extended hospitalizations
- Periodic confinement in a mental institution
- History of treatment in a mental health clinic or by a private therapist
- High prescription medication usage.



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DEFENSES CONT.

Examples of physical impairments:

- Restricted mobility/inability to walk without aid
- Amputation/paralysis of limbs
- Uncoordinated body movements/palsy
- Memory loss/blackout
- Poor vision/blindness/inability to read print
- Poor hearing/deafness



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DEFENSES CONT.

- Further, if there is an impairment present, a referral to an appropriate qualified professional may be needed to determine if the impairment(s) are the cause of the noncompliance. 16 ADM 11, pg. 9
 - See FH# 9018733Q for an example of DSS not meeting their burden of showing an appropriate qualified professional determined that noncompliance was not because of an impairment.
- DSS has tried to argue that there is no mental or physical impairment present when they assess the client and the client denies any issues. However, under FH# 7576734H, the ALJ ordered that DSS withdraw their discontinuation notice and refer the appellant to an appropriate qualified professional because she was observed with impairments despite denying them during an assessment.
 - However, it is best practice to get a doctor's note to DSS documenting the impairment.



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DEFENSES CONT.

Inadequate and/or untimely notice

No determination of APS or CPS referral being made.

THA Discontinuation Pending

- DSS may not discontinue PA on the basis of client failing to pay shelter share, when the determination to discontinue THA is still pending. FH# 9018733Q

DSS not meeting their burden at the hearing

- This can be because DSS failed to provide an evidence packet or appear
- DSS not showing documentation of an assessment or DSS writing in their case comments that an assessment was done, but not providing the report (FH# 9018733Q)
- DSS not showing documentation of an APS or CPS referral; or decision not to refer.
- DSS failed to produce documentation of what they are alleging
 - Example: FH# 7358663L- recipient did not keep an appointment under her ILP due to her ADHD. DSS failed to provide proof.



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HOW TO LOWER SHARE

- There are very few arguments for lowering the shelter share
- If DSS finds that there are physical or mental impairment(s) causing noncompliance, then DSS may revise the ILP. (16 ADM 11)
- Revising the ILP may include adjusting shelter share
- Can argue that if a client has income earmarked for certain things, DSS cannot count it as available income to calculate shelter share 02 ADM 02
 - Cash that is earmarked for essential items such as transportation expenses for employment/medical needs, food or necessary items of need



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Other situations in which DSS may discontinue THA:

- Failure to submit housing search; failure to seek permanent housing 18 NYCRR 352.35(c)(3)
- Failure to submit a job search/ take part in employment and training programs
- Failure to participate in rehab services
- Failure to participate in child support enforcement program
- Failure to apply for SSI benefits
- Failure to meet requirements for location of resources
- Failure to accept permanent housing 18 NYCRR 352.35(e)
- Failure to comply with an ILP 18 NYCRR 352.35(c)(2)
 - Examples:
 - Creating an unsafe environment 18 NYCRR 353.35(c)(4)
 - Unauthorized overnight guests
 - Drug use
 - Anything written in the ILP
 - DSS discovers the recipient has available housing elsewhere 352.35(g)



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Thank you for attending!

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