



WAIVERS AND EMERGENCY GUIDANCE RELATED TO PUBLIC BENEFITS IN NEW YORK DURING THE COVID-19 EMERGENCY DECLARATION

The information compiled below is taken from a number of different sub-regulatory sources and grouped by benefits topic area for ease of reference during this emergency. Because many of the waivers presented are at county option, there are also a few notes highlighting situations where advocates may need to clarify the practice with their local department of social services (“LDSSs”). Please note that this information is likely to change further, so check the version and date in the document footer to ensure you have recent information.

LDSS Office Operations

In spite of the declaration of emergency and directive to populate all open offices sparsely (75% staff reductions on site and maximum use of remote work possible by March 22, 2020, per Executive Order 202.7), the LDSSs are required to be open during their regular business hours, meet emergency needs, and respond to requests for assistance consistent with their prior obligations (see 20 GIS TA/DC016 at 5). Social services districts provide essential services and are exempt from the State’s restriction on in-person work (20 GIS TA/DC018 at 1).

Just as prior to this public health emergency, each LDSS remains obligated to accept and register applications on the day an individual makes an application to DSS for the form of assistance he or she feels is most appropriate to meet their needs. **LDSSs offices must have staff available during core business hours to address and meet the needs of individuals who apply for or receive benefits...regardless of county-wide mandates to close county government offices** (20 GIS TA/DC018 at 2). Applications can continue to be submitted in person, by mail, fax, scan, online or by remote app (where these capacities exist). LDSS may use a drop box to receive applications at the office if people are not coming inside but must check it throughout the day and at the end of the day to ensure that they can respond to emergencies in a timely manner (20 GIS TA/DC023 at 2-3, Q.8). LDSSs must also ensure their continued ability to handle after hours emergencies, as they have been required to do previously.

The current waiver provisions permit the LDSSs to **issue non-photo benefits cards** in order to facilitate access to assistance without requiring in-person appearance at the LDSS office.

It is also worthwhile to note that [Executive Order 202.7](#) permits notary by video conference if necessary, as some LDSS have asked clients to get notarized documents under

various circumstances (effective through April 18, 2020 at this point). OTDA has clarified that the LDSS-4930 form used for assignment of wages can be pended until there is in-person contact due to good cause at this time and need not be immediately notarized (GIS 20 TA/DC023 at 1, Q.1).

Refundable Tax Credit Rebate Payments Issued Under the Federal CARES Act:

- For all forms of Temporary and Emergency Assistance—Family Assistance, Safety Net Assistance, Emergency Assistance to Families, Emergency Assistance to Adults, Emergency Safety Net Assistance
 - Federally funded stimulus rebates paid directly to individuals are excluded from treatment as income for initial and recurring eligibility determinations and benefits calculations for the month in which the payment is received and the two following months.
- For SNAP
 - Federally funded stimulus rebates are excluded from treatment as income.
 - For applicant households, the stimulus rebate is excluded from treatment as a resource in the month it is received and the following month. Any remaining balance could be treated as a resource after that time. NOTE—most household in New York are still not subject to a resource test under current categorical eligibility rules.
 - For recipient households, the stimulus rebate is excluded from treatment as a resource for 12 months following receipt of payment.
- For HEAP
 - Stimulus rebate payments are excluded from treatment as countable income for Regular HEAP, Emergency HEAP, Heating and Equipment Repair (HERR), Heating Equipment Clean and Tune (C&T); and Cooling Assistance.
 - Stimulus rebate payments are excluded from treatment as a liquid resource for Emergency HEAP or HERR.

Temporary Assistance

All current public assistance cases slated to recertify in March, April or May 2020 were automatically extended for three months by coordinated computer process at the state level. The change ran on March 27, 2020, for the NYC system and March 28, 2020, for the Rest of State system.

LDSSs should not impose sanctions for non-compliance with requirements that require in-person contact or where the person has good cause related to the COVID-19 emergency (GIS 20 TA/DC023 at 2). Emergency guidance directed LDSSs to “consider the extent to which such factors [quarantine, lack of child care, worksite closure, etc.] may have affected an individual’s ability to meet program requirements and may document good cause” (GIS 20 TA/DC013 at 2; see also GIS 20 TA/DC023 at 2 note). In essence, OTDA has urged LDSSs to make broad and ready use of this emergency as a reason for waiving penalties and looking beyond strict programmatic compliance; this is referenced in multiple locations in both GIS 20 TA/DC013 and GIS 20 TA/DC016. **LDSSs that use the mail-in recertification**

process should not take negative action on recertification packets that are not received through May 15, 2020 (GIS 20 TA/DC023 at 2, Q.4; GIS 20 TA/DC 016 at 2). The guidance doesn't specify that LDSSs should suspend all terminations and sanctions, though it certainly seems have the authority to do this, and should be encouraged to take this option.

For individuals who have served a sanction and are now seeking to return to assistance after the durational period of the sanction has run, the district should lift the sanction and may only require an in-home activity for them to demonstrate compliance (GIS 20 TA/DC023 at 5, Q.1).

Interviews by Telephone: While a face to face interview is generally required for public assistance (see 18 NYCRR §§ 350.3(c), 351.20(b)(3)), *the requirement is currently waived through April 12, 2020, for new applications, and May 16, 2020, for recertifications* (GIS 20 TA/DC016 at 2). However, if an A/R requests an in-person interview, the LDSS must provide one.

LDSSs are directed to generate manual notices in order to send out information to recertifying TA recipients about the date and time of their telephone interview, and then send a written follow up to the telephone interview that indicates what additional documentation is needed to complete the eligibility determination after the interview is conducted (LDSS-2642, or local equivalent form). Essentially, this involves treating the interview and documentation process for TA in substantially the same manner as the LDSS would do an interview for a SNAP-only application with a telephone interview. **Copies of birth certificates, rather than originals, are temporarily acceptable because of this process of mailing documentation;** the original must be provided at the next feasible time (GIS 20 TA/DC023 at 3, Q.9)

Even where the LDSS is doing TA interviews by telephone, the LDSS must still conduct **required drug/alcohol or domestic violence screenings**. These mandatory screenings may also be done **by telephone**. (Soc Serv Law §§ 132 and 349-a are suspended through April 11, 2020, by the current declaration of emergency in Executive Order 202.1.)

Emergency Assistance

LDSSs can conduct phone interview for persons with emergencies through May 15, 2020.

Even where LDSSs are conducting telephone interviews for TA, **they must still screen for emergencies when the application is submitted and meet the emergency need the same day**, if present. This may require face-to-face interaction. (See GIS 20 TA/DC016 at 2.)

For Homeless and Emergency Assistance beneficiaries: **routine call-in/check-in procedures maybe be reduced in frequency, suspended and/or conducted by phone through May 15, 2020**. LDSSs are still expected to ensure the needs of persons in emergency housing are met and that they receive necessary services.

Food for Persons in Emergency Housing: restaurant allowances are available to individuals housed in a location where they do not receive meals in their home or are unable to prepare meals at home. There is also a **home-delivery meal allowance**. (See GIS TA/DC023 at 3, Q.11 for more details about both these options.)

There have been no changes to the requirements that districts are required to respond to an applicant's declaration of an emergency at the time of application and to provide appropriate notice to an applicant about meeting an immediate need, as outlined in 02 ADM-02.

In GIS 20 TA/DC013, OTDA reminded LDSSs about different eligibility requirements for emergency assistance and ongoing temporary assistance; this is not a change from prior guidance.

- “For individuals with income who may not qualify for recurring SNA, immediate needs may be met under emergency SNA in accordance with 18 NYCRR 370.3 because the emergency is the result of lost income due to COVID-19 and therefore the 125% gross income test would not apply.
- For Emergency Assistance to Families (EAF), only actual available income and resources at the time of application are counted in determining eligibility. Financial eligibility for EAF is determined if that available income on the date of application is at or below, 200% of the federal poverty level for that household size or if the household is financially eligible to receive TA.”

Employment and Training Activities (Both TA and SNAP)

LDSSs must not take negative action against applicants or recipients who fail to comply with an employment requirement that would have required in-person contact during this emergency (GIS TA/DC023 at 5, Note).

“Any TA or SNAP recipient that is **unable to comply with a work activity through May 15, 2020 must be granted good cause** if the nonparticipation is due to an inability to participate or concerns with participation due to COVID-19” (GIS 20 TA/DC016 at 3). The LDSS has the option to suspend or defer E&T activities and requirements for good cause and cite to GIS TA/DC016 as the reason thought May 15, 2020 (*id.*).

Employment orientations may be conducted by telephone, remotely or the LDSS can mail out papers to the recipient. Note: I foresee problems when the LDSS randomly mails out a pile of papers without any explanation to a public assistance recipient who is expected to comply with E&T requirements to some extent based on the content of the papers.

Employment assessments and plans can be completed by telephone and then draft plan mailed out to the recipient after the call.

For E&T participants attending an education program that offers a distance learning option, LDSSs should encourage participants to remain enrolled through the distance learning program. Through May 15, 2020, the 10 hour/week limit on remote education activity (see 08

ADM-07 at 19) is waived; in this waiver period, all remote hours are countable (GIS 20 TA/DC016 at 3).

SNAP

Mandatory Interview Can Be Waived: Applicants and recipients whose identity is verified by the LDSS and who have provided all other mandatory information and verification are NOT required to complete an application interview (GIS 20 TA/DS026 at 1; effective April 1-May 31, 2020). If both conditions are not met, the interview cannot be waived. Factors for mandatory verification are: identity, social security number, residency, gross income, disability, immigration status (see 7 C.F.R. § 273.2(f)).

The interview waiver also includes applicants for expedited benefits. The only information required to be verified when a household is eligible for an expedited issuance of SNAP is the applicant's identity (GIS 20 TA/DC026 at 2; 12-INF-06). All other verification required to establish eligibility for ongoing benefits can be pending and provided prior to issuance of ongoing SNAP benefits. If an applicant is issued expedited SNAP benefits and then subsequently the applicant verifies all mandatory information, no interview will be required.

For those applying for SNAP due to current job loss, LDSS may request but not require documentation to support the assertion of job loss. **The LDSS cannot require a SNAP applicant to provide verification of job loss from the prior employer** (GIS 20 TA/DC023 at 5, Q.4). Allowable verification could include pending application for Unemployment Insurance Benefits or self-attestation.

All current SNAP cases slated to recertify in March, April or May 2020 were automatically extended for three months by coordinated computer process at the state level. The change ran on March 27, 2020, for the NYC system and March 28, 2020, for the Rest of State system. It is unclear at this time how any potential overpayment resulting from these extended certification periods will be treated when operations return to normal at some point in the future. **Households due to submit an interim or periodic report during April or May will not be penalized for failing to return the form;** if the household does return the form, the LDSS should process changes that result in an increase of benefits.

For the months of April 2020, through the end of the month following the month in which the current public health emergency terminates, ABAWD work requirements are suspended (GIS 20 TA/DC021 at 1). ABAWDs currently facing termination will remain on benefits and those who are not currently receiving benefits may immediately reapply and complete the application process for benefits without having to “regain eligibility” under the ABAWD rule in 7 C.F.R. § 273.24(d). Any ABAWD who was unable to meet the ABAWD work requirement in March of 2020 should be identified as having good cause for noncompliance with the ABAWD work requirement attributable to GIS TA/DC016 (see p. 4).

All tax offsets for the purpose of recovering unpaid SNAP debts have been rendered inactive and will not be collected until further notice. No new notices will go out and any currently pending review requests will be extended beyond the standard 30 day timeframe.

LDSSs have the option to temporarily raise the collection threshold for SNAP overpayment claims to \$500 (rather than the \$125 amount set forth in 05 ADM-15) for active SNAP cases; note—this does *not* change the claim amount for closed SNAP cases. Disappointingly, OTDA has not directed LDSSs to alter their practices related to investigations and program violations at this point.

Additionally, the guidance provided reminders to the LDSSs about options they could undertake in operating SNAP right now, if they have not already done so. These options include:

- using telephone interviews, unless the applicant/recipient requests and in-person interview;
- maximizing the certification period for existing SNAP households to forestall recertification during the immediate emergency period; and
- use of SNAP to purchase food online through Amazon statewide, or ShopRite and Walmart in specific zip codes. Clients can enter their zip code on the Walmart or ShopRite websites to find availability (“nearest store” link). Note—this is a good reminder to clients you may be speaking to by telephone if they are not already aware.

HEAP

Per GIS TA/DC015 (effective March 13, 2020, and continuing until further notice), **the in-person application and interview requirement is suspended for HEAP applicants.** The mandatory interview may be conducted by telephone. The application itself and supporting eligibility documents may be submitted by mail, fax or mobile application, where available (Broome, Clinton, Chemung, Livingston, and St. Lawrence counties).

Child Support

Applications for the child support enforcement unit may be obtained from the child support enforcement hotline or online, in addition to in-person at the LDSS. The LDSS referral for child support may be issued to a TA applicant and then returned by mail to the child support enforcement unit (CSEU) by mail with any support documentation. The CSEU will then follow up with the applicant/recipient by telephone.

The CSEU *has flexibility* in determining whether or how a person must appear for purposes of support cooperation (GIS 20 TA/DC016 at 4, emphasis supplied). Telephone messages, email or regular mail may all constitute an “appearance” for purposes of cooperation. State regulation, 18 NYCRR 347.5, does not place a specific time limit on the cooperation requirement, so LDSS may delay determinations of cooperation in light of current public health conditions.

LDSS offices are encouraged but not required to set up telephone customer service lines for child support.

Fair Hearings

OTDA has authorized an immediate six-month pilot project of fair hearings by telephone, video conference, or “other means.” An in-person hearing will still be available when:

1. the applicant or recipient makes a request for an in-person hearing,
2. in the judgment of OAH or the Hearing Officer, a party's due process rights would best be served by conducting a hearing in-person, or
3. in the judgment of OAH or the Hearing Officer, there are circumstances presented by the appellant which make proceeding with the hearing by telephone, video, or other means inadvisable.

Interpreters will be available for appellants with language access needs the same way for these alternate formats as they would for in person hearings.

Appellants and their authorized representatives will be instructed to send copies of documentary evidence to OAH in advance of the hearing. OAH will provide all evidence electronically to the Hearing Officer. The Hearing Officer will transmit any documentary evidence received from the Appellant to the Agency via encrypted email.

Relevant Guidance Documents

- [GIS 20 TA/DC013](#), issued March 12, 2020, effective immediately;
- [GIS 20 TA/DC014](#), issued March 12, 2020, effective immediately;
- [GIS 20 TA/DC015](#), issued March 13, 2020, effective immediately and continuing until further notice;
- [GIS 20 TA/DC016](#), issued March 16, 2020, effective immediately, remains in place so long as the Governor’s declared State of Emergency remains—currently through April 11, 2020, per Executive Order 202.1;
- [GIS 20 TA/DC018](#), issued March 20, 2020, effective immediately.
- [GIS 20 TA/DC019](#), issued March 23, 2020, effective immediately.
- [GIS 20 TA/DC020](#), issued March 27, 2020, effective immediately.
- [GIS 20 TA/DC021](#), issued March 30, 2020, effective immediately.
- [GIS 20 TA/DC022](#), issued March 31, 2020, effective immediately. NOTE: This GIS was superseded by GIS 20 TA/DC026.
- [GIS 20 TA/DC023](#), issued April 1, 2020, effective immediately.
- [GIS 20 TA/DC026](#), issued April 3, 2020, effective immediately through May 31, 2020; *supersedes GIS 20 TA/DC022*.
- [GIS 20 TA/DC027](#), issued April 6, 2020, effective immediately.