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NEW YORK CITY PUBLIC HOUSING

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Public Housing

The New York City Housing Authority (NYCHA) is the largest public housing authority in the nation. NYCHA operates 345 public housing developments containing 181,856 apartments throughout the five boroughs of New York City. NYCHA reports that it provides housing to approximately 417,328 low-income residents (a figure that excludes an estimated 100,000 residents who live doubled-up in public housing). In July 2005, there were 248,132 applicants on the waiting lists for subsidized housing in the city: 147,111 applicants were waiting for Conventional Public Housing; 126,942 were waiting for Section 8 vouchers. (25,921 applicants were on both lists.) The turnover rate for NYCHA apartments is about 3.69%. The vacancy rate of apartments available for occupancy is 0.55% in July 2005.

For information about NYCHA's public housing projects, including location, travel directions, and the number of apartments in each project, see NYCHA's on-line Guide to Developments at <http://home.nyc.gov/html/nycha/tdhtml/devdirectory5.html>. For more detailed information, see NYCHA's Project Data Book at http://www.nyc.gov/html/nycha/pdf/dev_data_book.pdf. For general information about NYCHA, see <http://www.nyc.gov/html/nycha/html/factsheet.html>.

NYCHA's Annual Plan for Fiscal 2005 for its Public Housing program may be found on the web at <http://www.nyc.gov/html/nycha/pdf/ny005v01.pdf>.

Many important NYCHA materials, including its Management and Applications Manuals, can be found on line at www.probono.net.

For general information about the public housing program, see HUD's Public Housing Occupancy Guidebook (June 2003), available on-line from the National Housing Law Project at <http://www.nhlp.org/html/pubhsg/phguidebook.pdf>.

In addition, the National Housing Law Project's Tenant's Rights Handbook is a very useful resource for general information about public housing.

ELIGIBILITY CRITERIA

Residency

To apply for public housing, a family or individual must be a resident of New York City at the time of application. Applicants who are working or who have been notified that they are hired to work in New York City are treated as residents of New York City. There is no durational residency requirement.

Income

For admission in all but two of NYCHA's public housing projects (Forest Hills Cooperative and Frederick E. Samuel Apartments), a family's annual household income must not be greater than 80% of the Area Median Income for the family size as established and adjusted annually by HUD. HUD income limits for the public housing program are available on line at <http://www.huduser.org/datasets/il.html>.

The 80% income limit for New York City is shown in the chart below in the third row labeled "Tier 3." Other rows of this chart are used in connection with assigning priority to a NYCHA application. See the discussion of PRIORITIES below.

Area Median Income for NYC Effective FY 2004									
# in Household		1	2	3	4	5	6	7	8
Tier 1 < 30%	30% AMI	\$13,200	\$15,050	\$16,950	\$18,850	\$20,350	\$21,850	\$23,350	\$24,850
Tier 2 31-50%	50% AMI	\$22,000	\$25,100	\$28,250	\$31,400	\$33,900	\$36,400	\$38,950	\$41,450
Tier 3 51-80%	80% AMI	\$35,150	\$40,200	\$45,200	\$50,250	\$54,250	\$58,300	\$62,300	\$66,300

Note: Families who are already living in public housing are subject to higher "Continued Occupancy" limits. See ANNUAL AND INTERIM RECERTIFICATIONS below.

Maximum income limits for the Forest Hills Cooperative and the Frederick E. Samuel Apartments are shown below:

Maximum Income Limits for Forest Hills Cooperative (After Applicable Deductions)						
# in Household	1	2	3	4	5	6
Maximum Income	\$34,900	\$39,850	\$44,950	\$49,950	\$53,650	\$57,750

Maximum Income Limits for Frederick E. Samuel Apartments (After Applicable Deductions)					
# of Bedrooms	Studio	1	2	3	4
Maximum Income	\$27,450	\$31,350	\$39,200	\$45,560	\$51,750

(See NYCHA Dep't of Housing Applications Manual, Appendix, Exh. B.)

To determine annual income, include wages before payroll deductions of all family members 18 years of age or older. Also include net income from a business; interest, dividends, and other net income from real or personal property; periodic Social Security benefits; annuities; pensions; unemployment benefits; disability compensation; alimony and child support, and veteran's benefits. For a full list of inclusions and exclusions from annual income, see CALCULATING ANNUAL INCOME below.

Criminal Convictions

NYCHA will deny admission to a family if any person who is expected to be a member of the household has a criminal conviction and a prescribed period of time after the conviction has not elapsed. The prescribed time periods are shown in the chart below.

Criminal Conviction	Years after serving sentence (including probation/parole)
Persons subject to a lifetime registration requirement under a State sex-offender registration program	Indefinite
Class A, B, and C felonies	6 years
Class D and E felonies	5 years
Class A misdemeanors	4 years for one or two convictions 5 years for 3 or more convictions
Class B or unclassified misdemeanors	3 years for one or two convictions 4 years for 3 or more convictions
Violations or DWI infractions	2 years for one or two convictions 3 years for 3 or more convictions

(See NYCHA Dep't of Housing Applications Manual, Appendix, Exh. F.)

NYCHA will also deny admission to a family if any person who is expected to be a member of the household:

- Started fire within last 4 years
- Destroyed property, behaved violently, or disturbed neighbors within last 3 years
- Has a record of grossly unsanitary housekeeping within last 2 years
- Has a record of illegal use of drugs within last 3 years
- Was permanently excluded from NYCHA apt within 5 years
- Was terminated from NYCHA employment after trial within 3 years

(See NYCHA Dep't of Housing Applications Manual, ch. V, pp. 19-21.)

If NYCHA receives unfavorable information concerning an applicant, NYCHA will give consideration to the time, nature, and extent of the applicant's conduct and to factors that might indicate a reasonable probability of favorable future conduct. For example, NYCHA will consider:

- Evidence of rehabilitation
- Evidence of participation in or willingness to participate in social services or other appropriate counseling service programs and the availability of such programs.

Suggested evidence of rehabilitation includes but is not limited to:

- Positive school record
- Positive record at job training program
- Positive work record
- Written verification of rehabilitation from a state-licensed drug treatment agency
- Letter from sentencing judge or prosecutor's office

Immigration Status

HUD issued regulations in 1995 that generally prohibit certain non-citizens from receiving federal housing subsidies. In general, so long as at least one household member has an eligible immigration status, other household members with an ineligible immigration status may reside in the apartment but may not benefit from a federal housing subsidy. In such cases, the subsidy is *pro rated*. A family is ineligible for public housing on immigration grounds only if *all* of its members are ineligible.

Persons whose immigration status is in one of the following categories are eligible for a public housing subsidy:

- Citizens
- Nationals (persons born in a U.S. territory or possession)
- Legal permanent residents ("green card holders") (see 8 U.S.C. § 1641(b)(1));
- Refugees pursuant to INA §207 (see 8 U.S.C. § 1641(b)(3));
- Asylees pursuant to INA §208 (see 8 U.S.C. § 1641(b)(2));

- Permanent resident under registry provision, INA § 249 (see 8 U.S.C. § 1259) (non-citizens who have been lawfully admitted for permanent residence based on entry in the U.S. before 1972 and continuous residence since then);
- Persons granted withholding of deportation pursuant to INA §241(b)(3) (see 8 U.S.C. § 1641(b)(5));
- Parolees under INA § 212(d)(5) (see 8 U.S.C. § 1641(b)(4));
- Persons admitted under the mid-1980s legalization ("amnesty") program, INA § 245A (see 8 U.S.C. § 1255a).

Important note: Eligibility for housing assistance is **not** tied to TANF eligibility (or eligibility for any other federal benefits program). For example, Legal Permanent Residents who entered the United States after August 22, 1996 are not TANF-eligible for the first five years after entry (8 U.S.C. § 1613), and, except for veterans, those in active military service, and their spouses, are not eligible without 40 qualifying quarters of work (8 U.S.C. § 1612). But Legal Permanent Residents **are** immediately eligible for public/subsidized housing, regardless of the date of entry, passage of five years, 40 quarters, etc.

Proof of Eligible Immigration Status

Family members may choose not to claim they have an eligible immigration status. In that instance, no proof of immigration status need be submitted to NYCHA. Among family members who claim an eligible immigration status, citizens and nationals are required to submit a signed declaration of citizenship or U.S. nationality. Non-citizens 62 years of age or older are required to submit a signed declaration of eligible immigration status and proof of age. All others who claim an eligible status are required to document their immigration status.

NYCHA recognizes any of the following original documents as acceptable proof of eligible immigration status:

- INS Form I-551 (Permanent Resident Card) (**Note:** An I-551 stamp on a passport should also suffice)
- Form I-94 (arrival/departure record), with an annotation (1) "Admitted as Refugee Pursuant to Section 207"; or (2) "Section 208" or "Asylum"; or (3) Section 243(h) or "Deportation Stayed by Attorney General"; or (4) "Paroled Pursuant to Section 212(d)(5)"
- Form I-94 not annotated, but accompanied by (1) a final court decision granting asylum; or (2) a letter from an INS asylum officer granting withholding of deportation, or from an INS district director granting asylum; or (3) a court decision granting withholding of deportation;
- Form I-688B (employment authorization card) annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12"
- I-688 temporary resident card annotated "Section 245A" or "Section 210";
- A receipt issued by the INS indicating that an application for issuance of a

replacement document in one of these categories has been made and the applicant's entitlement to the document has been verified.

(See NYCHA Dep't of Housing Applications Manual, Appendix, Exh. D.)

Practitioners are strongly advised to consult an experienced attorney concerning immigrant eligibility and documentation requirements.

“Grandfathering in” of Long-Term Tenants

Households currently in receipt of public housing are entitled to the full ongoing (“continued”) assistance, at no reduction of benefits, if:

- the head of household or spouse has an eligible immigration status
- the family was receiving assistance on June 19, 1995
- there is no ineligible family member outside of the immediate family line (the head of household, spouse, and parents and children of the head of household and spouse)
- the family was entitled to continued assistance before November 29, 1996.

Current resident families who cannot afford or do not want to pay a higher rent, and tenant families with no eligible members, can ask for a deferral of the termination of assistance. A temporary deferral of up to 18 months, in six month increments (or 3 years if a refugee or asylee household) may be granted if the following conditions are met:

- the family demonstrates that reasonable efforts to find other affordable housing have been unsuccessful; and
- either the vacancy rate for affordable housing of the appropriate size is below five percent, or the jurisdiction lacks sufficient affordable housing

PRIORITIES

NYCHA uses an elaborate priority coding system to determine how quickly applicants will receive an eligibility interview for public housing. NYCHA's priorities for admission are described in its Tenant Selection and Assignment Plan (TSAP), which was adopted in 1992 as part of a Consent Decree in Davis v. New York City Housing Authority. The original TSAP included what were then both federally mandated preferences and local priorities.

In 1998, Congress eliminated the mandatory use of federal priorities. Despite that change, NYCHA continues to make use of the former federal preference categories for one-half of all new admissions (although NYCHA has changed the name of those priorities from “federal” to “need-based”).

For the remainder of all new admissions, NYCHA has adopted a local priority known as the “Working Family Preference.” In general, the Working Family Preference affords priority for up to one-half of all new admissions for those who are employed, elderly or disabled. If an applicant qualifies for both a Working Family Preference and a needs-based priority, the NYCHA will assign both priorities to the applicant. The priority that first gains the applicant an eligibility interview will be used.

NYCHA’s TSAP can be found at www.probono.net. For a summary of the priorities set forth in the TSAP, see <http://www.nyc.gov/html/nycha/html/prioritycode.html>. See also NYCHA Dep’t of Housing Applications Manual, Appendix, Exh. L.

Working Family Preference

Code W1: Applicants in income Tier III (51% to 80% of AMI) (highest local priority)
Code W2: Applicants in income Tier II (31% to 50% of AMI)
Code W3: Applicants in income Tier I (below 30% of AMI) who are “working”

Applicants are classified as “working families” if:

- the head of household or spouse is employed, or
- the head of household and spouse, or sole member, are age 62 or older or are receiving social security disability benefits, SSI-disability benefits, or any other payments based on an individual’s inability to work

Because of an injunction in the Davis case, applicants selected for interviews based on a local priority may not be assigned to 13 housing projects. Those projects are: Berry, Cassidy-Lafayette, Forest Hills, Haber, Independence, Middletown, New Lane, Nostrand, Robbins, South Beach, Taylor-Wythe, Todt Hill, and Williams.

Needs Based Preferences

Code N0 (highest priority)

- Applicants who meet any of the requirements of Code N1 or Code N3 (see below) and who are referred by the NYC Department of Homeless Services (“DHS”) or by the NYC Department of Housing Preservation and Development (“HPD”), pursuant to an agreement with the Housing Authority.

Note: DHS is no longer referring homeless families.

- Applicants about to be discharged from a hospital by the NYC Health and Hospitals Corporation who would be homeless upon discharge and who are referred to the NYCHA by HPD.

Code N1

Applicants who have suffered serious or repeated abuse from a family member or person with whom they have had, or continue to have, an intimate relationship, and as a result of that abuse the victim suffered actual physical injury or the threat of injury, and the victim: (a) will continue to suffer abuse if (s)he continues to live in the current residence, or (b) has left the residence due to the abuse and is not living in standard permanent replacement housing.

Code N2

Applicants with a family member cooperating in a criminal investigation/prosecution where a member of the household has been threatened by a defendant in that investigation/prosecution, and (a) the threat was made and was in retaliation for past or present cooperation with a prosecutorial or police agency, and (b) the threat poses a serious risk to a member of the household, and © it is likely that the defendant or the defendant's associates know the family's current home address.

Code N3

- Applicant families with one or more persons suffering from an illness or disability living in housing conditions that constitute a direct threat to such person's life due to their illness or disability.
- Applicants who have suffered serious or repeated abuse from a family member or person with whom they have had, or continue to have, an intimate relationship, and as a result of that abuse the victim suffered actual physical injury or the threat of injury, and the victim:
 - will continue to suffer abuse if (s)he continues to live in the current residence, or
 - has left the residence due to the abuse and is not living in standard permanent replacement housing.
- Applicants who live in hotels or shelters used by the City or whose primary nighttime residence is a place not designed for, or ordinarily used as, a regular sleeping accommodation.
- Applicants about to be displaced due to action taken by a landlord, including but not limited to eviction orders, unless the displacement is due to a rent increase or the applicant's failure to meet all the conditions of occupancy.
- Applicants living in housing declared uninhabitable by HPD or another government agency, or already displaced due to such a government order and not living in standard permanent replacement housing.
- Applicants about to be displaced by a government order from a site to be used for a public housing project or other public improvement.
- Applicants in the following categories who must leave their current housing within six months and are unable to return to their previous residence:
 - residing in a nursing or adult home
 - hospitalized long-term
 - 18-23 years old residing in foster homes and recently emancipated
 - residing in transitional housing for unwed mothers

Code N4

All other “working families” who are involuntarily displaced, living in substandard housing, or paying more than 50% of family income for rent.

Code N5

All other families who are involuntarily displaced, living in substandard housing, or paying more than 50% of family income for rent.

Code N8

Applicants who do not qualify for a Need Based preference and are not now renting either a public housing or a Section 8 apartment.
Applicants who do not live or work or have a commitment for a job in NYC

Code N9

Applicants who do not qualify for a Need Based preference and are now renting either a public housing or a Section 8 apartment.

APPLICATION PROCESS

Applications

Applications may be obtained in person or requested by mail at any NYCHA Borough Application Office. New applicants for public housing or NYCHA tenants requesting a transfer must apply at the NYCHA Applications Office in the borough of their current residence. Applicants may simultaneously apply for Public Housing and for the Section 8 program. Applications should be updated every 2 years. New information will be consolidated with past information. Applications not updated will expire after three years from the date of filing, unless the applicant has been called in for an interview.

NYCHA Borough Application Offices		
Manhattan	55 West 125 St., 7th Floor	(212) 828-7100
Brooklyn	350 Livingston Street 2 Floor	(718) 250-5900
Bronx	1 Fordham Plaza, 5th Floor	(718) 329-7859
Queens	120-34 Queens Blvd., 2nd Floor Kew Gardens	(718) 286-7500
Staten Island	120 Stuyvesant Place, 2nd Floor	(718) 448-7326

Selection Process

Each applicant must appear for and cooperate in an eligibility interview. Interviews are scheduled based on the priority coding, date of application and availability of apartment sizes in the borough requested. Waiting time tends to be shorter for families who qualify for smaller apartments (two bedrooms or less).

At the eligibility interview the applicant's family size and composition, housing priority, total family income and citizenship/immigration status are determined. If the family is income-eligible and all requested documentation is received, the application is sent to the Department of Housing Application's screening unit. Screening consists of three steps: (1) a criminal background check for all household members over the age of 16; (2) a contact with the current and/or previous landlord; and (3) a home visit conducted by an outside contractor.

If found eligible, applicants priority coded W1, W2, W3, N3, N4, N5, N8 and N9 are permitted choose a project. (Applicants in the first category of N3, "health emergencies," have the option of project choice or borough choice.) Applicants with project choice receive a list of projects designated as requiring applicants in the apartment size required by the family. Unless there were changed circumstances between the application and interview dates, applicants must select a project in the borough of their first or second choice as indicated on the application. Applicants may defer their project selection for up to thirty days. Once the project is selected, the applicant is "certified" to the project. NYCHA anticipates that certification to a project entails a wait of six to nine additional months until an apartment is offered.

Emergency applicants (priority codes N0, N1, N2, and N3) and applicants who require five bedrooms or more may select only a borough in which they wish to live, rather than a particular project. At their eligibility interview, these applicants must select one of the two boroughs listed on their application, unless they can demonstrate changed circumstances between the application and interview dates. Applicants who are found eligible will be computer-matched to an actual vacancy in the borough selected, without regard to any preference by the applicant for a particular project in that borough.

NYCHA operates some housing exclusively for the disabled and elderly and some apartments are reserved for these groups in all developments. Applicants should be prepared for a long wait, in some cases several years, depending on priority status.

Inactive Applications

Applications will not be acted upon if the applicant fails to:

- appear for an eligibility interview within six months of the scheduled date; or
- submit required additional information within six months of the date requested; or
- select a project from among those designated on the list of projects with anticipated vacancies in the appropriate apartment size within 30 days; or

- accept two apartment offers, unless a temporary emergency prevents a move at the time of the second offer; or
- respond within 45 days to notice from a project manager advising that an apartment is available; or
- respond within 45 days to a letter from NYCHA inquiring as to whether a certified applicant is still interested in public housing; or
- accept an offer because the applicant believes the apartment is of an inappropriate size, or
- has informed NYCHA that he or she is no longer interested in public housing.

The application will then be considered “dead,” meaning no further action will be taken on the application. A new application must be filed if the individual is still interested in obtaining public housing. Any new application is governed by the date of its receipt. The applicant may not be selected for interview or certified to any project for one year after the initial application was deemed “dead.” However, information contained in a “dead” application may be used to verify information contained in subsequent applications.

Occupancy Standards

In determining the apartment size for which an applicant family is eligible, NYCHA applies the following occupancy standards:

- Single person families are assigned either a “zero” bedroom (efficiency apartment) or a one-bedroom apartment
- Two person families
 - Couples (spouses, domestic partners, etc.) are assigned a one-bedroom apartment
 - Two persons with the youngest member under six years of age are assigned a one-bedroom apartment
 - Two persons of different sexes with the youngest member six years of age or older are assigned a two-bedroom apartment
- Three person families are assigned a two-bedroom apartment
- Four person families
 - “4P” families (all of same sex, two of each sex, or a couple and two others of same sex) are assigned a two-bedroom apartment
 - “4X” families (all other four-person families) are assigned a three-bedroom apartment
- Five person families are assigned a three-bedroom apartment

- Six, seven, or eight person families are assigned a four-bedroom apartment
- Families of nine persons or more are assigned to an apartment size with one bedroom provided for each two persons in the family. A separate bedroom will be provided for the person in excess of the basic two-person-per-bedroom standard

NYCHA will make an exception to these occupancy standards if necessary to provide a reasonable accommodation. For example, a separate bedroom may be provided if the family demonstrates the need for an additional bedroom due to a permanent health condition. See NYCHA Applications Manual, ch. 5, pp. 25-26.

SETTING THE RENT

Rent-payment options depend on three factors: (1) whether a project is federally subsidized; (2) whether a family's sole source of income is public assistance; and (3) how many family members are eligible immigrants.

Families Whose Members Are All Immigration-Eligible

Federally subsidized projects

The great majority of NYCHA's projects are federally subsidized. In these "federal" projects, the formula for setting the rent depends on whether the family's sole source of income is public assistance, and on the immigration status of all family members.

For a list of all NYCHA projects and the program (Federal, State, or City) under which each is funded, see http://www.nyc.gov/html/nycha/pdf/dev_data_book.pdf. For convenience, a list of all of NYCHA's **non-federal** projects is attached as Appendix A. All projects not listed in Appendix A are federal projects.

Families in federal projects whose sole source of income is not public assistance

In federally subsidized projects, families whose sole source of income is not public assistance, and whose members are all immigration-eligible, pay rent equal to the greater of 30% of the family's monthly *adjusted income*, or 10% of the family's monthly *gross income*, but not more than the *ceiling rent* for the apartment.

For definitions of the terms *adjusted income* and *gross income*, see CALCULATING ANNUAL INCOME below.

Ceiling rents

The ceiling rent is the maximum rent set by the Housing Authority for the apartment. Ceiling

rents depend solely on the number of bedrooms in the unit. Ceiling rents were created to encourage higher-income, working families to stay in public housing. Tenants will not have to pay more than the ceiling rent for an apartment, even when it less than 30% of their adjusted income or 10% of their gross income. Ceiling rent levels are uniform across all New York City public housing projects. The ceiling rents are:

# of Bedrooms	Ceiling rent	# of Bedrooms	Ceiling rent
Studio	\$347	4	\$693
1	\$421	5	\$797
2	\$495	6	\$901
3	\$619		

(NYCHA Man. Manual, ch. VI, Exh. 3.)

Families in federal projects whose sole source of income is public assistance

Families who live in federal projects, whose sole source of income is public assistance, and whose members are all immigration-eligible, pay rent based on their apartment size:

# of Bedrooms	Rent	# of Bedrooms	Rent
Studio	\$ 99	3	\$153
1	\$117	4	\$162
2	\$137	5	\$168

(NYCHA Man. Manual, ch. VI, Exh. 7.)

Note: There are no minimum rents in federal projects.

State and local projects

A small number of NYCHA's projects do not receive federal subsidies. A list of these "State and local projects" appears in Exhibit 8 to Chapter VI of NYCHA's Management Manual, and is reproduced as Appendix A.

Families in state/local projects whose sole source of income is not public assistance

In State and local projects, families whose sole source of income is not public assistance pay rent equal to 30% of their adjusted income, but not less than the *minimum rent* and not more than the *ceiling rent* for their apartment.

Minimum rents. NYCHA minimum rents for State and local projects are different for every project and apartment size. Minimum rent schedules for NYCHA's State and local projects are shown in Exhibit 8 to Chapter VI of NYCHA's Management Manual, and in Appendix A.

Grounds for exemption from minimum rents. Grounds for an exemption from NYCHA's minimum monthly rent include:

- When the family has lost eligibility for or is awaiting an eligibility determination for a federal, state or local assistance program, including a family that includes a member who is an immigrant lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (federal welfare reform law);
- When the family would be evicted as a result of the imposition of the minimum rent requirement;
- When the income of the family has decreased because of changed circumstances, including loss of employment;
- When a death has occurred in the family.

Waiting Period. If a resident requests a hardship exemption, NYCHA must suspend the minimum rent requirement beginning in the month following the family's request for a hardship exemption, and continuing until NYCHA determines whether there is a qualifying financial hardship and whether it is temporary or long term. **A resident may not be evicted for nonpayment of rent during the 90 day period beginning the month following the request for a hardship exemption.**

If NYCHA determines that there is no qualifying hardship, or the qualifying hardship is temporary, NYCHA must reinstate the minimum rent from the beginning of the suspension period. NYCHA then must offer the resident a reasonable payment agreement for the amount of back minimum rent owed by the resident. In the event the resident demonstrates that the financial hardship is of a long-term basis, NYCHA will retroactively exempt the resident from the applicability of the minimum rent requirement for such 90 day period and continue the exemption so

long as such hardship continues.

Ceiling rents. Ceiling rents for NYCHA's State and local projects are the same as for federal projects. (See p. 14 above.)

Families in state/local projects whose sole source of income is public assistance

- **Admission before September 1993.** In State and local projects, families who were admitted to public housing before September 1993 and whose sole source of income is public assistance pay the same rent as families in federal projects who receive only public assistance. See p. 13 above.
- **Admission on or after September 1993.** In State and local projects, families who were admitted to public housing on or after September 1, 1993 and whose sole source of income is public assistance pay rent based on the public assistance *shelter allowance* for the family size. For families **without** children, the shelter allowance schedule is as follows:

# on PA Budget	Rent	# on PA Budget	Rent
1	\$215	5	\$337
2	\$250	6	\$349
3	\$286	7	\$403
4	\$312	8+	\$421

(See NYCHA Man. Manual, ch. VI, Exh. 7.)

For families **with** children, the current shelter allowance schedule is:

# on PA Budget	Rent	# on PA Budget	Rent
1	\$277	5	\$501
2	\$283	6	\$524
3	\$400	7	\$546
4	\$450	8+	\$546

Changes in Income During the Year

Special rules apply to rent changes caused by increases or decreases in income during the year. See the discussion of “Annual and Interim Recertifications” below.

Rents for Families With Some Members Who Are Not Immigration-Eligible

As a general rule, families with some members who do not have an eligible immigration status have their housing subsidy *pro-rated*. To determine the rent for such a family, start by calculating the rent that the family would pay if all family members had an eligible immigration status. Subtract this figure from the ceiling rent. The difference is the amount of NYCHA’s subsidy.

Next, multiply the subsidy by a fraction equal to the percentage of immigration-eligible family members. Subtract this number from the ceiling rent. The difference is the family’s rent.

- **Example.** A family in a federal project consists of a mother who has an ineligible immigration status and two citizen children. The family, which lives in a two-bedroom apartment, receives only public assistance income.
- Start by finding the rent the family would pay if all family members had an eligible immigration status. From the table on page 13, if the mother were immigration-eligible, the monthly rent would be \$137.
- Subtract this figure from the ceiling rent. From the table on page 13, the ceiling rent is \$495. The difference of \$358 (\$495-\$137) is the amount of NYCHA’s subsidy.
- Next, multiply the subsidy by a fraction equal to the percentage of immigration-eligible family members. Two-thirds of the family members (the two children) have an eligible immigration status. Two-thirds of the subsidy is \$239 (to the nearest dollar)
- Finally, subtract this number from the ceiling rent. The family’s rent is therefore \$256 (\$495-\$239)

CALCULATING ANNUAL INCOME

Gross annual income means all amounts monetary or not, which (1) go to, or on behalf of the family head or spouse (even if temporarily absent) or to any other family members; (2) are anticipated to be received from a source outside the family during the 12 month period following admission or re-examination date; (3) are not exemptions (see below); and (4) are amounts derived during the 12 month period from assets to which any member of the family has access.

24 C.F.R. § 5.609 (a).

Gross Income

Gross income includes:

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation and personal services.
2. Net income from running of a business
3. Interest dividends and other net income from assets. Where the family has net family assets in excess of \$ 5,000, annual income includes the greater of the actual income derived from all net family assets or a percentage of the value of the assets based on the current passbook savings rate, as determined by HUD.
4. The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits.
5. Payments in the place of earnings such as unemployment benefits, workman's compensation, severance pay or welfare assistance.
6. Pay received by a member of the Armed Services, for example the salary of an army private whose child is living in a unit with the family.
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.

See 24 C.F.R. § 5.609(b)); and see the Public Housing Occupancy Guidebook, pp. 112-16.

Exemptions from Gross Income

1. Wages of children under the age of 18 years living at home, including foster children regardless of whether the individual attends school.

Note: The income of a household head or spouse and unearned income of minors from sources such as Social Security, SSI or welfare benefits is **not** excluded from income.

2. Earnings in excess of \$ 480 for each full-time student 18 years old or older (excluding the head of household and spouse);
3. Student Assistance

All amounts received from scholarships, educational entitlements, grants, work-study programs and financial aid packages, even if earmarked for living expenses.

4. Foster Payments (for the care of children or adults)
Unless it is the family's only income. If so, apply the 10% gross income rule.
5. Adoption Assistance Payments
Adoption assistance payments in excess of \$480 per adopted child.
6. Food
This applies to Food Stamps, programs that provide food and gifts of food from outsiders.
7. Income of live-in attendants.
8. Grants, Contributions or Reimbursements for apparatus for a disabled member, expenses for attendant care by someone other than a family member and medical expenses.
9. Lump-sum additions to family wealth such as inheritance or insurance settlement/payment

This applies also to payments under health and accident insurance and Worker's Compensation, capital gains and settlement for personal or property losses.
10. Deferred Periodic Payments of SSI and Social Security
Payments received in a lump sum or in prospective monthly amounts.
11. Temporary, non-recurring sporadic income.
12. State Rent Credits and Rebates for Property Taxes Paid on the Dwelling Unit.
13. Special Armed Forces Pay
For example, hazardous duty pay or extra pay for peace keeping duty.
14. A foreign government's reparations payments made to persons persecuted during the Nazi era.
15. Resident Service Stipends
Amounts paid to residents, not exceeding \$200 per month for performing services for the Authority or project to enhance the quality of life. If the stipend exceeds \$200 per month include the full amount in the calculation of the income, not just the portion that exceeds \$200. A family may receive more than one stipend, however, you may exclude only one stipend per family member. This exclusion is an expansion of a previous rule which excluded stipends to officers of resident councils.

16. Compensation received under a state or local employment or resident management training program - compensation that is a component of a program with clearly defined goals such as on-the-job training or apprenticeship programs.
17. Amounts received under training programs funded by HUD.
18. State Homecare Payments
Payments to offset the cost of equipment and services needed to keep a developmentally disabled family member at home.
19. Reimbursement and out-of-pocket expenses while attending a public assisted training program.

24 C.F.R. § 5.609(c). For more complete information on exemptions from annual income, see the Public Housing Occupancy Guidebook, pp. 116-20.

Adjusted Income

Federal Projects

Adjusted income means annual gross income of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

1. Dependent Deduction
\$480 per year for each member of the household who is
 - under 18 years old, or
 - 18 years old or older AND disabled, or
 - a full time student (minimum 12 credits)

The head of household, spouse, foster children and live-in home attendants may not be given dependent deductions under any circumstances.

2. Elderly Family Deduction
\$400 per year where the head of household, spouse or sole member is
 - 62 years of age, or
 - handicapped, or
 - disabled
3. Elderly Family Medical/Dental Deduction
All unreimbursed medical and dental expenses for an Elderly Family (such as insurance and Medicare payments) anticipated for the annual review period, **to the extent they exceed 3% of gross income.**

Note: This deduction applies only to an Elderly Family (head of household, spouse, or sole member is at least 62 years old, or disabled or handicapped). **However, the family member incurring the expense does not have to be elderly, disabled, or handicapped.**

5.. Handicapped Assistance Deduction

All unreimbursed attendant care and/or apparatus expense for each member of the family who is a person with a disability, to the extent necessary to enable any member of the family (including the disabled member) to work or pursue an education, **to the extent they exceed 3% of gross income.** The deduction cannot exceed the amount of employment income made possible by the expenses.

6. Child Care Deduction

Any reasonable child care expenses necessary to enable a member of the family to be employed or to further their education. **Note:** NYCHA limits the child care deduction to a maximum of \$50/week for one child or \$80/week for more than one child. (NYCHA Man. Manual, ch. 6, Exh. 9.) This limitation could be subject to legal challenge.

State and City Projects (See Appendix A for a list of State and City Projects)

1. Dependent Deduction

\$300 per year for each member of the household who is

- under 18 years old, or
- 18 years old or older AND disabled, or
- a full time student (minimum 12 credits)

2. Elderly Family or Disabled Family Deduction

10% of gross income

3. Non-Elderly Families

5% of gross income

4. Working Head of Household and Spouse

\$300, or actual earnings of spouse, whichever is less

5. Medical Expenses

All unreimbursed medical expenses (such as Medicare payments and dental expenses) anticipated for the annual review period, **to the extent they exceed 3% of gross income.**

Note: This deduction is not limited, as in federal projects, to Elderly Families.

6. Child Care Deduction

Any reasonable child care expenses necessary to enable a member of the family to be

employed or to further their education. **Note:** NYCHA limits the child care deduction to a maximum of \$50/week for one child or \$80/week for more than one child. (NYCHA Man. Manual, ch. 6, Exh. 9.) This limitation could be subject to legal challenge.

FAMILY COMPOSITION RULES AND REMAINING FAMILY MEMBERS

Persons Who May Lawfully Reside In A NYCHA Apartment

On November 22, 2002, NYCHA adopted stringent rules concerning who may lawfully reside in a NYCHA apartment. Three categories of persons may lawfully reside in a NYCHA apartment: (1) original family members; (2) additional family members automatically authorized to reside in the apartment because of “family growth”; and (3) persons granted permission for permanent residency in writing by the Housing Manager.

Original Family Members. Original family members are those authorized to reside in the apartment at the initial move-in.

Family Growth. Persons born to, legally adopted by, or judicially declared to be the ward of the tenant or an authorized permanent family member are automatically authorized to reside in a NYCHA apartment.

Requests for Permission for Permanent Residency. Before November 22, 2002, a NYCHA Housing Manager could grant permission for permanent residency to (1) two or more persons living together related by blood, marriage, or adoption, or (2) two or more unrelated persons, regardless of sex., living together as a cohesive family group in a sharing relationship.

After November 22, 2002, a NYCHA Housing Manager could grant permission for permanent residency only to the following persons:

- The following relatives of the tenant of record: spouse, son/daughter, stepson/stepdaughter, parent, stepparent, sibling (including half-sibling), grandparent, grandchild, son/daughter-in-law, mother/father-in-law
- A domestic partner of the tenant of record who submits a Certificate of Domestic Partnership Registration by the City Clerk of the City of New York
- Original family members, or persons in the Family Growth categories, who moved out and now seek to move back in.

A criminal background check is performed on all proposed new permanent residents in a NYCHA apartment who are at least 16 years of age.

Note: McFarlane v. New York City Housing Authority, 9 A.D.3d 289, 780 N.Y.S.2d 135, (1 Dep't 2004) seems to hold that written consent is not dispositive if the Authority "knew of, and took no preventive action against, the occupancy by the tenant's relative." This may open the door to creative lawyering.

Remaining Family Members

Apartment residents have "remaining family member" rights in a NYCHA apartment if they meet the following criteria:

- They were authorized for permanent residence in a NYCHA apartment as described above; and
- They are "otherwise eligible" for admission to NYCHA; and either
- For original family members and those in the Family Growth categories, they resided in the apartment continuously from the date of original move-in , or
- For persons granted permission for permanent residence by the Housing Manager **before November 24, 2002**, they resided in the apartment continuously from the date of the Housing Manager's approval, or
- For persons granted permission for permanent residence by the Housing Manager **after November 24, 2002**, they resided in the apartment continuously from the date of the Housing Manager's approval and for at least **one year** immediately prior to the date the tenant of record permanently vacates the apartment or died.

A new criminal background check is performed on all remaining family members who are at least 16 years of age.

ANNUAL AND INTERIM RECERTIFICATIONS

Non-Verifiable Income (NVI) Rents

Public housing tenants must recertify income and family composition annually. The failure to recertify income and family composition adequately may lead NYCHA to increase the rent to the "Non-Verifiable Income" (NVI) rent. The NVI rents are:

# Hshld Members	NVI Rent	# Hshld Members	NVI Rent
1	\$668	5	\$1030
2	\$764	6	\$1106
3	\$859	7	\$1183
4	954	8	\$1259

(NYCHA Man. Manual, ch. VI, Exh. 1.)

Income Review Quarters

In many NYCHA developments, annual income review are divided into quarters ending on March 31, June 30, September 30, and December 31 of each year. Any income changes up to and including the 16th day of the first month of the quarter in which the review is done are included in calculating annual income.

The chart below summarizes important dates for purposes of quarterly income reviews.

Review Period	Papers To Tenant By	Income Cutoff Date	Increases Completed by	Decreases Completed by	Effective Date of New Rent
1/1 - 12/31	12/31	1/16	3/20	4/20	5/1
4/1 - 3/31	3/30	4/16	6/20	7/20	8/1
7/1 - 6/30	6/30	7/16	9/20	10/20	11/1
10/1 - 9/30	9/30	10/16	12/20	½0	2/1

(NYCHA Man. Manual, ch. VI, App. A.)

Income Realism

If a tenant reports no income or amounts of income that appear insufficient to sustain basic household functioning, NYCHA will conduct an in-depth examination of all sources of income and will refer the household to its Social Services Division for an evaluation. To be considered sufficient to sustain basic household functioning, annual net income must be greater than 80 percent of the basic HRA public assistance grant level (the Food and Other allowance) for the family size. The following chart summarizes NYCHA's "income realism" thresholds:

# Hshld Members	Yearly Income	# Hshld Members	Yearly Income
1	\$1323	5	\$4451
2	\$2098	6	\$5138
3	\$2794	7	\$5834
4	\$3606	8	\$6529

Continued Occupancy Limits

A resident whose income increases beyond initial eligibility limits may remain as a public housing tenant so long as the net household income, after all allowable deductions and exemptions, is below NYCHA's Continued Occupancy standard for the family size.

NYCHA Continued Occupancy Limits Revised April 9, 2002								
# in Household	1	2	3	4	5	6	7	8
Income Limit	\$52,740	\$60,300	\$67,800	\$75,400	\$81,400	\$81,400	\$81,400	\$81,400

(See NYCHA Dep't of Housing Applications Manual, Appendix, Exh. B.)

To determine total household income for this purpose, make all deductions used in determining adjusted income. In addition, the following exclusions apply:

- 2. All earned income of minors under 21 years of age (other than the head of household)
- 4. All earnings of secondary wage earners up to \$2,000 (but not exceeding \$4,000)
- 6. All Social Security or pension up to \$75 per month for persons 62 years or older

(See NYCHA Management Manual, ch. VI, § VI, p. 32, and Exh. 2.)

Increases in Income Between Annual Recertifications

In 1998, Congress imposed mandatory income disregards when an increase in earned household income occurs for one of the following reasons:

- 2. employment of a family member who was previously unemployed for a year or more;
or
- 4. participation of a family member in any family self-sufficiency or other job training program; or
- 6. a family member is or was, within six months, assisted under the State Family Assistance program

For the first 12 months of employment there will be no rent increase, despite any increase of income in the household. During the second 12 months of employment, the rent will increase by only 50% of the amount it otherwise would have increased without the disregard. Thereafter, the rent increase will be based on the household's total income, without any disregard.

Any other increase in income between annual recertifications will result in a rent increase on the effective date above. However, with the following two exceptions, it will not result in a retroactive surcharge. The two exceptions are:

8. If NYCHA granted a rent reduction during the year based on an interim income review, and later during that year the income was restored, NYCHA will impose a retroactive surcharge from the time the income was restored.
- If the tenant fails to submit income information and verification in time to permit completion of the review before the close of the quarter, a retroactive charge may be imposed.

Decreases in Income Between Annual Recertifications

NYCHA's Management Manual discusses four situations in which NYCHA will process a rent reduction based on a documented decrease in income between annual recertifications:

10. For tenants who are accepted for PA. **Note:** Special rules apply where PA income reduces because of a work-related sanction (see below).
12. For employed family members who suffer a reduction or loss of employment income of 3 months duration.
14. For decreases in non-employment income occasioned by the death or departure of an income recipient, including placement in a nursing home, confinement in prison, permanent separation of spouses, marriage and departure of a resident dependent, and entry into military service.

Note: Except for a permanent separation of spouses when legal action has begun, NYCHA will not process the rent change unless the departure endures for three months.

16. For changes in income based on residents on full-time or reservist duty in the military.

Where notice is within 30 days of the decrease in income, the rent will be adjusted as of the first of the month following the date on which the change occurred.

Where notice is later than 30 days, the rent will be adjusted as of the first of the month following

the date on which NYCHA received notice. **Note:** An exception applies where the tenant establishes that the failure to report a decrease in income was due to reasons beyond the tenant's control; in that case, NYCHA will issue a retroactive rent credit to the first of the month following the date on which the reduction occurred.

Public Assistance Reductions

For families who reach the federally mandated five-year lifetime welfare benefit, NYCHA will invoke its minimum rent policy under which it accepts as rent a sum reflecting the family's reduced income.

To assist those who move from welfare to work, NYCHA will phase in rent increases over a two-year period.

Special rules apply where a reduction in public assistance income is caused by work-related or fraud sanctions. NYCHA may not reduce the rent based on a reduction in PA income attributable to a work-related or fraud sanction. However, this rule does not apply to a reduction in PA income based on welfare time limits. Written notice from welfare department stating the reason for sanction required. Additionally, a change in public housing lease is required before this policy may be implemented.

TENANT TRANSFERS

Transfers from one NYCHA apartment or project to another may be granted. The grounds and priorities for transfers, and the many conditions and limitations on them, are too numerous and complex to summarize fully here. For full details, see Section VI(B) of the TSAP, or the NYCHA Dep't of Housing Applications Manual, Appendix, Exh. P. Some of the more important grounds and priorities for transfer include:

- | | |
|-------------------------|---|
| <u>Priority Code T0</u> | Tenants whose apartments have become uninhabitable through no fault of their own, or who must move because of project renovation or wish to return after renovation was completed. |
| <u>Priority Code T1</u> | Tenants whose apartments are needed for project use, or who are living in underoccupied apartments, or who require an accessible apartment, or who are no longer eligible to reside in a senior project or building |

<u>Priority Code T2</u>	Tenants who are victims of domestic violence, intimidated victims and witnesses, child sexual victims, victims of a traumatic incident in their apartment, or related to a family member who died in the apartment.
<u>Priority Code T3</u>	Tenants who are extremely overcrowded, or involved in long-term friction with neighbors, or in need of medical, home health, or child care far from the project, or disabled in a non-elevator building and in need of a low-floor apartment.
<u>Priority Code T4</u>	Tenants who are overcrowded, or required to travel more than 90 minutes because of a change of work location, or wish to move into or out of a project for seniors.

NYCHA has adopted an Emergency Transfer Program for victims of domestic violence, child sexual victims, and intimidated victims and witnesses in Priority Code T2. Applicants for an emergency transfer must select one borough only for relocation, and may not select their current borough of residence.

To qualify for an emergency transfer as a victim of domestic violence, the applicant must provide documentation in the form of (1) a referral from Safe Horizon and a Criminal or Family Court order of protection, and (2) one or more Police Incident Reports within the last six months for a different incident than the one that prompted the order of protection.

To qualify for an emergency transfer as a child sexual victim, the applicant must, when younger than 18 years of age, have been the victim of rape or sodomy in the first degree or aggravated sexual assault. The victim must have a referral from Safe Horizon or the District Attorney's office and a copy of one or more arrest reports within the last year.

Tenants who wish to transfer between apartments or projects must submit a written request with supporting documentation to the manager of the project at which they reside showing the reason for the transfer request. If the project manager denies the request, the tenant will be notified in writing of the reason for denial. If the manager approves an intra-project transfer request, the individual will be assigned a priority code and placed on the computerized project waiting list. If the manager approves an inter-project transfer request, the applicant will be assigned a priority code and the case will be sent to the Borough Director or designee for review. If the Borough Director or other designated personnel denies the inter-project transfer request, the tenant will receive a written notice stating the reason for the denial. If the request is approved, the tenant transfer process will be effected.

COMMUNITY SERVICE

Federal law requires each adult resident of public housing (18 years of age and older) who is not exempt from participation to perform eight hours of community service or self-sufficiency training each month as a condition of tenancy. NYCHA has announced that residents in the following categories are exempt from the Community Service requirement.

- Persons who are 62 years of age or older
- Persons who are either blind or disabled
- Persons who are the primary caretaker of a public housing resident who is either blind or disabled
- Pregnant women, but only if the physician certifies that participation would cause "serious injury to the health or life of the mother or child"
- SSI and SSD recipients
- Participants in the New York City Work Experience Program (WEP)
- Welfare recipients who are exempt from work under any State welfare program
- Members of a family receiving welfare assistance who have not been found to be in non-compliance with the program
- Persons employed at least 30 hours per week
- A single adult with a child under 13 , when the adult is either employed at least 20 hours per week or is unable to secure qualified and affordable childcare
- Two adults with a child under 13, when the adults are employed for a combined total of 35 hours per week
- Persons who are looking for work, or who are in receipt of unemployment insurance benefits, but not to exceed six weeks in any year
- Persons who provide childcare to an adult public housing resident who is required to participate in community service
- Persons who provide childcare to an adult public housing resident who is exempt from participating in community service because of involvement in (1) the WEP program, or (2) employment or job search activities, or (3) education or job training.
- Persons engaged in vocational training, but not exceeding 12 months
- Persons engaged in "job readiness assistance" (training preparing the individual for employment), but not exceeding six weeks in any year
- Persons engaged in on-the-job training, or in job-skills training undertaken as a condition of getting a job
- Persons who have neither completed high school nor obtained a certificate of high school equivalency, and who are engaged in education directly related to employment
- Persons who are in satisfactory attendance at a secondary school or higher education school
- Persons who are in satisfactory attendance in a course of study leading to a GED
- Persons who are Victims of Domestic Violence and approved for a transfer but not yet transferred.

See NYCHA PHA Plan - Final: Annual Plan for Fiscal Year 2005, Attachment F,
<http://www.nyc.gov/html/nycha/pdf/ny005v01.pdf>.

Note: NYCHA is considering exempting two parent households where one parent works full time and the other cares for a minor child.

If any household member fails to comply with the Community Service requirement, the entire household could be evicted unless the offending family member agrees to leave the household. Compliance with the Community Service requirement began on May 1, 2004 for NYCHA tenants who recertify their income and family composition during the first quarter of 2004.

EVICTON AND GRIEVANCE PROCEDURES

Resident Grievance Procedures

Residents with grievances against NYCHA may use the grievance procedure. Policy questions, class grievances, inter-tenant conflicts, personal injury, damage claims or commercial tenants are excluded. A tenant initiates a grievance by discussing the problem with the Housing Manager, who must prepare and send to the tenant a summary of the discussion.

A tenant who is dissatisfied with the Manager's decision may file a written request for District Office review within ten working days after receipt of the Grievance Summary. Within 10 working days of the tenant's request, the District Chief Manager must review the grievance and inform the tenant and Housing Manager in writing of the determination. A grievance regarding remaining family member status will generally proceed only to this second step of the grievance process unless the tenant can make a substantial showing of the right to succeed to the apartment.

If the District Chief's review was unfavorable, the tenant may request a formal hearing before a NYCHA Impartial Hearing Officer (IHO) within ten days of the District Chief Manager's decision. A decision of the IHO becomes final upon review and approval by NYCHA's Board. All issues decided at any level of a grievance may be litigated again in court. 24 CFR 966.57; but see NYCHA v. Winkler, 175 Misc.2d 1018 (A.T. 2d 1998).

Challenging a Denial of Eligibility

Applicants found ineligible may request an informal hearing before an IHO. The IHO will schedule the day and time of the hearing and notify the applicant by mail. At the hearing, a representative from the Eligibility Division will present the basis for the determination of ineligibility. If found in favor of the applicant, the original application will be returned to the Department of Housing Applications for processing. The IHO's decision is final upon written notification to the applicant.

Eviction Procedures

Non-payment of rent cases

NYCHA employs two different procedures for seeking to evict a tenant. The first procedure applies when NYCHA seeks to collect rent from a tenant who fails to pay the monthly rent on time. In that instance, NYCHA may commence a summary “non-payment of rent” proceeding in Housing Court against the tenant. An administrative hearing is not conducted in such cases, and the tenant may litigate any defense(s) to the claim of non-payment of rent in Housing Court. For tenants who are mentally disabled, the Housing Authority is mandated to disclose to the Housing Court judge “information indicative of a mental disability that could prevent the tenant from participating meaningfully in the process.” Blatch et al v. New York City Housing Authority, 360 F. Supp.2d 595 (S.D.N.Y. 2005). This applies to defaults, settlements, and other appearances.

Termination of tenancy

The second procedure applies when NYCHA seeks to terminate a tenancy on grounds other than the non-payment of rent. In that case, the Housing Authority must afford the tenant an opportunity for an administrative hearing conducted by an IHO. These administrative hearings are known as “termination of tenancy hearings” or Escalera hearings, after the case that established the procedures applicable in such hearings. The grounds for terminating a tenancy include:

1. Non-desirability
 - a. Danger to health/safety, or
 - b. Conduct in the nature of a “sex or morals offense”
 - c. Source of danger or cause of damage to premises or property or peaceful occupancy of other tenants
 - d. Common-law nuisance
2. Breach of rules and regulations (opportunity to cure applies)
3. Chronic breach of rules and regulations (no opportunity to cure applies)
4. Chronic delinquency in payment of rent
5. Non-verifiable income
6. Assignment or transfer of possession
7. Wilful misrepresentation or concealment of a fact relating to eligibility for admission or continued occupancy

(See generally NYCHA Management Manual, ch. VII, § III(A) and (B).)

The first step in a termination of tenancy case consists of an optional interview with the Housing Manager. A Manager who wishes to go forward with eviction proceedings refers the case to the Legal Department for preparation of notice of charges. The case is then scheduled for a so-called impartial hearing by an IHO.

Important note: Tenants should be aware that any admissions or explanations made to the Housing Manager during the optional interview will be recorded in the tenant's file. (See NYCHA Management Manual, ch. VII, § III©.)

The tenant or representative may examine the tenant folder in advance of the hearing upon request by appointment at NYCHA. Any matter not made available after such a request may not be relied upon by NYCHA.

In a termination of tenancy hearing, the IHO has access only to those portions of the tenant file as the Authority or the tenant offers into evidence. An IHO's decision must be based solely on the testimony and documents offered into evidence during the hearing. Formal rules of evidence do not apply. Subpoenas may be issued by the IHO where appropriate. The hearing is tape-recorded; if judicial review is sought, a transcript of the hearing is made available to the tenant without charge. (See NYCHA Management Manual, ch. VII, § III(C)(5).)

Possible dispositions after a hearing include:

1. Termination of tenancy
2. Probation
3. Eligible subject to permanent exclusion
4. Eligible with a referral to Social Services
5. Eligible

Special rules apply regarding probation and permanent exclusion:

1. Where a charge of non-desirability has been proved and there is reason to believe that the conduct may not recur or has been cured, or the tenant is taking steps to do so, the tenant may be given probation for a term not to exceed one year.
2. Where the offender has removed from the household, a disposition of permanent exclusion, probation, or eligible is mandatory.
3. Where a charge of non-desirability has been proved and the disposition is not permanent exclusion, and where the offending member has been removed from the household, a disposition of probation is mandatory.

A violation of probation may be the basis for a further hearing, which may result:

1. In immediate termination of the tenancy, or
2. Continuation of probation already proscribed; or
3. Probation for an additional prescribed period not to exceed a year on such terms as may be appropriate.

If a tenant fails to answer or appear at a hearing (“defaults”), the IHO must make a written decision based on the record. Upon application made within a reasonable time after a default, the IHO may, for good cause shown, open the default and set a new hearing date.

For tenants with mental disabilities, NYCHA must follow GM 3630 which requires that a guardian be appointed and that the hearing be marked off calendar until a guardian is appointed. Note that NYCHA has no process as yet for appointing guardians and there is no settlement as yet of Blatch et al v. New York City Housing Authority, 360 F. Supp.2d 595 (S.D.N.Y. 2005)

Important note: To reopen a default, a tenant must show both (1) a good excuse for missing the hearing (excusable default) and (2) a good defense to the charges (meritorious defense). In January 2003, after years of advocacy, NYCHA adopted a new form for requesting reopening of a default. The form explicitly asks for both an excuse for missing the hearing and a defense. Both reasons must be filled in.

Important note: The statute of limitations to challenge a default runs from the date of the denial of the tenant’s request to reopen the default, **not** from the date of the default. Yarbough v. Franco, 95 N.Y.2d 342 (2000).

A decision by the IHO is subject to review by the NYCHA Board. A decision by the Board terminating a tenancy is administratively final and is subject to review only by means of commencing an Article 78 proceeding in State Supreme Court within four months. After the Board’s decision terminating a tenancy becomes administratively final, the Housing Authority may commence a proceeding against the tenant in Housing Court known as a summary “hold-over” proceeding. In such a holdover proceeding, the tenant may not re-litigate the grounds for termination of tenancy.

INFORMATION AND RESOURCES

Department of Equal Opportunity

Services for the Disabled Unit (SDU)
250 Broadway, 27th Floor 10007
(212) 306-4652 (Hotline)
(212) 306-4468 (Receptionist)

TTY (212) 306-4845

APPENDIX A

MINIMUM RENTS FOR NYCHA STATE AND CITY PROGRAMS

Source: NYCHA Management Manual, ch. VI, Exh. 8

STATE PROGRAM

Project	No. Rooms	Minimum Rent
Amsterdam Addition	3.5	\$100
	4.5	\$138
	5.5	\$164
Baychester	3.5	\$103
	4.5	\$120
	5.5	\$132
Bushwick	Efficiency	\$83
	3.5	\$103
	4.5	\$120
	5.5	\$134
	6.5	\$144
	7.5	\$146
Castle Hill	2.5	\$80
	3.5	\$110
	4.5	\$133
	5.5	\$148
	6.5	\$158
	7.5	\$162
Chelsea	2.5	\$87
	3.5	\$111
	4.5	\$130
	5.5	\$145
	6.5	\$159
	7.5	\$164
Drew Hamilton	2.5	\$87
	3.5	\$117
	4.5	\$132
	5.5	\$145
	6.5	\$159
	7.5	\$163

344 East 28 th St.	Efficiency	\$83
	3.5	\$112
	4.5	\$141
	5.5	\$157
	6.5	\$169
	7.5	\$173
Independence	3.5	\$120
	4.5	\$151
	5.5	\$168
	6.5	\$178
	7.5	\$185
	Manhattanville	Efficiency
3.5		\$109
4.5		\$134
5.5		\$153
6.5		\$160
7.5		\$168
Marlboro	2	\$76
	2.5	\$87
	4	\$100
	5	\$110
	6	\$116
	Murphy	3.5
4.5		\$134
5.5		\$145
6.5		\$159
7.5		\$163
Rutgers		Efficiency
	3.5	\$113
	4.5	\$134
	5.5	\$145
	6.5	\$168
	Stapleton	2.5
3.5		\$112
4.5		\$133
5.5		\$153
6.5		\$159
7.5		\$164

Williams	2.5	\$77
	3.5	\$110
	4.5	\$129
	5.5	\$147
	6.5	\$158
	7.5	\$164
Wise	3.5	\$100
	4.5	\$125
	5.5	\$138
	6.5	\$145
	7.5	\$156

CITY PROGRAM

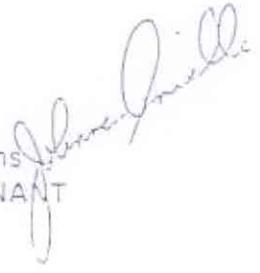
Project	No. Rooms	Minimum Rent
Boulevard	3.5	\$108
	4.5	\$123
	5.5 (1-3 persons)	\$148
	5.5 (4+ persons)	\$159
Marble Hill	3.5	\$103
	4.5	\$123
	5.5 (1-3 persons)	\$148
	5.5 (4+ persons)	\$159
Bay View	3.5	\$152
	4.5	\$183
	5.5	\$196
Linden	3.5	\$137
	4.5	\$172
	5.5	\$187
St. Mary's	3.5	\$138
	4.5	\$172
	5.5	\$187

NEW YORK CITY HOUSING AUTHORITY

April 29, 1999

GM-3630

TO: Distribution C
FROM: JoAnna Aniello, Assistant Deputy General Manager for Operations
SUBJECT: TERMINATION OF TENANCY: MENTALLY INCAPACITATED TENANT



I. PURPOSE

This General Management (GM) Directive expands upon existing NYCHA practice regarding required notifications and procedures staff must follow when terminating the tenancy of a tenant who may be mentally incapacitated. It addresses procedures to follow when it appears to the Housing Manager that reasonable efforts to solve the problem, as detailed in the NYCHA Management Manual, Chapter VII, Section II. A., have been unsuccessful.

II. DEFINITION OF MENTAL INCAPACITY

For the purposes of this GM, a tenant may be mentally incapacitated if it appears from a review of a tenant's file, or from the personal knowledge of any Authority staff familiar with the tenant, such as the Housing Manager, a Housing Assistant or a social services worker, that as a result of mental disease or defect, the tenant:

- may be unable to provide for his/her needs and is likely to suffer harm or cause harm to others;
- is hospitalized for a serious psychiatric or psychological disorder; or
- has exhibited seriously confused or disordered thinking that may render him/her incapable of understanding the termination of tenancy hearing process and defending against the charges.

III. HOUSING MANAGER'S REFERRAL

When considering termination of tenancy and a tenant exhibits behavior consistent with the above definition, the Manager shall:

- A. Submit a Management Referral for NYCHA Social Services, NYCHA 040.450, to the Borough Social Service Administrator, that requests a written evaluation of mental capacity as well as a proposal for possible corrective action, if feasible. The referral must indicate that the tenancy will be subject to termination. The Housing Manager must not forward the case to the Operations Services Department's Tenancy Administration Division (OSTA) until after (s)he receives a report from Social Services. The report must indicate whether the tenant appears capable of understanding the termination of tenancy hearing process and responding to the charges, or whether a guardian or other representative is required.

EXHIBIT P/L (Krisy-Lepore) 4
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- B. Enter the details of the referral, the receipt of the evaluation and the date, if sent, that the case was sent to OSTA for termination into the Termination of Tenancy Log.
- C. Follow up with the Borough Social Services Administrator after thirty (30) calendar days of the referral if no report has been received.
- D. When Social Services has completed its evaluation and informs the Housing Manager that corrective action is not feasible, the Housing Manager may submit the termination case to OSTA in accordance with all current procedures. When forwarding the case to OSTA, the Housing Manager shall:
 - 1. Indicate on the Transmittal to OSTA, NYCHA 040.276, that the tenant was referred to NYCHA Social Services for an evaluation of mental capacity. Include the results of the referral and the recommendation, if applicable, to appoint a Guardian or other representative to assist the Tenant with the administrative hearing and other termination procedures.
 - 2. Attach a copies of the most recent Management Referral for NYCHA Social Services, the corresponding Social Services report and the Professional Consultant's evaluation, if applicable.
 - 3. Attach copies of all applicable documents contained in the tenant folder, including prior social service referrals and social services evaluations.
 - 4. In the Interview Record, NYCHA Form 040.006, detail the reasons the case was submitted to Social Services, i.e., describe the tenant's behavior and all relevant information known about the tenant.
- E. If the problem for which the Housing Manager made the referral persists up to twelve (12) months after documented Social Services intervention and the Housing Manager determines that it is in the best interest of the Authority to terminate the tenancy, no further evaluation by the Social Services Division is needed before submitting the case to OSTA. The steps outlined in Section D shall be followed when forwarding the case to OSTA for termination. The Housing Manager must also notify the Borough Social Services Division that the case has been forwarded to OSTA for termination.

IV. BOROUGH SOCIAL SERVICE DIVISION

The following details the procedure to follow when the Borough Social Service Division receives a referral from a Housing Manager that a tenant may be mentally incapacitated and is at risk of termination.

- A. Immediately upon receipt of a pending termination case of a tenant who may be mentally incapacitated, the Borough Social Services supervisory staff assigns the case to staff who shall, within twenty (20) calendar days of being assigned:
 1. Take appropriate steps needed to determine whether or not the tenant is mentally incapacitated as defined in Section II. If social services staff believes a psychiatric evaluation and determination of mental capacity is required, they must notify the Borough Social Services Administrator, who shall refer the matter to a Professional Consultant retained by the Housing Authority. The Professional Consultant must complete the evaluation and submit a report to the Borough Social Services Administrator within 30 days. The report must indicate whether the appointment of a guardian or other representative is necessary if proceedings to terminate the tenancy would be commenced within the next 180 days. If the report indicates that the tenant is incompetent and unlikely to benefit from corrective action, no further action shall be taken by social services staff.
 2. If the Professional Consultant's evaluation indicates that the tenant is competent, the social services staff worker shall submit a proposal detailing corrective action that might assist in resolving the tenancy problems. Reasonable corrective action may include arranging for financial management, cleaning and/or housekeeping services, communication with family members or community-based social workers, identification and request for the intervention of community based case management services.
- B. The Borough Social Services Administrator reviews the evaluation and the Professional Consultant's report, and reports the findings to the Housing Manager. If reasonable corrective action is not feasible and termination must proceed, the Borough Social Services Administrator must notify the Housing Manager so that the file can be forwarded to OSTA. When forwarding the Professional Consultant's report to the Housing Manager, the Borough Social Services Administrator shall attach a cover memo addressed to the Assistant Director of OSTA that must indicate whether or not the referred tenant appears to be mentally incapacitated in accordance with the definition specified in Section II, and whether the appointment of a guardian or other representative is recommended by the Professional Consultant.

V. TENANCY ADMINISTRATION DIVISION (OSTA)

OSTA staff must screen cases to determine whether the tenant has been evaluated for mental capacity:

- A. If the Social Services report recommends the appointment of a guardian, OSTA shall then forward the case to the Law Department for the purpose of obtaining a guardian. OSTA shall maintain a log of all cases forwarded to the Law Department for the purpose of obtaining a guardian. OSTA shall follow-up with the Law Department if a guardian has not been obtained within 45 days of the referral to the Law Department. As soon as the Law Department notifies OSTA that a guardian has been appointed, OSTA shall forward the case for termination to the Law Department's Tenant Administrative Hearings Division (TAHD) or the Anti-Narcotic Strike Force as appropriate.
- B. In the event a termination case is received by OSTA in which the tenant appears to be mentally incapacitated as defined in Section II, or in which a referral was made to Social Services but there is no report on mental capacity or record of intervention, the proceeding to terminate the tenancy shall cease. OSTA shall make a referral to Social Services for an evaluation of mental capacity and return the file to the Housing Manager. Social Services shall determine the appropriateness of a psychological evaluation, and if required, forward the request for an evaluation to the Professional Consultant in accordance with the procedures detailed in Section IV. A. and IV B. above.

VI. TAHD/ANTI-NARCOTIC STRIKE FORCE & OFFICE OF THE IMPARTIAL HEARING OFFICER

If at any time during the administrative hearing, either the TAHD/Anti-Narcotic attorney or the Hearing Officer has reason to suspect that the tenant may be mentally incapacitated, and there has been no social service evaluation of the tenant's condition, the hearing must be stayed, and the Law Department/Hearing Office shall notify OSTA, detailing the reasons for which the hearing was stayed, i.e., a description of the tenant's behavior at the hearing and any other pertinent information known about the tenant. OSTA will make a Social Services referral, notify the Housing Manager, and follow up with Social Services within 30 days if no report is received.

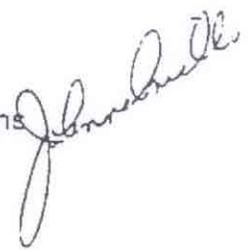
If a tenant or his/her representative seeks to re-open the default at an administrative hearing on the ground of mental incapacity, the tenant shall make an application to the Hearing Officer. If the Hearing Officer grants the application, the case is referred to the tenant's housing development to be referred for NYCHA Social Services by the Housing Manager and processed in accordance with the procedures detailed in Section IV.

NEW YORK CITY HOUSING AUTHORITY

May 21, 1999

GM-3627

TO: Distribution C
FROM: JoAnna Aniello, Assistant Deputy General Manager for Operations
SUBJECT: REFERRALS FOR NYCHA SOCIAL SERVICES



I. INTRODUCTION

This General Management Directive (GM) expands upon existing NYCHA practice regarding the referral of residents to NYCHA's Borough Social Service Divisions, formerly a part of the Department of Resident Review and Counseling (DRRC). As a result of the reorganization of DRRC, all social services functions are assigned to the Borough Management Departments; all other DRRC functions are assigned to the Operations Services Department's Tenancy Administration Division (OSTA).

Housing Managers or other staff may, from time to time, encounter residents who request or appear to need social service assistance. Under the direction of the Borough Social Services Administrator, each Borough Social Service Division provides a wide range of support services to assist residents within their boroughs.

Some examples of situations which can be the basis for a referral are:

- Chronic delinquency in the payment of rent
- Poor housekeeping
- At risk evictions
- Child abuse and neglect
- Problems associated with an elderly person living alone
- Problems associated with mentally or physically incapacitated persons
- Alcohol or substance abuse (Note: refer only cases of substance use; cases that involve drug trafficking or sale should be referred to law enforcement)
- Domestic violence/Elder abuse
- Non-verifiable income

II. MAKING REFERRALS

A. Housing Manager

A Housing Manager refers a resident for social service assistance by completing the form, NYCHA 040.450, Management Referral for NYCHA Social Services (Referral Form) (sample attached) and:

1. Forwards the referral form to the Borough Social Service Division, detailing the reason for the referral (attach a copy of the Interview Record detailing management's attempts to resolve any breach of rules and regulations with the tenant (eg. housekeeping, improper disposal of garbage, noise complaints, etc.).
2. Files a copy of the referral form in the tenant folder.
3. Notes in the Interview Record, NYCHA 040.006, that the referral was sent.

B. Persons from Non-Management Departments

NYCHA personnel from locations other than developments may refer a resident for NYCHA social service assistance by completing the form, **NYCHA 040.451, Referral for NYCHA Social Services from Non-Management Departments** (*sample attached*). (S)he then:

1. Forwards the referral form to the appropriate Borough Social Service Division, detailing the reason for the referral.
2. Sends a copy of the referral form to the Borough Management Director and the Housing Manager of the development in which the resident lives.
 - Manager follows instructions in Section II. A. 2. and 3.

III. PROCESSING OF REFERRALS

Borough Social Service Division staff must immediately log the receipt of a referral and submit it to a Borough Social Service supervisor who:

1. Reviews the referral.
2. Assigns the referral to an appropriate staff member who:
 - a. Initiates contact with the referred individual(s).
 - b. Assesses and evaluates the situation.
 - c. Devises and implements a course of action in an attempt to remedy the situation. Some examples of actions which may be taken are:
 - Referral for financial assistance (e.g., to Department of Social Services, Social Security, financial management, budget counseling).

- Referral for assisted living/medical help (e.g., housekeeping services, visiting nurse, nursing home, hospital).
 - Referral for breach of peace or domestic crisis assistance (e.g., Family Court, Victim Services, domestic violence shelter, police).
 - Referral for help with social/emotional problems (individual or family counselling).
 - Referral for problems caused by an individual's apparent mental incapacity (possible referral to the New York City Human Resources Administration/Protective Services for Adults {PSA}).
3. Supervises and reviews the evaluation and reporting process.
 4. Initiates, or supervises referrals to appropriate agencies, as set forth above.
 5. Forwards a completed form, **NYCHA 040.440, NYCHA Social Services Case Follow-up** (*sample attached*), or a more detailed comprehensive report when appropriate, to the Housing Manager of the development in which the resident lives, and to other referring parties as appropriate.
 - The reports detail an assessment of the individual and referrals made, especially referrals to PSA (i.e. whether PSA has accepted the case for assessment), as well as the outcome of such referrals and plan of care instituted.
 - The report is kept in the Manager's Confidential File (*a permanent file located in the Manager's Office*) for use only by the Manager, Assistant Manager and Housing Assistants. The Manager must ensure that the form, **NYCHA 040.062, Tenant Data - Summary**, on the left side of the Tenant Folder, is stamped **SEE CONFIDENTIAL FILE** to alert staff of the social service report.

Attachments