

COUNTY OF NEW YORK : IAS PART 26

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BARBARA JIGGETTS, et al.,

Plaintiffs,

Index No. 40582/87

-against-

MICHAEL DOWLING, as Commissioner of the
New York State Department of Social
Services, et al.,DECISION AFTER TRIAL
AND INTERIM ORDER

Defendants.

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KARLA MOSKOWITZ, J.:

This action challenges the schedule of maximum shelter allowances paid to recipients of Aid to Families with Dependent Children ("AFDC") in New York City, set forth in 18 NYCRR § 352.3. It comes to this Court on remand by the Court of Appeals (Jiggetts v Grinker, 75 NY2d 411). In its decision, the Court of Appeals held that "section 350(1)(a) [of the Social Services Law] imposes a statutory duty on the State Commissioner of Social Services to establish shelter allowances that bear a reasonable relation to the cost of housing in New York City and that plaintiffs' claim that he has failed to perform that duty presents a justiciable controversy...." (75 NY2d at 415). This court conducted a three and a half month trial on this issue. Thereafter, the parties submitted proposed findings of fact and memoranda of law.

The evidence presented at trial establishes that the shelter allowance does not bear a reasonable relationship to the cost of housing in New York City. Accordingly, the State Commissioner of Social Services ("State Commissioner") has failed

to comply with the statutory standard and the plaintiffs are entitled to appropriate relief.

PROCEDURAL HISTORY

Plaintiff Barbara Jiggetts commenced this action on February 26, 1987, alleging that the maximum monthly shelter allowances for AFDC recipients is contrary to law, naming both the New York City Commissioner of Social Services ("City Commissioner") and the State Commissioner as defendants. An amended complaint was filed and motions for preliminary relief, class certification, intervention and joinder were made on March 9, 1987. The City and State Commissioners cross-moved to dismiss the complaint for failure to state a cause of action and lack of subject matter jurisdiction. While these motions were pending, Theresa Felder, Maria Artiaga, Johnnie Mae Beal, Dorothy Hughes, Blanca Sanchez and Linda Green moved to intervene in the action and sought preliminary relief.¹ Neither the City nor the State Commissioners opposed these motions to intervene and the court granted intervention.

On January 12, 1988, this court denied the City and State Commissioners' motions to dismiss and granted plaintiffs' motion for class certification and preliminary injunctive relief (the "January 1988 Order") (139 Misc 2d 476). I found that Social

¹ Additionally, the Court granted the motion to intervene of Andrew and Lorraine O'Malley. The O'Malleys subsequently withdrew from the action, although Mrs. O'Malley later received relief through the informal procedure established by the parties. PX. 92. Plaintiff's Exhibit 92 ("PX" 92).

Services Law ("SSL") § 350(1)(a) imposes a mandatory duty on the State Commissioner to set adequate shelter allowances and granted a preliminary injunction ordering the City and State defendants to pay plaintiffs' arrears and full ongoing rents pending the outcome of the action (Id. at 485-87).

The City and State Commissioners appealed from the January 1988 Order. In a decision dated June 15, 1989, the Appellate Division, First Department, reversed the January, 1988 Order and dismissed the complaint (Jiggetts v Grinker, 148 AD2d 1). The Appellate Division concluded that the Social Services Law did not impose mandatory standards on the Commissioner of Social Services in setting shelter allowances (Id. at 19). It also concluded that, in any event, the City Commissioner was not a proper party and that class certification should not have been granted (Id. at 21). The Court did not address issues of preliminary relief.

On November 28, 1989, the Court of Appeals granted plaintiffs' motion for leave to appeal and stayed the order of the Appellate Division dismissing the complaint (Jiggetts v Grinker, 74 NY2d 933). On April 3, 1990, the Court unanimously reversed the decision of the Appellate Division and denied the motion to dismiss the complaint (75 NY2d 411). It held:

we conclude that section 350 (1)(a) imposes a statutory duty on the State Commissioner of Social Services to establish shelter allowances that bear a reasonable relation to the cost of housing in New York City

(Id. at 415). After reviewing provisions of the Social Services Law, the Court stated:

We construe these provisions as manifesting the Legislature's determination that family units should be kept together in a home-type setting and imposing a duty on the Department of Social Services to establish shelter allowances adequate for that purpose. A schedule establishing assistance levels so low that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard

(Id. at 417).

The Court of Appeals remanded the action to this court for a determination of the adequacy of the schedule of maximum shelter allowances.

While the appeals were pending, a number of additional AFDC recipients intervened, seeking preliminary relief to prevent eviction and homelessness. The State Commissioner did not oppose the motions, apart from arguing that the entire action was stayed pending appeal. Plaintiffs Nilsa Rodriguez, Pauline Smith, Bernadine Niles, Rita Bell, Ramona Oquendo, Marta Sanchez, Tammy Saxby, Maria Ramos, Judith Morris, Jaime Guzman and Ulyses Jackson, were granted intervention. This court stayed their evictions and ordered payment of their arrears and full ongoing rents pending outcome of the action.² In each instance, the City and State Commissio

² The one exception is Nilsa Rodriguez who did not seek this preliminary relief.

After the Court of Appeals' decision, this court granted motions for intervention and preliminary relief of Gloria Gonzalez, Yvette Parson, Iris Ross, Nilsa Carabello, Adrianna Melendez, Irene Rivera and Roselaine Louis-Charles without opposition by the State Commissioner. In each instance, as with previous intervenors, the proposed plaintiff alleged that her rent exceeded the shelter allowance, that she had fallen behind in rent payments and that her family was threatened with eviction as a result. The court stayed each intervenor's eviction pending authorization by the Department of Social Services ("DSS") of payment of arrears. As each AFDC recipient intervened as a plaintiff, her landlord was added as a defendant and eviction proceedings were stayed.

The parties then established an informal procedure for dealing with potential intervenors in this action.

On February 27, 1991, this court issued an order directing that the State Commissioner continue to process requests for interim relief.

At the trial of this action, plaintiffs presented twenty-two witnesses, including five experts on poverty, housing and homelessness, three public assistance recipients and eleven researchers who had conducted a study of the availability of apartments renting within the shelter allowance. Plaintiffs also presented excerpts of deposition testimony of four State officials and documentary evidence, including State documents. The State Commissioner presented fourteen witnesses, including one expert and nine current and former State employees. In rebuttal, plaintiffs

presented two additional witnesses, including one additional expert. Among the experts who testified for the plaintiffs were:

Professor Michael Stegman, Chairman of the Department of City and Regional Planning at the University of North Carolina at Chapel Hill and former Deputy Assistant Secretary for Research at the United States Department of Housing and Urban Development ("HUD");

Professor Emanuel Tobier, Chairman of the Urban Planning Program and Professor of Economics and Planning at the Graduate School of Public Administration at New York University, former Chairman of the New York City Rent Guidelines Board;

Dr. Anna Lou Dehavenon, Project Director of the Action Research Project on Hunger, Homelessness and Family Health;

Elizabeth Krueger, Director of Income Support Programs for the Community Food Resource Center;

Scott Auwarter, Director of the Homeless and Relocated Family Project at the Citizen's Advice Bureau in the Bronx;

And, in rebuttal, Dr. Victor Bach, Director of Housing Policy and Research for the Community Service Society of New York City.

Defendants' expert was Professor Randall Filer, a Professor of Economics at Hunter College.

Among public officials who were called by plaintiffs were Burton Blaustein, Deputy Director, Income Support Operations, of the DSS, New York City Human Resources Administration ("HRA"); his Executive Assistant, Anthony Imbo; and Vincent DiJesu, Director of

the Homes Data Base System of the Office of Crisis Intervention, HRA.

The State Commissioner³ called Dr. Edward G. Colfer, Principal Budget Examiner, New York State Division of the Budget ("DOB"); Dr. James Welsh, Chief of the Bureau of Policy Analysis in the Office of Program Planning Analysis and Development, DSS; William Shapiro, now Director of Policy Analysis and Development, Division of Income Maintenance, DSS; Kenneth Relyea, Director of Research, DSS; Mark Lewis, Deputy Commissioner for Executive Services and Support, DSS; Nancy Travers, Deputy Commissioner, Office of Community Development, State Division of Housing and Community Renewal; John Hickey, Associate Commissioner, Division of Income Maintenance, DSS; Burton Blaustein, HRA; Swati Desai, Director of Work and Welfare, Office of Policy Program and Development, HRA and Barbara Knecht, Adult Services Administration, HRA.

³ The New York State Department of Social Services is referred to as State defendant, State Commissioner, Commissioner, DSS or Department. These names are used interchangeably and are synonymous.

FINDINGS OF FACT

1. SSL § 350 entitled "Character and adequacy" provides in § 350-1(a) that "allowances shall be adequate to enable the father, mother or other relative to bring up the child properly, having regard for the physical, mental and moral well-being of such child," in accordance with SSL § 131-a and other applicable provisions of law. It further states that "allowances shall provide for the support, maintenance and needs" of others in the home if in need.

SSL § 344(2) provides that "Aid shall be construed to include services, particularly those services which may be necessary for each child in the light of the particular home conditions and his other needs." (DF 5, 8).⁴

2. In New York State, the public assistance allowance provided to recipients of AFDC consists of three components: a "basic" grant, two "home energy" allowances, and a shelter allowance. SSL § 131-a; Krueger Tr. 669-70; Hickey Tr. 2519, 2525-26; DX AT-2.

3. The schedules of amounts for the basic grant and the home energy allowances are established by the Legislature in the Social Services Law and are uniform throughout the State. SSL § 131-a.

⁴ Abbreviations are as follows: Tr. for pages in the trial transcript, coupled with the identity of the expert or witness. DX for defendant State Commissioner's exhibits. PX for plaintiffs' exhibits. PF for plaintiffs' proposed findings of fact. DF for defendant State's proposed findings of fact. Citations to pages of exhibits track the page numbers in the documents cited, unless unnumbered.

The schedules of shelter allowances are promulgated by DSS. Each of the 58 Social Services districts has a different schedule of maximum amounts. Recipients receive a shelter allowance in the actual amount of their rent, up to the maximum, for their household size in the pertinent district. The City of New York is a single district for these purposes. 18 NYCRR § 352.3(a). (PF 20).

4. At the time of trial, there were approximately 200,000 AFDC families in New York City. Tr. 1292. (DF 4).

5. Prior to 1975, the shelter portion of the public assistance grant was based on schedules individually established by each Social Services district. The regulations required the districts to provide an allowance schedule which "shall provide a sufficient amount for all persons to obtain housing in accordance with standards of public health in the community." 18 NYCRR § 352.3(a) (repealed in 1975). Exceptions to the maximum were granted at the discretion of the local commissioners. Almost all recipients received shelter allowances that paid their full rents. Colfer Tr. 1307-08. PX 13-13, at p.4. (PF 21 and 22).

6. In 1975, the Commissioner promulgated amended regulations that established maximum shelter allowance schedules varying by Social Services district. 18 NYCRR § 352.3(a) (amended). The schedule was based on the 95th percentile of rents actually paid. Colfer Tr. 1307, PE 13. (DF 47). Fiscal implications were minimal because most recipients were reimbursed for the rents they paid. Tr 1308 (DF 48). Two schedules were established for each county, one including heat and one excluding it. To obtain the latter, the

fuel allowance was subtracted from the heat-included schedule. PX 15-16, p. 2. For New York City residents (most of whom receive "with heat" allowances), the following maximum shelter allowances took effect on October 1, 1975:

	Family Size							
	1	2	3	4	5	6	7	8+
With heat	152	183	194	218	226	249	303	317
Without heat	136	160	169	186	189	209	261	273

(PF 23 - 25)

7. Between 1975 and 1984 the shelter allowance was not increased. By 1979, 25.5% of recipients in New York City were receiving the maximum shelter allowance DX AZ-129; Colfer Tr. 1308. (PF 27; DF 61).

8. In 1982, DSS issued a report that developed an alternative methodology for shelter allowances, finding that the method of setting shelter allowances based on a percentile of rents paid by recipients was flawed because it was influenced by the amounts that were previously paid to recipients, and "does not reflect shelter needs or actual costs of housing." Part of the report concluded that HUD Fair Market Rates were a "good proxy" of costs. The recommendations in this report were not adopted. PX 13-13, at pp. iii and 10; PX 15-16, at p. 2. (PF 28,29).

9. In 1984, the Commissioner implemented an increase in shelter maxima of approximately 24% for public assistance recipients in New York City. PX 67-250. Commencing January first,

for New York City recipients, the maximum allowances for apartments including heat were:

1	2	3	4	5	6	7	8+
193	227	244	270	281	308	366	383

State defendant's Answer to the Intervenor Complaint of Bernadine Niles and Rita Bell, PX 45; PF 30; PX 67-250. (PF 30).

10. This schedule was based on recipient rents despite the 1982 report recommendations. The shelter allowance for a family of three was set at "the median contract rent for non-dilapidated units rented by public assistance recipients" as reflected in the 1981 Housing and Vacancy Survey (\$244) and as a convenient round number. PX 137-153, at p. 52; PX 14-14, at p. 2; Welsh Tr. 1439. (PF 34-35). Rent levels for other household sizes were derived from the allowances for a family of three through use of a mathematical formula. PX 14-14. The allowance was, as was the later increase, set between the 65th and 70th percentiles for New York City. Colfer, Tr. 1310. After the increase, 30% of all recipients continued to have rents in excess of the shelter allowance. PX 137-153, at p. 61; PX 24-34, at p.1. (PF 31-32). Defendant admits that the 1984 shelter allowance schedule was based on 1981 rent figures, actually covering full rent for only 70% of AFDC recipients. Defendants' Reply Brief, p. 10. (DF 53).

11. The method used to set the shelter allowance in 1984 was not calculated to provide public assistance recipients with a reasonable opportunity to secure housing renting within the maximum allowance. It left many public assistance families with rent in

excess of the shelter allowance each month without any consideration for what would become of them. Stegman TR. 341-345. Furthermore, even if the methodology is accepted as a means of estimating the cost of housing in New York City in 1981 (which it is not), rents had increased by over 20% between the time the data relied on by the Department was gathered and the date of implementation. Stegman Tr. 341-45.

12. Professor Randall Filer's opinion that the 1984 shelter allowance schedule was set in a reasonable manner is not persuasive. Dr. Filer made no attempt to justify DSS's failure to update the 1981 data to reflect increases in rents. Filer Tr. 2045-62. (PF 38).

13. It is unnecessary for this court to make a finding on the issue of whether DSS included or excluded rents of recipients in public housing from its calculation for the 1984 schedule for New York City. PX 14-14; 19-26. PX 137-153, at pp. 39-41. Dr. Welsh Tr. 1579-80. See also PX 15-16, at p. 3.

Regardless of whether public housing units were included or excluded from the data, the methodology did not reasonably reflect the cost of housing in New York City at the time the schedule was implemented, was admittedly based on 1981 rent figures and deliberately excluded 30% of rents as above the maximum shelter allowance. Defendants' Reply Brief p.10. (PF 42-43).

14. The shelter allowance was raised in January, 1988. Colfer Tr. 1308-10. The schedule was based on the 65th percentile of actual rents paid by three-person public assistance households

as of May 1986, adjusted by an inflation factor of 6% to reflect the fact that the schedule was implemented in January 1988. A formula was used to derive amounts for other household sizes. PX 19-26; 132-39. In New York City the schedule amounted to an average increase ranging from a 9% increase for a one person household to 18% for a three person household. PX 67-250 (PF 41, 45).

15. The 1988 maximum shelter schedule for New York City households with heat included in the rent is as follows:

Family Size								
1	2	3	4	5	6	7	8+	
215	250	286	312	337	349	403	421	

18 NYCRR § 352.3. (PF 46)

16. The 1988 schedule was finalized by the State Division of the Budget based on a proposal by DSS. DSS had proposed a higher schedule based on the 70th percentile of rents paid by three person households in May 1986, adjusted by a 12% inflation factor. PX 23-33; 139-55, at p. 64. An inflation factor was included because the date upon which the increase was based reflected 1986 rents and the schedule was to take effect on January 1, 1988. The 12% proposal was based on an estimate of the consumer price index for residential rents in New York City and in Buffalo. PX 23-33, at pp. 2-3, Tr. 1685, 2307. (PF 47; DF 20, 21).

17. DSS never considered whether the 30% (plaintiffs' contention) or 23% (defendant's contention) of recipients whose rents were above the shelter allowance would be able to retain

their housing or obtain less expensive apartments. As in 1984, Dr. James Welsh developed the methodology for the increase (Shapiro Tr. 1526-27, 1530; Welsh Tr. 1581-82, PX 139-155, at pp. 39-40, 47-48), and he undertook no analysis of this question, participated in no discussions where it was raised, and saw no documents referring to it. PX 138-154, at pp. 197-98. See also PX 138-154, at pp. 175-76. Nor did the Department consider whether these rates would enable building owners to cover costs of operating their buildings. PX 11-9, PX 138-154, PX 136-152, at p. 166-69. (PF 48, 49). Nor did the Department produce any witness during discovery or at trial who could explain the basis of the Department's recommendation. PX 140-156, pp. 4-6; Welsh Tr. 1699; PX 139-155, at pp. 64-65 (Relyea deposition); See Shapiro Tr. 1537. (PF 48-50).

18. The Division of the Budget included in the executive budget an increase to only the 65th percentile of recipient rents, with only a 6% inflation adjustment, PX 19-26; 132-39; Colfer Tr. 1319-20, 1330-34, 1405-6. The Department could not change DOB's decision. Tr. 1330. (DF 34, 35). In cutting the Department's proposal, DOB made no substantive analyses of housing market conditions or the impact on the homeless public assistance recipients' ability to find housing, except that the staff felt that the difference between the 70th and 65th percentile would not make an appreciable difference in a landlord's ability to maintain the housing stock, was comparable to the 1984 relief, would provide "significant programatic relief" to recipients and because of other

competing expenditure requirements. Colfer Tr. 1336-38, 1401-02, 1408; PX 140-156, at pp 49-50. (PF 51, 54; DF 31).

19. The Division of the Budget's reduction of the increase proposed by the DSS, in effect, cut the increase in half. The increase proposed by the DSS would have resulted in a shelter allowance for a family of three of \$328, an amount that is \$84 above the maximum that was in effect at the time. The increase approved by the Division of the Budget resulted in a maximum allowance of \$286, an amount that is \$42 above the previous maximum. (PF 51, 52).

The shelter allowance resulted in an additional annual gross expenditure of \$110,000,000. PE 32-52. (DF 37). The annual expenditure on the shelter allowance at the time of trial was approximately \$800,000,000, about one half of the overall budget for the income maintenance program. Tr. 1299. (DF 15). Those costs are shared by the Federal government, localities and the State.

20. The Division of the Budget viewed an increase in the shelter allowance to the 65th percentile as "reasonably meeting the cost of shelter" because "we would be reimbursing 100% of the cost of shelter for 65% of the caseload." For the rest, "a large number of them were receiving the substantial portion of their rent reimbursed." The "possibility" of alternative income, earned income, child support or rent subsidies might help them pay their rent. It was Dr. Colfer's opinion that recipients had the "option" of looking for less expensive housing, despite his recognition of

"the very low vacancy rate among low rent housing." Colfer Tr. 1378-79. (PF 57, 58).

21. The method used to set the shelter allowance in 1988 was not a reasonable means of estimating the cost of housing for families on public assistance in New York City. Because it was based on the 65th percentile of recipient rents it was supposed to leave tens of thousands of AFDC families with rents above their shelter allowances. Thirty-five percent of AFDC families would have rents above the shelter allowance. Considering that public housing accepted the shelter allowance, the impact was greater on families seeking or renting private housing in New York City. No inquiry was made or study done of whether these families could be expected to relocate to apartments renting within the shelter allowance or whether they would be able to pay their rents.

Stegman Tr. 341-44.

22. Officials in DSS never claimed that the 1988 shelter schedule was adequate to enable recipients to obtain or remain in housing in New York City. After the 1988 increase, they still did not view the allowance as adequate. In responding to a public comment on the proposed regulation containing the 1988 shelter schedule, the Department's Director of the Bureau of Income Support wrote that "[w]e agree that the new rent schedules may still be below the actual cost of housing in New York City" although "this increase will provide significant relief for those most seriously affected given the limited amount of funds available..." PX 26-41, Defendant's Reply Brief, p. 13. (PF 60).

In discussing a "Tier II" proposal of HUD "Fair Market Rates" for some families, Department officials conceded the inadequacy of the general shelter allowance schedule then proposed ("Tier I") as follows: "[i]t is unlikely that the Tier I levels will encourage landlords to maintain or rehabilitate buildings or that they will allow clients to compete for housing meeting HUD's quality standards." PX 16-19, at p.4. (PF 61).

23. Randall Filer's opinion that the method used to set the shelter allowance in 1988 was reasonable is not persuasive. Dr. Filer stated that the method was reasonable because it restored the percentage of recipients paying more than the shelter allowance to the level that it had been immediately after the 1984 increase. Filer Tr. 2065-66. However, the 1984 shelter allowance increase covered the full rents of a greater percentage of public assistance recipients than did the 1988 increase. PX 137-153, at p. 61; PX 24-34, at p. 1. That the two increases resulted in schedules that covered nearly the same percentile of recipient rents does not establish the reasonableness of the 1988 shelter schedule. (PF 62).

24. Even though the percentage of recipients with rents in excess of the shelter allowance has risen significantly since the 1988 increase, the schedule of allowances has not increased. The executive budget submitted to the Legislature has not contained any requests for appropriations based on further increases in the shelter allowance. No Department studies have shown that, to the extent they have considered the issue, public assistance recipients

can relocate to housing renting within the shelter allowance. PX 83-261, Colfer Tr. 1406. (PF 63-65).

25. One DSS study, a report to the Legislature on the statewide impact of the 1988 shelter allowance increase, concluded that the overwhelming majority of public assistance recipients believe that they cannot find a place where they would like to live with a rent less than the new shelter maximum. PX 20-27, at p. 7; PX 138-154, at p. 225, 243-44. (Defendant's Reply Brief, p.35; PF 66).

In another report to the Legislature on the issue of combining the different components of the public assistance grant, the Department stated that, in New York City, in light of the "extremely low vacancy rate that characterizes the low income rental market," recipients have no real option of "acting more economically" in their choice of housing." PX 21-29, at p.18. See Lewis Tr. 2345-46. These reports were issued in June 1989 and December 30, 1988. PX 138-154, at pp. 243-44. (PF 67).

26. DSS instead relies on data it collects periodically, contending that 1990 quarterly reports reveal that the average level of rents paid by public assistance families is below the shelter allowance maximum. DX AZ-129, paragraph 50-80 through 62-92; 18-23; 40-70 through 62-93; Tr. 2602. Defendant ignores its own data that show overall numbers and percentages reaching almost to 50% of AFDC families in non-public and 40% in public and private housing with rents above the shelter maxima. PX 62 and DX U.

27. Department officials have continued to recognize that the shelter allowance is insufficient to enable recipients to compete in the housing market. In its formal proposal to the Division of the Budget for the fiscal year 1988-89, DSS stated "[d]espite an increase in the shelter allowance, public assistance recipients have been unable to purchase quality housing and are frequently forced to pay as much as 45 percent of their monthly grant for housing that is often substandard." PX 34-61; See PX 39-68, at p.5 ("Despite an increase in the shelter allowance, public assistance recipients are unable to compete for quality housing and people are forced to use more of their basic allowances to meet shelter obligations that may not be code compliant and may pose a threat to the health and safety of recipients"). The proposal recognized that recipients may not even be able to afford state-assisted housing units. PX 34-61, at p. 1. (PF 69).

28. Richard Higgins, an attorney who was Commissioner of the Division of Housing and Community Renewal from the summer of 1988 until November 1990, testified that, during the summer and fall of 1990, he participated in discussions about the shelter allowance "brought upon by the decision of the Court of Appeals in this case." Higgins Tr. 2750-1, 2797.

29. Mr. Higgins considered the use of HUD "fair market rents" too high as a shelter allowance schedule and communicated this view to the Commissioner of Social Services and other officials. Higgins Tr 2797-2800, 2802. However, there is no evidence in the

record that the Department considered former Commissioner Higgins' evaluation. (PF 71).

30. On cross-examination, Mr. Higgins admitted that his evaluation of the shelter allowance led him to recommend that the schedule be increased "modestly." Higgins Tr. 2814-15. In a memo dated September 25, 1990, Mr. Higgins stated that the shelter allowance must cover the operating costs of housing plus a cushion for debt service and profit. If it were insufficient, tenants would be unable to afford basic housing, be evicted, becoming homeless, leading to owners disinvesting and ultimately abandoning housing. Tr. 2813-2814. By a "modest" increase, he meant an increase on the same order of magnitude as the 1984 or 1988 increases. Higgins Tr. 2819. He also proposed that the shelter allowance be indexed on an annual basis to reflect increases in operating costs, and that additional payments of up to \$100 a month be available in areas that are subject to rent regulation such as New York City, "to keep a tenant housed if these costs were less than those associated with eviction." Higgins Tr. 2815.

The maximum shelter allowance for a family of three in New York City would have increased to \$457 in 1990 (an increase of \$171), with further increases as time went on, by indexation. In his evaluation, Mr. Higgins also made a number of other proposals, including increasing funds for the construction of new low-income housing. Higgins Tr. 2818; DX BE. None of Mr. Higgins' recommendations were considered or adopted. Higgins Tr. 2824-25. (PF 72, 73).

31. In setting the shelter allowance, DSS has pegged the schedule to particular percentiles of recipient rents. This methodology does not yield a reasonable estimate of the cost of housing in each area because it takes as a given that a certain percentage of recipients will not have their rents covered by the shelter allowance. Without considering other characteristics of the housing market, including the availability of vacant apartments renting within the shelter schedule, it is impossible to tell whether the recipients whose rents are not fully covered by the allowance will be able to relocate to apartments renting within the schedule. Thus, unless the percentile chosen covers the rents of all recipients -- or 95% as in 1975 -- the methodology provides no assurance that recipients will be able to find housing. Stegman Tr. 342-44; 3382-83. (PF 75).

32. Before testifying at trial, DSS officials recognized these flaws with the method of arbitrarily setting the shelter allowance at a percentile of recipient rents. As William Shapiro, Director of Policy Analysis and Development within DSS's Division of Income Maintenance, Shapiro Tr. 1501, wrote:

As we have argued previously, this criterion - the percentage of clients with rent in excess of their allowances -- has no special validity. That is why we proposed a change to an external standard that would permit the shelter ceilings to rise in tandem with housing costs generally.

PX 28-44; See PX 8-2, at p. 4; PX 25-40; PX 11-9. (PF 76).

33. Half the AFDC families living in private housing in New York City have rents greater than their shelter allowances. Thus, in December 1990, 79,022 AFDC households in New York City had rents

in excess of their shelter allowances. The rents for 39,279 households were more than 130% of their shelter allowances. For a family of three, a rent that is 130% of its shelter allowance would be \$372, or \$86 above its shelter allowance. DX U-90. See also PX 84-262 (data for prior periods). (PF 77, 79).

34. The purchasing power of the shelter allowance originally established in 1975 has eroded dramatically as rent increases have far exceeded the two increases in the shelter allowance. Stegman Tr. 299-300; Filer Tr. 2229, 2232; PX 84-287; Compare PX 67-250 and 74-253. See also PX 8-2; 12-11, at p. 2; PX 23-22, at p. 2 (formal DSS budget submission stating that "[a]s the allowance failed to keep pace with the rising rents, more and more welfare recipients are finding it difficult or impossible to locate or maintain decent housing"); PX 24-34; DX G-37, at p. 12. (PF 80).

35. Since 1975, when the shelter allowance was first established, rent levels in New York City have more than doubled. The median contract rent (asking rent minus tenant paid utilities) in New York City rose by 127.7% from 1975 to 1987. From 1987 to December 1990, the Consumer Price Index ("CPI") for residential rents in New York City rose 22%. PX 74-253. Stegman Tr. 289-93. See also Filer Tr. 2229 (rent levels doubled between 1975 and 1984). (PF 81).

36. These increases in rents have far outstripped increases in the shelter allowance. The shelter allowance has increased by an average of 41% since 1975. This is less than one quarter of the 177% increase in rents, even though the 1988 shelter allowance

increased by 17.2% for a three person household, 15.6% for a four and 19.9% for five. Compare PX 67-250 with PX 74-253. (Defendant's Reply Brief, PF 82, p. 21-22). (PF 82).

37. The median contract rent as shown in the triennial Housing and Vacancy Survey ("HVS") is an appropriate way of measuring changes in rent levels in New York City. For periods in which HVS data is not available, the Consumer Price Index ("CPI") for residential rent is an appropriate estimate of changes in the cost of rental housing in New York City. Stegman Tr. 291-92. See PX 15-16, at p. 4. See also PX 10-6, at p. 2; 12-11, at p. 2. (PF 83, 84).

38. The majority of AFDC recipients in New York City live in rent stabilized buildings. Since 1975, rent increases authorized by the Rent Guidelines Board have far exceeded the increases in the shelter allowance. For example, if a public assistance recipient rented an apartment at the shelter allowance for a family of three in 1975 and lived there continuously until the present, taking two year lease renewals, rent increases authorized by the Rent Guidelines Board could result in a current rent that is approximately \$100 above the shelter allowance for a family of three. If this apartment changed hands, or if the tenant had selected one year leases, or if the landlord had taken a Major Capital Improvement ("MCI") increase, the rent could be even higher today. Further, from October 1984 through September 1990, the Rent Guidelines Board authorized landlords to add surcharges on low rent apartments to the authorized levels of increases. Stegman Tr. 465;

PX 65-201 (Orders 16-21); PX 79-257; PX 80-258; Tobier Tr. 463-70. (PF 85-88).

39. Randall Filer's testimony that rent increases authorized by the Rent Guidelines Board are of no significance in evaluating the adequacy of the shelter allowance because owners of apartments in older buildings have not taken all possible rent increases (Filer Tr. 2044-45) is not persuasive. The evidence shows that rents in rent stabilized buildings have increased at rates substantially greater than increases in the shelter allowance. Between 1978 and 1987 median rent levels for pre-1947 rent stabilized buildings, which make up the older and less expensive portion of the rent stabilized stock, rose by 89%. PX 70-209, at p. 66. See Stegman Tr. 3340. (PF 89).

40. As rents have increased since 1975, the number of apartments renting within the shelter allowance has shrunk considerably. The number of apartments renting below \$300 has dropped by two-thirds since 1975. PX 69-251; Stegman Tr. 300-02. See also Tobier Tr. 457. An apartment renting for \$300 today is comparable in terms of affordability for public assistance recipients to an apartment renting for \$200 in 1975. Compare PX 67-250 (\$300 is 105% of \$286, the current maximum allowance for a family of three) with id. (\$200 is 103% of \$194, which was the maximum allowance for three in 1975). The number of apartments renting below \$300 is less than half of the number of apartments that rented for under \$200 in 1975. Compare PX 69-251 (601,559 apartments), with PX 72-212 (1,410,000 apartments). Cf. Stegman

Tr. 3369 (In 1975, 70% of apartments rented within the shelter allowance for a family of three). (PF 90, 91).

41. A substantial number of apartments still renting below \$300 are operated by the New York City Housing Authority or have low rents because of government subsidies. Stegman Tr. 301-02; PX 70-209, at p.60, n.2. See also Stegman Tr. 3317-25. (PF 92).

42. In assessing the adequacy of the shelter allowance it is appropriate to look at the private sector of the market, and not at public or in rem housing, because the rents in public and in rem housing are administratively set so that public assistance recipients will not pay more than the shelter allowance. Thus, surveys using those rentals are skewed: approximately 18% reside with their rents capped at the shelter allowance. DSS's own data show that, in December 1990, only 6.27% or 2,224 AFDC families in public housing had rents higher than the maximum shelter allowance, whereas 49.85% or 79,022 families in private housing had rents higher than the maximum, resulting in an overall 41.88% of A.F.D.C. families (81,246 of 202,293) with rents over the maximum shelter allowance. DX U-90. See also PX 62; Stegman Tr. 321-22; PX 135-151 at pp. 93-94 (Shapiro Deposition). (PF 94).

43. Because of their limited supply, public housing and federal Section 8 certificates are, in practice, not available to the vast majority of public assistance families. The waiting list for public housing numbers in the hundreds of thousands. Moreover, because few public assistance families occupy rent controlled apartments, the vast majority are relegated to the unregulated or

rent stabilized sectors of the private housing market. Intervenor Complaint of Rita Bell and Defendant's Answer ¶ 84 (admitting allegation in the complaint). Stegman Tr. 321; PX 63-102 (more than 180,000 families on NYCHA waiting list); PX 128-64, at p.35. (PF 94).

44. Randall Filer's testimony that there are a large number of apartments available within the shelter allowance is not credible. Filer Tr. 1806. As Professor Stegman explained, the chart Dr. Filer relied on (Exhibit AF-1) does not show that there are a sufficient number of apartments available to public assistance recipients renting within the shelter allowance because it includes many apartments that are occupied by other people. Filer Tr. 2106-07 (admitting that 260,000 of the 266,000 one bedroom apartments listed in DX AF-1 were occupied); id. at 2107-08 (admitting that 280,000 of the 282,000 two bedroom apartments listed in DX AF-1 were occupied); See Filer Tr. 2108 (admitting that apartments listed in DX AF-1 are "not necessarily" occupied by persons defined to be in need of such apartments). The existence of low rent apartments that are occupied by other people is of no help to public assistance recipients looking for housing within the shelter allowance. Even if these apartments became vacant, many of them would rent at higher rates. Stegman Tr. 3319-20, 3324-26, 3330-34. (PF 95).

45. Exhibit AF-1 also misleadingly includes one and two bedroom apartments in in rem buildings and public housing units as "available" to public assistance recipients, on the theory that

public assistance recipients living in those units have rents that are set so as not to exceed the shelter allowance. Filer Tr. 1800. Defendant has admitted that these units are not generally available to public assistance recipients. Intervenor Complaint of Rita Bell and Defendant's Answer ¶ 84. (PF 96).

46. Moreover, public housing and in rem units are allocated pursuant to government established rules and priorities that effectively limit the number of public assistance families that occupy this housing. Stegman Tr. 3315-17. The New York City Housing Authority has a policy of allocating its apartments to households with a wide range of incomes. Thus, only 28% of tenants in public housing receive public assistance. Stegman Tr. at 3315-16. (PF 97).

47. According to the 1987 Housing and Vacancy Survey, only 37% of in rem tenants receive public assistance. PX 70-209, at p. 213. The data show that the median income of the 63% of tenants in in rem housing who do not receive public assistance is more than twice as high as the median income of the tenants in in rem housing who do receive public assistance. Stegman Tr. 3316. (PF 98).

48. Further, many apartments counted in Exhibit AF-1 as units of "private" housing available within the shelter allowance only have low rents because their occupants receive government subsidies, under programs such as "Section 8" of the federal rent subsidy program, covering 44,000 tenants in New York City who pay 30% of their income as rent (See Stegman Tr. 325-27, 3323; Shapiro Tr. 1546-47, 1553; PX 70-209, at pp. 84-86) or the Senior Citizen

Rent Increase Exemption ("SCRIE") program providing that landlords of rent regulated apartments receive tax abatements in lieu of rent increases for eligible elderly households whose incomes are less than \$15,000 and whose rent/income ratio exceeds one third of their income. The average subsidy under the SCRIE program is about \$75 a month. Stegman Tr. 3321-22. PX 71-210, at pp. 118-119. (PF 99 and footnotes 13 and 14).

49. Vacant apartments available for rent within the shelter allowance are almost impossible to find. The vacancy rate for apartments under \$300 in 1987, which is the most recent vacancy data for apartments at different rent levels, was 0.96. The vacancy rate for apartments renting between \$300 and \$349 was 2.15%. The overall vacancy rate was 2.46%. PX 73-252; Stegman Tr. 305-07, 3323-26. See PX 21-29, at p. 18; PX 70-209, at p. 92; PX 159, at p. 3. (PF 101).

50. Even using Dr. Filer's calculations, the vacancy rate for apartments renting within the shelter allowance is extremely low. Dr. Filer's exhibit of apartments that rent within the shelter allowance, DX AF-1, shows a vacancy rate of 1.67% for one bedroom apartments and 1.02% for two bedroom apartments. The combined vacancy rate is only 1.34% and shows a total of only 7,334 vacant units, a de minimis number considering that there are 1,250,000 one and two bedroom rental apartments in the New York City housing market. These vacancies also include in rem and public housing. Stegman Tr. 3323-26; Filer Tr. 2256. (PF 104).

51. An estimate of the vacancy rate for New York City as a whole of 5.2% for the last two quarters of 1990, based on the Current Population Survey does not show the vacancy rate for apartments in different price ranges and is thus meaningless as a measure of apartments available within the shelter allowance. Stegman Tr. 3330-34 (PF 105). The vacancy rate for low rent apartments has been much lower than the vacancy rate for New York City as a whole. Stegman Tr. 3332; PX 159, at p.3. The 1987 HVS, which contains the most recent vacancy data for apartments renting at different price levels, shows that the vacancy rate for apartments renting under \$300 was less than half the vacancy rate for the City as a whole. PX 73-252; 21-29, at p. 18; 70-209, at p. 50. (PF 106). Defendants' surmise that the vacancy rate will increase for low cost housing because of "the likely addition of new units to the market [and] an overall increase in vacancy rate" is speculative. (Defendant's Reply Brief, p. 27).

52. Because of the decline in the number of apartments renting within the shelter allowance and the extremely low vacancy rate for those apartments, families looking for apartments renting within the shelter allowance do not have a realistic chance of finding one. Tobier Tr. 459, 475-78; PX 20-27, at p.7; PX 26-41; 21-29, at p.18 (state report stating that the opportunity for public assistance recipients to "act more economically" in their choice of housing appears minimal at best); 70-209, at p. 92 & Table 4.28 (HVS analysis of number of apartments available on private market within the shelter allowance in 1986); 93-509, 94-

527, 97-500, 98-506, 99-520, 100-521, 101-510, 102-522, 103-505, 104-529, 105-503, 106-531, 107-504, 108-523, 109-508, 110-525, 111-501, 112-526, 113-511, 114-530, 115-502, 116-524, 117-507, 118-528 (newspaper advertisement study).

53. Public assistance recipients looking for housing in the Bronx renting within the shelter allowance do not have a reasonable chance of finding apartments. The court adopts the opinion of Scott Auwarter, despite defendant's contention that the reason recipients do not find apartments is that landlords believe public assistance recipients might not be acceptable tenants. Auwarter Tr. 623-26. Mr. Auwarter directs a program that has assisted 3,000 homeless and relocated families over the past three years. During that time, Mr. Auwarter's program has helped 750 of these families search for apartments in the Bronx. Only 200 of these families were successful in finding apartments. Of these 200, none of them found apartments without some form of subsidy in addition to the shelter allowance. Auwarter Tr. 617-619, 664. Mr. Auwarter concludes that "families who are on public assistance [who] have no other type of subsidy, cannot find housing, permanent housing in the Bronx." Auwarter Tr. 623-24. Mr. Auwarter's opinion, also based on his contacting 60 landlords who own buildings in poor neighborhoods who rent to public assistance recipients, is that landlords "won't take them with just the money that Welfare will offer. They need some other type of housing subsidy." Auwarter Tr. 625-26. And the "going rate" for a one bedroom apartment is around \$500 a month and for a two bedroom apartment the "going

rate" is about \$600 (Auwarter Tr. 626), even though the Bronx has the lowest rent levels in New York City. PX 70-209, at p. 67, Table 4.6. (PF 108-112).

54. Public assistance recipients do not have a reasonable chance of finding apartments renting within the shelter allowance by consulting newspaper advertisements. A study of apartment advertisements in twelve newspapers, including five major city-wide dailies, three city-wide weeklies and three local weeklies, conducted from November 1, 1990 through January 31, 1991 (missing some Daily News apartment weeklies and one Sunday New York Times) showed that there were no advertisements in any of these newspapers during the entire period for apartments renting within the shelter allowance in the borough of Brooklyn. PX 93-509, 94-527, 97-500, 98-506, 99-520, 100-521, 101-510, 102-522, 103-505, 104-529, 105-503, 106-531, 107-504, 108-523, 109-508, 110-515, 111-501, 112-526, 113-511, 114-530, 115-502, 116-524, 117-507, 118-528. See also Remy Tr. 31-32; Diaz Tr. 83, Irizarry Tr. 112. (PF 113). Defendant's criticism of the "newspaper study" asks this court to draw conclusions based again on speculation, e.g. low rent apartments may be rented by word-of-mouth (Defendant's Reply Brief, p. 34).

55. Defendant's own survey of public assistance recipients in 1988 concluded that 81% of those with recent experience in the housing market do not believe that they can find a suitable apartment renting within the shelter allowance. PX 20-27, at p. 7; see also DX AH-14, at p. 11, Table 20 (finding that 55.9% of

homeless families at the Martinique Hotel and 62.2% of families at the Forbell Street Shelter were unable to rent apartments they viewed because the rent was too high). (PF 114).

56. Because the shelter allowance does not meet the rent of almost 50% of AFDC recipients in private housing in New York City and does not provide these families with a reasonable chance of moving to apartments renting within the shelter allowance, it is not reasonable. Stegman Tr. 320-21; 3323-26; PX 25-40, at p. 2; 26-41; 39-68, at p. 55. (See Findings of Fact, supra; PF 117).

57. There is no evidence in the record that any Department officials share Dr. Filer's opinion that there are a large number of vacant apartments renting within the shelter allowance. Instead, officials have often commented on the lack of housing for recipients. See PX 26-41; 20-27, at p. 7; 21-29, at p. 18; 25-40; 34-61; 39-68, at p. 55; 159, at p. 3. (PF 116).

58. Even State officials recognized, both before and after the 1988 increase in the shelter allowance, that the shelter allowance does not enable AFDC recipients to compete for decent housing. PX 11-9, at p. 1 ("[e]ven our current proposal would be grossly inadequate to bring shelter allowances back into the ballpark of what is needed to give P[ublic] A[ssistance] clients a fair chance of keeping afloat in the current housing market"); 34-61 ("Despite an increase in the shelter allowance, public assistance recipients have been unable to purchase quality housing"); 24-34 ("Shelter allowances have long been inadequate to permit recipients to compete for housing"); 26-41; 39-68, at p. 55;

126-10, at p. 3; 25-40, at p. 2 ("Adequate supplies of housing remain beyond the reach of many public assistance recipients, and the impending shelter ceiling increases will still leave a large gap between the rents demanded by the housing market and the amounts clients can afford to pay."). See also PX 8-2; 10-6, at p. 1 ("Since 1979 our clients' ability to compete for housing has been substantially compromised"); 23-33, at p. 110 ("The reality is that, particularly in New York City, there is a shortage of decent low income housing and the current shelter maxima are insufficient to purchase housing from the present supply"); 130-7. (PF 118).

59. Randall Filer's testimony (Tr. 1837-39) that many AFDC families with rents in excess of the shelter allowance voluntarily chose to move into more expensive apartments when less expensive apartments were available to them is not credible. The data on which his opinion is based do not break out the actual reason for moves, other than "voluntary," or the public assistance status of the family at the move (Filer Tr. 1811-13; 2116; 2119-20, 1824-25, 1835-37. (PF 119, 120).

60. I find that the schedule of "fair market rents" ("FMR") published by HUD is a reasonable estimate of the price "which would be required to be paid in order to obtain privately owned, existing safe and sanitary rental housing of modest nature." Using the 45th percentile of rents in various markets in the United States to establish the schedule results in a reasonable measure (DF 87, 88). Stegman Tr. 325-27; 56 Federal Register 49024 (Sept. 26, 1991); 55 Federal Register 40044 (Oct. 1, 1990); (PF 121) 24 CFR 882.02; PX

10-6, at p. 3. At the time the shelter allowance was initially adopted in 1975, it was roughly comparable to the HUD schedule of fair market rents. For example, in 1976 the HUD fair market rent for a two bedroom apartment in a non-elevator building was \$215, while the maximum shelter allowance for a family of four was \$218. Compare PX 141 with PX 67-250. However, as rent increases outpaced increases in the shelter allowance, a gap developed between the FMR and the shelter allowance. In 1984 the FMR for a two bedroom apartment was \$130 greater than the shelter allowance for a family of four. By 1990, this gap had widened to \$266. PX 81-259; Stegman Tr. 333-34; See PX 10-6. (PF 121-23).

Defendant State's position at trial that the HUD schedule is not a good measure (DF 87-93) is in contrast to its prior position when the schedule approximated the shelter allowance (PX 13, p. 10).

61. At the time of trial, the schedule of maximum shelter allowances was approximately half of HUD's schedule of FMRs for New York City. Stegman Tr. 330-32; PX 82-260; PX 27-43, at p. 2 (estimating that the shelter allowance ranged from 49% to 55% of the FMR in 1988). On October 1, 1991, HUD fair market rents increased further. 56 Fed. Reg. 49024 (Sept. 26, 1991). The court takes judicial notice of the FMR in New York City in 1997 for a two-bedroom apartment of \$838 a month 61 Federal Register 49613 (September 20, 1996). This contrasts with the present shelter allowance of \$286 for a family of three and \$312 for a family of four. (PF 124).

62. The disparity between the shelter allowance and HUD FMRS is another indication that the shelter allowance schedule is seriously inadequate. The shelter allowance is well below the amounts that HUD estimates are required to enable families to secure decent non-luxury housing in New York City. Stegman Tr. 332-33; Tobier Tr. 529; PX 23-33; 24-34, at pp. 1-2, 126-10, at p. 3. (PF 125).

63. When the 1975 shelter allowance schedule is updated by either the rate at which rents in New York City increased or the Rent Guidelines Board's Price Index of Operating Costs of Rent Stabilized Housing ("PIOC"), the resulting schedules are much higher than the shelter allowance. PX 83-261; Stegman Tr. 334-39. The resulting schedules are comparable to the level of HUD FMRS. This comparability is a further indication that HUD's fair market rents provide a more reliable estimate of the cost of securing housing and further illustrates the extent of the inadequacy of the current schedule of shelter allowances. Stegman Tr. 338-39. (PF 127).

64. Randall Filer's testimony that the schedules contained in PX 83-261 do not provide a reasonable basis for comparison with the shelter allowance is not persuasive. Filer Tr. 1983-1988. Dr. Filer testified that all three alternative schedules were based on updating the 1975 shelter allowance. Filer Tr. 1984. The first schedule, based on HUD fair market rents, however, was not derived in any way from the 1975 shelter allowance. Stegman Tr. 335. Exhibit DX AF-8, showing the percentage of the total number of

apartments of various sizes renting within the alternative schedules, includes many units that are not in fact available to public assistance recipients and units that would rent at much higher amounts if they became vacant, such as "Section 8" housing, subsidized housing for the disabled, SCRIES and rent controlled apartments. Exhibit DX AF-8 exaggerates the number of units that are available in the private unsubsidized rental market for public assistance families under the alternative schedules. Stegman Tr. 3315-24, 3362-64. If public, in rem and subsidized housing are excluded, the percentage of apartments renting within the alternative schedules would be much lower. Stegman Tr. 3364-65. The percentages listed in DX AF-8 are comparable to the percentages of the total rental market that has rented within the shelter allowance in the past. Stegman Tr. 3369. In 1975, approximately 70% of all apartments in the City of New York rented within the maximum shelter allowance for a family of three. Id.; PX 72-212. In 1978, after the shelter allowance had been in effect three years, approximately 60% of all apartments in New York City rented within the shelter allowance maximums. Stegman Tr. 3369, 3415-16. (PF 128, 131, 134-135).

65. Randall Filer's conclusions, based on DX AF 8-11, are also not persuasive because the exhibits incorporate assumptions about the space requirements of families that are different than the assumptions upon which PX 83-261 is based. Compare PX 82-260 with Filer Tr. 1988-89, 2028. Exhibit PX 83-261 is based on one method of converting rents, i.e., framed in terms of number of

bedrooms into a schedule of allowances, while Exhibits AF 8-11 are based on a different method of converting the schedule of allowances back into rents based on number of bedrooms. As a consequence, the rents used in AF 8-11, under the columns "fair market rents," are substantially above the actual fair market rents. Compare Filer Tr. 1989 with PX 66-208. (PF 136).

66. Whether these assumptions about space are reasonable or not, they were relied on by DSS in calculating the 1984 shelter allowance schedules and were recommended by DSS in a Report to the Legislature. PX 13-13, at p. 16; PX 14-14, at p. 1. See PX 10-6, at p. 3; PX 16-19, at p. 5; PX 11-9, app. at p. 5 (Table II) (draft HPD report using same space requirements as used in PX 82-260 and 83-261). (PF 139).

67. The shelter allowance has not kept pace with the rising cost of operating and maintaining housing in New York City. Stegman Tr. 314-15; Tobier Tr. 459-62; PX 76-254; 85-287. See PX 11-9; 24-34, at p. 2. The cost of operating and maintaining rent stabilized housing has increased by approximately 180% since 1975, while the shelter allowance has increased by an average of 41%. PX 76-254, 67-250. See PX 85-287. (PF 140, 141).

68. I adopt the opinions of Dr. Stegman and Dr. Tobier that the shelter allowance is inadequate to enable owners to cover their total costs. Total costs include both operating and capital cost components. Stegman Tr. 3357-58. Tobier Tr. 462-63, 471 ("widening gap between the shelter allowance and the costs of providing housing "); PX 11-9, at p. 1; 24-34, at p. 2 (citing

HPD's 1985 estimate of an operating cost of \$361 for an apartment for a family of three). See also PX 126-10, at p. 3 ("Even at the proposed levels, landlords have little incentive to maintain or rehabilitate buildings"). That the shelter allowance has not kept pace with owners' cost of operating and maintaining housing is one of the reasons that public assistance recipients are much more likely to live in seriously substandard housing than the rest of the population in New York City. Stegman Tr. 315-16, 323-24. See PX 23-33, at p. 2; 37-66; 134, at p. 3. (PF 142, 143).

69. The failure of the shelter allowance to keep up with rising costs of operating and maintaining housing is one factor in reducing the supply of housing available to public assistance recipients. This failure also contributes to the abandonment of low income housing by owners and to the diversion of low income housing to upper income groups. Tobier Tr. 457-459, 470-71; PX 30-48, at p 25. See DX G-37, at p. 12; PX 38-67, at p. 2. (PF 144).

70. Dr. Filer concluded that 15 to 20% of rent stabilized apartments had costs within the shelter allowance schedule based on 1988 data. Filer Tr. 1850, 2123-24. Thus, it is reasonable to conclude that at least 80% to 85% of rent stabilized apartments had costs that exceeded the shelter allowance. Stegman Tr. 3336. Because operating costs have continued to rise since 1988, while the shelter allowance has remained constant, even a larger percentage of buildings would have per unit operating costs in excess of the shelter allowance today. Stegman Tr. 3358-59; PX 76-254. Dr. Filer's opinion about available apartments within the

shelter allowance is also suspect because it was based on data filed by landlords on a form that shows the actual income and expenses. Filer Tr. 2121; Stegman Tr. 3335-36. The data show amounts actually spent on maintenance, not the amounts necessary to maintain a building in decent condition. So, the 15% to 20% of rent stabilized buildings with costs below the shelter allowance in 1988 may well have had serious maintenance deficiencies. (PF 146, 147).

71. Dr. Filer's testimony that abandonment is an indication that the New York City housing market is functioning well is not credible. Filer Tr. 1850-55. Based on the overwhelming evidence that there is an acute shortage of low income housing in New York City, the abandonment of buildings by owners cannot be viewed as beneficial. Tobier Tr. 457-459, 470-71; PX 128-64, at pp. 32-35; 34-61, at p. 1; 159 at p. 3; 63-102. See DX G-37 (1987 DOB Presentation statement "there is currently a shortage of safe affordable housing for poor people in New York. This is particularly characteristic of urban neighborhoods, where many Welfare recipients are concentrated. And while we have some evidence that the rate of abandonment is slowing, we know that the amount of rent our clients can pay is not sufficient for most landlords to maintain current housing stock, let alone improve it"). (PF 149).

72. Dr. Filer's opinion that an increase in the shelter allowance would cause rents in New York City to rise (Filer Tr. 2075-77), is not persuasive and is contradicted by the

Commissioner's own previous statements in a December 1988 report to the Legislature.

In summary, the inflationary effect sometimes attributable to shelter allowance increases is questionable, and an alternative view should be considered: that the rents paid by public assistance clients reflect the broader low income housing market in which they compete for scarce housing.

(PX 21-29, at p. 18). Further, the housing market in New York City is now regulated, limiting the extent of any rent increases. Stegman Tr. 345-46; PX 64-200; 65-201. See also Department reports to the Legislature in PX 21-29, at p. 26; PX 20-27, at p. 2, 12; PX 131-28, at p. 2 and studies (DX AJ-100, at p. 173, PX 29-47). Even if modest increases in rent did follow an increase in the shelter allowance, the additional cash flow to landlords would help keep low-income housing in the market. Stegman Tr. 345-47; Tobier Tr. 470-71. (PF 150, 152-157).

73. Inadequate shelter allowances contribute significantly to homelessness among families in New York City. Inadequate shelter allowances force families to move out of or be evicted from housing they cannot afford. Those families cannot find other affordable housing and they are therefore forced to seek emergency shelter or double up in unstable situations that many cannot maintain. Families who have never had their own apartment are unable to find an affordable one and are forced to double up in crowded conditions or seek emergency shelter. Stegman Tr. 322-23; Tobier Tr. 476-78; Dehavenon Tr. 557; DX B-108, vol. 1, at p. 9.

The court adopts Professors Tobier's and Stegman's opinions that the number of homeless families has increased over the past ten years because:

there was a gap that had opened between the rent-paying ability of public assistance recipients and the costs of standard housing for them in the market that they were operating [in] and had widened so substantially, and the vacancy rate on housing units that were affordable to them had dropped so precipitously, that once you were out of whatever housing you had and looking for housing, you were no longer able to afford it. And therefore, you basically had to enter the emergency shelter system to find -- to be housed.

Tobier Tr. 477-78. And because:

inadequate shelter allowance forced people to be evicted for nonpayment of rent or to move out of housing which they cannot afford to try to find housing they can afford....[O]nce in that market [they] cannot find adequate housing and are forced either to seek shelter directly or into a doubled up situation and ultimately fall out of that situation into a period of being in an emergency shelter or even in a doubled up situation[,] which I defined as being homeless, that is to say without control over one's independent living units....

Stegman Tr. 322-323.

Dr. Stegman concluded that there is "a direct link between the inadequacy of the shelter allowance and homelessness." Id.; see also Stegman TR. 3422-23. (PF 159, 160).

74. Over the past decade, DSS has repeatedly admitted that inadequate shelter allowances are a cause of homelessness. The Governor's Executive Budget for 1987-88 states that "[i]nadequate shelter ceilings also contribute to the rapidly growing homeless

population and promote deterioration of the State's housing stock." PX 37-66 at p. 361. State defendant admitted in the New York State Register (September 16, 1987) that: "It is also a fact that insufficient shelter allowances help increase the homeless population and contribute to the reduction of suitable housing for public assistance recipients." PX 38-67 at p. 20. See also PX 8-2; PX 127-45, at p. 4 ("Another cost [of the current shelter allowance system] is the rising number of homeless families who are in need of high cost emergency shelter"); PX 128-64, at p. 32 (Report to the Legislature on Homelessness, 1984, Vol. 1); PX 129-65, at p.20 (Report to the Legislature on Homelessness, 1984, Vol. 2); see Defendant's Answer ¶ 16 (admitting that the level of public assistance is one factor that causes homelessness). (PF 161, 162)

75. In its submission to the State Division of the Budget for the fiscal year 1987-88, DSS admitted that the inadequacy of the shelter allowance results in the expenditure of money for emergency shelter:

Presently the demand by PA recipients for safe affordable housing far exceeds the supply. As a direct result the number of homeless families has soared. In New York City the number of homeless families seeking emergency shelter has nearly doubled in two years. Over 90 percent of the homeless cases report eviction as the reason for being homeless. This fact lends strong support for the provision of higher shelter allowances in order to retain housing these families are forced to leave.

The irony of inflation-based homelessness is that instead of raising the shelter allowance to a realistic level and facing the direct fiscal impact of such a decision, enormous amounts of money are expended on temporary solutions designed to address housing inadequacies. The reality is that, particularly in New York City, there is a shortage of decent low-income

housing and the current shelter maxima are insufficient to purchase housing from the present supply.

PX 23-33, at p.2. See also PX 35-62, at pp. 4-5. (PF 163)

76. Thus, the State defendant has repeatedly admitted that inadequate shelter allowances contribute to homelessness by causing rent arrearages and evictions. For instance, in 1986, the State defendant admitted that the inadequacy of the shelter allowance in 1983 resulted in the "accumulation of arrearages leading to evictions and other housing emergencies." PX 8-2. In 1989, DSS's Division of Income Maintenance admitted in its 1990-91 planning package that, "[a]s of June 1989, 54% of the public assistance caseload statewide paid over the shelter maximum. Many of these cases face eviction and temporary housing with all its attendant costs." PX 35-62, at p. 4. State defendant conceded that "eviction is one of the primary causes of homelessness." PX 39-38, at p. 58. In a 1990 report entitled The Homeless Prevention Program: Outcomes and Effectiveness, the State defendant admitted the "strong causal link between landlord eviction and homelessness." The report found that one-sixth of all shelter users are homeless as a direct result of eviction and that, when indirect factors are taken into account, approximately 25%-30% of family homelessness can be attributed to landlord evictions. PX 160, at pp. 13-14. (PF 164-167).

77. Academic studies confirm State defendant's admission that inadequate shelter allowances contribute to homelessness by causing evictions. Homeless families are four times more likely than other

families on public assistance to have ever been evicted. DX B-108, vol. 2, at p. 29 & Figure 3. (PF 168).

78. Dr. Anna Lou Dehavenon, a cultural anthropologist who has studied the poor in New York City since 1974, testified about studies she has done interviewing families in New York City's Emergency Assistance Units ("EAUs") in 1986-87, 1988-89 and 1989-90. Tr. 248-70, Tr. 541-87. The EAUs are after-hours welfare centers where homeless families are sent to await emergency shelter assignments when they have not been placed during the day. Tr. 255-56. Dr. Dehavenon has conducted interviews lasting, on average, between 30 and 45 minutes with families in the EAUs in the Bronx, Brooklyn and Manhattan. More than one-third of the families present were interviewed. Dr. Dehavenon's method ensured the randomness of the sample she interviewed, making it valid to draw general conclusions from her studies about families utilizing EAUs in New York City in the years of her studies. In each year, Dr. Dehavenon summarized her findings in a published report. (Tr. 541-46). (PF 169-171).

79. Almost all homeless families seeking shelter in the EAUs have had an open AFDC case in the previous twelve months. Dehavenon Tr. 576-77. See DX B-108, vol. 1, at p. 6 (only about 10% of families entering emergency housing were not previously recipients of public assistance); DX AG-111, at p. 8 (83% of families seeking emergency shelter received public assistance within a month prior to entering the shelter system); DX AH-114, at p. 3, Table 6 (81.6% of families in the Martinique Hotel and

79.7% of families in the Forbell Street Shelter reported that public assistance was their usual source of income). (PF 172).

80. Most homeless families at one time had their own apartments. Dehavenon Tr. 551-52 (68% in 1989-90, 71% in 1988-89, 69% in 1986-87); DX B-108, vol. 1, at pp. 4, 9 (in 1988, 55% of families in the EAUs had once had their own apartment for at least a year); DX AG-111, at p. 12 (in December 1985, 56% of families in the EAUs had their own apartment at some time in the previous two years). (PF 173).

81. For homeless families who once had their own apartments, eviction was the most important reason for losing them. Other problems with paying the rent also figured prominently. Dehavenon Tr. 551-52 (in 1989-90, 55% lost their apartment because of an eviction; in 1988-89, 46% lost their apartment through an eviction; in 1986-87, 69% lost their apartment through an eviction); DX AG-111, at p. 14 (18.4% lost apartment because of a nonpayment eviction and another 28.9% because the rent was too high, for a total of 47.3%). (PF 174).

82. A report prepared for HRA by Professors James Knickman and Beth Weitzman of the New York University Robert Wagner Graduate School of Public Service concluded that, for families who once had their own apartment, eviction is a "very important predictor of homelessness," and that "[t]he highest risk of seeking shelter is faced by families which once had their own place to live, but lost this apartment for one reason or another." DX B-108, vol. 1, at pp. 9-10, 15. In discussing strategies to prevent homelessness,

the authors of the report wrote, "[i]t is very possible that the most effective policies to prevent homelessness would focus on keeping people in apartments or houses where they were the primary tenant." Id., vol. 2, at p.27. (PF 175) Professors Knickman and Weitzman also reported from their survey, comparing families in shelters with families interviewed in income maintenance centers, that, statistically, of the 55% of shelter families who had once been primary tenants, 32% had been evicted. Another 9% had left their apartments without eviction because they had been unable to pay rent or because of landlord harassment. For shelter families who had been primary tenants the night before seeking shelter, 48% had been evicted. Of the homeless families in shelters, 45% had never had their own place, so eviction could not be a cause of their homelessness. Id., vol. 1, p. 14. (DF 426-429).

83. Dr. Dehavenon testified that the homeless families she had surveyed in the EAUs reported "that one of the reasons that they lost apartments was because Welfare was not giving them enough money for rent." Tr. 574. (PF 176).

84. The evidence presented by recipients and their families vividly shows how the inadequacy of the shelter allowance leads to the eviction of public assistance families. AFDC recipients who testified had been sued for nonpayment of rent and were faced with eviction because they were unable to pay the full rent with the shelter allowance. See PX 1-619, 2-620, 4-623, 5-625, 6-617, 7-618 and Findings infra. (PF 177).

85. For instance, Jacqueline Remy lives in Brooklyn with her three children, ages three, thirteen and sixteen. She has been a recipient of public assistance for four years since her marriage broke up. Before her marriage ended, Ms. Remy worked as a cashier in a supermarket but she no longer works because there is no one else to care for her children. Tr. 23-24, 52, 66-67. (PF 280-81).

86. Ms. Remy receives monthly public assistance grants totalling \$340.38 to meet her family's needs other than rent and, prior to receiving interim relief in this action, she received a monthly shelter allowance of \$312. Ms. Remy's shelter allowance is paid in the form of two-party checks. Ms. Remy does not receive the full monthly allowance of \$375.70 for nonshelter needs because the DSS pays \$35.32 each month directly to Consolidated Edison for Ms. Remy's electric bill. Ms. Remy also receives \$214 in food stamps each month. Ms. Remy's nonshelter grant and her food stamps provide an income of only \$4.63 per person per day for all her family's expenses other than rent and electricity. Tr. 24, 26. (PF 282-83).

87. Ms. Remy moved into her rent stabilized apartment in 1987. Her rent is now \$441.90, which is \$120 in excess of the maximum shelter allowance. Prior to December 1990, Ms. Remy's rent was \$413.82, which is \$101.82 in excess of the shelter allowance for a family of four. Tr. 27, 36. (PF 284).

88. If Ms. Remy paid \$129 each month to her landlord out of the non-shelter portions of her public assistance grant, she and her family would be left with a cash income of only \$1.76 per

person per day. Prior to December 1990, in order to pay the portion of her rent due above the maximum shelter allowance, Ms. Remy would have had to pay \$102 each month to her landlord out of her non-shelter income. Her family would have been left with a cash income of only \$239 each month, or \$1.99 per person per day. (PF 286)

89. After April 1989, Ms. Remy was unable to pay this additional \$102 a month to her landlord. To meet her family's needs, Ms. Remy spends her food stamps and an additional \$85-90 a month on food. She spends about \$35-\$38 a month on gas, \$60 a month on transportation, \$12 for the telephone, \$40 for laundry, \$23 for toiletries, \$20 on personal care items, and \$90 on clothes. After making these monthly expenditures, Ms. Remy has no money left over. When she incurs additional expenses, such as for school trips for her children, she must try to borrow from neighbors or from a local grocery store. She buys the cheapest food that she can find and sometimes gets a ride from her sister so that she can shop in New Jersey where prices are lower. Tr. 24-26, 28, 44-45, 64-65. (PF 287-88).

90. Prior to receiving relief in this case, Ms. Remy paid her shelter allowance of \$312 to her landlord each month, but could not pay the additional \$102 that she owed. Until April or May 1989, a friend of Ms. Remy's contributed the amount due above the shelter allowance each month. At that time, Ms. Remy's friend encountered personal problems and could no longer contribute towards Ms. Remy's rent. Because Ms. Remy could not pay the portion of her rent that

exceeded her shelter allowance, she was sued for nonpayment of rent in June 1990. The nonpayment petition sought \$1,379.66. Tr. 27-29; PX 1-619. (PF 289-90).

91. Ms. Remy entered into a stipulation in housing court requiring her to pay \$1,480.94 by November 26, 1990, reflecting rent due through October 1990. This amount consisted entirely of rent due in excess of Ms. Remy's shelter allowance. In return, Ms. Remy's landlord agreed to perform certain repairs. PX 2-620. (PF 291).

92. Ms. Remy could not pay the \$1,480.94. Eventually, the sum was paid as interim relief in this lawsuit. Tr. 31. But for that interim relief, Ms. Remy and her three children would have been evicted. As part of her interim relief in this case, Ms. Remy now receives a monthly shelter allowance of \$405.90. Tr. 24, 31. (PF 292).

93. Ms. Remy has searched extensively for a less expensive apartment. She has gone door to door seeking apartments, read newspaper listings and applied for subsidized housing. All of these efforts have been unsuccessful. Tr. 31-32, 50-51. (PF 293).

94. The threat of eviction causes Ms. Remy to worry about what would become of her and her three children. Ms. Remy had no place to go had she and her children been evicted. She vowed that she would never go to a homeless shelter because she had been in one thirteen years ago and considered shelters unfit for human habitation. Tr. 33-34. (PF 294).

95. Also testifying was Enid Diaz who lives in the Bronx with her four children, two of whom are eight years old. Others are ten and fourteen years old. Her family's sole income is public assistance. Ms. Diaz receives a monthly public assistance cash grant of \$384 to meet her family's needs other than rent. Ms. Diaz also receives between \$206 and \$234 in food stamps each month. Prior to receiving interim relief in this action, Ms. Diaz received a monthly shelter allowance of \$337. Ms. Diaz's non-shelter public assistance grant and her food stamps (assuming a monthly amount of \$234), provide the family with only \$4.12 per person per day. Ms. Diaz's non-shelter grant is currently reduced by 10%, or approximately \$80 a month, as a recoupment for a past rent arrears grant. Tr. 70-72, 98. (PF 295-96).

96. Ms. Diaz's rent is \$537.34 each month, an amount that is \$200 in excess of the maximum shelter allowance for a family of five. Ms. Diaz moved into her rent stabilized apartment two years ago. Her rent was scheduled to increase on April 1, 1991 to \$571. Prior to September or October 1990, Ms. Diaz's shelter allowance was paid directly to her landlord by the HRA. Ms. Diaz was unable to pay her landlord the \$200 a month by which her rent exceeded her shelter allowance. If she had done so, her family would have been left with a monthly cash income of only \$184 for all her family's needs other than rent, or \$1.27 per person per day. Ms. Diaz has no money left over from the non-shelter portions of her public assistance grant that she can apply to her monthly rent without depriving her family of basic necessities. Ms. Diaz spends between

\$75 and \$100 each month for utilities, \$100 on clothing, \$16 to \$18 on haircuts for her children, \$30 for a telephone, \$30 on toiletries, \$30 on laundry, \$11.50 on transportation, and \$30 on miscellaneous expenses such as school trips. She also spends between \$75 and \$100 each month on food, in addition to her food stamps. Tr 71-76. (PF 297-99).

97. In May 1990, Ms. Diaz's landlord sued her for nonpayment of rent. PX 4-623. A final judgment was entered for \$2,604. Tr. 80, 98-99. (PF 300).

98. In order to stave off eviction, Ms. Diaz made three payments of \$300 to her landlord, in July, October and November 1990. Ms. Diaz took these funds out of her bi-monthly public assistance grant of \$360, leaving her with only \$60 for her family's needs for two week periods. Ms. Diaz could not meet her family's needs with these amounts. She went into debt and could not pay her electric bills. Tr. 81-82, 86, 99. (PF 301).

99. Ms. Diaz's rent arrears were paid by the DSS as interim relief in this case. Tr. 82; PX 92. Absent this relief, Ms. Diaz and her four children would have been evicted. (PF 303).

100. Before moving into her current apartment, Ms. Diaz looked extensively for inexpensive apartments. Her current apartment is the least expensive one that she could find. Since moving in, Ms. Diaz has continued to look constantly for a less expensive apartment, but has been unable to find one. She has walked door to door and consulted newspaper listings. Tr. 83, 85, 100-101. (PF 304).

101. Mabel Irizarry and her two children, ages two and sixteen, live in Manhattan. Ms. Irizarry receives a public assistance grant of \$232 a month for non-shelter needs and \$210 in food stamps. Prior to obtaining relief in this action, Ms. Irizarry received a monthly shelter allowance of \$286. Ms. Irizarry's shelter allowance is paid directly to her landlord by HRA. Because Ms. Irizarry was unable to pay her electricity bills on a number of occasions, the HRA pays her electric bill directly. Tr. 103-05, 128, 133. (PF 305).

102. Ms. Irizarry and her children live in a two bedroom apartment that rents for \$338.49, an amount that is \$52.49 in excess of the shelter allowance. Ms. Irizarry has lived in the rent stabilized apartment for thirteen years. At the time she moved in, the rent was \$195. It has increased every two years. PX 7-619; Tr. 108. (PF 306).

103. Ms. Irizarry has not been able to pay any money to her landlord other than her shelter allowance for four years. Even without using portions of her non-shelter income to pay rent, Ms. Irizarry is unable to meet her family's basic needs. In addition to her food stamps, she spends approximately \$30 each month on food, \$40 a month on diapers, \$40 a month on laundry, \$20 a month on toiletries, \$20 a month on carfare, \$30 a month on clothes, and \$7 a week on cigarettes. She also gives her teenage son \$22 a month in spending money. She cannot afford a telephone and goes to Catholic Charities for clothing for her children. Tr. 106-107, 109, 134. (PF 307).

104. On July 13, 1990, Ms. Irizarry's landlord sued her for nonpayment of rent. Tr. 109, PX 6-617. Ms. Irizarry entered into a stipulation agreeing to pay \$1,719.79 in back rent. The stipulation provided that, if Ms. Irizarry failed to make this payment by August 31, 1990, a warrant of eviction would be executed upon 72 hours notice. PX 7-618. Ms. Irizarry was unable to pay this amount. Tr. 111. (PF 308).

105. The amount that Ms. Irizarry owed under the stipulation was eventually paid as interim relief in this case. Absent this relief, Ms. Irizarry would have been evicted and her family would have become homeless. Tr. 112-113. (PF 309).

106. Ms. Irizarry has looked extensively for less expensive housing, but has not been able to find a cheaper apartment. She has consulted newspaper listings and real estate agents. Tr. 112. (PF 310).

107. Several of the plaintiffs in this action were sued for nonpayment of rent and had final housing court judgments entered against them and DSS fair hearing decisions rendered against them, including Judith Morris, Dorothy Hughes and Yvette Parson. These records, in evidence, show that, but for interim relief in this case, these families would have been evicted. PX 133-626 through 133-656; PX 121-431, 121-432, 121-433. (PF 178).

108. Judith Morris requested emergency rent arrears. On November 18, 1988, defendant issued a fair hearing decision finding that Ms. Morris receives a public assistance grant for herself and her four year old child; Ms. Morris' rent was \$347.86, an amount

\$97.86 in excess of the maximum shelter allowance for a family of two. Ms. Morris receives her shelter allowance in the form of two party checks and did not pay her landlord the difference between her shelter allowance and her actual rent for nine months. She was sued by her landlord and stipulated to pay \$906.50 in rent arrears. Ms. Morris had asked HRA for assistance in paying her rent arrears on November 7, 1988. This request was denied the same day. On appeal, the State defendant issued a decision stating that Ms. Morris owed \$906.50, all attributable to rent due in excess of her shelter allowance. It concluded that DSS regulations do not provide for payment of rent in excess of the shelter allowance schedule and affirmed the denial of Ms. Morris' request for relief. PX 121-431; 133-648; 133-649. (PF 382-3).

109. On January 20, 1989, this Court granted Ms. Morris' motion to intervene and directed that her arrears and ongoing rent be paid. (Order dated January 20, 1989). On August 17, 1990, arrears totalling \$5,413 were paid. PX 92. (PF 384).

110. On April 19, 1990, defendant issued a fair hearing decision on Yvette Parson's request for emergency rent arrears, finding Ms. Parson receives public assistance for herself and her 12 year old child and Ms. Parson's rent was \$354.84, an amount \$104.84 in excess of her monthly shelter allowance. Ms. Parson was sued by her landlord and stipulated to pay \$3,579.40, reflecting 10 months of rent owed. By April 1990, the amount due had risen to \$4,289.40. For eight months of the period in which arrears had accrued, HRA had provided Ms. Parson with a shelter allowance of

\$250 a month, but she had not paid these amounts to her landlord. For the remaining period, HRA did not provide her with any shelter allowance at all. At no time during the relevant period did Ms. Parson pay rent due in excess of the shelter allowance. On March 19, 1990, Ms. Parson asked HRA for assistance in paying her rent arrears. The agency denied this request because Ms. Parson was unable to pay that portion of the rent in excess of the shelter allowance for the arrears period and on an ongoing basis. PX 123-433; 133-634; 133-635. (PF 385, 386).

111. On appeal, the State defendant conceded that HRA should not have stopped paying Ms. Parson's shelter allowance. Of the remaining \$3,289.08 owed, defendant found that \$2,000 consisted of amounts for which Ms. Parson had received a shelter allowance; that she might have been eligible for a recoupable grant in this amount, had she been able to demonstrate an ability to pay the balance of the arrears due and her ongoing rent. The agency noted that Ms. Parson had stated that her brother could contribute toward the rent in the future. Nonetheless, it affirmed the denial of any assistance because Ms. Parson was unable to pay the \$1,289.08 in accumulated "excess rent" arrears. Id. (PF 387).

112. On June 18, 1990 this court signed Ms. Parson's Order to Show Cause and ordered that her eviction be stayed. It subsequently granted Ms. Parson's motion to intervene and ordered that her full arrears be paid. On July 20, 1990, HRA issued checks, complying with the Court's order. PX 92. (PF 388).

113. On April 6, 1987, the State defendant issued an administrative hearing decision on Dorothy Hughes' request for an emergency rent arrears grant to avoid eviction. The decision found that Ms. Hughes and her three year old child received an AFDC grant for two persons and that Ms. Hughes was eight months pregnant. In January 1987, Ms. Hughes had requested a grant of rent arrears to prevent eviction. HRA had denied the request on the ground that the agency does not pay rent in excess of the maximum shelter allowance. At the time, Ms. Hughes' rent was \$348.52, an amount that was \$121.52 in excess of her shelter allowance. Ms. Hughes' shelter allowance is paid in the form of two-party checks. Ms. Hughes was sued by her landlord for nonpayment of rent on December 24, 1986. The petition sought arrears of \$527.27, consisting of \$93.75 for November 1986 rent, \$348.52 for December 1986 rent and \$85 in fees. In January 1987, Ms. Hughes stipulated to pay \$848.29 covering rent through February 2, 1987. Toward this amount, Ms. Hughes paid \$287, consisting of two party rent checks and a money order for \$60. The balance was \$561.29.

The hearing decision concluded that all arrears consisted of rent in excess of the shelter allowance and affirmed the denial of a rent arrears grant. It also considered Ms. Hughes' eligibility for assistance under the Emergency Assistance to Families program ("EAF"). Ms. Hughes argued that she was eligible for that assistance because "the progressive rent increases she has received upon renewing her lease are not within her control and that, despite a diligent search, she has been unable to locate cheaper

accommodations." In rejecting this argument, the State defendant found that these "are not sudden unforeseen circumstances, but rather are aspects of daily urban life." PX 122-432; 133-645. (PF 389-391).

114. On March 22, 1987 Ms. Hughes moved to intervene in this action. Eventually her eviction was stayed and her arrears and ongoing rent were ordered paid. (PF 392).

115. HRA records show that, by March 12, 1991, 135 families were receiving preliminary relief through the informal procedure in this case. These families are all AFDC recipients with rent in excess of the shelter allowance. PX 92; Blaustein Tr. 751-54, 774. Defendant has admitted that all the families listed on PX 92 were sued in housing court and had final judgments entered against them. Tr. 3560-61. State defendant introduced into evidence at trial the case records of eleven of these families receiving preliminary relief. These case records show how the level of the shelter allowance causes families to fall behind in rent and face eviction despite the State's misinterpretation of the records. Three of these families are named plaintiffs in this action: Linda Green, Johnnie Mae Beal and Roselaine Louis-Charles. The remainder receive relief informally pursuant to defendants' consent. PX 92. The files are exhibits DX. BR 1, 3, 4, 6, 8, 9, 11-15. Tr. 3264, 3562. Although the particular circumstances of these families vary and some of the families have had a number of other problems, a common thread runs throughout -- inability to pay rent because of the level of the shelter allowance, resulting in a threatened

eviction that was forestalled by the interim relief in this case. (PF 179, 311).

116. Defendant's Exhibit BR-8 contains its file for AFDC recipient Clara Saleh and her daughter, Natasha, born on September 5, 1990. Defendant's contention that Mrs. Saleh's son lived with her at the relevant time and her sister actually contributed to the rent is not supported by the case file. Ms. Saleh's rent is \$325, an amount that is \$75 in excess of her shelter allowance. Ms. Saleh was sued for nonpayment because her rent exceeded the shelter allowance. The petition sought rent arrears in the amount of \$440, which had accrued at the rate of \$110 a month from August 1990 through November 1990. During the period for which arrears were sought, Ms. Saleh received a shelter allowance for a household of one. Ms. Saleh's daughter was born in September 1990 but not added to her public assistance budget until January 1991. On December 21, 1990, a stipulation was signed in Housing Court providing that Ms. Saleh would pay \$550, which included the unpaid \$110 for December 1990. To pay this amount, Ms. Saleh requested preliminary relief in this action. She sought \$410 in rent arrears consisting of "excess rent," and \$140 in retroactive benefits reflecting the addition of Natasha to the household. This request was approved on January 7, 1991 and prevented the eviction. DX BR-8; PX 92. (PF 312-315).

117. Vilma Mitchell's rent was set by the Housing Court at \$498.62, an amount that is \$212.62 in excess of the family's shelter allowance. Mitchell and her two children, AFDC recipients,

were evicted because of her inability to pay this rent as well as the higher amount the landlord had claimed in excess of her shelter allowance. As a result of the preliminary relief in this action, the family was restored to possession of their apartment. One cannot infer, as defendant urges, that letters from friends and relatives promising ongoing financial help in Ms. Mitchell's case file resulted in their making extensive contributions towards the rent. DX BR-12, PF 316; PX 161, 163. (PF 316-323).

118. Defendant's Exhibit BR-11 shows that Estelle Betty applied for public assistance on behalf of herself and her two daughters, ages six and three, on December 6, 1990, when she was three months in arrears. She was eight months pregnant and had worked until November, 1990. The case file shows that Ms. Betty's apartment is in Brooklyn, is subject to rent stabilization, and has a rent of \$617.00 per month. Absent the preliminary relief in this action, the Betty family would have been evicted.

Ms. Betty said she had been unable to pay her rent because of child care and other expenses, including carfare, groceries, and gas bills, despite working. Ms. Betty had been sued for nonpayment of rent by her landlord. Final judgment was entered on November 27, 1990. On December 10, 1990, Ms. Betty entered into a stipulation providing for a final judgment in the amount of \$1,848, with the execution of the warrant of eviction stayed until December 31, 1990. On December 13, 1990, Ms. Betty applied for emergency assistance. She stated that "I'm not working because I am pregnant I cannot do my duties. I'm unable to pay my rent and

take care of my kids." On December 24, 1990, Ms. Betty's caseworker noted that Ms. Betty stated that she owed three months of back rent. The caseworker told Ms. Betty to "get a donor" and that Ms. Betty replied that "she cannot get a donor." "Therefore," the caseworker noted, "we are paying rent for current month 12/90 p.a. level which is \$286 for a family of three." Because Ms. Betty did not have a third party prepared to pay the portion of her rent in excess of the shelter allowance, her caseworker determined that she was not eligible for payment of her arrears as an applicant for public assistance. Ms. Betty subsequently requested relief through the informal procedure in this case. Her request was approved by the defendant and HRA issued a \$2195.50 check. Ms. Betty currently receives a monthly shelter allowance in the amount of her full rent as interim relief in this action. DX BR-11; PX 92; Defendant's Reply Brief, p. 50. (PF 324-329).

119. Defendant's Exhibit BR-15 contains the case file for AFDC recipient Linda Green, who lives in Rockaway, Queens. Since April 1988, Ms. Green has had a federal "Section 8" certificate that limits her contribution to the rent to an amount that is below the maximum shelter allowance, with the remainder paid by the federal government. Prior to her receipt of a Section 8 certificate, Ms. Green was threatened with eviction and received relief in this action to prevent her and her children from losing their home. Ms. Green applied for public assistance in behalf of herself and her daughter, Jamel, in November, 1983. Ms. Green was pregnant and her daughter, Danielle, was born the next month. Prior to receipt of

public assistance, Ms. Green had worked for the Social Security Administration for approximately 10 years. In November 1983, Ms. Green lived doubled-up with her cousin, Mathilda Cunningham, and her two children. Ms. Green contributed \$180 a month to the total rent of the apartment. In February 1986 Ms. Cunningham moved out of the apartment. The landlord agreed to give Ms. Green a lease starting on May 1, 1986, at a monthly rent of \$430. In approving Ms. Green's security deposit, the income maintenance center required her to submit a letter from a "nonlegally responsible relative" stating that he or she would pay the "excess" rent. In May 1986, Ms. Green took in a roommate, Gwen McCormick, who contributed \$200 a month toward the rent, leaving Ms. Green with a contribution of \$230 a month. However, Ms. McCormick moved out of the apartment in February 1987, leaving Ms. Green to pay the full rent by herself. Ms. Green's rent exceeded the monthly maximum shelter allowance for a family of three at that time (\$244) by \$186.

On March 31, 1987, Ms. Green's landlord served a three day demand for back rent and subsequently sued Ms. Green for nonpayment of rent. On December 7, 1987, this court granted Ms. Green's motion to intervene and stayed her eviction pending determination of the motion for a preliminary injunction and motions to dismiss then pending. On January 12, 1988, the court directed that Ms. Green's rent arrears be paid and continued the stay of her eviction pending payment. Defendants appealed from that order (See Orders, dated March 9, 1988). On April 26, 1988,

while this court's order directing payment was on appeal, Ms. Green, HRA, and Ms. Green's landlord entered into a stipulation providing that the landlord would accept a Section 8 certificate from Ms. Green as of May 1, 1988, provided that she tender \$2959 by that date. HRA agreed to issue \$1,809 of this amount as a duplication of shelter allowances previously paid. Because Ms. Green owed sums in addition to the \$2,959, the stipulation provided that, if Ms. Green prevailed on the pending appeals in this case, those sums would be paid pursuant to this court's order. If, however, Ms. Green lost on appeal and this court's order were to be vacated, Ms. Green would pay off the arrears at the rate of \$75 a month. After the Court of Appeals decision in this case, HRA issued a rent arrears payment of \$2,977 in satisfaction of the stipulation.

Absent the stay of eviction and payment of arrears, Ms. Green and her family would have been evicted from her apartment long before she received a Section 8 Certificate. Defendant's contention that Ms. Green could add a roommate to contribute to the rent is belied by the size of the apartment and that five people would make it "very crowded." DX BR-15. (PF 330-338).

120. Defendant's exhibit BR-13 shows Carmela Flores is a recipient of AFDC. She lives with her four children, ages 24, 21, 15, and 12 but receives a public assistance grant for a household of three. Until June 1990, Carmela Flores' daughter Theresa was included in Carmela Flores' public assistance budget. Since August 1990, Theresa has received a grant for a household of one. Theresa

Flores' shelter allowance is cooperatively budgeted with her mother's so that the family is treated as a single household of four for shelter allowance purposes. Ms. Flores' 24 year old son, Ricky, has not been a recipient of public assistance since October 1989.

The Flores family was threatened with eviction and only the payments issued as interim relief in this case enabled the family to retain their apartment. The rent on the Flores' apartment is \$453.66, an amount that is \$141.66 in excess of the maximum shelter allowance for a household of four. Prior to October 1990, Ms. Flores' rent was \$430 a month. Ms. Flores fell behind in her rent. On February 6, 1990, her landlord commenced a holdover proceeding to evict her, alleging violations of the lease. In a stipulation settling the proceeding, Ms. Flores was required to pay her landlord \$3,247 in back rent by September 5, 1990. The arrears included rent due from October 1, 1989 through August 31, 1990, minus \$1,483 in payments made by Ms. Flores. The stipulation provided that, if this amount were not paid by the specified date, Ms. Flores' landlord could reinstate the proceeding.

On September 26, 1990, Ms. Flores asked the State defendant to approve payment of her rent arrears and provide her with a shelter allowance for ongoing rent as interim relief in this action. On October 2, 1990, this request was approved pending the outcome of the case. On October 13, 1990 HRA paid arrears totalling \$3,991.85, consisting of \$1,973.85 in "excess" rent and the remainder as reissuance of stale or unnegotiated shelter

allowance checks. Ms. Flores currently receives a shelter allowance in the full amount of her rent. Defendant's contention that Ms. Flores fell behind in her rent because of a sanction and her daughter Theresa not contributing to the rent is not supported by the actual numbers in the file. DX BR-13; PX 92. (PF 339-44).

121. Defendant's Exhibit BR-14 is its case file for AFDC recipients Myriam Figueroa and her two children, ages 11 and 4. The rent on their apartment is currently \$427, an amount \$141 above the maximum shelter allowance for a family of three. Up until October 1990, the rent was \$400. Defendant's contention that the rent was \$277.50 is contrary to the decisions of the Division of Housing and Community Renewal ("DHCR") and the Housing Court.

Ms. Figueroa and her children would have been evicted without the interim relief in this case. Ms. Figueroa was sued by her landlord for nonpayment of rent. On May 3, 1990, a judgment for \$6,400.00 was entered against Ms. Figueroa. Ms. Figueroa moved to set aside the judgment, alleging an illegal rent overcharge. On June 21, 1990, the Civil Court denied this motion based on the DHCR decision. By stipulation, Ms. Figueroa's landlord agreed to stay execution of the warrant until September 12, 1990. On August 21, 1990, Ms. Figueroa requested consent to pay her arrears and full ongoing rent as interim relief in this action. In August 1991, State Defendant approved her request. DX BR-14. (PF 345-48).

122. Defendant's exhibit BR-1 contains its file for AFDC recipients Johnnie Mae Beal and her son. Currently the rent in their rent stabilized apartment is \$293.41, an amount that is \$43

reimbursement for erroneous HRA sanctions is not accurate. DX BR-1. (PF 349-56).

123. Defendant's exhibit BR-3 contains the file for Carmela Andujar and her five year old daughter Angela who live in a stabilized apartment in the Bronx. Their rent is \$388.85. Angela Andujar is a recipient of AFDC but, because of her immigration status, Carmela Andujar is not. The family's rent of \$388.85 is \$173.85 in excess of the \$215 monthly shelter allowance that they receive. Ms. Andujar's shelter allowance is paid in the form of two-party checks.

Ms. Andujar fell behind in her rent and was threatened with eviction. Her landlord repeatedly rejected Ms. Andujar's two-party shelter allowance checks because she could not pay the full amount of the rent. The landlord commenced a nonpayment proceeding and returned four shelter allowance checks. On November 7, 1990, Ms. Andujar entered into a stipulation of settlement with her landlord acknowledging that, after an abatement of one month's rent, she owed \$2,654.62. This stipulation was later amended to include rent due through January 31, 1991, so that the amount owed totalled \$3,217.32, with issuance of the warrant of eviction stayed until February 21, 1991.

Ms. Andujar sought interim relief in this action through the informal relief procedure. Her request was approved. On February 14, 1991, Ms. Andujar's center issued a total of \$3,606.17, to pay her rent arrears and end the threat of eviction.

This sum included the stipulated amount plus an additional month's rent. DX BR-3. (PF 357-361).

124. Defendant's exhibit BR-4 contains its case file for Lydia Oge and her son Siaori, four years old, who live in a rent stabilized apartment in Brooklyn. As of February 1991, the rent for the apartment was \$473.46. Prior to April 1990, the rent was \$448.86. Ms. Oge's son is a recipient of AFDC but Ms. Oge is not eligible because of her immigration status. The family's rent is \$258.46 in excess of their shelter allowance. In January 1990, HRA provided Ms. Oge with a rent arrears grant to resolve a pending eviction action. After that payment, however, Ms. Oge was still unable to pay the portion of her rent due in excess of the shelter allowance and once again fell behind.

In June 1990, Ms. Oge's landlord sued for nonpayment of rent. Ms. Oge again requested a grant of emergency rent arrears to avoid eviction. This time, her request was denied. Ms. Oge appealed the denial to the State Commissioner. At the fair hearing, Ms. Oge testified that she had not paid any portion of the rent due in excess of the shelter allowance since January 1990 and that she had no resources to do so. The State Commissioner noted that, pending the outcome of the Jiggetts case, there is no provision in the Department's policies for payment of rent arrears in excess of the shelter allowance. The Commissioner remanded the matter for a determination of whether all shelter allowance amounts had been paid. On October 17, 1990, Ms. Oge stipulated to a final judgment in housing court, granting the landlord a judgment in the

amount of \$2,372.69, with execution stayed 12 days. Ms. Oge requested interim relief through the informal procedure in this case. The State defendant consented to her request, and rent arrears of \$2,329.14 were paid on October 25, 1990. DX BR-4; PX 92. (PF 360-368).

125. Defendant's exhibit BR-9 contains its file for Sonia Rueda and her two sons, who live in the Bronx. One son, Eugenio, is disabled and receives Federal Supplemental Security Income benefits ("SSI"). As a caretaker of a minor receiving SSI, Ms. Rueda is eligible for and is a recipient of AFDC 18 NYCRR § 369.5(2). HRA and DSS must disregard SSI in calculating eligibility for public assistance of non-SSI recipients in the household and the amount of benefits such persons are to receive. 42 USC § 602(a) (24); 18 NYCRR § 352.20(a). Ms. Rueda's other son, Gabriel, was 19 years old and a student at the High School of Fashion Industries at the time of trial, and receives public assistance as a separate household. Ms. Rueda and Gabriel's shelter allowance is cooperatively budgeted so that they receive a shelter allowance for a family of two.

Ms. Rueda's rent as of March 1991 is \$376.64. Before that, the rent was \$360.42, an amount \$110.42 in excess of the maximum shelter allowance for a family of two. Ms. Rueda fell behind in her rent and was sued by her landlord in September of 1990. The petition sought \$1,921.76. On October 24, 1990 Ms. Rueda stipulated to a final judgment in the amount of \$1,057.54, with issuance of the warrant of eviction stayed through November 6,

1990. The stipulation noted that the amount due is "all excess rent." On November 2, 1990, Ms. Rueda asked HRA for a grant of emergency rent arrears. Ms. Rueda's worker determined that \$210.00 of the amount due could be issued, leaving an excess of \$847.54. The \$210 reflected correction of an underpayment stemming from HRA's payment of a shelter allowance of \$215 a month, rather than the \$250 to which Ms. Rueda and her son were entitled. Ms. Rueda requested a fair hearing.

On January 15, 1991, Ms. Rueda entered into another stipulation in Housing Court, agreeing to pay \$2,188 by January 31, 1991. On January 16, 1991, Ms. Rueda requested payment of her arrears through the informal procedure in this case. The State defendant consented to this request on January 25, 1991. DX BR-9. (PF 369-374).

126. Defendant's exhibit BR-6 contains its file for Roselaine Louis-Charles, who lives in Brooklyn with her four children, ages 12, 10, 8, and 1. Ms. Louis-Charles' actual rent of \$524.70 is \$187.70 more than the shelter allowance for a family of five. Ms. Louis-Charles applied for public assistance in August 1988. She worked as a home attendant at a wage of \$4.15 per hour for four hours a day, five days a week until November 18, 1989. Ms. Louis-Charles received a public assistance supplement to her income based on a food and other standard of need of \$326.70 a month, and a maximum monthly shelter allowance of \$312.00. At that time, Ms. Louis-Charles' rent was \$469.57, \$157.57 more than the shelter allowance for a family of four. Based on a roommate in the

household providing Ms. Louis-Charles with the ability to pay her rent in the future, HRA issued her an applicant rent arrears grant to pay her rent arrears accrued through September 1988, the month her application was accepted.

Ms. Louis-Charles was subsequently sued by her landlord for nonpayment of rent. Her roommate had vacated the apartment. On May 26, 1989, she stipulated to a housing court judgment of \$3,052.50. According to that stipulation, Ms. Louis-Charles owed a balance of \$127.00 for November 1988, and \$483.00 per month for December 1988 through May 1989. On June 15, 1989, Ms. Louis-Charles' caseworker noted that her rent arrears consisted of \$1,197.00 in excess rent as well as \$2,311.00 in shelter payments that could be duplicated pursuant to HRA policy if Ms. Louis-Charles could produce a money order for the excess of \$1,197.00 and a letter and paystubs from a "donor" willing to pay her excess rent in the future. On September 19, 1989, Ms. Louis-Charles entered into a new stipulation with her landlord in which she agreed to pay \$5,008.50 as all rent due through September 1989. A subsequent judgment in the same case was entered on June 19, 1990, for \$8,959.80.

By order to show cause dated July 5, 1990, Ms. Louis-Charles moved to intervene in this case. That motion was granted. On July 30 1990, HRA issued checks to Ms. Louis-Charles' landlord totaling \$6864.00. Without HRA payments, Ms. Louis-Charles could not have satisfied the housing court judgment against her and she and her children would have been evicted. Defendant's

interpretations of the case file are not supported by the record.
DX BR-6. (PF 376-81).

127. The State defendant's policies for the issuance of emergency rent arrears grants to AFDC families requires HRA to deny emergency assistance when the threat of eviction stems from inability to pay rent above the maximum shelter allowance. Thus, when a family with rent in excess of the shelter allowance tenders its full shelter allowance to the landlord but nonetheless falls into arrears because it cannot pay the "excess rent," the State defendant provides no assistance to prevent the eviction. In contrast, when a recipient falls into arrears because of failure to tender the shelter allowance to the landlord, the State defendant's policies provide for recoupable emergency grants to forestall eviction. These policies illustrate how the level of the shelter allowance results in the eviction of AFDC families. DX. BI at p. 5; 18 NYCRR § 352.7 (g) (5); 18 NYCRR § 352.7 (g) (4); DX. BJ; Blaustein Tr. 766-67; Hickey Tr. 2558-59, 2605-06. (PF 181)..

128. The effect of these policies on AFDC families is shown by 129 administrative "fair hearing" decisions issued by the DSS from March 20, 1990 through January 1991. In virtually all these decisions, DSS affirmed HRA's denial of emergency grants to families threatened with eviction because their rents exceeded their shelter allowances. DSS also directed HRA to place the names of these public assistance recipients on a list of recipients who may be eligible for relief upon the resolution of this litigation. Rather than helping these families to avoid eviction, the

Department directed HRA to provide emergency shelter in the event that the family is left homeless as a result. PX 119-300-434, 120-426-429. (PF 182).

129. These "fair hearing" decisions show how families fall behind in their rent because it exceeds the shelter allowance and are threatened with eviction as a result. An example is the case of Pauline P., dated June 5, 1990. Ms. P. lived with her minor child and received AFDC benefits. Her rent was \$316.41, an amount \$66.41 in excess of her shelter allowance. Ms. P. accumulated arrears of approximately \$1,000 and was threatened with eviction. She applied for an emergency rent arrears grant that was denied on the ground that her arrears were an accumulation of "excess rent." On appeal, the State Commissioner found that "[t]he Appellant admitted that her rent arrears are an accumulation of her rent that is in excess of her Public Assistance shelter allowance." The Commissioner concluded that

Pending the final outcome of the case of Jiggetts et al. v. Grinker, et al., there is no provision in the Department's regulations authorizing payment of the Appellant's rent arrears in excess of the maximum Public Assistance shelter allowance for a household of Appellant's size. Therefore there is no relief that the Agency could provide to the Appellant that would prevent her eviction.

PX 119-344, at p.4. (PF 183).

130. In the case of Dawn M., dated June 27, 1990, the recipient received a shelter allowance for two persons, totalling \$250 a month and her rent was \$371. Until October 1989, Dawn M.'s brother helped her by contributing toward the \$121 monthly deficit

between the shelter allowance and her full rent. On November 1, 1989, Dawn M.'s brother lost his job and could no longer contribute to her rent payments. Dawn M. fell into arrears and asked HRA for a grant of emergency rent arrears in the amount of \$2,968. In February 1990, HRA denied this request on the ground that Dawn M.'s arrears were due to "rent costs in excess of the maximum shelter allowance." On appeal, the State Commissioner upheld this denial. The decision noted that Dawn M.'s arrears consisted of amounts in excess of the shelter allowance and amounts for which shelter allowances had been issued but spent on household items. The decision stated that:

Pending the final outcome of the case of Jiggetts et al. v. Grinker, et al., there is no provision in the Department's Regulations authorizing payment of the Appellant's rent arrears in excess of the shelter allowance. The Agency cannot pay the rent costs of a Public Assistance recipient that exceed the maximum shelter allowance based upon household size. However the Agency must provide an appropriate shelter allowance, and it can issue advance rent allowances to duplicate previously issued shelter allowances that were not used to meet rent costs if the issuance of said advance rent allowances would prevent eviction.

PX 119-343, at p.4.

Concluding that Dawn M. had received the appropriate maximum shelter allowance, the decision upheld the denial of relief in excess of the shelter allowance and of any advance allowances to duplicate shelter allowances previously issued, because "[a]ppellant offered no explanation as to how she will pay her future excess rent costs nor does she give any indication that the

landlord would settle for partial payment of the rent arrears." "Therefore," the decision concluded, "the record does not establish the issuance of a rent advance in duplication of misapplied shelter allowances would prevent eviction in this case." Id.

Finally, the decision directed that Dawn M.'s name be placed on a list of AFDC cases "so that any necessary action may be taken on the Appellant's case consistent with the outcome in the case of Jiggetts, et al. v. Grinker, et al." In the meantime, HRA was directed to provide Dawn M. with emergency shelter in the event that she became homeless. PX 119-343. (PF 184-188).

131. Virtually all of the 129 fair hearing decisions in evidence reach the same result. In many of these decisions, families facing eviction owed back rent that consisted solely of the portion of the rent due in excess of their shelter allowances. See, e.g. plaintiff's exhibits PX 119-300, 303, 307-08, 310, 316, 319-21, 323-24, 340, 344, 349, 353, 360, 371-74, 378, 393-94, 397, 399-400, 405-06, 423; PX 120-429. (PF 189).

132. In some of the fair hearing decisions, recipients had not paid the "excess rent" and also had not applied their full shelter allowances to their rent. See, e.g., PX 119-301, 330-31, 333-34, 338, 341, 343, 349, 352, 357, 361, 369, 381, 386, 389, 410, 414, 416, 418. As the State Commissioner pointed out, these families would have been eligible for a recoupable duplication of past shelter allowances, except that their rent was more than the shelter allowance, and duplication of past allowances would not have forestalled their evictions. See PX 119-357, at p. 4. See

Blaustein Tr. 766-77; Imbo Tr. 806-07. These recipients faced eviction and may since have been evicted because of the inadequate level of the shelter allowance. (PF 190).

133. In some of the fair hearing decisions in evidence, the recipients were entitled to reissuance of past shelter allowance amounts because checks had become stale-dated or were misdirected by HRA, or recipients were otherwise entitled to correction of some underpayments. But recipients were nevertheless denied emergency rent arrears for the portion of the overdue rent that exceeded their shelter allowances. See, e.g., PX 119-311, 317, 318, 322, - 335-337, 342, 345, 347, 355-356, 364, 370, 375, 377, 380, 382, 388, 391, 421; PX 120-426. See also PX 120-427, at pp. 3-4. (PF 191).

134. The record does not show how many, if any, additional families who were denied emergency rent arrears at income maintenance centers because their rents exceeded the shelter allowance did not pursue appeals. Nor does the record show how many additional families faced eviction but, because their rents were more than the shelter allowance and because of the State defendant's policies, did not apply for emergency rent arrears. (PF 192).

135. Although estimates vary, the doubling up of families on public assistance is a problem of substantial magnitude. DX B-108, vol. 2, at p. 31 (19% of families on public assistance were doubled up in 1988, 12% as secondary tenants and 7% as hosts); PX 128-64, at p. 3 (defendant's 1984 Report to Legislature on Homelessness stating that statewide there were 33,000 families on public

assistance doubled and tripled up). See PX 160, at p. 6 (defendant's 1990 report on the Homelessness Prevention program, stating "[i]t is widely believed that 100,000 families residing in New York City are currently living doubled up with other family members or friends."); PX 63-102, at p. 6 (annual report of the New York City Housing Authority estimating that there were 35,000 families doubled up in NYCHA apartments). These statistics do not reflect whether the doubling up resulted in "overcrowding" or not. (Defendant's Reply Brief, pp. 43-44; PF 193).

136. Many families turn to doubling up after losing their own apartment. See Dehavenon Tr. 550-51 (in 1989-90, 68% of homeless families had once had their own apartment, but only 6% had slept in their own apartment the night before requesting emergency shelter). Other families have never had their own apartment. See Dehavenon Tr. 551 (32% of families requesting emergency shelter in 1990 never had own apartment, 29% in 1988-89, and 31% in 1987-88); DX B-108, vol. 1, at p. 9 (44% of families requesting emergency shelter did not have own apartment for at least one year). (PF 194).

137. Dr. Filer's opinion that few doubled-up families were doubled up as a result of an eviction because "the vast majority of public assistance recipients who are living in doubled-up situations have at no time been primary tenants and therefore cannot have been evicted" is not supported by the Knickman report (DX B-108), the source he relied on. Filer Tr. 1880, 2221-23. The Knickman report shows that, while 55% of homeless families once had their own apartment for more than one year (DX B-108, vol. 2, at p.

28), only 18% of homeless families slept in their own apartment the night before requesting emergency shelter (DX B-108, vol. 1, at p.8). Thus, at least 37% of all homeless families once had their own apartment, but did not live there immediately prior to requesting emergency shelter.

138. Doubling up "often represents an interim situation" that eventually leads to a need for emergency shelter. DX B-108, vol. 1, at p. 40. The Knickman report found that doubling up was the single greatest predictor of future shelter use. DX B-108, vol. 3, at p. 33. See PX 128-64, at p. 2 (defendant's 1984 Report to the Legislature on Homelessness stating that homelessness is often the "last stage of a process that begins in a crowded unit"); DX at B-108, vol. 1, p. 8 (71% of families were doubled up immediately prior to requesting emergency shelter); Dehavenon Tr. 550 (78% of families doubled up immediately before requesting emergency shelter in 1990; 68% in 1989). (PF 196).

139. The State defendant itself has recognized that many doubled up families are, in a sense, homeless. In a 1990 report, the State defendant wrote:

There is a third component of the homeless population -- the doubled up or marginally housed component. This population consists of families who are forced to live with other families to avoid living on the street or in homeless shelters. Some definitions of homelessness exclude doubled up families or consider this population to be marginally housed. But regardless of the definition applied, it is clear that the housing status of this group is in jeopardy because it is dependent on the complaisance of the host individuals or families.

PX 160, at p. 6. See also PX 128-64 (distinguishing between the "technically homeless" and the "near homeless" doubled up).

It is a widely held view that, due to the unstable and tenuous nature of living doubled up, many of these families are properly considered homeless. Stegman Tr. 322-23; DX B-108, vol. 2, at p. 27 ("In an important sense, homelessness is defined not by shelter use, but by not having one's own place to live"). See Auwarter Tr. 642; Cf. Filer Tr. 2230 ("definition of homelessness is to a large extent an arbitrary line drawn somewhere along a continuum of poor housing [options]"). (PF 197).

140. Dr. Dehavenon has studied the conditions of the apartments in which families were doubled up immediately before requesting emergency shelter. In 1989-1990, 96% of homeless families who came to the EAUs from doubled-ups had been in apartments that were crowded, defined as more than one person per room, and 85% had been in apartments that were very crowded, defined as more than 1.5 people per room. Dehavenon Tr. 552-56. (PF 198).

141. The data collected by Professors Knickman and Weitzman also reveal that previously doubled-up families entering the emergency shelter system endured "extremely crowded living conditions" prior to entering the shelter system. See DX B-108, vol. 2, at pp. 95-97 (89% of homeless families previously doubled up with the mother's parents and 71% of homeless families previously doubled up with others reported having lived in an apartment with four or more persons per bedroom). (PF 199).

142. For these families, living in double-ups was characterized by a lack of privacy and a lack of control over their living spaces. Only 30% of families coming out of double-ups to the EAUs had had their own room; only 50% had had their own bed. In many cases they had been unable to receive mail where they were staying and only half of them had been able to use the telephone, if there was one. Dehavenon Tr. 554. See DX B-108, vol. 2, at pp. 25-26 (noting that lack of control is a key element of doubling up). (PF 200).

143. Doubling up also contributes to the disintegration of families. Husbands and fathers are separated from their families. Mothers may have one or two of the children staying with them and another child staying in some other situation. Dehavenon Tr. 555.

144. The double-ups that families live in before turning to the emergency housing system are unstable. In 1989-1990, the median length of stay in double-ups prior to entering the EAUs was two months. Fifty percent of families reported having lived in two or more double-ups prior to asking for emergency shelter. Dehavenon Tr. 553-54. (PF 202).

145. Families turn to a series of less and less viable double-ups before finally seeking emergency shelter. DX B-108, vol. 2, at p. 34 ("The pathways to homelessness generally include a period of trying less and less viable housing options outside the shelter system before coming to the EAU's"). See DX AG-111, at p. 10 (housing history of homeless families characterized by "stability at some point in the past, followed by a decline in the stability

of arrangements"). In 1988, only 4% of families requesting shelter had slept the night before in the place they had stayed for the longest time in the last year. DX B-108, vol. 2, p. 33. (PF 203).

146. Most families would not willingly subject themselves to the indignity and instability of living doubled up if they had other housing options available to them. See Auwarter Tr. 625 (doubled-up families cannot find their own apartments renting within the shelter allowances). Because the current shelter maxima make it impossible for families to find their own apartments, shelter allowances are "a substantial contributing factor to families having to double up." Dehavenon Tr. 557. See Stegman Tr. 322. (PF 205).

147. Dr. Filer's opinion that most doubled-up families are living in such arrangements voluntarily (Filer Tr. 1868-69, 1870) ignores the conditions families endure in double-ups. The Knickman and Weitzman study found that, although "host families were not at increased risk of homelessness by doubling up, the doubling family was. Further, the key factor was not the crowding aspect, but the doubling family's lack of control over the housing unit. DX B-108, vol. 2, p. 33. "Usually the problem involved a fight or disagreement of one sort or another." Id. at vol. 1, p. 8. Dr. Dehavenon cited overcrowding, host tenant needing space, needing to move, for example, based on her questioning of shelter residents. Dehavenon Tr. 554-5. Battering was also a cause. Auwater Tr. 635-6. Dr. Filer's opinion is also based on assumptions about family compositions that are unfounded and on baseless speculation about

people's motives. The source that Dr. Filer relied on, the Housing and Vacancy Survey ("HVS"), contains no data on why persons or families live together. Stegman Tr. 3371-72. To fill this gap, Dr. Filer imputed motives to families based solely on the composition of their households. The HVS does not contain information that is sufficiently detailed to permit this kind of inference. See PX 70-209, at p. 142. Nor are his assumptions supported by any data. Filer Tr. 1870, 1888-90; DX AF-5. (PF 206).

148. Although it is impossible to use the data from the HVS compiled in DX AF-5 to draw meaningful conclusions about why people are doubled-up (Stegman Tr. 3371-72), DX AF-5 does show that public assistance families are much more likely than other families to be doubled-up. (PF 210).

149. Dr. Filer's testimony that public assistance recipients are only slightly more likely than the general population to be doubled-up (Filer Tr. 1873-74) is based on a distortion of the data from the 1987 HVS, which he cites as his source. In DX AF-5, Dr. Filer purported to show that 9.9% of all households and 11.7% of public assistance recipients are doubled-up. See Filer Tr. 1873-74. However, when the total number of public assistance households in the 1987 HVS (232,743) is compared with the number of doubled-up households on public assistance listed on AF-5 (35,489), it shows that 15.2% of public assistance households were doubled-up in 1987. Stegman Tr. 3373. See PX 70-209, at p. 21. (PF 211).

150. When households where the double-up consists of one single adult living with another unrelated single adult (situations that Dr. Filer testified likely involved roommates or lovers, Filer Tr. 1870-71) are removed from consideration and correction is made for errors of arithmetic, the statistics relied upon by Dr. Filer show that public assistance recipients are almost twice as likely as other households to be doubled-up. When single adults living together as double-ups are not considered, 14.3% (33,312 of 232,743) of households receiving public assistance and 7.6% (188,195 of 2,468,943) of non-public assistance households are doubled-up. See PX 70-209, at pp. 12, 21 (total number of households in the 1987 HVS was 2,701,687; total number of households on public assistance was 232,743). (PF 212).

151. Dr. Filer's resume shows that, throughout his career, his publications have concentrated on issues of labor economics, in particular, the income of artists and sex-based wage differentials. DX AE-13. (PF 213).

152. Dr. Filer's opinion that homelessness among families in New York City during the 1980's and 1990's has been caused by their failing to obtain benefits to which they are entitled and their choosing to leave viable housing situations to enter the emergency shelter system to obtain preferences for city apartments (Filer Tr. 1942-45, 1954-57) is not persuasive because it is contradicted by overwhelming evidence that families turn to the emergency shelter system only as a last resort after having exhausted all viable alternatives. The first "Key Finding" of the Knickman and Weitzman

report, upon which Dr. Filer relied (Filer Tr. 1761-62, 2173-74) is that "Shelter Use Appears To Be A 'Last Choice' Option For Families." DX B-108, vol. 1, at p. 8. The report found that families seeking emergency shelter had "worn out their welcome at the apartments" of those to whom they had social ties and that "the housing and social problems facing potential shelter users leads to a period of reliance on friends and relatives, and shelter use occurs when these informal networks wear down." *Id.*, vol. 1, at p. 26; see id., vol. 2, at p. 86 ("Families entering shelter do not feel that they have other options or have used up the options they had."). (PF 214).

153. An HRA study relied on by Dr. Filer (Filer Tr. 2180-81) concluded that:

This study was undertaken to understand the reasons for the apparent increase in the numbers of families seeking emergency shelter from HRA. The study yielded little evidence that families are forsaking stable housing arrangements to become homeless in the hopes of getting an apartment.

DX AG-111, p. 20. Compare Filer Tr. 2184 (stating that he relied on DX AH-114) with DX AH-114, at p. 5, Table 10 (finding that 87.5% of homeless families at the Forbell Street Shelter and 94.4% of families at the Martinique Hotel reported that they could not return to the place they had lived before entering the emergency shelter system). Compare also Filer Tr. 1760-61 (where he stated he was impressed by a number of studies of homelessness in New York City, including a report by the Manhattan Borough President) with Tr. 2190-93 (acknowledging that the Borough President's report

contained a finding that "generally homeless families entering the shelter system have exhausted all other housing resources available to them, including doubling up with friends and relatives and renting substandard hazardous apartments"). (PF 215).

154. Further, the rise in family homelessness pre-dates the allocation of City apartments to homeless families. The first programs to allocate apartments to the homeless began in 1983. By that time, there were already 2,000 families in the City's shelter system. Filer Tr. 2164-65. Thus, Dr. Filer's theory confuses cause and effect. A rise in the need for emergency shelter led to an allocation of City apartments for the homeless, rather than the other way around. (PF 218).

155. Families in the emergency shelter system remain for lengthy periods and are not eligible for placement in permanent housing for many months. During the 1980's, families in the emergency housing system had been in the system an average of eleven months to more than a year. Filer Tr. 2195-2196 (average stay in 1985 was eleven months, in 1987, over a year; in 1988, 350 days). (PF 230).

156. From the fall of 1985 through most of 1987, the waiting period in the shelter system for homeless families without a pregnant woman to obtain a placement in permanent housing, was eighteen months; for families with a pregnant woman it was six months. In late 1987, the waiting period changed to twelve months for all families. (Filer Tr. 2194-95). Thus, a mother making a rational "choice" to enter the shelter system in order to obtain a

City apartment would have to do so knowing that she and her children might spend up to a year in several locations in the City's shelter system prior to receiving a referral. (PF 231).

157. Dr. Filer's theory also fails to take into account the long acknowledged and judicially recognized terrible conditions in the emergency shelter system. (See McCain v Koch, 117 AD2d 198, and court decisions arising out of that litigation). Nor was he familiar with the recent findings and decisions in McCain (Filer Tr. 2204, 2208-09, 2215-17). On cross examination, Filer admitted that homeless families placed in "Tier I" shelters stay in congregate facilities where many families sleep in each room and share bathrooms. Filer Tr. 2196-97, 2202. He admitted that, in the Forbell Street Shelter, 20 families slept in each area. Tr. 2197, 2202; DX AH-114, at p. 1 (121 families sleep in six open areas). Dr. Filer also acknowledged that families are placed in "overnight beds" in hallways, cafeterias and offices. Tr. 2203.

Dr. Filer's statement that families are required to remain in Tier I shelters for an average of 28 days. (Filer Tr. 2461) is contradicted flatly by Nancy Travers, who was in charge of monitoring the City of New York's compliance with State regulations governing conditions in emergency shelters from 1988 until February 1990. Ms. Travers testified that the average length of stay in Tier I shelters is 50 days -- almost twice as long as the period claimed by Dr. Filer. Defendant's proposed findings of fact also contradict Dr. Filer's statement. Travers Tr. 2624-26. (PF 219-21; DF 452-53).

158. In the absence of evidence that a significant number of actual families are really acting as Dr. Filer hypothesizes they are acting and given the terrible conditions in the emergency shelter system for families over the past decade and the long waiting periods for placement in permanent housing, this court rejects Dr. Filer's opinions as an explanation for the phenomenon of family homelessness. No evidence was offered by the State defendant to support Dr. Filer's opinions and there is no evidence that families entering the shelter system left stable or tolerable housing situations. (PF 235).

159. Dr. Filer's position that there are thousands of apartments immediately available to the homeless at rents within the shelter allowances (Filer Tr. 1806) is inconsistent with his opinion that large numbers of families are voluntarily entering the shelter system. Tr. 2195-96. If apartments really were available in the market at rents within the shelter allowance, families making a cost benefit analysis, as Dr. Filer claims they do, would not enter and endure the shelter system to obtain something that is readily available. (PF 236).

160. Further, Dr. Filer cited no evidence that the apartments provided to homeless families are so desirable that families would forego other housing options in order to obtain these apartments. The only report that he considered that discussed the conditions in these City apartments was a report by the Manhattan Borough President, which found that "apartments offered to homeless families often suffer from inadequate or incomplete repairs. The

conditions of these units is sometimes so poor that homeless families, as desperate as they are for a permanent home, are hesitant to accept apartments shown to them." Filer Tr. 2219. (PF 237).

161. The regression analysis performed by Dr. Filer does not support his conclusion that family homelessness is not related to the level of AFDC benefits (Filer Tr. 2018-21). He used 1984 data that did not distinguish between homeless singles and homeless families. Filer Tr. 2245-46, 2367. According to the data, relied on by Dr. Filer, at that time homeless singles made up approximately 77% of the homeless population nationally. Filer Tr. 2367-69. The key variable in the study is therefore essentially a measure of homelessness among singles rather than among families. Bach Tr. 3520-23. Because the causes of homelessness for singles and for families are very different and because homeless singles are not even eligible for AFDC, the use of data that did not distinguish between homeless singles and families makes it impossible to draw valid conclusions about the relationship between AFDC benefits and family homelessness by using regression analysis. Bach Tr. 3520-24; Filer Tr. 2246-47 (admissions by Dr. Filer in his own paper that his study does not capture differences in the proportion of homeless that are part of families in different cities); Tr. 2368-69 (admission by Dr. Filer that homelessness among singles has different causes than homelessness among families). (PF 238).

162. Although not mentioned by Dr. Filer on direct examination, his study did conclude that rent levels at the lowest end of the housing market are clearly linked to homelessness. Filer Tr. 2374-75. This finding is at odds with Dr. Filer's opinion at trial that housing affordability is not a significant factor in causing homelessness. Cf. Filer Tr. 1934-35 (changes in housing market do not have impact on homelessness); 1943-45 (discussing the two "primary" causes of family homelessness).

Dr. Filer's opinion that administrative case closings are also a contributing cause of family homelessness (Filer Tr. 1943-44, 1951-52) is not inconsistent with inadequate shelter allowances also being a cause of homelessness. In fact, case closings and inadequate shelter allowances may work together in pushing families into homelessness. (PF 239, 240).

163. The graphs created by Dr. Filer of the number of homeless families in the emergency shelter system in New York City (DX AF-6 and DX AF-6[1]) do not support his conclusion that the 1984 and 1988 shelter allowance increases had no impact on homelessness among families. Too many factors influence the number of families in the emergency shelter system to conclude anything about the impact of those modest shelter allowance increases on homelessness among families. Stegman Tr. 3370-71. For example, changes in the total number of families in the shelter system may result from changes in the rate at which families are leaving the system as well as changes in the rate at which families are entering. Thus, drops shown on the graph may as likely represent

an increase in the City's success in finding permanent placements for families as a decrease in families entering the system. Likewise, a rise on the graph may show a decrease in placements out of the system rather than an increase in entries. (PF 241).

164. Comparing the data underlying DX AF-6 and AF-6(1) with Dr. Filer's testimony shows that he mischaracterized the trends shown by the graph in an attempt to reconcile it with his conclusions. To support his conclusion that the 1988 shelter allowance increase had no impact on homelessness, he claimed that the graph showed that the "number of homeless families was -- statistically it was the same from the summer of 1987 through the end of 1988." But there are no data in evidence showing the number of families in the shelter system for three of the four months prior to the 1988 increase in the shelter allowance. The data that exist clearly show that the number of homeless families peaked at the beginning of 1988, remained relatively stable through July of 1988, and then declined steadily between August and December 1988. Compare Filer Tr. 1928-29 with DX AQ. (PF 242).

165. Even if it were appropriate to draw conclusions from DX AF-6 and DX AF-6(1) about the impact of the 1984 and 1988 shelter allowance increases on family homelessness, those increases in the shelter allowance were not based on reasonable estimates of the market cost of housing and no conclusion can be drawn about the impact that shelter allowances based on the cost of housing would have had. The 1984 and 1988 increases were too small to be relevant in predicting the impact of an adequate shelter allowance

schedule on homelessness among families. Stegman Tr. 3376-77. See PX 128-64, at p. 37 (1984 state Report to the Legislature on Homelessness stating that "the effects of the new shelter allowance are likely to be slow in appearing. Even at higher rent levels, available apartments are few, difficult to find, and very often unavailable to welfare recipients. In all probability, the new allowances will help to slow the growth of the homeless population, but will not by themselves reverse it."). (PF 243).

166. Dr. Filer's opinions regarding the relationship between the shelter allowance and homelessness are also not persuasive in that they are based on incorrect data regarding entries into the New York City emergency shelter system. The corrected data does not support his conclusions. Dr. Filer testified that "the shelter allowance increase [in 1988] had no impact on the number of families becoming homeless in New York City" based on data for entries into the emergency shelter system contained in DX AF-7. Filer Tr. 1939. He testified that the sources for the data contained in DX AF-7 were the HRA monthly emergency housing census reports. Filer Tr. 1936. The data used by Dr. Filer for DX AF-7, however, did not match the data contained in the census reports.

When confronted by the lack of census reports for all the months contained in DX AF-7, Dr. Filer explained that his research assistant had visited HRA and personally obtained a table of figures prepared by HRA. Filer Tr. 2386-88.

However, data on entrants into the shelter system contained in HRA's monthly reports was admittedly erroneous until

March 1990. Knecht Tr. 3197-99; DiJesu Tr. 3445-49. Later at trial, defendant introduced corrected data for entries to the shelter system. DX BV. But AF-7 was not further amended to reflect these corrections. Thus, the corrected data differ from that on both the original AF-7 and the amended version of that chart. Compare DX BV (average number of entrants in 1989 was 828) with DX AF-7 (average number of entrants in 1989 listed as 813) and DX AF-7(1) (average number of entrants in 1989 was 782). Tr. 3153-56. (PF 244-45, 247).

167. HRA does not have corrected data for the number of families entering the emergency shelter system prior to July 1987. DiJesu Tr. 3447-48. For the period from July 1987 through February 1990, the corrected data is contained in DX BV. DiJesu Tr. 3448-49. Beginning with March 1990, the corrected data is contained in the CIS Monthly Census Reports (DX AQ). DiJesu Tr. 3444. (PF 248).

168. An analysis of the corrected data for entries into the emergency shelter system contained in DX BV and DX AQ shows that the revised data do not support Dr. Filer's opinion that the 1988 increase in the shelter allowance did not have an impact on the number of homeless families entering the emergency shelter system. The number of families entering the system every month was higher before the 1988 shelter allowance increase, dropped after the increase, remained lower for approximately 18 months, and then began to rise again. A table reflecting these trends is set forth below:

<u>Period</u>	<u>Average Number of Entrants</u>
July - Dec. 1987	876
Jan. - June 1988	805
July - Dec. 1988	815
Jan. - June 1989	792
July - Dec. 1989	864
Jan. - June 1990	865
July - Dec. 1990	960

Source: DX AQ (March 1990- Dec. 1990); DX BV. (PF 249).

169. The public assistance grant in New York City consists of three components, a shelter allowance, a basic grant, sometimes referred to as the "pre-add" allowance, and two home energy allowances. The "pre-add" allowance and the home energy allowances are set by the Legislature and are uniform throughout the State. (Findings of Fact 2-3). The home energy allowances are provided in order to meet the costs of domestic energy needs such as lights, cooking and hot water. 18 NYCRR § 352.5(e) (2) (documentation that these grants have been used for intended purposes must include "proof of payment of an amount equal to or greater than the recipient's combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) to domestic (lights, cooking, hot water) energy costs..."); PX 89-30, at p.2 (HEA and SHEA intended "to augment the amounts provided for utilities in the basic needs component"). Proof of this use is not always required. (Defendant's Reply Brief, p. 30, 49; PF 250-252).

170. Together with food stamps, the "pre-add" allowance provides recipients with basic income assistance for all expenses other than rent and energy costs. Food stamps alone are not intended to be sufficient to enable recipients to purchase an adequate diet. Instead, they are calculated based on an assumption that, in addition to food stamps, recipients will spend 30% of their countable cash income on food. Krueger Tr. 679. See, e.g., Remy Tr. 45-46; Diaz Tr. 73, 95; Irizarry Tr. 105, 136. For these purposes, countable income includes the "pre-add" allowance and the shelter allowance, but not the home energy allowances. Krueger Tr. 670. (PF 253).

171. The total value of the public assistance grant as a whole has declined drastically since the mid-1970's. In 1975, the maximum public assistance grant for a family of three in New York City was equal to 110% of the federal poverty level. By 1991, it had fallen to approximately 65%. Krueger Tr. 671. See DX P-131, at p. 4 & Table 4 (referring to the "steady and significant decline over the past decade in the ratio of benefits to [the] poverty [level], even including the increases of the early 1980's"); G-37, at p. 11. The "pre-add" allowance has only increased by 15% since 1974. 1989 Session Laws ch. 77; DX P-131, at p. 5 (1987 document stating that the basic grant has remained unchanged since 1974). When food stamps are taken into account, the income of public assistance recipients declined from 124% of poverty level in 1975 to 85% today. Krueger Tr. 671. See DX P-131, at Table 4. (PF 254-255).

172. The "pre-add" and home energy allowances do not provide enough money to families to enable them to use a portion of those funds for rent. Krueger Tr. 678-80. See e.g., Remy Tr. 26; Diaz Tr. 73-74; Irizarry Tr. 108. AFDC families who pay rent greater than their shelter allowances from other portions of their public assistance grants must forgo basic needs. Such families are placed in ongoing crisis situations. Krueger Tr. 678-80, 699-700; Dehavenon Tr. 558. See, e.g., Diaz Tr. 81-83. (PF 257).

173. The inability of AFDC families to rely on the nonshelter portions of their public assistance grant to pay their rent results in many being forced to seek help from emergency food pantries and soup kitchens. Krueger Tr. 672-674; Dehavenon Tr. 558. See, e.g., Irizarry Tr. 107. More than half of all families seeking emergency food supplies report that they are seeking help because their public assistance money has run out. Krueger Tr. 673-674, 704-705. Many families that run out of money for food report that they have spent their food money on rent. Dr. Dehavenon's studies of families experiencing food emergencies led her to conclude that:

[S]ince the early 1980's many families give up purchase of food and other necessary items in order to be able to pay excess rent and to keep a roof over their heads. I therefore find that the level of the shelter allowance is also a substantial contributor to family food emergencies.

Dehavenon Tr. 555-6, 558. (PF 258, 259).

174. Liz Krueger, Director of Income Support Programs for the Community Food Resource Council, opined:

[F]amilies with rents significantly higher than the shelter allowance are in the most

sort of ongoing crisis stage. Every month, they don't have enough money to pay the rent according to what their rent level is supposed to be. If they are trying to pay their rent, they are using some of the money they are supposed to have for their food and their nonfood costs to cover the rent.

They are likely to end up, or they are most likely to end up, dependent on and needing emergency assistance, falling behind in both their food costs and their nonfood costs, and it's not just direct client work that shows this. Many, many studies have been done by government agencies, as well as other consumer organizations, showing that you can't afford to purchase all the basic needs, food and other, with the amount provided to you by your public assistance and food stamp allowance.

Krueger Tr. 679-80. (PF 260)

175. Ms. Krueger's opinion is not compromised by her inability to distinguish families on public assistance from others at food pantries or determine whether families received all their entitlements.

176. Emergency food providers, such as food pantries and soup kitchens, are unable to meet the full needs of families. Demand for emergency food far outstrips the resources available to meet this need. As a result, providers of emergency food supplies are forced to turn away hungry families seeking food. Krueger Tr. 673-76. (PF 261).

177. Defendant State's contention at trial that families can use part of the basic grant for rent is contradicted by numerous prior statements in Department studies and by Department officials. In a 1988 report, the Bureau of Policy Analysis of the Office of Program Planning, Policy and Analysis of the State DSS ("the OPPAD

Report") recalculated the costs of the items of need provided for by the "pre-add" allowance and concluded that the cost of meeting such needs was 79% higher than the amounts provided by the "pre-add." PX 89-30, p. 16; DX Q-132, at pp. 1-2. This report is DSS's only study since 1994 of the basic needs component. See DX O-130 (December 1986 statement that the basic standard of need has not been re-examined since 1974); Q-132, at p. 4 ("Much of the current embarrassment surrounding the standard of need study results from the issue's [sic] having been ignored for a decade and a half"). (PF 262).

178. The OPPAD Report, PX 89-30, shows that the basic grant lags far behind the only estimate that the State defendant has made of the actual costs of the necessities that the basic grant is intended to cover. In view of this large deficit, the basic grant contains no money that can be spent on rent without impairing the ability of families to purchase clothing, food and other necessities. (PF 263).

179. DSS and its employees admitted that the nonshelter portions of the public assistance grant are not provided to meet rental costs. In 1987 the Executive Budget for the fiscal year 1987-88 acknowledged that, when families are forced to rent apartments with rent above the shelter allowances, their ability to purchase other necessities is compromised: "If shelter allowances remain at current levels, over 60 percent of AFDC and HRA recipients would be forced to use a portion of their basic needs grant to pay rent, thus eroding purchasing power and diminishing

access to food, clothing and other essentials." PX 37-66, at p. 355. (PF 264).

180. The Executive Budget for the fiscal year 1987-88 also stated that: "[B]y 1988 approximately 63 percent of the public assistance caseload would pay rents in excess of the current shelter ceilings. This would diminish the value of the total welfare grant by forcing recipients to pay a portion of their rent from allowances intended for food, clothing and other essentials." PX 37-66, at p. 361. See also PX 153, p. 2 and DX G-37, p. 12. (PF 268).

181. Dr. James Welsh, the author of the OPPAD Report, testified that OPPAD did not study rent issues because the report focused on the basic needs grant, which is not intended to include costs for shelter. PX 137-153, at pp. 237-38. (PF 266).

182. Ms. Krueger explained how an AFDC family of three with rent \$100 in excess of the shelter allowance would find itself more than \$130 short of meeting its basic monthly needs based on the current Thrifty Food Plan adjusted to the maximum food stamp allotment without adjusting to local food costs. PX 90-263; Krueger Tr. 687-89, 692-700. (PF 267).

183. Each year, the Thrifty Food Plan amount is adjusted by a small percentage to calculate the "maximum food stamp allotment amount." In 1990-91, the maximum food stamp allotment was set by statute to be no more than 3% (\$8) higher than the Thrifty Food Plan amount. 7 USC § 2012(o)(11). (PF 269).

184. Dr. James Welsh testified that he believed Ms. Krueger's budgeting example did not conform with the methodology of the OPPAD Report because it substituted the maximum food stamp allotment amount for the Thrifty Food Plan amount, unadjusted for food stamp purposes. Welsh Tr. 1643-44. (PF 270).

185. However, Dr. Welsh himself utilized the 1988 maximum food stamp allotment amount rather than the Thrifty Food Plan amount throughout the OPPAD Report. PX 89-30, at p. 9 (figures are "as determined for food stamp purposes"). Dr. Welsh further adjusted this amount by a number of factors, including a 6% increase to reflect the higher cost of food in New York State. The net effect of these adjustments is that the OPPAD Report used a figure that is higher than the Thrifty Food Plan amount in effect at that time. Krueger Tr. 687-89, 698-99. Ms. Krueger's example therefore used a more conservative methodology than did the OPPAD Report. PX 90-263. (PF 271).

186. Ms. Krueger's example is also conservative because it is based on the Thrifty Food Plan, which the United States Department of Agriculture considers reflects the cost of food on a short-term emergency basis only. Krueger Tr. 688-90. When DSS established the "pre-add" in 1969, it relied on the more nutritional USDA "low-cost" food plan. Krueger Tr. 688-691. Similarly, OPPAD in its report on revaluing the basic need standard had also recommended reliance on the "low-cost" food plan. PX 89-30, at p. 6. (PF 272).

187. Dr. Filer testified that, in his opinion, the OPPAD Report on basic needs, PX 89-30, is flawed because it used the Consumer Expenditure Survey, which he considers unreliable for non-food needs. Filer Tr. 2094-96. Dr. Filer did not offer any other estimate of the amounts required to meet non-food needs. (PF 273).

188. The use of the Consumer Expenditure Survey for this purpose was expressly recommended to Commissioner Perales by Michael Dowling, then Deputy Commissioner for Income Maintenance. DX O-130; P-131, at p. 5 ("The Department's study will be aimed at developing a picture of the expenditures of 'typical low-income' households. The data employed will be from the most recent annual Consumer Expenditure Survey conducted by the Federal Bureau of Labor Statistics"). Contrary to Dr. Filer's opinion, DSS officials endorsed the use of the Consumer Expenditure Survey for this purpose. (PF 274).

189. Ms. Krueger's testimony concerning the inability of public assistance recipients to spend their nonshelter grants on rent is substantially uncontradicted. Neither Dr. Filer nor any other witness testified that AFDC recipients are provided with funds in the nonshelter portions of their grants that can be spent on rent without sacrificing basic needs. (PF 275).

190. No state official testified that funds can be diverted in this manner and no study that reached this conclusion was introduced or mentioned. To the contrary, DSS has admitted that, when shelter allowances fail to keep pace with rising rents, "public assistance funds intended for clothing, food and other

basic needs must be diverted to meet shelter costs. The lack of buying power experienced by this population contributes to the substandard living conditions that exist among the State's neediest families". PX 23-33, at p. 2. The Commissioner's speculation in his reply brief is unsupported by any evidence in the record. (PF 276).

191. As of March 12, 1991, 135 families receiving AFDC had been approved for preliminary relief in this case. Blaustein Tr. 751; PX 92. (The exhibit lists 137 recipients, but one potential intervenor, Fatima Serrano, subsequently withdrew. Tr. 2923. Additionally, counsel stipulated that one of the recipients was HIV positive and eligible for a supplemental shelter allowance under DSS regulations. Tr. 2916.) This number increases on a daily basis. The vast majority of these families received relief pursuant to an informal procedure developed by counsel in this case. Id. Others received interim relief pursuant to order of this court (N. Carabello, J. M. Beal, L. Green, T. Felder, P. Smith, A. Melendez, M. Artiaga, I. Rivera, D. Deas, and T. Saxby). (PF 277).

192. Under the informal procedure, counsel for proposed intervenors write to the Attorney General's office requesting consent to payment of ongoing rent and arrears in excess of the maximum shelter allowance for the family's size. Tr. 750. All the families have active public assistance cases (Tr. 774) and all but four had ongoing rents in excess of their shelter allowances. PX 92 (recipients listed on PX 92 who are not reported with rents in

excess of the shelter allowance may well have received interim relief in this action prior to an event that lowered their rents, such as receipt of a "Section 8" certificate. Blaustein Tr. 749-50, 768). All were sued in housing court and have judgments entered against them. Tr. 3560-61.

In each instance, HRA paid rent arrears as part of the preliminary relief in this case in order to forestall eviction and, in all but four cases, has provided ongoing rent in excess of the shelter allowance. PX 92; Tr. 755. These 135 families were all threatened with eviction because their shelter allowances did not cover their full rents and their evictions were averted by the preliminary relief in this case. (PF 278, 279).

193. Defendant's evidence, offered to show the State's efforts to create new and renovated housing across the State, is irrelevant because defendant was unable to show that this housing was set aside for homeless families or for families whose rent is above the shelter maximum or has resulted in a significant number of additional available units (DF 130-152). In addition, defendant's contention that its programs are increasing the quantity and quality of housing for low income families in New York City conflicts with its expert Dr. Filer's opinion that there are sufficient rental units within the shelter allowance now available in New York City. Tr. 1806.

194. The remainder of plaintiff's 392 proposed findings of fact and of defendant State Commissioner's 459 proposed findings of fact are not adopted and deemed denied.

DISCUSSION

The Court of Appeals has determined that SSL § 350(1)(a) "imposes a statutory duty on the [Commissioner] to establish shelter allowances that bear a reasonable relation to the cost of housing in New York City" (75 NY2d at 415). This requirement implements "the Legislature's determination that families should be kept together in a home-type setting" (*Id.* at 417).

This courts finds, based on the evidence in the record, that the current shelter allowances do not bear a reasonable relationship to New York City housing costs. The 1984 shelter allowance was not reasonably related to housing costs (Finding of Fact ["FF"] 11-13). Likewise, the 1988 shelter allowance is not reasonably related to housing costs (FF 22, 25, 27, 30, 33-34, 56), which defendant Commissioner admitted (FF 22,27), and his own studies confirm (FF 25, 30). Nor was the method he used to determine and set the rates related to the actual cost of housing in New York City (FF 8, 10, 14, 16-18, 21, 31-32). According to the Commissioner's own statistics, almost 50% of AFDC families in non-public housing have rents above the maximum shelter allowance (FF 26; See, e.g., compilation in PX 84-262).

The shelter allowance has not been raised since 1988 (FF 24). Since 1975, the difference between the shelter allowance and rents has drastically widened, especially for rent-stabilized apartments, where most recipients live (FF 34-36, 38, 63, 73), and between the shelter allowance and housing maintenance costs, contributing to abandonment of low-income housing (FF 67-69). There are now fewer

apartments in the private housing stock within the allowance (FF 40) and there is a low vacancy rate in low-rent apartments (FF 51).

Families do not have a realistic chance of finding an apartment within the allowance (FF 52-55). State officials themselves have recognized that the likelihood of finding an apartment within the allowance is low (FF 58).

A significant percentage of AFDC and poor families live "doubled-up" (FF 135, 150). Doubling-up occurs when families are evicted, lose their apartment or are unable to find their own apartment (FF 136). Doubling-up damages family stability in the "guest family" and has been characterized as equivalent to homelessness (FF 138-146). The continuing inadequacy of the shelter allowance contributes to homelessness whether the family is doubled-up or sheltered (FF 73-126, 129-134, 191-92) and the state defendant, before trial, admitted this correlation (FF 74-76).

DSS's policy of upholding HRA's denial of emergency payments for rent over the shelter allowance to forestall evictions of AFDC families also contributes to homelessness (see passim FF 84-131).

Thus, the Commissioner's failure to provide adequate shelter allowances through the years has resulted and results in families unable to find decent housing, living in seriously substandard housing, doubling-up or becoming homeless or in EAU's, thus frustrating the Legislature's intent that families be kept together in a home-type setting.

The Commissioner, in his post-trial brief, seeks to justify the current shelter allowances on a number of unrelated grounds.

He relies to a significant degree on the testimony of his expert, Dr. Filer, to show that the current shelter allowances are reasonable and do not cause homelessness. As noted in its findings of fact, the court has found Dr. Filer's opinions are unpersuasive and has not credited them (e.g., FF 12, 23, 39, 44, 59, 64-65, 70-72, 137, 149, 152, 157, 161, 163-64, 166).

The Commissioner also outlines the budget process and asserts that DSS's original budget proposal had suggested an increase to the 70th percentile of rents paid as of 1986, with a 12% inflation factor added, but was asked by the DOB to develop alternatives that resulted in the 65th percentile, 6% inflation factor that was included in the budget effective January 1988 (Defendant's Post-Trial Brief at 15-19). In making this argument, the Commissioner essentially relies on an argument that was rejected by the Court of Appeals in Jiggetts: "the Legislature may or may not appropriate funds necessary to fund these obligations, but the Commissioner does not discharge this statutory duty unless he complies with the mandate contained in Social Services Law § 350(1)(a)" (75 NY2d at 421; see also Klostermann v Cuomo, 61 NY2d 525, 537). Even a schedule at the 70th percentile would not have met the Court of Appeals standard (FF 10-11, 17, 19).

The Commissioner argues further that the Legislature, in funding the DSS budget, exercised its discretion under Article XVIII of the State Constitution that provides: "the aid, care and support of the needy are public concerns and shall be provided by the [S]tate . . . , as the [L]egislature may from time to time

determine." In the Commissioner's opinion, by enacting the budget that incorporated the current shelter allowances, the Legislature has overridden the mandate of SSL § 350 (1)(a) (Defendant's Post-Trial Brief at 109-112). This court concludes that the Legislature's own failure, in enacting budgets, to comply with section 350(1)(a)'s mandate that shelter allowances "shall be adequate," does not relieve the Commissioner from his duty to set allowances at an adequate level (see Jiggetts, 75 NY2d at 421).

The Commissioner also outlines "DSS and other State Funded Housing Activity 1983-1990" (Defendant's Post-Trial Brief at 39-43), with details of numerous state-funded housing programs aimed at increasing the stock of new and rehabilitated housing for low-income families. The Commissioner argues that funding the supply side of the housing market, rather than merely increasing the shelter allowance, helps in averting homelessness, as shown by his expert, Dr. Filer. The court does not disagree that an increased housing supply helps in averting homelessness and may, in the long run, result in lower or contained housing costs. The court concludes, however, that the state's efforts to increase the housing supply has not resulted in a significant number of units available to AFDC families, has not had a great impact on the quality of their housing and does not relieve the Commissioner of his obligation to establish shelter allowances at a level where they bear a reasonable relationship to current New York City housing costs (see FF 193).

The Commissioner also seeks to justify his failure to set lawful shelter allowances by arguing that the overall public assistance grant of most families enables them to pay their excess housing costs from the other portions of their grant (Defendant's Post-Trial Brief at 44). The court finds no factual evidence in the record to support his argument that the overall grant is set high enough to meet recipients' other basic needs and fund 30% of housing costs, the point at which applicants are required to provide documentation as to how excess rent is to be paid (*Id.* at 44, n 12). Rather, the total value of the public assistance grant has declined considerably since the mid-1970s (FF 171) and the non-shelter parts of the grant are not high enough to be used for rent, without severely impacting on food, clothing and other basic needs (FF 172-74, 177-82, 189-90). Even assuming the Commissioner's argument were valid, it does not excuse the Commissioner's failure to comply with the statutory mandate to set adequate shelter allowances.

The Commissioner maintains further that, based on the findings of Dr. Filer, there are a significant number of vacant apartments within the shelter allowance (Defendant's Post-Trial Brief at 48). Again, the court has found otherwise (*supra*). Further, the Commissioner concedes that, in December 1990, the shelter allowance for only 64% of AFDC families covered 90% of their rent and, for an additional 8% of families, the shelter allowance covered 84% of their rent (Defendant's Post-Trial Brief at 45-46). He justifies these deficiencies by contending that, "since almost 80 percent of

all ADC families in New York City are able to pay at least 70 percent of their rents using only the portion of their allowances earmarked for shelter, the current level is approximately what it was in 1988, when the shelter allowance maxima, as approved by DOB and the Legislature, were last increased" (*Id.* at 46). The court concludes that there is no factual basis in the record or logic supporting the Commissioner's argument.

The Commissioner also contends that "[t]he Court of Appeals did not dictate that a family use only the shelter allowance to pay rent" (*Id.* at 83). The Commissioner is correct in this contention. What he fails to understand, however, is that a family's freedom to divert inadequate resources meant for food and other basic needs in no way affects the Court of Appeals' determination that he has a statutory duty to establish shelter allowances reasonably related to housing costs.

The Commissioner argues that, although the Court of Appeals remanded this issue for a determination of whether the shelter allowances are reasonably related to the cost of housing, he is owed "great deference in his interpretation and application of policy matters with his expertise and delegated power" (Defendant's Post-Trial Brief at 124, citing *Klostermann v Cuomo*, 61 NY2d 525). There, the Court held that "mandamus will lie against an administrative officer only to compel him to perform a legal duty, and not to direct him how he shall perform the duty" (*Id.* at 540). Here, the Court of Appeals has determined that the Legislature "imposed a duty on the Commissioner to establish a schedule

reasonably calculated [to be adequate]" (75 NY2d at 421). This court seeks only to insure that the Commissioner fulfills that duty, not to direct the manner in which he establishes lawful shelter allowances.

The Commissioner argues further that, as long as his interpretation of SSL § 350(1)(a) is not irrational or arbitrary or capricious, his interpretation is within his broad discretion and is owed deference (Defendant's Post-Trial Brief at 128-31). Here, the Court of Appeals has already determined, through the language of SSL § 350(1)(a) and the legislative history, the Legislature's clear intent to impose a duty on the Commissioner to set shelter allowances that are reasonably related to housing costs. Thus, the Commissioner cannot now interpret SSL § 350(1)(a) differently.

Finally, the Commissioner argues that there is no significant evidence that the current shelter allowances have caused large numbers of families to become homeless (Defendant's Post-Trial Brief at 142-45). The court has concluded otherwise, based on Department officials' admissions before trial, statistical evidence and individual AFDC families' testimony and case records introduced at the trial showing their inability to find housing, evictions, doubling-up and resort to shelters.

Other arguments the Commissioner makes in his post-trial brief and reply brief are equally without factual bases in the trial record.

The Commissioner concedes that approximately 2% of AFDC families are in emergency shelters and argues that, although a

significant number of families have been forced to double-up, they are not, in fact, homeless (contrary to DSS official statements made before trial) (*Id.* at 143; FF 139). Indeed, the Commissioner's concessions only provide additional reasons for this court's conclusion that the shelter allowance is not adequate. His "2%" statistic, according to the statistics in evidence, translates to 4,156 families with 7,319 children or 12,828 people in the New York City emergency shelter system in January 1991. By July 1988, 16,000 families of 230,000 AFDC families had already been in the emergency shelter system (Plaintiff's Post-Trial Reply Brief, pp 49-50 and FF 168).

RELIEF

Plaintiffs seek the following relief:

1. A judgment declaring that:

- (a) the shelter allowance schedule is contrary to law;
- (b) the Commissioner's policy and practice of denying full rent arrears to AFDC families whose rent exceeds the shelter allowance is contrary to law; and
- (c) the Commissioner's denial of full rent arrears to individual plaintiffs is contrary to law;

2. A permanent injunction:

- (a) enjoining the Commissioner from applying a maximum shelter allowance that does not enable families to obtain and maintain housing in New York City;

(b) enjoining the Commissioner from applying their policy of denying full rent arrears grants to families whose monthly rents exceed the current monthly shelter allowance; and

(c) enjoining the Commissioner from refusing specific plaintiffs' requests for rent arrears and ordering him to pay their arrears; and

3. An order requiring the Commissioner to pay plaintiffs' attorneys' fees pursuant to CPLR § 909 and 42 USC § 1988.

The court has concluded that the current shelter allowance does not bear a reasonable relation to the cost of housing in New York City. Accordingly, the court declares that the current shelter allowance schedule is contrary to law and orders the Commissioner to develop and promulgate a schedule of shelter allowances that bears a reasonable relation to the cost of housing in New York City and is designed to enable families "to be kept together" in a home-type setting.

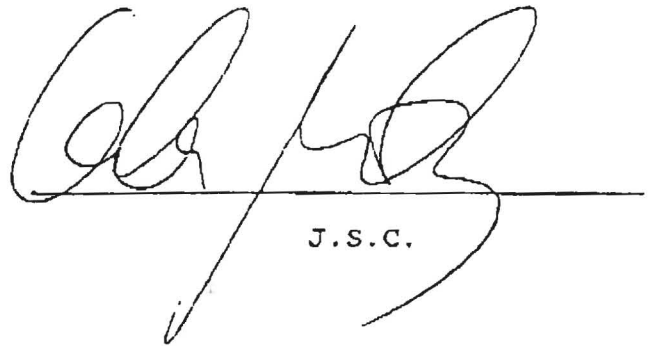
The court also concludes that plaintiffs are entitled to interim relief until the Commissioner develops and promulgates a lawful shelter allowance schedule. Accordingly, the preliminary injunctions are continued, pending service of a copy of a signed and entered Final Judgment with appropriate injunctive and other relief, including disposition of attorneys' fees claims.

Settle Order and Judgment promptly.

The foregoing is the decision and interim order of the court, copies of which have been sent to counsel for plaintiffs and the Commissioner before filing. The parties are directed to mail

copies to additional intervening defendants who did not participate in the trial and to pick up their exhibits from Chambers, Room 532, within 60 days. After that time, these exhibits will be discarded.

Dated: April 16, 1997



J.S.C.

PRESENT:

Hon. KARLA MOSKOWITZPART 26*Justice*BARBARA JIGGETTS, et al.,INDEX NO. 40582/87

Plaintiffs.

MOTION DATE

- v -

MOTION SEQ. NO. MICHAEL DOWLING, as Commissioner of the
New York State Department of Social Services, et al.,MOTION CAL. NO.

Defendants.

The following papers, numbered 1 to were read on this motion to/for

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits Answering Affidavits — Exhibits Replying Affidavits Cross-Motion: ☐ Yes ☐ No

THE BENCH TRIAL IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING DECISION AND INTERIM ORDER.

Dated: APRIL 16, 1997
KARLA MOSKOWITZ,

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION