

# Section 385.7 - Assessments and Employability Plans for Households Without Dependent Children

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## Part A - The Regulations

### a) Assessments

- 1) To the extent that resources are available, the social services official shall conduct an assessment of employability for applicants and recipients in households without dependent children who are not exempt from assignment to work activities in accordance with the provisions of section 385.2 of this Part.
- 2) Such assessment shall be conducted within a reasonable period of time, but in any case shall be conducted within a year following a recipient's application for safety net assistance.
- 3) Such assessment shall include, but not be limited to, a review of the individual's:
  - i) educational level, including literacy and English language proficiency;
  - ii) basic skills proficiency;
  - iii) supportive service needs;
  - iv) skills and prior work experience;
  - v) prior participation in education and training;
  - vi) training and vocational interests; and
  - vii) family circumstances.
- 4) The social services official shall encourage and may require a nonexempt recipient who has not attained a basic literacy level and who is not subject to the educational requirements of section 385.9 of this Part to enroll in a basic literacy program, high school equivalency program or other educational program in combination with other work activities. Any such assignment shall be consistent with the employability plan prepared pursuant to subdivision (b) of this section.

Basic literacy level for purposes of paragraph (4) of this subdivision is defined as a literacy level equivalent to the ninth grade.

- i) (Such basic literacy level for nonexempt recipients of public assistance who have not obtained a high school diploma or the equivalent shall be established based on a test for basic literacy level as determined appropriate by the Education Department. Basic literacy level for purposes of paragraph (4) of this subdivision is defined as a literacy level equivalent to the ninth grade.
  - ii) Such basic literacy level for nonexempt recipients of public assistance who have not obtained a high school diploma or the equivalent shall be established based on a test for basic literacy level as determined appropriate by the Education Department.
- 5) The social services official shall offer the option and may require a nonexempt recipient who has achieved a basic literacy level as defined in subparagraph (4)(i) of this subdivision, but has not attained a high school diploma or the equivalent and who is not

subject to the educational requirements of section 385.9 of this Part to enroll in an educational program designed to improve the individual's literacy level and/or prepare the individual for attainment of a high school diploma or the equivalent in combination with other work activities as appropriate. Any such assignment shall be consistent with the employability plan prepared pursuant to subdivision (b) of this section.

- 6) An applicant or recipient may be assigned to work activities in accordance with the provisions of this Part prior to the completion of an assessment.
- 7) Applicants and recipients are required to participate in an assessment as assigned by the social services official.
  - i) An applicant who fails to comply with assessment requirements shall be ineligible for public assistance, provided, however, that the term applicant means the entire applicant household.
  - ii) A recipient who fails to comply with assessment requirements shall be subject to the provisions of sections 385.11 and 385.12 of this Part.

#### a) Employability plan

- 1) Based upon the assessment required pursuant to this section, an employability plan shall be developed in writing and in consultation with the recipient, which shall set forth:
  - i) services that will be provided, including supportive services;
  - ii) work activities to which the individual will be assigned; and
  - iii) the individual's employment goal.
- 2) The plan shall take into account the individual's:
  - i) supportive service needs;
  - ii) available program resources;
  - iii) local employment opportunities; and
  - iv) if the recipient is assigned to an education program, the appropriateness of the educational activity based on the assessment completed pursuant to subdivision (a) of this section and the recipient's liability for student loans, grants and scholarship awards; and
  - v) the recipient's participation in prior education and training activities.
- 3) Notwithstanding the requirements of paragraph (2) of this subdivision, in developing an employability plan for an individual the social services official must consider the need of the social services district to meet State work activity participation rates before completing an individual's employability plan.
- 4) Participation in an educational and/or vocational training program, that includes but is not limited to, a two-year post-secondary degree program, which is necessary for the participant to attain their individual employment goal and is likely to lead to a degree or

certification and sustained employment, shall be approved consistent with such individual's assessment and employability plan to the extent that such approval does not jeopardize the State's ability to comply with federal work participation rates.

- b) The social services official shall use designated trained staff or providers with demonstrated effectiveness in assessment and employability development to prepare the assessments and plans required by this section.
- c) Social services officials may provide assessments which are more detailed and comprehensive than required by this section.

## Part B - Department Policy

### Assessment Overview

Districts must assess nonexempt Safety Net Assistance recipients who are part of a household without dependent children within one year of the date of application for safety net assistance. The assessment process includes the requirements of paragraph(a)(3) of the regulations. The district's assessment process must be documented in the local employment plan (see section 385.10).

An employment assessment for all non-exempt adults in households without dependent children is required to be completed no later than a year following the recipient's application for Safety Net Assistance (see SSL §335-a, and 18 NYCRR §385.7) to the extent that resources are available. All adults (exempt and non-exempt) in households without dependent children applying for or receiving Safety Net Assistance may be required to comply with employment assessment requirements.

Districts describe local assessment and employment plan procedures in their Biennial Temporary Assistance and Supplemental Nutrition Assistance Program (SNAP) Employment Plan, including when assessments are conducted and what information they collect. While districts are encouraged to provide assessments that are more detailed and comprehensive than what is required, the regulations list the seven required elements of an assessment at subdivision (a)(3). Assessments must include, at a minimum, a review of an individual's:

- education level, including literacy and English language proficiency;
- basic skills proficiency;
- supportive service needs;
- skills and prior work experience;
- prior participation in education and training;
- training and vocational interests; and
- family circumstances.

As described above, districts are required to complete employment assessments within one year of application for households without dependent children. However, districts are encouraged to complete the employment assessment as soon after an individual has applied for Safety Net Assistance as is practicable and to thereafter reassess individual circumstances and work activity assignments as relevant changes occur, no less frequently than annually. Districts may choose to use the LDSS-4980 *New York State Employment Assessment Tool*, a locally developed assessment tool, or the Welfare-to-Work Caseload Management System (WTWCMS) or New York City Work Accountability and You (NYCWAY) assessment functions to record the information gathered during the client assessment. Prior to the completion of the assessment the district may assign the applicant or recipient to work activities.

Districts are strongly encouraged to use WTWCMS to enter assessment and plan information as recommended in 11-ADM-06 *New York State Employment Assessment*. The use of WTWCMS will simplify data entry and will support improved reporting capabilities. Data

identifying that the assessment and/or employability plan have been completed is sent from the WTCMS to the Welfare Reporting and Tracking System (WRTS) database for reporting and tracking purposes. The benefits of utilizing WTCMS will allow for quick and easy access to client information among staff as needed. When case maintenance is required, updates/changes can be made as needed to family composition, work history and other supportive services. By using WTCMS, all staff will see the latest updates.

Failure to comply with the assessment may result in non-compliance proceedings and/or sanction. An applicant who fails to comply with assessment requirements shall be ineligible for Safety Net Assistance. A recipient who fails to comply with assessment requirements shall be subject to the provisions of sections 385.11 and 385.12.

## Employment Plan

Based on the assessment, a written employment plan should be developed in consultation with the client and should reflect the individual's preferences whenever possible, consistent with the assessment.

An employment plan is developed for each individual that is assessed but in determining work activity assignments, the social services district must give priority to the needs of the district to meet the prescribed participation rate. Districts may choose to use the LDSS-4978 *New York State Employment Plan*, a locally developed plan or the WTCMS or NYCWAY employment plan functions to facilitate the use of information collected through the employment assessment to develop appropriate employment plans intended to help individuals achieve economic independence through employment.

The employment plan is composed of seven sections and addresses all of the required employment plan elements including the supportive services the district will provide, the work activity assignment(s) and the individual's employment goal. Additionally, the LDSS-4978 *New York State Employment Plan* includes a section to summarize an individual's challenges and barriers as determined through the employment assessment and describe how the barriers are to be addressed. The Outcomes and Client Activity Assignment(s) sections record the actions taken once the employment assessment and employment plan have been completed, including recording why an individual's preferences could not be accommodated, if applicable.

Assignments to work activities must be made at district discretion after considering the ability of the district to attain its participation rate. If the recipient's preferences cannot be accommodated in the employment plan, the plan should record the reasons why. The district does not necessarily need client agreement with the finished plan but should strive to accommodate client preferences where appropriate in order to increase client's success with meeting plan goals. The employment plan can be changed as needed as long as the local district informs the client in writing.

## Policy Releases

- 11-ADM-06: New York State Employment Assessment
- 09-INF-20: Countability of Job Search and Job Readiness Training Activities
- 09-ADM-14: Employment Assessments for Exempt Public Assistance Applicants and Recipients in Households Without Dependent Children
- 09-ADM-16: Enrollments in Educational Activities for Nonexempt Public Assistance Applicants and Recipients
- 23-ADM-09 Post-Secondary Education Work Activity Amendments to Social Services Law (SSL) as Authorized in the 2023-24 State Budget

## Desk Guides/Forms

- LDSS-4978 - New York State Employment Plan
- LDSS-4979 - New York State Employment Assessment And Employment Plan Guide
- LDSS-4926 - Employability Code Desk Guide SNA non-Moe
- 10-INF-10 Temporary Assistance and Employment Program Requirements for Individuals 18 to 21 Years Old Residing With Their Parents

## Part C - Questions and Answers

Q.1 Can the district sanction an individual who refuses to comply with a work activity assigned in accordance with the employment plan, e.g., basic education, but who is willing to do another work activity, such as work experience?

A.1 Yes. If the district determines that the individual needs the activity assigned to reach self-sufficiency or the assignment is necessary in meeting the district's participation rate, then it can sanction the individual for refusing or failing to comply with the assignment. Of course, the procedure for conciliation must be followed (Section 385.11).

Q.2 What happens to an applicant or recipient who fails willfully and without good cause to attend an assessment?

A.2 Failure to comply with applicant assessment requirements results in denial of the TA application for the household. No conciliation is required. However, in those instances where the individual who failed to comply with applicant assessment requirements is not a legally responsible relative of another member of the assistance unit, only the individual should be denied (individual ineligible) TA. TA eligibility for the remaining household should be determined consistent with existing procedures. For example, a 19 year old individual who is residing with their parent and fails to comply with applicant assessment would be denied TA benefits, but the district would still determine the eligibility of the remaining household members who applied for TA. A TA recipient who fails to comply with an employment assessment must be offered conciliation and would be subject to an employment sanction in accordance with 18 NYCRR §385.12, in those instances where the district determines that the individual willfully and without good cause failed to comply with employment assessment requirements.

Note: Unlike other employment sanctions which result in a prorata reduction in TA benefits, the change in TA benefits for the household when a non-legally responsible individual willfully and without good cause refuses or fails to comply with TA employment requirements other than applicant assessment or applicant job search would be an incremental reduction to remove the noncompliant individual from the TA budget. The district must notify the household of the employment sanction and the individual would be sanctioned from TA in accordance with the sanction progression for households with dependent children, if the household includes a dependent child or the sanction progression for households without dependent children, if the household does not include a dependent child as identified in 18 NYCRR §385.12. Essential persons receiving TA as part of a Family Assistance case would be considered to be residing in a household with dependent children for the purpose of determining the TA sanction progression under 18 NYCRR 385.12. A recipient who fails to comply with an assessment requirement is subject to the same conciliation and sanction as one who fails to comply with other work activity requirements.

Q.3 Are districts permitted to conduct an employment assessment by telephone if conducting an in-person assessment is not feasible?



A.3 Yes. Districts may conduct a staff-assisted assessment in person or by telephone.