Empire Justice Center
Making the law work for all New Yorkers
Albany ◆ Rochester ◆ White Plains ◆ Long Island

Joint Legislative Budget Hearing:
Human Services

February 4, 2014

Prepared by:
Susan Antos, Senior Attorney
Don Friedman, Senior Attorney
Kristin Brown Lilley, VP for Government Relations & Policy
Cathy Roberts, Senior Paralegal

Presented by:
Susan Antos, Senior Attorney

119 Washington Avenue, Albany, NY 12210
Phone 518.462.6831 ◆ Fax 518.935.2852
www.empirejustice.org

Introduction

Hello my name is Susan Antos and I am a Senior Attorney in the Albany office of Empire Justice Center. Thank you so much for the opportunity to testify here today about the Executive Budget as it pertains to human services.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, White Plains and Central Islip (Long Island). Empire Justice provides support and training to legal services and other community based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including health, public assistance, domestic violence and SSI/SSD benefits.

My testimony today will span three agencies: the New York State Office for the Aging, the Office of Children and Family Services, and the Office of Temporary and Disability Assistance, and will call for:

1. Additional targeted investment in child care and the Disability Advocacy Program.
2. Changes in language for the Managed Care Consumer Assistance Program (MCCAP) appropriation.
3. Inclusion of Article VII language in your one house budget bills or resolutions to reform the welfare sanctions and welfare lien processes.
4. Adoption of the Governor's SSI supplement takeover and Fair Hearing chargeback proposals.

OFFICE FOR THE AGING

Maintain the Managed Care Consumer Assistance Program (MCCAP)

We are grateful that the Executive Budget maintains level funding for the Managed Care Consumer Assistance Program (MCCAP), a statewide initiative run through the New York State Office for the Aging (NYSOFA). MCCAP is essential for New York in this fiscal climate because it assists seniors and people with disabilities in accessing services and reducing health care costs through Medicare.

MCCAP's six agencies partner with NYSOFA, NYSDOH and CMS to provide training, technical support and assistance to local Health Insurance Information Counseling and Assistance Program (HIICAP) offices across New York State and other nonprofit organizations working directly with Medicare consumers across New York State. Additionally, MCCAP agencies work directly with consumers to provide education, navigational assistance, legal advice, informal advocacy and direct representation in administrative appeals. We serve clients in their communities and provide services in their native languages; consumers also increasingly reach us via internet and our telephone helplines, as well as through our educational materials and referrals from HIICAPs.

Medicare Part D remains a highly complex program with complicated rules governing enrollment periods, access to federal subsidies and procedures for appealing denials of necessary medications.

We continue to field high volumes of calls from HIICAP agencies and other advocates for elderly and disabled Medicare recipients who need help maximizing their federal coverage. We also get requests to assist dual eligibles with health care access issues separate from Medicare Part D.

This year's appropriations language includes some changes to the program. First of all, the language would no longer limit the scope of grantees' work to Medicare Part D and EPIC assistance, and instead would allow MCCAP agencies to assist dual eligibles with non-Part D related issues. This change acknowledges the need that exists in local communities. While Medicare Part D and EPIC will continue to be a major focus for MCCAP grantees, they will also be able to assist dual eligibles with other critical health-related issues. **We support this language.**

The other change is that NYSOFA would cut the number of grantees in half and require them to go through an RFP process. We are concerned that this approach does not take into account the established statewide network of providers already in place, which has developed over the past many years, and adapted to meet the changing needs of the agency and our clients. By shrinking the provider network and requiring the agency to utilize a full-blown RFP process, there is real danger of disruption in client services, given the short turnaround time and time consuming nature of the RFP process. Existing providers would not have sufficient time to plan for a reduction or change in services, which would directly affect clients.

Recommendation: We urge the Legislature to negotiate with the Executive to line out the programs and funding levels in the manner the funding was distributed in previous years.

OFFICE OF CHILDREN AND FAMILY SERVICES

Invest a Total of $182 million in Child Care Assistance; Add 25,000 New Child Care Slots for Working Families

Low income working families in New York State are facing a crisis of unprecedented proportions, as funding for the state's Child Care Block grants remains behind the $999 million investment of SFY 2010-2011. Even with the Governor's proposed increase of $21 million in child care subsidy funding, no new slots will be created because that increase is targeted to meet the overdue market rate adjustment, which was due in October of 2013.

Child care is in crisis. As many as 17 counties have lowered eligibility levels to cope with inadequate funding. Other counties have stopped taking applications because they cannot meet the need. In New York City only 25% of eligible families are served.[1] It is time to recognize child care as the critical work support that it is for low income wage earners. As an increasing number of counties across the state cut eligibility for child care assistance due to lack of funding, we believe it is time for New York to step up to help meet the need of working families. Empire Justice Center joins the We Believe in Children Campaign in asking for a 5 year commitment to meet the needs of all low income working families in New York, beginning with an initial investment of $182 million which would add 25,000 slots.

The provision of affordable quality child care to low income working families is a women's issue that is critical to sustained economic development in New York State. The Governor's budget, which has made a priority of economic development in other areas, overlooks the importance of this investment that is essential to workers with children. An investment in one child care subsidy is an economic investment in two jobs. Not only does every child care subsidy keep a low income worker employed, it also supports a significant small business sector in New York State – child care providers. Child care providers constitute 22,000 small businesses, including not-for-profit and for-profit centers, Head Start and Pre-kindergarten programs, and 11,000 family child care providers.[2] Early care and education teachers, aides and staff represent one of the fastest growing employment sectors in the economy. The child care sector employs approximately 119,000 workers and is comparable in size to the local/interurban passenger transit system, and the hotel and lodging sector.[3] An America's Edge commissioned study utilizing the IMPLAN model, an economic modeling system that is widely used to conduct economic impact and related analyses, demonstrated that the child care industry produces a boost to local businesses as high or higher than investments in other major sectors: construction ($1.86), retail trade ($1.83), manufacturing ($1.72), transportation ($1.72) and utilities ($1.53).[4] The America's Edge study reports that for every new dollar invested in early care and education, the statewide economic benefit is $1.86.

1. Investing in child care is a critical piece of welfare-to-work

As a result of 1996 Federal Welfare Reform, with its emphasis on "work first," public assistance rolls have plummeted as families left welfare for low wage jobs. In 1995, there were 1.5 million recipients of cash public assistance in New York State; 1.2 million received Aid to Families with Dependent Children (AFDC, the cash public assistance program before welfare reform). 803,000 of these recipients were children. By December of 2012, the number of persons on Temporary Assistance had plummeted to 581,005 (311,636 of those recipients were children)[5] as low income parents left the welfare rolls to work at low wage jobs instead of staying home with their children.

However, without assistance in paying for child care, low wage workers cannot make ends meet. The report on the Self-Sufficiency Standard for New York concludes that in order meet basic needs, including child care, a family of three with a preschooler and a school age child needs the following hourly wage:[6]

- NYC (Northern Manhattan): $27.38 per hour
- Westchester/Yonkers: $32.38 per hour
- Erie: $22.33 per hour
- Suffolk: $37.37 per hour

These hourly wages are significantly above the wages earned by many families and yet, given limited funding, at least one-third of all social services districts are not able to help all eligible low income

working families. The percentages below represent current income eligibility for child care assistance.

- Seneca and Tompkins: 100% of poverty ($19,010 for a family of three)
- Niagara: 120%
- Albany, Dutchess and Essex: 125%
- Fulton, Oneida, Ontario, Orange, Saratoga, Schenectady and Suffolk: 150%
- Cayuga and Livingston: 160%
- Monroe: 165%
- Cattaraugus: 175%
- Rensselaer: 180%
- Washington: 185%
- Chemung: only opening new cases for mandated categories (TANF related and Transitional Child Care) and has 202 families (510 children) on its waiting list
- Although the income eligibility limits In New York City have not formally changed, and eligibility remains up to 275% of the federal poverty level, the effective rate reflects very differently. As of April 2012:
    - 64.1% of households receiving child care (non-TANF) were below 100% of the federal poverty line
    - 81.8% were under 135% of the federal poverty line
    - 92.2% were under 175% of the federal poverty line

Adequate funding for childcare is critical to the success of New York's economic development initiatives and of welfare reform. It makes no sense to guarantee a child care subsidy to welfare recipients who find a job for one year, and then remove that benefit when their wages remain at a level that is not high enough to promote self- sufficiency.

Recommendation: Increase child care assistance funding to $182 Million

2. Child care must be affordable

Even when subsidies are available to low income families, the inequity in the child care benefit offered to similarly situated families (same family size, same income) varies by as much as 300% depending upon the county in which a family resides. This disparity exists because of the regulation of the Office of Children and Family Services (OCFS) that sets forth the formula for calculating copayment amounts. The formula gives social services districts total discretion to choose a multiplier between 10% and 35% that is applied to the family's income above the state income standard (the equivalent of the federal poverty level) to determine the household's copayment amount.[7] The result is that the larger the multiplier chosen by the county, the smaller the child care benefit received by the family.

It is time to address this inequity. This standardless formula has been in place, unchanged, since at least June 29, 1987, when the New York State Department of Social Services, the OCFS predecessor

agency, directed all social services districts to adopt the methodology by June 1, 1988. Because OCFS authorizes each district to select a multiplier without further guidance, child care subsidies and copayment policies vary dramatically across the state. A county can opt to issue child care benefits that are approximately one-third of what the same family would receive in a neighboring county.

The inequity is vast across New York. As indicated by the chart appended to this testimony, in four social services districts parents pay 10% of their income over the poverty level as their child care copayment; in one district parents pay 15% of their income over poverty; in eleven districts, parents pay 20% of their income over poverty; in thirteen districts, parents pay 25% of their income over poverty; in one district parents pay 27% of their income over poverty; in three districts, parents pay 30% of their income over poverty; and in twenty-five districts, parents pay 35% of their income over poverty.

A bill sponsored by Assemblywoman Titus and cosponsored by seventeen other Assemblymembers (A.1978), would ameliorate these inequities by providing that no family could be required to pay more than 10% of their gross income for child care. It is time to move this bill forward so that no families in the state are faced with copayments that consume inordinate amounts of their income. This bill still permits counties to choose their multiplier, but it imposes a second step in the copayment calculation – if the resulting number exceeds 10% of the family gross income, the copayment is adjusted downward to that number. New York City actually implemented such a cap from 2007-2009,[8] but ended up adjusting the cap upward from 10% to 12% in May of 2009[9] and then to 17% in 2011,[10] rendering the cap essentially meaningless.

The existing standardless delegation created by the regulation has resulted in a system that unequally distributes an important benefit and puts the cost of child care out of reach of some low income working families but not others. This results in a system that is not equitable and not based upon a family's ability to pay.

Recommendation: Empire Justice Center urges the legislature to make copayments equitable and assure that all parents can afford child care in New York State.

3. Disregard Teen Earnings When Determining Child Care Eligibility

When determining financial eligibility for public assistance, the general rule is to look at the size of the household and the income of those in the household. The income of children under the age of 18 is disregarded.[11] In contrast, when determining eligibility for a child care subsidy, only the income of a child under the age of 14 is disregarded. The income of children between the ages of 14 and 17 is counted and local districts are provided the option of whether to count the income of 18, 19 or 20 year olds when determining a parent's financial eligibility for child care for a younger child in the household. This is in direct contrast to public assistance eligibility, where the income of older teens (18, 19 and 20 year olds) is disregarded, but they are included in the household size for determining the financial need of the family.[12] This bill proposes that all income of children below the age of 18

be disregarded in the same manner as it would for public assistance, and that the income of older teens only be included if doing so would benefit the family.

Last year, New York State created a tax incentive for businesses to hire teenagers, [13] making it particularly inappropriate to penalize low income families when their teens work. Counting teen income creates a disincentive to teen employment, and puts working parents in the awkward position of having to discourage their teen from working if counting the teen's income would result in the loss of the child care subsidy for a younger sibling, or an increased copayment.

Recommendation: Social Services Law 410-x should be amended as proposed by A.1077 (Jaffee)/S. 2516-a (Savino) to encourage teen employment, avoid the disincentive created by the present law and support the efforts of low income working families.

OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

Build Upon the Investment in the Disability Advocacy Program

For thirty years and counting, the Disability Advocacy Program has been helping low income disabled New Yorkers who were cut off or denied federal SSI/SSD benefits. Over the course of its first 30 years, DAP providers, who work in every part of the state:

- Assisted over 208,000 New Yorkers
- Helped put over $710 million in retroactive benefits in their hands to be spent in local economies
- Generated over $205 million in federal funds paid back to New York State and the counties
- Saved at least $272 million in avoided public assistance costs.

Consistently successful in approximately 80% of cases, DAP services help stabilize people's incomes, which in turn helps stabilize housing, health and quality of life overall. **For every dollar invested in DAP, at least $3 is generated to the benefit of New York's state and local government.**

We are very pleased to report that DAP is funded in the Executive Budget at $5.26 million, which includes the additional investment made by the Legislature last year.

Recommendation: Given that the Legislature's investment has been embraced by the Executive, we are asking the Legislature to once again invest in DAP to bring statewide funding to a total of $7 million. This will allow for additional services to be provided that we estimate will generate an additional $5.4 million in annual savings to state and local governments by 2015.

EBT Restriction

Part J of the Article VII bill seeks to amend the Social Services Law to prevent the use of the cash assistance electronic benefits transfer (EBT) card at ATMs and point of sale (POS) terminals in liquor stores, casinos, gaming establishments and adult-oriented entertainment venues. Empire Justice recognizes that New York needs to have an EBT restriction plan in place, but would recommend some changes to the Article VII bill, specifically around the client penalties language.

The Executive Budget proposal is being made to comply with Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96), which requires states to adopt policies and practices to restrict TANF and MOE EBT access in liquor stores, casinos and strip clubs. States are required to have an EBT restriction plan in place by February 22, 2014, and to outline their restriction plan to HHS via the state plan amendment process.

The federal legislation requires restriction of EBT transactions based on location, not on items purchased. States have a choice of blocking ATMs and POS devices in the prohibited locations, or prohibiting the use of TANF EBT funds at these locations.[14]

The Executive Budget language prohibits use of TANF and Safety Net EBT transactions at the federally mandated locations as well as at gaming establishments, through a new provision in Social Services Law (section 145-b) and amendments to SSL sec 21-a and sec 151. These changes codify the federally prohibited transactions as "unauthorized use of public assistance," and carry progressive sanctions and penalties for both recipients and retailers.

For TANF and Safety Net recipients, the new SSL section 145-d imposes disqualification periods which start at one month for the first offense, a two month sanction for second offense, 3 month sanction for the third offense and a 6 month sanction for any subsequent offense. Retailers face a fine for the first offense and potential suspension, cancellation or revocation of their license for any subsequent offense. Adult entertainment venues also face criminal charges for any violation. There is an exception carved out for EBT transactions at certain casinos and gaming establishments, including establishments where groceries are sold in the same building and establishments where gaming is incidental to the principal purpose of business.

Our understanding is that New York has chosen not to require OTDA to implement a mandatory blocking system because it would be almost impossible to implement and enforce. The e-Government Payments Council noted that there are significant hurdles to enacting and enforcing EBT access restrictions because of this fundamental challenge: "the merchant categories at which access is being restricted are not controlled or regulated in any way by the agencies charged with enforcing the [EBT restriction] law."[15] However, retailers should be able to easily comply with the new law by implementing a voluntary blocking system. As explained in a state liquor authority memo:

> *Licensees can simply request their third party processors to also block the NYS EBT card's unique Bank Identification Number (BIN), 600486, from being able to complete a transaction in the licensed premises. Third party processors routinely add and block BINs via software updates on a regular basis as part of*

the service they provide to retail businesses. Most third party processors do so as part of their service agreements. Once blocked, an EBT cardholder would receive the same message that any other customer with a non-participating debit/credit card would receive – "your debit card is not accepted by our system". The card would simply be declined.[16]

We are therefore hopeful that the vast majority of prohibited transactions can be prevented from occurring in the first place through the use of voluntary blocking.

We do have concerns, though, about the client sanctions portion of the bill in instances where voluntary blocking is not utilized. The Article VII provisions are slated to go into effect 60 days after being signed into law. The bill would impose an immediate disqualification period for the first instance of non-compliance. How is the state planning to reach all recipients and applicants to provide advance notice of the change in law? Individuals who are unaware of the change in law, or who have limited English proficiency or suffer from cognitive or mental health issues, who inadvertently use their cash EBT card at a prohibited location could be disqualified, or an honest mistake, if the retailer has not implemented a voluntary blocking system.

Recommendation: ***The penalty for the first client offense should be changed to a warning and/or requirement to repay the misspent funds***, rather than an immediate durational sanction. Several other states provide a warning for the first offense. Only after this initial warning and/or requirement to repay, and only if the client makes another prohibited transaction, should the client face a durational sanction.

Fair Hearings Chargeback – How will it Work? What are the Incentives?

The Executive Budget proposes a "performance-based chargeback to local social services districts to recoup a portion of the state costs" associated with administering Fair Hearings. The Fair Hearing is the quasi-judicial forum in which individuals challenge agency decisions concerning their receipt of an array of public benefits. As the budget documents observe, for a huge percentage of hearings, the local district withdraws from the hearing without proceeding. This is most commonly done because the agency lacks evidence or for other reasons determines, in essence, not to defend their initial decision. The chargeback would, in the language of the Briefing Book, "recoup a portion of the State costs associated with administering such hearings..."

We wholeheartedly agree with the Governor that the excessive number of unnecessary hearings imposes costs on the State, as well as the localities, and hardships on our clients. We also agree with the concept of establishing incentives for the districts to find more effective means of resolving outstanding issues. We have concerns, arising solely out of a lack of information, as to how this will be accomplished.

The families and individuals who ask for Fair Hearings tend to be among the poorest and most vulnerable New Yorkers. Too often, they do not see their local district offices as offering a fair

opportunity to resolve issues concerning their benefits. A miniscule number of them are represented by anyone at all, much less by a trained advocate. So they sometimes see the State-run Fair Hearing as their best chance for a just resolution. Thus the details of how the chargeback initiative will work are critical.

How will the incentives for the agency to reduce Fair Hearing withdrawals be designed? Will they be structured in such a way as to encourage districts to meaningfully engage with clients to resolve issues? Or will there be room for localities to avoid chargebacks by otherwise discouraging clients from requesting Fair Hearings? New York City operates a Fair Hearing reduction program called "Mandatory Dispute Resolution." It has now been modified, but as first conceived, participation was mandatory, and clients could be penalized for not participating. So an *alternative* means for resolving issues became an *additional* means for punishing clients. Will that outcome be possible in the context of the chargeback?

And how will the chargeback deal with types of cases where the local district is not the entity issuing the decision which the client is appealing? This plays out in at least two different ways:

a. The action involves the district but the problem occurred on the state level. This can happen in SNAP SSI auto-pay (NYSNIP) and some Medicare Savings Program and Medicaid cases, where there are automated functions at the state level to authorize or renew coverage, and sometimes there are computer glitches or malfunctions. The local district investigates and intervenes after the fair hearing request, resolves the problem and withdraws the notice. It would make absolutely no sense to penalize a district in this type of case.

b. The action does not involve the district at all. For example, there is a steadily increasing volume of Medicaid fair hearings against managed care plans, and the numbers will continue to increase as all recipients are being mandated into managed care. Is the state contemplating including managed care plans and other non-district entities in the chargeback proposals? If not, what would be the rationale for excluding them if the aim is to reduce the incidence of unwarranted fair hearings?

Again, we fully support the concept of replacing needless administrative hearings with alternative dispute resolution practices. Indeed, our support, noted in our testimony below, for reform of the welfare sanction rules would, in part, also help to dramatically reduce the number of unwarranted welfare fair hearings. But as is so often the case, we need further details so we can determine whether the devil resides within.

The following two items are proposals we would like to see included in both of the Legislature's one house bills/resolutions for discussion with the Executive.

1. **Sanctions Reform: Welfare Work Programs too often Punish Those with Disabilities and Other Barriers**

The stated mission of the welfare work programs is to enhance the employability of participants through work experience, skills building, education and training. But too often, work assignments result in sanctions, that is, clients' benefits are terminated or reduced because of their alleged failure to comply with the rules. Those who are sanctioned are disproportionately people with disabilities or other barriers to participation, such as children with disabilities, domestic violence and low levels of literacy.

Sanctions are meant to punish non-compliance. We believe that sanctions are often erroneously imposed, but they certainly do succeed in punishing the supposed "wrong-doers and the entire household as well. Sanctions dramatically increase the likelihood of homelessness, hunger, illness and the loss of utility services. Children in sanctioned households also suffer from interrupted school attendance and an increased risk that they will be removed from the home. If there are viable alternatives to sanctions, shouldn't we be exploring them?

Joining with our partners in the Sanction Reform Campaign, we believe that A.2669 (Wright)/S.4830 (Savino) offers crucial protection against unwarranted sanctions that should be included in the budget as a companion to the Governor's chargeback proposal. If the district believes a client is non-compliant, the worker first would determine whether the individual was disabled, and that proper child care and transportation were in place. Second, by demonstrating readiness to come into compliance, the person could avoid the threatened sanction, or have the existing sanction lifted. The often traumatic impact and protracted legal process that accompany sanctions would be replaced by continued participation in assigned programs and accommodations for clients with disabilities. The overall result would be fewer Fair Hearings requested – thus cutting down on the potential chargeback for districts.

Concerns have been raised about the cost of implementing such a law. It will, indeed, be the case that some wrongly sanctioned households will now receive the assistance they need and for which they are eligible. The law would also arguably involve additional worker time in making the required pre-sanction determination about disability, transportation and child care. But these cost factors are overwhelmed by savings. As a result of this law, there will be fewer families needing public shelter, fewer households seeking emergency food, a reduction in medical costs stemming from the trauma and hardships that follow sanctions. There will be less worker time required to trigger and implement sanctions, to prepare the district's case in sanction-related Fair Hearings and to process reapplications by sanctioned households.

Indeed, in the last fiscal year, nearly 43,000 sanction-related hearings were held; the district decision to sanction was affirmed in less than 10% of the cases, and the district either withdrew from the hearing or was reversed in 80% of cases. With the passage of this law, both the State and the districts will benefit from a substantial reduction in the absurd costs of unwarranted Fair Hearings – achieving at the front end of the process some of the efficiency sought by the Governor's chargeback proposal.

Recommendation: Include the text of A.2669 (Wright)/S.4830 (Savino) in both House's one house budget bills as a companion to the Governor's chargeback proposal to reform the sanctions process while helping to mitigate the need for chargebacks.

2. **Eliminate or Fix the Process for Taking Public Assistance Mortgages**

Social Services Law § 106 permits social services districts to take a mortgage against the homes of welfare applicants and recipients as a condition of eligibility for public assistance. This statute permits the districts to recover the amount of assistance paid to the homeowner when the homeowner dies, sells or transfers the property, or attempts to refinance the primary mortgage.

Local districts recover millions of dollars every year through this practice. Between 2006 and 2012, local social services districts took 12,000 mortgages and recovered $25 million dollars in equity from the homes of former public assistance recipients through liens taken previously – some taken decades ago. However, there are no checks on the accuracy of this process. There is no requirement that homeowners be provided with an accounting of the amount of public assistance paid, the amount of the accrued debt or credits made against the debt. They are never advised as to how the debt is calculated, how much they owe and are never advised how they might arrange to pay back the debt. As a result, homeowners cannot check for errors and do not realize the size of the mortgage against their home until they attempt to sell their property, refinance their mortgage, or face foreclosure and are seeking a loan modification, often many years after they were last on public assistance.

This archaic practice is outlined in the recent report from Empire Justice Center, "Don't Lien on Me: How New York's Public Assistance Mortgages Undermine Homeownership and Financial Stability" available at: http://www.empirejustice.org/assets/pdf/publications/reports/welfare-lien-report-dec-2013/updated-dont-lien-on-me.pdf. No other state in the country except Connecticut makes providing a mortgage a condition of receiving cash assistance benefits, and with good reason.

The practice undermines the financial stability of New York's most vulnerable homeowners. Individuals most often impacted by this policy are elderly individuals and their families seeking to sell the family home, divorced spouses, typically women who received the house as the only asset in their divorce, or former recipients seeking to refinance high interest mortgages or to obtain home equity loans for things such as home maintenance or medical care. To make matters worse, many homeowners are unaware that when they apply for public assistance, they have the right to refuse to execute a mortgage and still receive public assistance for their children.

Only cash public assistance is recoverable as part of the mortgage. However, all too often the amount of the mortgage is wrong because the local district has erroneously (and illegally) attempted to recover payments made under the Supplemental Nutrition Assistance Program (SNAP), the Home Energy Assistance Program (HEAP) or the Child Care Block Grant. In addition, the size of the mortgage is often more than it should be because the local district has failed to credit child support that the district retained to pay itself back for public assistance received, or failed to credit another

payment made such as a lottery intercept under Social Services Law §131-r, or child support that was collected and retained by the social services district.

Former recipients who have gotten their lives back on track find that, if they try to refinance their primary mortgage to get more favorable interest rates, they are often barred from refinancing, even if they have decent credit ratings, because of the existence of this welfare lien. The problem becomes particularly acute for individuals with high interest primary mortgages who are candidates for refinancing relief or seeking to avoid foreclosure.

Accountability and Transparency. Social Services Law § 106 should be repealed, and the Empire Justice Center supports S.3269 (Kreuger), which would accomplish that.

If repeal is not possible, the Legislature should amend the Social Services Law to provide transparency and accountability in the public assistance mortgage process. Empire Justice Center urges the Legislature to pass A.7780 (Titus)/S.5498 (Savino). This bill achieves these goals by prohibiting a local social services district from recovery of public assistance payments unless it has first received a signed acknowledgement from the public assistance recipient acknowledging that:

- **a.** SNAP, child care assistance, emergency assistance to adults and HEAP payments made by the social services district are not recoverable; AND
- **b.** Children will remain eligible for public assistance if the homeowner refuses to sign a mortgage.

In addition, social services districts will be required to provide public assistance recipients with an annual accounting statement that clearly states the amount and type of public assistance benefits provided during the calendar year, any credits made against the debt, the total debt accrued, and instructions as to how to make payments on the lien.

Finally, A.7780 (Titus)/S.5498 (Savino) provides the authority for social services districts to subrogate these mortgages when the former recipient can refinance the primary mortgage at more favorable terms.

Social Services Law § 106 provides New York State and local social services districts with millions of dollars every year in recovered public assistance costs, but provides those current and former public assistance recipients who are providing this reimbursement with no way to verify the accuracy of these recoveries. It is imperative that this process be transparent and accountable.

Recommendation: We urge both houses to include language in their one house bills that would either repeal or reform the welfare lien process and to negotiate with the Governor to address this critical economic justice and consumer rights issues in this year's budget.

Pass Through of Federal SSI COLA

The Executive Budget would reauthorize legislation to allow Supplemental Security Income (SSI) recipients to receive the benefit of their cost of living adjustment (COLA) in 2015, without having to reduce the state supplement portion of their SSI benefit. Empire Justice strongly supports this provision. SSI recipients, who are disabled or elderly, already live well below the poverty line and desperately need whatever small COLA may be provided on the federal level.

Recommendation: Support this proposal.

Asset Limit Tests for Public Assistance Eligibility: 529 College Savings Accounts and Retirement Accounts

While public assistance receipt is limited to those with very few assets, in many states, including New York, some assets are not considered when determining an applicant's Public Assistance eligibility. Examples of assets that are excluded from New York State's asset limit test are payments from the Earned Income Tax Credit (EITC) and Individual Development Account (IDA) holdings. New York State does, however, include 529 college savings accounts or retirement savings when determining whether a person has available resources. If these accounts exceed the resource level of $2,000, the family will be disqualified from receiving public assistance. These two resources should be disregarded when a person applies for public assistance.

529 Accounts are college savings plans that provide incentives for individuals who save money for college for their children. When placed in this special account, the money deposited is deductible from income for state (not federal) tax purposes, and withdrawals are not taxed as long as the withdrawal is used to pay for college. The failure to exempt 529 accounts from asset limit tests for public assistance eligibility functions as a clear savings disincentive to low income families who wish to send their children to college. Low income families have the fewest resources and the least access to the savings platforms that financial institutions offer. Further, children from low income families are less likely to enroll in, attend and graduate from college. In fact, a recent study reported that only 9% of students from low income families obtained bachelor's degree, compared with 54% of students from wealthier families. Given these circumstances, low income families need more support and assistance – rather than discouragement – in order to develop college savings for their children. New York State should therefore exclude 529 accounts from asset limit tests for Public Assistance.

Retirement Accounts: For many workers, an Individual Retirement Account (IRA) is the only retirement plan they have. Deposits into IRAs are deductible from income for both federal and state tax purposes. If a withdrawal is made before a person reaches the age of 59 ½, there is a penalty of 10% of the value of the IRA unless the withdrawal is used for the purchase of a home, college tuition or certain medical or health expenses. When a working person loses his or her job, it makes no sense to undercut the person's retirement savings as a condition of eligibility for public assistance. Particularly with the President's announcement of the creation of myRA's to encourage retirement

savings, it makes no sense to require the liquidation of retirement accounts as a condition of eligibility for public assistance.

Recommendation: New York State should exclude 529 accounts and retirement accounts from asset limit tests for public assistance.

Thank you once again for the opportunity to testify today. If you have any questions, I am happy to answer them.

---

[1] http://nycfuture.org/pdf/Subsidizing_Care,_Supporting_Work.pdf

[2] *Investing in New York: An Economic Analysis of the Early Care and Education Sector*, Cornell University Department of City and Regional Planning (2004)

[3] Id.

[4] America's Edge. 2010. *Strengthening New York Businesses through Investments in Early Care and Education: How investments in Early Learning Increase Sales from Local Businesses, Create Jobs and Grow the Economy.* http://www.ocfs.state.ny.us/main/reports/Create_Jobs_Through_Early_Education.pdf

[5] New York State Department of Social Services, Social Statistics, December 1996, Table A, p. 29, available at http://onlineresources.wnylc.net/OTDA%20Caseload%20Statistics.htm ; Statistics of the Office of Temporary and Disability Assistance, December 2012, Table 5, p. 5, available at http://otda.ny.gov/resources/caseload/2012/2012-12-stats.pdf [accessed June 27, 2013]).

[6] D. Pearce, The Self Sufficiency Standard for New York State 2010, http://www.selfsufficiencystandard.org/docs/New%20York%20State%202010.pdf

[7] 18 NYCRR 415.3 [e] [3].

[8] http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County312.pdf

[9] http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County310.pdf

[10] http://www.ocfs.state.ny.us/main/childcare/plans/New%20York%20County/New%20York%20County305.pdf

[11] N.Y. Social Services Law §§ 131-a(8)(a)(i); SNAP Source Book, sec.13, p.276, available at: http://otda.ny.gov/programs/snap/SNAPSB.pdf

[12] N.Y. Social Services Law §§ 131-a(8), 131-a(10).

[13] http://www.syracuse.com/news/index.ssf/2013/03/new_yorks_minimum_wage_tax_cre.html

[14] See CLASP PowerPoint presentation *TANF EBT Access and Restrictions*, dated September 10, 2013, at https://peerta.acf.hhs.gov/uploadedFiles/Lower-Basch%20EBT%20Access%20and%20Restrictions(2)-_kf_11_md.pdf

[15] See page 7 of the e-Government Payment Council's report *Restricting Access to TANF funds at Specific Merchant Locations* at http://www.efta.org/currentissues/BLOCKI~1.PDF

[16] See NYS State Liquor Authority advisory #2014-3 dated January 28, 2014 at http://www.sla.ny.gov/system/files/Advisory_2014-3_-_EBT_Transactions.pdf