

760 CMR: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
760 CMR 67.00:ELIGIBILITY FOR EMERGENCY ASSISTANCE (EA)

Section

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67.01: Authority

(1) Effective July 1, 2009, the Emergency Assistance program and the regulations in 760 CMR 67.00 will be administered solely by the Department of Housing and Community Development and not by the Department of Transitional Assistance (106 CMR) in accordance with St. 2009, c. 4. Any reference in 760 CMR 67.00 to "Department" shall only refer to the Department of Housing and Community Development. Where there are citations in 760 CMR 67.00 to regulations of the Department of Transitional Assistance at 106 CMR 701.310 through 701.330, 701.350 through 701.360, and 701.380 through 701.390, 106 CMR 703.192 and 703.193, 106 CMR 704.000 through 704.510, and to regulations of the Executive Office for Administration and Finance at 801 CMR 1.02: *Informal/Fair Hearing Rules*, such regulations shall be applied by the Department of Housing and Community Development in furtherance of this transfer of responsibilities. Any other citation or cross-reference in 760 CMR 67.00 to other regulations, whether issued by DTA or otherwise, shall not be considered binding in the application, implementation, or interpretation of 760 CMR 67.00, although the Department may choose to use such cross-references for guidance in interpretation of 760 CMR 67.00. The Department may issue such additional guidance as may be necessary or helpful in the application, implementation, or interpretation of 760 CMR 67.00 or statutes applicable to the Emergency Assistance program. Where other regulations of the Department of Transitional Assistance refer to 760 CMR 67.00 or to the Emergency Assistance program, such regulations shall be applied by the Department of Transitional Assistance in furtherance of this transfer of responsibilities. The Division of Hearings within the Department of Transitional Assistance will conduct hearings and render decisions on behalf of the Department of Housing and Community Development for any requests for hearings received on June 30, 2009 by 5:00 P.M. The Division of Hearings will apply the regulations at 106 CMR 343.000: *Fair Hearing Rules* for such cases.

(2) Emergency Assistance (EA) to needy families with dependent children younger than 21 years of age or to a pregnant woman without any dependent children shall be made available in accordance with the provisions of 760 CMR 67.00.

67.02: Program Eligibility

Emergency Assistance may be provided, in accordance with the timetable in 760 CMR 67.08, on behalf of a needy child younger than 21 years of age or a pregnant woman without any needy children and other members of the household provided the following criteria are met.

(1) The child:

- (a) 1. Is living within the EA household. For the purposes of 760 CMR 67.00, the EA household consists of the needy child(ren), the parent(s), stepparent or caretaker relative(s) of the needy child, a legal guardian and the siblings (including half-siblings and step-siblings) of the needy child, who themselves are younger than 21 years of age.
- 2. In extraordinary circumstances, the Department may include other relatives of the needy child in the EA household with the approval of the Associate Director or his or her designee.

3. Verification of relationship to the needy child shall be in accordance with 106 CMR 703.310: *TAFDC Relationship*; or
 - (b) in the case of a pregnant woman, is an unborn child. For the purposes of 760 CMR 67.00, the household consists of the pregnant woman and her spouse. The pregnancy must be verified in writing by a statement from a competent medical authority as defined in 106 CMR 701.600: *Definition of Terms*.
 - (c) is a member of a household in which all members of the EA household shall be residents of the Commonwealth of Massachusetts and shall demonstrate residency as an element of basic verification of identity. A household must demonstrate qualification as an EA household pursuant to 760 CMR 67.02(1) by providing basic verification of identity and relationship before it can appear eligible for placement pursuant to 760 CMR 67.06(1)(c).
- (2) The child or pregnant woman's need has not occurred because the child or pregnant woman or a relative with whom the child or pregnant woman lives refused without good cause, as defined in 106 CMR 701.380: *Good Cause Criteria*, to accept employment or training for employment.
- (3) Emergency Assistance benefits for the household will be denied if the EA applicant or a member of the household reduced his or her earnings from employment or terminated his or her employment within 90 days prior to the month of application without good cause as defined in 106 CMR 701.380: *Good Cause Criteria*.
- (4) Emergency Assistance benefits for the household will be terminated if an EA household member reduces his or her earnings from employment or terminates his or her employment without good cause as defined in 106 CMR 701.380: *Good Cause Criteria*.
- (5) (a) At the time of the initial eligibility determination, the household must have gross monthly income equal to or less than 115% of the Federal Poverty Level adjusted for household size. These standards as adjusted annually based on changes in the Federal Poverty Level, are posted at www.mass.gov/dta and viewed by selecting the Program Eligibility Charts and Tables link under Key Resources. Paper copies are available upon request.
 - (b) Gross income for an EA applicant shall be determined in accordance with 106 CMR 704.210 through 704.230; 704.240(A) and (B); 704.250(A)(2) through 704.250(QQ); and 704.290. Receipt of Lump Sum Income in accordance with 106 CMR 704.240 shall not activate either the requirements of 106 CMR 704.240(C) and (D) or the six-month period of continued shelter benefits as described in 760 CMR 67.02(5). After all applicable exclusions are made in accordance with 106 CMR 704.240(B), the remaining Lump Sum Income shall be treated as an asset in accordance with 760 CMR 67.02(6). TAFDC, EAEDC, and SSI are countable income.
 - (c) EA benefits will be denied if the applicant household's monthly gross income exceeds 115% of the then-applicable Federal Poverty Level for a household of that size.
 - (d) An EA household will be subject to termination of shelter benefits if the EA household's income exceeds 200% of the Federal Poverty Level, referred to below as the Continuing EA Eligibility Standard (excepting the receipt of Lump Sum Income as defined in 106 CMR 704.240: *Lump Sum Income*) for a continuous 90-day period. The termination will be effective six months after DHCD issuance of an over-income notice in accordance with 760 CMR 67.02.
 1. Once DHCD becomes aware that the recipient EA household's gross monthly income exceeds the Continuing EA Eligibility Standard, DHCD will provide an over-income notice to the EA household. The over-income notice will specify the date on which the household's gross monthly income first exceeded the Continuing EA Eligibility Standard.
 2. Following issuance of the over-income notice, DHCD staff will review household income every 30 days until 90 days have passed from the date on which the household's gross monthly income first exceeded the Continuing EA Eligibility Standard.

3. If, at any point during this income review period, the recipient EA household's gross monthly income falls below the Continuing EA Eligibility Standard, the household will be so informed and the household will no longer be subject to termination of shelter benefits based on its household income having exceeded the Continuing EA Eligibility Standard as of the date specified in the over-income notice. The EA household will remain subject to all applicable EA eligibility requirements, and may be subject to termination if the household becomes ineligible for continued EA shelter benefits during this period for another reason.
 4. If the recipient EA household's gross monthly income remains above the Continuing EA Eligibility Standard for a sustained and consecutive 90-day period from the date on which the household's gross monthly income first exceeded the Continuing EA Eligibility Standard as noted in the over-income notice, the EA household will receive a termination notice specifying that the EA household's shelter benefits will cease six months after the date of the over-income notice.
 - (e) An EA household must escrow the amount of monthly gross income that exceeds the Continuing EA Eligibility Standard during the six-month period. Extended EA benefits will be terminated prior to the end of the six-month period if the EA household fails to verify income, fails to escrow the total excess amount or withdraws some or all of the escrowed funds. The EA household may access the escrowed funds when the EA household moves into permanent housing or the EA household becomes ineligible for extended EA benefits.
 - (f) Once the EA household's income exceeds the Continuing EA Eligibility Standard for a sustained and consecutive 90-day period, the income will not be reevaluated to determine EA eligibility.
 - (g) In extraordinary circumstances, the Associate Director or his or her designee may extend EA benefits beyond the six-month period. Extraordinary circumstances will be determined by the Department on a case-by-case basis. The loss of income alone will not constitute extraordinary circumstances. Verification substantiating the extraordinary circumstances must be submitted by the EA household.
- (6) (a) The household's total countable assets do not exceed \$5000. Assets of both TAFDC and non-TAFDC recipients are determined in accordance with 106 CMR 704.120 through 704.140. EA households composed solely of TAFDC recipients are automatically asset-eligible.
- (b) The asset limit shall not apply to the household that is participating in the Department's Local Housing Authority Placement Program, or to a household with savings as specified in its rehousing plan.
- (c) The portion of the household's gross income that is escrowed during the six-month period as described in 760 CMR 67.02(5) is a non-countable asset.
- (7) EA may be provided to or on behalf of an EA household member who is a citizen in accordance with 106 CMR 703.670: *Citizens*, an American Indian in accordance with 106 CMR 703.685: *American Indian Born in Canada*, a noncitizen in accordance with 106 CMR 703.675: *Noncitizens*, or a noncitizen lawfully admitted for permanent residence or otherwise permanently residing under color of law in the U.S.
A household consisting only of noncitizens neither described in 106 CMR 203.675: *Noncitizens*, nor admitted for permanent residence, nor residing under color of law in the U.S. is ineligible for Emergency Assistance benefits.
- (8) No member of the EA household has within one year immediately prior to the filing of an application for Emergency Assistance made an assignment or transfer of real or personal property for the purpose of becoming eligible for Emergency Assistance.
- (9) An EA household is required to report to the Department within ten calendar days any change in circumstances as specified in 106 CMR 701.420: *Responsibility for Notification of Changes* that may affect its continued EA eligibility. Continued eligibility for EA must be reviewed any time that the Department obtains information indicating a change in the EA household's circumstances and needs more information to determine the exact effect of the change(s) on its continued EA eligibility. The eligibility review shall include a review of all financial and nonfinancial aspects of the EA household's eligibility. The EA household must provide the applicable verifications specified by the Department for continued eligibility.

(10) If an applicant EA household either fails to appear at the designated placement without good cause as defined in 106 CMR 701.380: *Good Cause Criteria* or 760 CMR 67.03(4) or refuses a placement offered by the Department, the household will be ineligible for EA for the 12 months following the refusal or failure to appear.

(11) An individual is not eligible for Emergency Assistance benefits if the EA individual has an outstanding default or arrest warrant issued against him or her by any court of the Commonwealth, and the warrant has not been resolved within 30 days of the individual being notified of the warrant by the Department. Evidence of the outstanding default or arrest warrant appearing in the Massachusetts Warrant Management System, or any successor system, shall be sufficient grounds for such action by the Department.

(12) An adult individual 18 years of age or older is not eligible for Emergency Assistance benefits if they fail to disclose on their application prior criminal convictions, other than convictions that have been sealed or expunged, and pending criminal charges, whether occurred, occurring or pending in the Commonwealth or any other jurisdiction.

(13) An adult individual 18 years of age or older is not eligible for Emergency Assistance benefits unless the individual consents to the Department obtaining criminal offender record information (CORI) from the department of criminal justice information services (DCJIS) by signing a CORI Acknowledgement Form, and verifies their identity for CORI purposes pursuant to 803 CMR 2.11. The Department shall obtain CORI information from DCJIS at the Required 1 Access level in accordance with 803 CMR 2.05. An adult applicant for shelter benefits shall not be placed prior to the Department's receipt of the required CORI information from DCJIS; provided, however, that the Associate Director or their designee may authorize the Department to place an adult individual based on Open Access level CORI in accordance with 803 CMR 2.05 based on circumstances making obtaining Required 1 Access level CORI impractical without an unreasonable delay in placement. In cases where the Associate Director or their designee authorizes the Department to place an adult individual based on Open Access level CORI, a Required 1 Access level check shall occur promptly after placement.

(a) The Department shall, prior to taking any adverse action based on CORI results, notify the individual about the adverse action and the opportunity to dispute the accuracy of the CORI results received from DCJIS. An individual who appears to be ineligible for Emergency Assistance benefits under 760 CMR 67.02(14) or (15) shall not be placed while a dispute is pending.

(b) The Department may share CORI information with an EA shelter provider in a manner consistent with 803 CMR 2.00.

(14) An adult individual 18 years of age or older is not eligible for Emergency Assistance benefits if the individual has been convicted of, or has a pending charge in any jurisdiction for, the following crimes or their equivalents, including attempts or conspiracy to commit such offenses:

- (a) First or second degree murder;
- (b) Voluntary manslaughter;
- (c) Felonies involving child pornography, sex offenses, human trafficking, or failure to register by a sex offender;
- (d) Felonies involving rape or sexual assault;
- (e) Arson;
- (f) Kidnapping;
- (g) Felonies or misdemeanors involving firearms within the previous six years;
- (h) Felony drug trafficking within the previous three years.

(15) An adult individual 18 years of age or older is not eligible for Emergency Assistance benefits if the individual has been convicted within the previous three years of, or has a pending charge in any jurisdiction for, the following crimes or their equivalents, including attempts or conspiracy to commit such offenses, without a determination of mitigating circumstances by the Department:

- (a) Involuntary manslaughter;

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- (b) Felonies involving spousal or elder abuse;
- (c) Felony assault and battery with a dangerous weapon causing serious bodily injury;
- (d) Felonies involving violence against children;
- (e) Armed or unarmed robbery; or
- (f) Felony burglary or breaking and entering.

The Department may determine mitigating circumstances exist: (i) upon review of an assessment by a qualified mental health professional obtained and provided by the individual, indicating that the individual does not pose an unacceptable risk of harm to others in the EA Family Shelter Program; (ii) upon review of an assessment from a criminal justice official, including a probation or parole officer, obtained and provided by the adult individual, indicating that the individual does not pose an unacceptable risk of harm to others in the EA Family Shelter Program; (iii) upon review of third-party verifications from another individual qualified under guidance issued by the Department indicating that the individual does not pose an unacceptable risk of harm to others in the EA Family Shelter Program; or (iv) if the charge was continued without a finding. The burden of producing mitigating documentation shall be on the adult individual.

(16) A criminal conviction within the previous ten years or a pending charge that does not result in ineligibility pursuant to 760 CMR 67.02(14) or (15) may be considered by the Department in placement or oversight decisions. The individual shall be notified of any such action by the Department in accordance with 760 CMR 67.02(13)(a).

67.03: Other Eligibility Conditions

(1) Unless otherwise specifically referred to in 760 CMR 67.01(1), no other regulations apply to 760 CMR 67.00.

(2) 760 CMR 67.09 contains Department notification requirements and fair hearing rights.

(3) Eligibility for a particular EA benefit(s) is subject to the circumstances and provision of the verification(s) specified in 760 CMR 67.00 for the specific benefit at the time of the provision of such benefit.

(4) In addition to the good cause criteria in 106 CMR 701.380: *Good Cause Criteria*, transportation issues may be claimed as good cause if the EA household fails to appear at the initial temporary emergency shelter placement or any subsequent temporary emergency shelter placement.

67.04: Scope of Assistance

(1) EA benefits for specific items shall not exceed the amounts specified in 760 CMR 67.00.

(2) Provision of EA benefits shall be subject to legislative appropriation.

(3) The burden of producing verifications shall be on the applicant or recipient; however, the Department will provide assistance in obtaining verifications.

67.05: Housing Assistance Program Services

- (1) An EA-eligible household will be referred to the housing assistance program (HAP) when:
- (a) it has been determined that it may be at risk of losing its current living accommodations;
 - or
 - (b) it has been approved for temporary emergency shelter benefits.

(2) The housing assistance program will provide the EA household with the appropriate housing assistance services to assist the EA household in retaining their current accommodations or locating and securing private, public or subsidized housing. These services will be provided by an agency under contract or agreement with the Department.

(3) An EA household that fails to cooperate with housing assistance program services and subsequently becomes homeless as a result of the noncooperation with housing assistance program services is ineligible for temporary emergency shelter benefits, as specified in 760 CMR 67.06(2)(g). An EA household that fails to cooperate with the housing assistance program services while in a temporary emergency shelter will be found to be in noncompliance with the

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requirements of maintaining temporary emergency shelter as specified in 760 CMR 67.06(5)(a).

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67.06: Temporary Emergency Shelter

(1) Who Is Eligible for Temporary Emergency Shelter.

(a) household must meet the eligibility criteria specified in 760 CMR 67.00. In addition, a household is eligible only if:

1. the household is at risk of domestic abuse in its current housing situation or is homeless because the head of household fled domestic violence and the household has not had access to safe, permanent housing since leaving the housing situation from which they fled;
2. the household is homeless due to fire, flood, or natural disaster through no fault of its members;
3. the household has been subject to eviction from its most recent housing due to:
 - a. foreclosure for no fault of the members of the household;
 - b. condemnation for no fault of the members of the household;
 - c. conduct by a guest or former household member who is not part of the household seeking emergency shelter and over whose conduct the remaining household members had no control;
 - d. nonpayment of rent caused by:
 - (i) a documented medical condition; or
 - (ii) diagnosed disability; or
 - (iii) a documented loss of income within the last 12 months directly as a result of:
 - i. a change in household composition; or
 - ii. a loss of income source through no fault of the household; or
 - e. no fault eviction at the end of a lease or an at-will tenancy; or
4. the household in a housing situation where the household members:
 - a. do not include the primary lease holder; or
 - b. the child(ren) of the household are in a housing situation not meant for human habitation, and where;
 - c. there is a substantial health and safety risk to the family that is likely to result in significant harm should the family remain in such housing situation.

(b) A household must be homeless due to the lack of feasible alternative housing. Feasible alternative housing means any currently available living situation including temporary housing with relatives, friends or charitable organizations.

(c) A household that appears eligible based on statements provided by the household on a form prescribed by the Department and any other information in the possession of the Department, but who needs additional time to obtain any third-party verification, shall be placed in shelter for up to 30 days pending the determination of EA eligibility for the household.

(d) 1. An EA household is not eligible to receive EA benefits more than once in a 12-month period unless:

- a. the EA benefit received was a rental arrearage;
 - b. the EA benefit received was temporary emergency shelter and the household left for permanent housing, but loses that permanent housing prior to the expiration of the 12-month period and is considered to have a continued need for temporary emergency shelter by demonstrating that the housing into which it moved did not meet the definition of safe, permanent housing as defined in 760 CMR 67.06(4)(b) when the household moved into it;
 - c. the EA benefit received was housing assistance program services and the EA household cooperated with the services in the housing assistance plan;
 - d. the EA benefit received was temporary emergency shelter placement which was interrupted when the household left for temporary housing and the move to the temporary housing was approved on a form prescribed by the Department; or
 - e. the only EA benefit received was temporary emergency shelter as defined in 760 CMR 67.06(1)(c);
2. If one of these exceptions does not apply, the 12-month period begins on the last day emergency shelter or another shelter benefit was paid for by the Department.
 3. A household is deemed to have received an EA shelter benefit if the Department has referred the household to a designated placement for EA shelter or other shelter benefit.

4. For purposes of 760 CMR 67.06(1)(d), an EA shelter benefit shall include any EA benefit, including a housing assistance plan, that provides a family with overnight sleeping accommodations, whether in a temporary, transitional, short-term, medium-term, or long-term setting.
- (e) A household must verify that their current, and if applicable, their prior living situation is no longer available to the household and that there is no other feasible alternative housing for the household, by the following:
 1. a fire or other natural disaster shall be verified by one of the following:
 - a. a home visit;
 - b. a written assessment report from the Red Cross Emergency Services Department if a Red Cross unit was present at the scene of the natural disaster;
 - c. a report signed by a superior officer of the fire department;
 - d. a report signed by a member of the police or fire arson squad; or
 - e. a telephone or verbal verification from a member of the Red Cross Emergency Services Department if a Red Cross unit was present at the scene of the fire. The telephone or verbal verification from the Red Cross Emergency Services Department shall be considered a temporary verification and must be followed up with a written assessment within five working days from the Red Cross Emergency Services Department;
 2. an eviction shall be verified by written documentation that the judgment for possession of the current residence has been executed and notice of levy on execution served and that the landlord refuses to renew the lease or tenancy agreement with the household;
 3. housing situation posing a substantial health and safety risk due to physical conditions for purposes of 760 CMR 67.06(1)(a)4. shall be verified by a risk assessment by the Department of Children and Families that the housing situation meets the conditions detailed in 760 CMR 67.06(1)(f)6.d.
 4. substantial health and safety risk due to conduct of household members for purposes of 760 CMR 67.06(1)(a)4. when the applicant is or has been living with a primary tenant shall be verified by a risk assessment by the Department of Children and Families that the housing situation meets the conditions detailed in 760 CMR 67.06(1)(f)6.a. through c.
 5. domestic abuse or domestic violence for purposes of 760 CMR 67.06(1)(a)1. shall be verified by reliable and authentic written documentation in accordance with Departmental guidance meeting the definition of domestic abuse and domestic violence in 760 CMR 67.06(1)(f)1.;
 6.
 - a. documented medical condition and diagnosed disability for purposes of 760 CMR 67.040(1)(a)3.d. shall be verified by reliable and authentic written documentation in accordance with Departmental guidance meeting the definition of documented medical condition and diagnosed disability in 760 CMR 67.06(1)(f)1.
 - b. In the case of a documented medical condition causing eviction due to non-payment of rent, verification must include:
 - (i) written documentation of extraordinary medical expenses in the form of receipts for payment of such expenses;
 - (ii) a written statement by a competent medical professional that the extraordinary medical expenses were necessary for the health of the individual, were not covered by medical insurance; and
 - (iii) documentation that extraordinary medical expenses arising from the necessary treatment of the medical condition caused the applicant to have to pay more than 50% of his or her household income for rent, a reasonable utility allowance, and the medical expenditures on an annualized basis.
 - c. In the case of a diagnosed disability causing eviction due to nonpayment of rent, verification must include a written statement by a competent medical professional that:
 - (i) a diagnosed disability by the head of household was directly causally related to the inability to pay rent; and
 - (ii) the rent arrearage at the time of eviction was unpaid at least in part because of the applicable disability, and either

- i. money that would otherwise have gone towards rent payments was spent otherwise on other expenses compelled by the disability; or
 - ii. the applicant's disability was such that he or she was unable because of the disability to take the actions necessary to cure the arrearage timely or unable to obtain a stay of execution. The applicant shall verify by reasonable third-party documentation, or adequately supported self-declaration, that the nonpayment of rent had no significant cause other than the disability and should demonstrate the manner in which available funds were expended during the time in which the rent arrearage accrued.
 - 7. the household must verify that its current and, if applicable, the prior living situation, is no longer available to the household by providing documentation or information from collateral contacts; and
 - 8. a household requesting temporary emergency shelter benefits must also verify the lack of feasible alternative housing with relatives, friends or charitable organizations in accordance with 106 CMR 702.340: *Methods of Verification*.
- (f) For purposes of 760 CMR 67.00:
- 1. Domestic violence and domestic abuse shall mean, for purposes of 760 CMR 67.06(1)(a)1. the occurrence of one or more of the following acts between intimate partners, family members, or household members:
 - a. physical acts that resulted in, or threatened to result in, physical injury;
 - b. sexual abuse, which for purposes of this provision only shall mean:
 - (i) attempting to cause or causing physical harm;
 - (ii) placing another in fear of imminent serious physical harm; or
 - (iii) causing another to engage involuntarily in sexual relations by force, threat or duress;
 - c. sexual activity involving a dependent child of one or both of the intimate partners;
 - d. being forced to engage in nonconsensual sexual acts or activities;
 - e. threats of, or attempts at, physical or sexual abuse;
 - f. a pattern of coercive control, meaning:
 - (i) willful or knowing acts, courses of action, or demands and credible threats;
 - (ii) with intent to establish and maintain power and control over the life, decisions, relationships or activities of an intimate partner;
 - (iii) that reasonably would cause a person in the situation to engage in conduct in which that person otherwise would not, or to abstain from conduct in which that person otherwise would, engage;
 - g. neglect or deprivation of medical care; or
 - h. stalking, which for purposes of this provision only shall mean:
 - (i) willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress; and
 - (ii) making a threat with the intent to place the person in imminent fear of death or bodily injury.
 - 2. Intimate partner shall mean, for purposes of 760 CMR 67.06(1)(f)1.:
 - a. a current or former spouse of the applicant,
 - b. a person with whom the applicant shares a child in common,
 - c. a person who is cohabitating with or has cohabitated with the applicant as a couple in an interdependent relationship that is intended to be long term, or
 - d. a person who is or has been in a substantive dating or engagement relationship with the applicant, which shall be determined based on consideration of the following factors:
 - (i) the length of time of the relationship;
 - (ii) the type of relationship;
 - (iii) the frequency of interaction between the parties; and
 - (iv) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

3. Control shall mean, for purposes of 760 CMR 67.06(1)(a)3.c.:
 - a. A head of household has control over the conduct of all household members and guests of members of the household by virtue of the right to exclude such individuals from the housing unit and common areas by removing that individual from the authorized household composition or forbidding such individual to enter the housing unit or common areas as a guest of the household.
 - b. A parent or guardian has control over the conduct of minor children over whom such parent or guardian has legal or legally recognized physical custody.
 - c. Notwithstanding 760 CMR 67.06(1)(f)3.a. and b., such head of household, parent, or guardian does not have control over the conduct of a household member or guest:
 - (i) When the tenant is the victim of domestic violence and the conduct is abusive conduct of the perpetrator;
 - (ii) When the individual whose conduct is at issue was mentally ill and all reasonable efforts had been taken to insure that the individual would be able to comply with the law and the terms of any applicable lease or tenancy agreement by reasonable accommodations through medication and treatment; or
 - (iii) When the individual whose conduct is at issue is a minor in the legal or legally recognized physical custody of the head of household and who is subject currently or previously to an order pursuant to the Children Requiring Assistance (CRA) laws, M.G.L. c. 119, §§ 39E through L, and the head of household has complied with all the requirements and recommendations of any CRAS plan and the minor has been authorized by the Department of Children and Families to continue residing with the head of household pursuant to a finding that the minor, after program participation, will obey the lawful and reasonable commands of his or her parents or guardians.
4. a. Documented Medical Condition shall mean, for purposes of 760 CMR 67.06(1)(a)3.d.(i), a serious medical impairment or combination of impairments that is verified by a competent medical authority, on such form as may be prescribed by the Department, and which the competent medical authority determines:
 - (i) meets a standard specified in 106 CMR 703.192: *EAEDC Medical Standards*; or
 - (ii) is included in the SSI Listing of Impairments as specified in 20 CFR, Part 404, Subpart P, Appendix 1; or
 - (iii) substantially reduces or eliminates the individual's ability to support himself or herself when consideration is given to the vocational factors specified in 106 CMR 703.193: *EAEDC Vocational Factors*; and
 - (iv) is not based on a history of alcohol or substance use.
- b. Diagnosed Disability shall mean, for purposes of 760 CMR 67.06(1)(a)3.d.(ii): An impairment or combination of impairments that is expected to last 60 days or more and that substantially reduces or eliminates an individual's ability to support himself or herself. An individual shall be considered as having such an impairment or combination of impairments if he or she has:
 - (i) a documented medical condition; or
 - (ii) has written notification from SSA or an administrative law judge that he or she is considered disabled for purposes of SSI or SSDI and/or that he or she is eligible for SSI or SSDI, and such disability is not based on a history of alcohol or substance use.
5. Loss of income shall mean, for purposes of 760 CMR 67.06(1)(a)3.d.(iii), both 760 CMR 67.06(1)(f)5.a. and b.:
 - a. a reduction of more than 10% of a household's monthly income before the reduction. When considering a loss of income, the income before the reduction should be compared with the family's total income 60 days after the loss of income, including any increases during that time.
 - b. a reduction in income that results in an undue rent burden, which shall be the cost to the tenant of rent and utilities (based on regional average utility expenditures used for Section 8/Housing Choice rent determinations by the Department) over 50% of the household income.

- c. A loss of income from employment is at the fault of the applicant or a member of the household, if he or she without good cause, as determined by 760 CMR 67.02(3):
 - (i) reduced his or her earnings from employment,
 - (ii) voluntarily terminated his or her employment, or
 - (iii) was terminated by his or her employer for cause.
- 6. Substantial health and safety risk that is likely to result in significant harm shall mean, for purposes of 760 CMR 67.06(1)(a)4.:
 - a. Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to either felony or misdemeanor crimes or violent physical conduct, in the housing situation where the household resides, perpetrated by the primary tenant or a member of the primary tenant's household who is not a member of the applicant household that cannot be addressed through law enforcement intervention or other alternative dispute resolution measures in a timely manner and that are likely to cause significant physical, psychological, mental, or emotional harm to the members of the applicant household. For purposes of 760 CMR 67.06(1)(f)6.a. through c., the repeated conduct of a regular guest is attributable to the primary tenant.
 - b. Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to mental health issues exhibited by the primary tenant and/or a member of primary tenant's household who is not a member of the applicant household that cannot be addressed through referral for mental health or medical treatment in a timely manner and that are likely to cause significant physical, psychological, mental, or emotional harm to the to the members of the applicant household.
 - c. Exposure, in a dwelling unit occupied by the children of the applicant household and rented to or owned by a non-member of the applicant household, to ongoing substance abuse by the primary tenant and/or member of primary tenant household who is not a member of the applicant household that cannot be addressed through referral for substance abuse treatment in a timely manner and that that are likely to cause significant physical, psychological, mental, or emotional harm to the members of the applicant household.
 - d. (i) The presence in the housing situation where the children of the applicant household are sleeping of physical condition(s) that led to the condemnation for safety violations of the housing situation without the fault of the members of the applicant household; or
(ii) The presence in the housing situation where the children of the applicant household are sleeping of the following physical condition(s) that cannot or will not be corrected by the property owner's remediation of the conditions before such conditions are likely to cause significant direct physical, psychological, mental, or emotional harm to the members of the applicant household:
 - i. Lack of a supply of hot and cold water, or inability to access the same for personal use.
 - ii. Lack of heat from September 16th through June 14th.
 - iii. Lack of electricity, or inability to access the same for personal use, or lack of lighting, or inability to access the same for daytime use and to minimize the same for evening sleeping purposes.
 - iv. Lack of toilet and/or operable sewage or waste disposal system.
 - v. Unsanitary conditions in the unit that results in any accumulation of garbage, rubbish, filth or other causes of sickness which may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease; or any such accumulation in the building that creates a food source or harborage for such pests, to the extent that such pests infest the unit.
 - vi. Inability to access a utility for personal use shall include situations in which the utility is in a location accessible to the general public;
 - (iii) An irregular overnight sleeping situation, as defined in 760 CMR 67.06(1)(f)7.b., if this has been persistent, as opposed to occasional, and cannot be remedied immediately by access to feasible alternative housing; or

(iv) Physical conditions making a unit unfit for human habitation pursuant to M.G.L. c. 111, § 127B, and 105 CMR 410.020: *Definitions*.

7. housing situation shall mean, for purposes of 760 CMR 67.06(1)(a)4., either:
 - a. a specific housing situation, being the location where the children of the applicant household are regularly sleeping overnight; or
 - b. an irregular overnight sleeping situation. A regular overnight sleeping situation is one that is consistent and continually available, not intermittent or occurring for an individual instance. An irregular overnight sleeping situation is an overnight sleeping situation that is not regular, consisting of repeated moves from place to place or the exhaustion of time limits in a time-limited emergency family homeless shelter not funded pursuant to 760 CMR 67.00.
8. housing situation not meant for human habitation shall mean, for purposes of 760 CMR 67.06(1)(a)4., a housing situation that is defined in 760 CMR 67.06(1)(f)6.d.(ii).
9. primary leaseholder, as used in 760 CMR 67.06(1)(a)4.a., shall mean, for these purposes, a primary tenant, whether holding under a lease, a tenancy agreement, or tenancy-at-will arrangement, with the exception that a primary tenant who is a co-tenant with one or more other co-tenants shall not be considered a primary tenant for purposes of 760 CMR 67.06(1)(f)6.a. through c., unless the other co-tenant is an intimate partner.

(2) Shelter Ineligibility. A household shall not be eligible for EA temporary emergency shelter benefits if it became homeless:

- (a) for the purpose of making itself eligible for EA;
- (b) for the purpose of obtaining a housing subsidy;
- (c) because it abandoned in the preceding year, without good cause, public and/or subsidized housing, or was evicted from public and/or subsidized housing for nonpayment of rent or fraudulent behavior, provided the eviction occurred within the preceding three years; it shall not be considered abandoning housing if the household left for good cause including, but not limited to, accepting employment or permanent housing elsewhere, or because of a direct threat to the household's safety; a household shall not be denied EA for an eviction, including for reasons referenced in 760 CMR 67.06(2)(d) and (e), when the person causing the eviction is no longer part of the household;
- (d) because it was evicted from private, public and/or subsidized housing because of criminal activity, except when the criminal activity was committed by a domestic violence batterer who is no longer part of the household;
- (e) because it was evicted from private, public and/or subsidized housing for destruction of the property;
- (f) because it lost its housing under an agreement for judgment in eviction proceedings brought in whole or in part for the reasons referenced in 760 CMR 67.06(2)(c), (d) or (e);
- (g) because it failed to cooperate with housing assistance program services provided by an agency under contract or agreement with the Department as specified in 760 CMR 67.05, or with a housing assistance program, providing similar services, including provision of overnight shelter, and administered by another government agency or by a nonprofit organization; or
- (h) because the teen parent 18 years of age or older was asked to leave three Teen Living Programs for rule violations or other behavior-related issues or the teen parent refuses to accept a placement in a Teen Living Program.

(3) Temporary Emergency Shelter Placements. An EA-eligible household homeless due to the lack of feasible alternative housing in accordance with 760 CMR 67.06(1)(b) shall be approved for temporary emergency shelter. Any temporary emergency shelter placement must be approved by the Associate Director or his or her designee. Such approval for placement may be withdrawn or temporary emergency shelter benefits terminated if feasible alternative housing subsequently becomes available. A temporary emergency shelter placement shall also be subject to the following provisions:

- (a) The Department shall make reasonable efforts to locate temporary emergency shelter that will accommodate the physical composition of the entire household, *i.e.*, the size of the household and the age and gender of the household members.

(b) An EA household requiring temporary emergency shelter shall be placed in an appropriate family shelter, substance abuse shelter or other Department-approved accommodations.

1. An EA household shall be placed in a family shelter when such shelter is available. A room or rooms shall not be considered available if the Department has reserved space for intake cases. Temporary emergency shelter in another approved temporary emergency shelter specified by the Department may be authorized as an interim measure after the Department determines that there is no family shelter with space available.

2. An EA household having a member with a substance abuse problem shall be referred to the Department of Public Health for placement in a substance abuse shelter when such shelter is available. Temporary emergency shelter in another approved temporary emergency shelter specified by the Department may be authorized as an interim measure if the Department of Public Health determines that there is no substance abuse shelter with space available or appropriate for the household needs.

3. If an EA household contains more than one adult (individual 21 years of age or older), or contains no children younger than 21 years of age during the period of aid pending appeal pursuant to 760 CMR 67.09(2)(a)2.b., the Department may make alternative sheltering arrangements for such adult(s) with the approval of the Associate Director or his or her designee.

(c) The Department-approved family shelter shall be located within 20 miles of the EA household's home community unless the EA household requests otherwise;

(d) The Department shall make every effort to ensure that a child receiving temporary emergency shelter shall continue attending school in the community in which he or she lived prior to receiving EA, unless the EA household requests otherwise.

(e) The EA household will be placed in an interim placement, such as shelter beyond 20 miles or a hotel/motel, only if appropriate Department-approved family shelter space is not available. During this interim placement, the EA household must attend the family shelter interview(s) at family shelter(s) specified by the Department. The household shall be advised at the time of placement that:

1. it will be transferred from a shelter beyond 20 miles into an appropriate Department approved family shelter within 20 miles of its community at the earliest possible date unless the EA household requests otherwise; or

2. it will be transferred from another interim shelter into an appropriate Department approved family shelter at the earliest possible date.

(4) Conditions for Shelter Benefits.

(a) The EA household must make all reasonable efforts that can significantly and directly contribute to the household's ability to find, obtain or retain safe, permanent housing. The EA household placed in temporary emergency shelter must cooperate in the development of and participate in the activities outlined in the EA household's plan for rehousing.

(b) 1. The plan for rehousing will be developed by the Department representative and the shelter staff person, the housing assistance program worker and the adult members of the EA household. The plan will contain the activities to be performed by the adult members of the EA household that will lead to the EA household's finding safe, permanent housing. A child who is at least 18 years of age must comply with the activities leading to self sufficiency of the rehousing plan as specified in 760 CMR 67.06(4)(b)2.h.

2. Activities in the plan for rehousing shall include, but are not limited to:

- a. cooperating with housing assistance program services by actively looking for safe, permanent housing as described in the EA household's plan for rehousing. Safe, permanent housing is housing which:

- (i) complies with 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation State Sanitary Code: Chapter II*;

- (ii) takes into consideration the critical medical needs of the members of the EA household and any domestic violence issues; and

- (iii) the EA household is capable of maintaining for a period of at least one year, considering the totality of the household's circumstances, including the household's income from all sources (including food stamp benefits and child support) in relation to the cost of rent and utilities for the housing, housing subsidies and other available benefits, and the cost of meeting the household's nonshelter needs;

- b. attending all scheduled meetings with the assigned housing assistance program worker;
 - c. meeting with the Department representative and the housing assistance program worker;
 - d. planning the short-term or long-term goals associated with maintaining permanent housing;
 - e. providing proof of applications for public and subsidized housing and cooperating in providing needed documentation for public or subsidized eligibility determinations;
 - f. providing documentation as specified by the Department of efforts to obtain safe, permanent housing in the public and private market;
 - g. saving 30% of the household's net monthly income for the purpose of obtaining safe, permanent housing, provided the savings requirement shall not apply when a household is placed in a hotel or motel and shall be reduced in extraordinary circumstances; provided further, the Executive Director of the shelter, or his or her designee, may request an exemption from the savings requirement upon a showing that it will lead to more rapid rehousing or shall make other reasonable changes to the requirement when reassessing the rehousing plan; and provided further, the required amount of savings shall be reduced if the household is repaying past debt obligations such as unpaid rent or utilities that may be a bar to obtaining permanent housing; and
 - h. taking part in activities leading to self-sufficiency, as specified in 106 CMR 703.150: *TAFDC Work Program*(A)(2) for 30 hours per week, provided this hourly requirement shall be reduced as a reasonable accommodation for those who are disabled; self sufficiency activities shall include, but not be limited to, education and training programs, including attendance at a community college, community service, and substance abuse treatment; provided the requirement shall be reduced or eliminated for good cause including, but not limited to, lack of appropriate child care or transportation, addressing medical issues including mental health issues, domestic violence issues, actual hours spent in housing search, and caring for a newborn under the age of three months, and the reasons specified in 106 CMR 701.380: *Good Cause Criteria*; provided further, the shelter shall reassess regularly the household's rehousing plan.
- (c) The Department may transfer an EA household from one Department-approved temporary emergency shelter to another for the efficient administration of the EA program.
- (d) The Associate Director or his or her designee may notify the Department of Children and Families (DCF) when temporary emergency shelter is approved for an EA household so that DCF may provide appropriate support services. The Associate Director or his or her designee shall notify the DCF when temporary emergency shelter is terminated.
- (e) An EA household approved for temporary emergency shelter benefits shall be referred to the housing assistance program to receive the appropriate housing assistance program services. The EA household shall have a Department representative, a shelter staff member, or a staff member from an agency under contract or agreement with the Department assigned to it to assist in the search for safe, permanent housing.
- (5) Noncompliance While in Temporary Emergency Shelter.
- (a) The EA household shall be considered to be in noncompliance with the requirements for maintaining temporary emergency shelter and will be sent a notice of noncompliance as specified in 760 CMR 67.09(1)(c) in the first or second instance that the EA household does one of the following:
- 1. a. fails to attend a scheduled family shelter interview without good cause. The following constitutes good cause for failure to attend scheduled family shelter interview(s):
 - (i) A death in the immediate family;
 - (ii) A personal injury or illness that reasonably prevents the person from attending the interview(s);
 - (iii) A sudden and serious emergency as determined by the Department, that reasonably prevents the person from attending the interview(s);

- b. The verification of the good cause for failure to attend a family shelter interview must be provided by the recipient to the Department within three working days of the scheduled interview.
 - c. Verification shall include a copy of death notice for 760 CMR 67.06(5)(a)1.a.(i), a written statement from a competent medical authority for 760 CMR 67.06(5)(a)1.a.(ii), a written statement from the recipient for 760 CMR 67.06(5)(a)1.a.(iii) that explains the emergency that prevented the recipient from attending the scheduled family shelter interview(s), or other appropriate verification determined by the Associate Director or his or her designee;
 2. is refused admittance to a family shelter because of unreasonable behavior at the interview;
 3. fails to cooperate in participating in the activities required by the plan for rehousing as specified in 760 CMR 67.06(4)(b), or fails to cooperate in developing a plan for rehousing without good cause as defined in 106 CMR 701.380: *Good Cause Criteria*;
 4. violates a rule established by the Department for temporary emergency shelter, including a hotel or motel without good cause if good cause is provided for such rule, and with *de minimis* violations not to be counted towards program discipline if the rule so provides;
 5. the EA household is posing a threat to the health or safety of self, other residents, guests and/or staff of the temporary emergency shelter for reason(s) other than engaging in criminal activity(ies); or
 6. the EA household is cited for one violation of the hotel rules established by the Department.
 - (b) In determining whether rules established by the shelter, hotel or motel are reasonable, there is a presumption that any such rule is reasonable.
 - (c) The EA household shall be considered to be in noncompliance with the requirements for maintaining temporary emergency shelter and will be sent a termination notice as specified in 760 CMR 67.09(1)(a) when the EA household is determined noncompliant for a third time for one or more of the reasons specified in 760 CMR 67.06(5).
 - (d) For a violation of 760 CMR 67.00 or a rule violation, including a violation of a reasonable rule established by the Department, a shelter, hotel or motel, the EA household may be placed in another approved temporary emergency shelter as a result of the noncompliance. A notice of transfer shall be given/sent to the EA household as specified in 760 CMR 67.09(1)(b).
 - (e) A noncompliance notice under 760 CMR 67.06(5)(a)3. or 4. will be deemed rescinded and may not be used as a basis for termination of benefits if no further violation of 760 CMR 67.06(5)(a) and no violation of 760 CMR 67.06(6)(a) has occurred within the following six months.
- (6) Termination of Temporary Emergency Shelter Benefits.
- (a) The EA household shall have its temporary emergency shelter benefits terminated when:
 1. the EA household is asked to leave a temporary emergency shelter because there is reasonable cause to believe that a member(s) of the EA household is engaging in or engaged in a criminal activity that threatens the health, safety and/or security of self, other residents, guests and/or the staff of the temporary emergency shelter. For the purpose of 760 CMR 67.00 the temporary emergency shelter benefits may be terminated on the basis of criminal activity in accordance with 760 CMR 67.02(14) or (15) or if the Department concludes by a preponderance of the evidence (more likely than not) that a member of the EA household is engaging in or engaged in criminal activity described;
 2. the EA household rejects one opportunity for safe, permanent housing, as defined in 760 CMR 67.06(4)(b), without good cause, as defined in 106 CMR 701.380: *Good Cause Criteria* or 760 CMR 67.03(4); provided that good cause shall also include, but not be limited to, the housing would require the parent to leave a job that is part of his or her rehousing plan; the housing would interfere with access to critical medical needs of household members, including access to specialty medical providers; the housing would interfere with the special education needs of a child; the housing is in an area in proximity to a domestic abuser, or in an area the household was forced to leave because of safety concerns directed at any member of the household.

67.06: continued

- The opportunity of safe, permanent housing must take into consideration the current, critical medical needs of members of the household or any domestic violence issues;
- 3. the EA household is determined noncompliant for a third time for one or more of the reasons specified in 760 CMR 67.06(5), not including prior noncompliance notices that have expired pursuant to 760 CMR 67.06(5)(e);
 - 4. the EA household either fails to appear at the designated placement or refuses the available placement without good cause as defined in 106 CMR 701.380: *Good Cause Criteria* and 760 CMR 67.03(4);
 - 5. the EA household abandons the temporary emergency shelter placement. For the purpose of 760 CMR 67.06, the EA household shall be deemed to have abandoned placement if it fails to stay at the placement for two consecutive nights or longer, or has repeated absences from the placement. It shall not be considered an abandoned placement if the absence is authorized by the shelter's Executive Director, or his or her designee, or the Department's caseworker or for good cause, as defined in 106 CMR 701.380: *Good Cause Criteria* or 760 CMR 67.03(4); provided further, good cause shall include, but not be limited to, a medical emergency or death in the family;
 - 6. feasible alternative housing becomes available to the EA household;
 - 7. the EA household is no longer categorically or financially eligible for EA benefits. However, a recipient who is financially ineligible due to income in excess of the EA Continuing Eligibility Standard will continue to receive shelter benefits for six months, if otherwise eligible;
 - 8. an adult member of the EA household commits fraud on the EA program; or
 - 9. an adult member 18 years or older of the EA household does not sign a CORI Acknowledgement Form.

(b) The EA household shall be sent a timely notice of termination in accordance with 760 CMR 67.09.

67.07: Other Services

When appropriate, the following services provided by the Department or by groups operating under interagency agreements or contract with the Department shall be available to members of EA-eligible households.

- (1) Information Services, to give EA households written and verbal data about benefits and programs designed to help the households with emergency situations. Such programs and benefits are offered by public and private agencies.
- (2) Referral Services, to make arrangements for EA households to receive the additional benefits and services the EA households need.

67.08: Table of Time Periods for Recipient Actions and Department Actions in the Emergency Assistance Program

See 106 CMR 701.500 through 701.530.

EMERGENCY ASSISTANCE BENEFIT	RECIPIENT VERIFICATION TIME FROM DATE OF DEPARTMENT NOTICE	DEPARTMENT SERVICE DELIVERY TIME (IF VERIFICATION IS TIMELY) FROM DATE OF REQUEST FOR SERVICES
Temporary emergency shelter	two calendar days	seven calendar days*

* The service shall be provided in fewer than seven days when there is serious and imminent risk to the health or safety of the recipient.

760 CMR: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
67.09: Notification Requirements and Fair Hearing Rights-EA

The rights and procedures governing the informal hearing procedure, as specified in 801 CMR 1.02: *Informal Rules*, apply to the EA program, except to the extent that they are inconsistent with 760 CMR 67.09, in which case the provisions of 760 CMR 67.09 apply.

(1) Notification Requirements. The Department shall send written notification of approval, denial, noncompliance and/or termination of EA benefits to the EA household. Any required communications with the EA household during the application process, after approval, but before placement, or after denial, shall be sent to the last address of record reported by the applicant during the application process, unless otherwise notified in writing by the EA household.

(a) When the Department determines that it is necessary to terminate EA temporary emergency shelter benefits, the Department shall send the EA household written notice of termination on a form prescribed by the Department. This notice shall be sent to the address of record. Unless otherwise notified in writing by the EA household, the Department will use the last shelter address as the address of record. Any required communications with the EA household after it has left EA temporary emergency shelter, whether after receipt of a notice of termination or otherwise, shall continue to be sent to the last shelter address, unless otherwise notified in writing by the EA household. This notice must be sent at least ten calendar days in advance of the proposed termination date. This notice shall specify:

1. the reason(s) why the EA household is being terminated; and
2. the date the shelter benefits will be terminated.

(b) When the EA household is being transferred from one temporary emergency shelter to another temporary emergency shelter, the Department will give or send the EA household a written notification of the transfer. Changing the placement of an EA household from one temporary emergency shelter to another temporary emergency shelter shall be considered a continuance of EA benefits. This transfer notice shall only be given at the time of the change of placement. This notice does not have to meet the requirements of 106 CMR 343.140: *Time Limits*. The written notice issued pursuant to 760 CMR 67.09 shall be adequate as defined in 106 CMR 343.200: *Adequate Notice Requirements(A)*.

(c) When the Department determines that the EA household has a first or second instance of noncompliance with the requirements of maintaining temporary emergency shelter as described in 760 CMR 67.06(5)(a), the Department shall send a written notice of the noncompliance to the EA household. This noncompliance notice shall specify:

1. the reason(s) why the EA household is determined to be in noncompliance;
2. that a third instance of noncompliance will result in the termination of the temporary emergency shelter benefits in accordance with 760 CMR 67.06(6); and
3. that the EA household may request a face-to-face interview with a Department worker to discuss its noncompliance. This notice does not have to meet the requirements of 106 CMR 343.140: *Time Limits*.
4. The written notice issued pursuant to 760 CMR 67.09 shall be adequate as defined in 106 CMR 343.200: *Adequate Notice Requirements(A)*.

(d) When the Department places an EA household in a temporary emergency shelter placement or transfers an EA household from one temporary emergency shelter placement to another temporary emergency shelter, the Department shall provide notice of the EA household's right to appeal:

1. whether the Department made reasonable efforts to locate temporary emergency shelter that will accommodate the physical composition of the entire household, *i.e.*, the size of the household and the age and gender of the household members pursuant to 760 CMR 67.06(3)(a);
2. whether the Department failed to place the EA household in an available Department- approved temporary emergency shelter within 20 miles of the EA household's home community;
3. whether the Department made every effort to ensure that a child continues attending school in the community he or she lived prior to the EA shelter placement, unless requested otherwise; and
4. whether the Department transferred the EA household placed in temporary emergency shelter beyond 20 miles of the EA household's home community back to an appropriate Department-approved temporary emergency shelter within 20 miles of the EA household's home community at the earliest possible date.

(2) Right to a Fair Hearing.

(a) An EA applicant or recipient may appeal:

1. the failure of the Department to provide any temporary emergency shelter benefits available under 760 CMR 67.06;
2. a. the termination of temporary emergency shelter benefits pursuant to 760 CMR 67.06(6). The EA household has the right to appeal the termination based on his or her assertion that the event(s) specified by the Department as the reason(s) for the termination has not occurred or otherwise does not warrant a noncompliance notice under applicable EA rules, regulations or policy. If the termination is based on a third noncompliance pursuant to 760 CMR 67.06(6)(a)3., during the termination appeal, the household may contest the validity of any prior noncompliance notice unless the prior noncompliance notice was previously appealed and upheld. With regard to a prior noncompliance notice that was not timely appealed within 21 days of the notice, the EA household will have the burden of proving by a preponderance of the evidence why the prior noncompliance notice(s) should be overturned;
- b. Only one appeal pursuant to 760 CMR 67.06(6) may be requested by the EA household. The EA household may remain in the placement pending the fair hearing decision only with the permission of the temporary emergency shelter;
3. whether the Department made reasonable efforts to locate temporary emergency shelter that would accommodate the physical composition of the entire household, *i.e.*, the size of the household and the age and gender of the household members pursuant to 760 CMR 67.06(3)(a);
4. whether the Department placed the EA household in an available Department approved temporary emergency shelter within 20 miles of the EA household's home community pursuant to 760 CMR 67.06(3)(c), unless requested otherwise;
5. a finding of the first or second instance of noncompliance made pursuant to 760 CMR 67.06(5)(a) based only on the EA household's assertion that the events specified by the Department as the reasons(s) for the noncompliance did not occur or otherwise do not warrant a noncompliance under applicable EA rules, regulations or policy;
6. whether the Department has transferred the EA household to a placement within 20 miles of its home community at the earliest possible date, unless requested otherwise; or
7. whether the Department has made every effort to ensure that a child continues attending school in the community he or she lived prior to the EA shelter placement, unless requested otherwise.

(b) 1. The appeal request must be received by the Hearings Manager within 21 calendar days of the date of the notice of the Department's proposed action, findings of noncompliance, or placement. There shall be no waiver of the requirement that the Hearings Manager receive requests for an appeal filed pursuant to this section within 21 calendar days of the date of the notice.

2. Appeals based on 760 CMR 67.09(1)(a)6. may be filed at any time after placement in a temporary emergency shelter more than 20 miles from the EA household's home community. A timely appeal request is one received by the Hearings Manager within the timely notice period of ten days, as specified in 760 CMR 67.09(1)(a).
3. A timely appeal of termination request will result in aid pending the appeal decision.

(c) Other than in the circumstances specified in 760 CMR 67.09(2)(b), EA applicants and recipients may not appeal the Department's decision as to the type, location or particular temporary emergency shelter provided or the Department's decision to change the temporary emergency shelter placement.

(d) The EA household shall be given written and/or oral notice of the date, time and place of the hearing. Such notice shall be communicated so as to allow receipt by the EA household at least two business days prior to the hearing date.

67.09: continued

(e) There shall be an expedited hearing and an expedited fair hearing decision for all appeals of temporary emergency shelter decisions including initial placement(s), findings of noncompliance, transfer(s) and termination(s). A decision may be implemented by the Department three working days after the decision is mailed to the household. An applicant or recipient may not have the hearing postponed, continued, or rescheduled without good cause as specified in 106 CMR 343.320(D): *Good Cause*. The verification of good cause for failure to appear for a hearing must be provided by the recipient within five working days of the scheduled hearing.

(f) Temporary emergency shelter benefits continued pending an appeal decision shall be in a shelter designated by the Department. The EA household may remain in the temporary emergency shelter placement location occupied on the date of the appeal pending the fair hearing decision with the approval of the shelter provider.

(g) When the subject of the appeal is an extension of shelter benefits beyond the six-month period under 760 CMR 67.02, the hearing officer shall not substitute his or her judgment for that of the Associate Director or his or her designee. Such actions may only be overturned by a hearing officer if it is found that the Associate Director or his or her designee have abused his or her discretion when making the determination on the extension request.

67.10: In the Event that the Shelter System Is Unable to Serve All Eligible Families

(1) Notwithstanding 760 CMR 67.01 through 760 CMR 67.09, in the event that the Director (the Secretary) determines that, in light of legislative appropriations, the shelter system is no longer able to meet all current and projected demand for shelter from eligible families considering the facts and circumstances then existing in the Commonwealth, the Director (the Secretary) shall issue a written declaration detailing that determination and the basis for it. The declaration shall identify a maximum program shelter capacity which the Director (the Secretary) determines the shelter system can attain and that the shelter system shall not be required to exceed during the term of the declaration. The declaration shall have an initial time limit of 120 days after it is issued but may be extended for additional periods of up to 120 days if the Director (the Secretary) determines that the shelter system is still unable to meet all current and projected demand for shelter from eligible families in light of legislative appropriations. In the event that a declaration lapses, nothing in these regulations shall preclude the Director (the Secretary) from subsequently issuing an additional declaration under this provision. The declaration shall be made available publicly when it is issued and promptly posted on the website of the Department (now the Executive Office of Housing and Livable Communities).

(2) Upon the issuance of a declaration under 760 CMR 67.10(1), and notwithstanding 760 CMR 67.01 through 760 CMR 67.09, in light of legislative appropriations and facts and circumstances existing in the Commonwealth, the Department shall take all reasonably available steps to ensure that available shelter resources are distributed so as to support as many eligible families as possible and to prioritize support for those eligible families most in need.

(a) The Department shall issue written guidance setting forth the particular steps that the Department will take in response to each declaration under 760 CMR 67.10(1), which may include:

1. How the Department will prioritize families for access to shelter. The prioritization system shall take into account the basis that led to the secretarial declaration and the health and safety risk facing the family seeking shelter, which may include the family's medical vulnerability and any risks to the family arising from domestic violence. The prioritization system may include protocols to establish priority category groups that are ranked based on levels of health and safety risks and to establish how households will be ranked within each priority category group. In determining how to prioritize families for access to shelter, the Department may consult as appropriate with the Department of Public Health and other agencies.

2. Whether the Department will establish a shelter placement waitlist and the policies and procedures the Department will use to administer the waitlist if one is established.

3. Upon not less than 30 days prior notice, setting a limit on or establishing the timeframe during which an EA shelter eligibility determination shall remain effective. If such a limit or timeframe is adopted, the guidance may create a process by which a family may seek an additional period of eligibility. The guidance issued under a secretarial declaration and 760 CMR 67.10(2)(a)3. may permit a family to reapply for shelter even if that family would not be eligible to apply for an additional period of shelter in the absence of a secretarial declaration, and may set out a prioritization framework for applications from previously sheltered families seeking an additional period of shelter.

(3) Guidance issued under 760 CMR 67.10 shall be posted on the Department's website and may be revised as appropriate while a declaration under 760 CMR 67.10(1) remains in effect. The Department shall solicit written comments on the guidance, which shall be due within 30 days after the initial posting of the guidance. The Department may revise the guidance after giving due consideration to any timely submitted written comments. To the extent revisions are made, the Department shall post the updated guidance on its website.

67.11: Waiver Provision

To the extent permitted by law, and to the extent required by the Americans with Disabilities Act and M.G.L. c. 151B, consistent with the fundamental program requirements and goals of benefits administered under 760 CMR 67.01 through 67.11, provisions of 760 CMR 67.01 through 67.10 may be waived in writing by the Director of the Department of Housing and Community Development if requested by a provider of services, applicant, or recipient in writing for a good reason.

REGULATORY AUTHORITY

760 CMR 67.00: St. 2009, c. 4 and M.G.L. c. 23B.

NON-TEXT PAGE