



**Massachusetts Department of Housing and Community Development
Division of Housing Stabilization**

To: DHCD Field Staff
From: Robert Pulster, Associate Director, *Robert Pulster*
Date: April 20, 2012
RE: Housing Stabilization Notice 2012-03, HomeBase Relationship to Emergency Assistance; HomeBASE Not Subject to the 12-Month Rule.

Introduction

This Housing Stabilization Notice is intended to clarify whether a family that has received HomeBASE (HB) household assistance (HA) benefits (up to \$4,000 per year) is deemed to have received Emergency Assistance (EA) benefits, meaning that the family is subject to the 12-Month Rule under 106 CMR 309.040 (A) (4) and budget line item 7004-0101.¹ In summary:

- HB is not an EA benefit subject to the 12-Month Rule, even though EA eligibility is one element of HB eligibility.
- Former HB HA recipients who apply for EA will *generally* be eligible for EA unless they received an HB HA termination for cause.
- Former EA recipients who received HB RA or HA as a means of exiting from EA emergency shelter, however, are subject to the 12-Month Rule.

Discussion

It is important to note that HB is *not* an EA benefit. Each program has its own budget line item,² and its own set of regulations³ and EA also has separate authorization by a stand-alone provision of the General Laws, G.L. c. 23B, § 30, that does not apply to HB. EA temporary emergency shelter eligibility is only one of several required qualifications for HB. This is similar to Homelessness Prevention and Rapid Rehousing Program (HPRP) benefits administered by the Department of Housing and Community Development (“DHCD”), where EA eligibility was a requirement for receipt of benefits, but the program is not an EA program. For example, if HB were a form of EA, DHCD would have to provide EA-style court-like hearings pursuant to 106 C.M.R. § 309.070 under G.L. Chapter 23B, § 30 (F). Because HB HA is not EA and there is no statutory or regulatory provision barring a former HB HA recipient from receiving EA, except as outlined below, the 12-Month Rule as stated in line item 7004-0101 and 106 C.M.R. § 309.040 (A) (4), does not apply to bar former HB HA recipients from EA.

¹ “[E]ligibility for shelter by an otherwise eligible family shall not be impaired by prior receipt of any *non-shelter* benefit.” 2011 Mass. stat. ch. 171, § 6, line item 7004-0101 (emphasis added).

² Line item 7004-0101 for EA; line item 7004-0108 for HB.

³ 106 C.M.R. c. 309 for EA and 760 C.M.R. c. 65 for HB.

There are several reasons that former HB HA recipients are not be subject to the 12-Month Rule:

1. The HB statute specifically provides that a termination of certain families from HB HA for cause results in a 12-month bar from both HB and EA benefits.⁴ A family terminated from HB rental assistance (RA) for cause is subject to a 24-month bar from HB or EA assistance.⁵ A family terminated from HB RA for exhaustion of benefits after 36 months of RA is only barred from HB for 12 months, but not from EA.⁶

The clear implication for the statute is that there is no bar to subsequent receipt of HB or EA when a family leaves the HB program without cause, but rather because of exhaustion of benefits or, in the case of a partial HB HA grant (less than \$4000), if the partial grant is exhausted and a further grant would not assist the family in remaining housed.⁷ To deny an EA applicant benefits under the 12-Month Rule because he or she received a no-cause termination from HB HA (or more likely, exhausted HB HA benefits and never received a formal termination) would contradict the legislative mandate that a 12-month bar from receipt of EA benefits should only apply in cases of for-cause termination from HB HA.

By statute the 12-month bar due to a for-cause termination from HB HA only applies in cases where the HB HA benefits were to be used for rent arrears, utility charges or extraordinary medical bills.⁸ To determine the purposes for which the HB HA grant was made, the Homeless Coordinator should review the HB Form Notice of Level and Type of Benefits, which is

⁴ 2011 Mass. stat. c. 171, § 7, line item 7004-0108 (“[A] family that . . . did not make a good faith effort to follow their housing stabilization plan during the term of their assistance shall be ineligible for benefits pursuant to said section 30 of said chapter 23B [EA] and short-term housing transition benefits [HB] for a period of no more than . . . 12 months for a family that received assistance only for rent arrears, utility charges or extraordinary medical bills . . .”). See 760 C.M.R. § 65.03 (4) (b) (2). By statute, there are certain exceptions applicable only to families with a head of household who is over 60 years of age or disabled. 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (5). Please contact the Legal Office for guidance if one of these exceptions might apply.

⁵ 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (4) (b) (1). By statute, there are certain exceptions applicable only to families with a head of household who is over 60 years of age or disabled. 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (5). Please contact the Legal Office for guidance if one of these exceptions might apply.

⁶ 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (3). By statute, there are certain exceptions applicable only to families with a head of household who is over 60 years of age or disabled. 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (5). Please contact the Legal Office for guidance if one of these exceptions might apply.

⁷ The way that the statute reads, even if the HB HA termination is for cause, the family remains eligible for EA, *unless* the HB HA benefit was for rent arrears, utility charges or extraordinary medical bills. 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (4) (b) (2).

⁸ 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (4) (b) (2).

available from the HB provider. If an HB HA recipient has exhausted HA benefits without a reasonable explanation, the Homeless Coordinator should refer the case to the HB provider for investigation for a possible for-cause termination from HB HA, which could result in a 12-month bar from HB and EA assistance.⁹

2. As stated above, HB is not an EA benefit. However, even if HB HA were an EA benefit, HB HA would be in the nature of a housing assistance program (HAP) under 106 C.M.R. § 309.039 (for example, both FlexFunds and the former Department of Transitional Assistance Shelter to Housing program were both administered as HAP benefits). Therefore, the only way that an EA applicant could be denied if HB were a form of EA HAP is if he or she had been terminated from HB HA for failure to cooperate with the HB program, in other words, for cause.¹⁰ A no-cause termination or an exhaustion of benefits would not be evidence of failure to cooperate with the HB program, and therefore, it would not be a reason to bar the family from EA under the 12-Month Rule.

3. As stated above, HB is not an EA benefit. However, even if HB HA were an EA benefit, the budget language applicable to the 12-Month Rule prevents a family from receiving EA *shelter* benefits more than once in a 12-month period.¹¹ Families can receive either HB RA or HB HA, but not both, within the same year from initial receipt of HB benefits. A new family entering the HB program after October 28, 2011, can receive only HB HA, not HB RA. HB HA is intended to help with non-rental expenses, such as utility arrearages, extraordinary medical expenses, moving costs, deposits for first and last months' rent and security deposit, furniture purchases, transportation, or assistance for a primary tenant to let the HB family continue to stay with him or her. Therefore, HB HA could not be an EA *shelter* benefit.. Only EA-funded emergency shelters and rental assistance, such as Flex Funds, are forms of shelter benefits.¹² Therefore, even if HB were a form of EA, the 12-Month Rule would not apply because the benefits were not in the nature of EA *shelter* benefits.

Screening Former HB HA Recipients

Note that HB does not issue a termination notice to HB HA recipients who have exhausted their benefits. In cases where an EA applicant received a partial HB HA grant (less than the full \$4000 in one year) and later applies for EA, the Homeless Coordinator should refer the applicant to HB provider staff to determine if the applicant can possibly remain housed with an additional HB HA grant. Only if the applicant family cannot remain housed with an additional HB HA grant (up to \$4000 in a year from initial receipt of benefits), should the applicant receive EA, if the family is otherwise eligible. If the applicant family can remain housed with an additional HB HA grant and still wishes to complete an EA application, the EA application should be denied on the basis of feasible alternative housing.

⁹ 2011 Mass. stat. c. 171, § 7, line item 7004-0108; 760 C.M.R. § 65.03 (4) (b) (2).

¹⁰ 106 C.M.R. § 309.040 (A) (4) (c) (“An EA household is not eligible to receive EA benefits more than once in a 12-month period unless . . . (c) the EA benefit received was housing assistance program services and the EA household cooperated with the services in the housing assistance plan . . .”).

¹¹ 2011 Mass. stat. c. 171, § 6, line item 7004-0101.

¹² In other words, a shelter benefit provides a roof over a family. A shelter benefit can provide any form of alternative feasible housing for a family, not only shelter in a emergency shelter facility.

Families who have exited from emergency shelter with HB HA are subject to the EA 12-Month Rule under 106 C.M.R. § 309.040 (A) (4),¹³ unless one of the exceptions to the 12-Month Rule applies. The 12-month period begins on the last day that emergency shelter was paid for by DHCD. Therefore, if they exhaust their \$4000 of HB HA benefits in less than 12 months from the time of emergency shelter exit, they cannot receive EA again until the 12-month anniversary of their EA emergency shelter exit date.

Former HB HA recipients entering EA after October 28, 2011, are new EA entrants. Therefore, like all other families who entered EA after October 28, 2011, they are ineligible for HB HA or HB RA as a means of exiting EA emergency shelter. Thus, once a former HB HA recipient enters EA shelter, the family has forfeited any further HB eligibility.

Conclusion

HB is not an EA benefit and therefore not subject to the EA 12-Month Rule. However, families who have used HB and are terminated for cause from HB are subject to a 24-month bar from EA and HB if they received RA and a 12-month bar from EA and HB if they received some forms of HA. For questions regarding the effect of an HB termination, please check with the Legal Office..

¹³ Families who entered the EA emergency shelter system on or before October 28, 2011, have a choice, if they are exiting emergency shelter through the assistance of HB, of either HB RA or HB HA. Families who enter the EA emergency shelter system after October 28, 2011, are not eligible for HB assistance as a resource for exiting emergency shelter.