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*Executive Office of Health and Human Services*  
**Department of Transitional Assistance**  
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**Field Operations Memo 2006-4**  
**January 11, 2006**

**To:** Transitional Assistance Office Staff

**From:** *CD* Cescia Derderian, Assistant Commissioner for Field Operations

**Re:** EA – Frequently Asked Questions Regarding EA Eligibility

**Introduction**

In an effort to achieve consistency as it relates to processing Emergency Assistance applications, as well as to ensure program integrity on a statewide level, a series of frequently asked questions relative to EA eligibility has been developed. The following questions and answers are intended to clarify some of the difficult EA regulations that may cause confusion for field staff.

This memo addresses the following questions:

- Q1. When is verification of a formal eviction required?
- Q2. What if instead of an eviction, the legal paper presented was an agreement for judgment?
- Q3. When is a verification of a formal eviction (or agreement for judgment) not required?
- Q4. What about the situations and verifications listed in the EA regulations? Don't we need proof of eviction, fire, health or safety threat assessments?
- Q5. What exactly do we mean by feasible alternative housing?
- Q6. When can a person be denied for becoming homeless for the purpose of becoming eligible for EA?

**Required Verification For a Formal Eviction**

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- Q1. *When is verification of a formal eviction required?***
- A1.** It is required when an applicant states the reason for homelessness is because the family was evicted from their apartment. The Department asks for this verification for two reasons:
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**Required  
Verification  
For a Formal  
Eviction  
(continued)**

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1. To determine if they have actually been evicted. Sometimes people have been told by their landlords that they have to leave right away but that is not true. You need to find out if the family is still able to stay in the apartment because only the notice to quit has been issued but the eviction has not yet been executed. In this instance, the Department should deny the family EA shelter benefits, but should refer them to EA HAP services so that, prior to execution of the eviction, HAP can work with them to try to keep the family housed or to re-house them before they need shelter services; and
  2. If an eviction has actually been executed, what was the reason for eviction? Was it for criminal activity, non-payment of rent in a subsidized unit, destruction of property? This information would indicate whether the family was eligible for shelter at all.
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**Agreement  
for Judgment**

***Q2. What if instead of an eviction, the legal paper presented was an agreement for judgment?***

- A2.** Agreements for judgment should be treated the same way as an eviction for purposes of determining whether an applicant was forced to leave the apartment for cause, i.e., nonpayment of rent, destruction of property or criminal activity. An agreement for judgment is just another way to resolve an eviction case prior to the execution of judgment. Therefore, if an agreement for judgment was signed by both the landlord and the applicant and the underlying reason for the dispute was nonpayment of rent from subsidized or public housing, destruction of property or criminal activity, the applicant would be ineligible for EA shelter benefits.

The fact that an EA applicant signed an agreement for judgment should never be used as verification that an applicant rendered himself or herself homeless for the purpose of receiving EA. Again, the agreement is a legal mechanism to dispose of the court case without a judicial finding, i.e., an execution of judgment; it does not constitute a voluntary giving up of tenant's rights as is cited in 106 CMR 309.040(B)(1) .

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**Verification is  
Not Required**

***Q3. When is a verification of a formal eviction (or agreement for judgment) not required?***

**A3.** It is not required when an applicant has left a place where he or she has no rights of tenancy. Generally, a person who is staying with someone, but is not on the lease or is not the owner, has no rights to that housing. The person is only allowed to be there at the owner's or leaseholder's permission. Therefore, if the owner or tenant has required the person to leave, the person would be trespassing if he or she refused. Because the applicant in these circumstances has no summary process rights, the Department cannot require notice of a formal eviction as it simply does not apply to the situation. The Department can, however, verify whether the owner or tenant that the applicant is staying with really has asked the applicant to leave. This can be done via collateral contact or through other documentary verifications.

**Note:** This is different from a "tenancy at will" situation where the tenant does not have a lease but does have a right to the tenancy and to certain rights of prior notice of termination of tenancy.

If you are having difficulty determining what type of tenancy is presented and what verifications are required, please call the Legal Division's Attorney of the Day at 617-348-8520.

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**Collateral  
Contact as  
Verification**

**Q4. *What about the situations and verifications listed in the EA regulations? Don't we need proof of eviction, fire, health or safety threat assessments?***

**A4.** The EA regulations have been revised to ensure that field staff know that another verification for proving the homeless situation can be used when none of the originally listed situations in 309.040(A)(5)(a) through (f) describe the reason for the family's homelessness.

Generally, when a family has no place to live, their current living situation constitutes an obvious threat to the family's health and safety. You should:

- Discuss with the family what caused their homelessness. If the reason for homelessness is based on one of the shelter ineligibility reasons (309.040(B)), the family is not eligible for shelter.
- If the reason for homelessness is NOT based on one of the shelter ineligibility reasons, and the family cannot verify a fire, an eviction, a threat to health or safety, mistreatment, or severe medical condition, then the family may submit other documents or information from a third-party collateral contact to verify:
  - the family's current living situation; and
  - if applicable, that the prior living situation is no longer available to them.

**Example:** A family is homeless after being told that they no longer can stay with her sister and family. There is no formal eviction. The sister confirms in a letter that the family may not return to her home. This homeless family does have a threat to health and safety and is eligible for shelter benefits if otherwise EA-eligible.

**Example:** A 20-year old mother states she and her child are homeless because her mother has told them to leave. There is no formal eviction. By using either the mother's letter or by contacting the mother, you find out that the 20-year old and her child can stay with the mother. This family has feasible alternative housing, there is no threat to her health and safety and the family is not eligible for shelter benefits.

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**Collateral  
Contact as  
Verification  
(continued)**

**Example:** A 20-year old mother states her landlord told her to leave her apartment because he wanted it for a relative. She left without a formal eviction. She currently is homeless. Either the previous landlord or a third-party collateral contact provides a statement confirming that she did live at that address and the landlord did tell her to move. This homeless family does have a threat to health and safety and is eligible for shelter benefits if otherwise EA-eligible.

**Example:** The homeless family is sleeping in their car. A third-party collateral contact, such as another social service agency, medical contact, friend, or church contact, provides a statement that the family is homeless and living in their car. The family is able to provide documents or landlord information (that you can verify) to prove they did not lose their prior housing due to eviction for nonpayment of rent, destruction or criminal activity, or any of the other reasons for shelter ineligibility (106 CMR 309.040(B)). This homeless family is eligible for shelter benefits if otherwise EA-eligible.

However, if the family is unable to provide documents or landlord information about their prior living situation or had been evicted for nonpayment of rent in public or subsidized housing or any other ineligibility reason listed in 309.040(B), the family is not eligible for shelter benefits.

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**Feasible  
Alternative  
Housing**

**Q5. *What exactly do we mean by feasible alternative housing?***

- A5.** Feasible alternative housing means any currently available living situation including temporary housing with relatives, friends, or charitable organizations. This is an important concept because it underlines the fact that EA shelter is a program of last resort. However, before an EA applicant is denied for having feasible alternative housing, it must be made certain that the living situation is **currently available** as opposed to was available to them.

**Example:** A family leaves their apartment because the landlord tells them they are being evicted. They leave the apartment immediately, before either the eviction has been executed or an agreement of judgment has been obtained. They stay with a friend for a week, the friend makes them move out (no longer has feasible alternative housing), and then they apply for EA. They no longer have access to their old apartment as they gave up their keys to the landlord when they left. They do not have feasible alternative housing because the original apartment is no longer available to them. There is no other family, friends or organizations they can stay with; therefore they lack feasible alternative housing.

The notice to quit as to why they were evicted must still be verified. The family may be ineligible because of the reason they were asked to leave but they are not ineligible because they have feasible alternative housing. If the facts were different and the apartment was still unoccupied and the applicant could go back, then a denial based on feasible alternative housing would be appropriate.

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**Becoming  
Homeless for  
Purpose of  
EA-Eligibility**

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**Q6. *When can a person be denied for becoming homeless for the purpose of becoming eligible for EA?***

**A6.** Some advocates have raised concerns that EA regulation 106 CMR 309.040(B)(1) is being applied incorrectly resulting in inappropriate shelter denials. This regulation requires denial of an EA shelter application if the family became homeless for the purpose of making itself eligible for EA. The rationale behind this regulation is to prevent fraud by individuals who render themselves homeless to receive cost-free housing (more commonly, some believe they will receive preference for housing subsidies if they are considered “homeless”).

For this regulation to apply, you must show two things:

- 1) the family became homeless, i.e., has no feasible alternative housing; and
- 2) the family did so for the purpose of receiving EA shelter benefits.

Because the intent of the applicant is at issue, i.e., did the family “purposefully” become homeless to receive shelter benefits, it is often hard to prove that the regulation applies. If you suspect that the regulation may apply, you must first be able to show that the applicant knew about EA. Always ask how an applicant found out about the EA program. If he or she did not know about the program prior to becoming homeless, this regulation simply will not apply.

If you can show that the applicant did know about EA, then you must determine whether the family became homeless for the specific purpose of receiving EA shelter. A parent who voluntarily left a housing arrangement because of domestic violence, poor conditions, medical issues or an unaffordable rent increase has not rendered themselves homeless for the purpose of receiving EA. If you think that these alleged motivations are merely a pretext, you should ask for supporting documentation or verification.

Moreover, a situation where an individual appears to have shown extremely poor judgment by leaving a previously available living arrangement to move to Massachusetts (or even left previously available housing within Massachusetts) without a sufficient plan for housing would not fall under this regulation. For this regulation to apply, you must be able to document that the intention to reside in EA shelter motivated the family to leave its previous housing.

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**Becoming  
Homeless for  
Purpose of  
EA-Eligibility  
(continued)**

It should be recognized, however, that you can draw inferences from a person's behavior.

**Example:** A former EA recipient (who therefore knew about EA), applies for shelter immediately after leaving her New York apartment and claims that the only reason she left was that she was behind in rent. You call the landlord and find out that there was, in fact, no rent arrearage. Thus, it could logically be inferred that she left her apartment for the specific reason of becoming eligible for EA. In drawing inferences, you should look at the individual's past shelter history, the timing of the application (the closer the EA application is to when he or she became homeless, the more likely the regulation would apply) and if there is support for the individual's stated rationale.

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**Questions**

If you have any questions, please have your Hotline designee call the Policy Hotline at 617 348-8478.

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