

U.S. Department of Health and Human Services, Office for Civil Rights
Complaint

filed by

Welfare Law Center, Urban Justice Center, MFY Legal Services, and
Brooklyn Legal Services Corp. A

on behalf of

People with Psychiatric Disabilities Who Are Applicants and Recipients
in the Family Assistance and Safety Net Assistance Programs

against

The New York City Human Resources Administration

APRIL 2, 2002

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A. APPLICATIONS AND APPOINTMENTS RELATED TO ELIGIBILITY.

1. The Length and Nature of the New York City Human Resources Administration’s Benefits Application Process Denies Individuals with Psychiatric Disabilities an Equal and Meaningful Opportunity to Apply for Public Assistance and Medicaid.

The New York City Human Resources Administration’s (“HRA’s”) exceedingly complex, multi-stage application process,¹ violates the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1974 (“Section 504”) by denying individuals with psychiatric disabilities an equal and meaningful opportunity to participate in and benefit from New York State’s cash assistance programs.² Inasmuch as the joint application is used to apply for Medicaid for those persons who seek Medicaid while applying for public assistance, the challenged practices also deny individuals with psychiatric disabilities an equal and meaningful opportunity to participate in and benefit from New York State’s Medicaid program. The application process also violates the ADA and Section 504 prohibition on administering the public assistance programs in a manner that has a discriminatory effect.³ OCR Guidance on the application of the ADA and Section 504 to TANF programs states that modifying an application process and application form would help ensure that individuals with learning disabilities and

¹ The New York City Public Advocate has called the public assistance benefits application process in New York City a “multi-borough bureaucratic nightmare.” New York City Office of the Public Advocate, *From Welfare to Work: Getting Lost Along the Way* 14 (1997).

² 28 C.F.R. § 35.130(b)(1)(ii); 45 C.F.R. §§ 84.4(b)(1)(ii); 84.52(a)(2); *Alexander v. Choate*, 469 U.S. 287 (1985). New York State provides cash public assistance through two programs: the Family Assistance program and the Safety Net Assistance program. These programs are described in Appendix B and are referred to collectively as “public assistance programs.”

³ 28 C.F.R. § 35.130(b)(3)(i); 45 C.F.R. § 84.4(b)(4)(i); U.S. Dep’t of Health and Human Serv., Office of Civil Rights, *Prohibition Against Discrimination on the Basis of Disability in the Administration of Temporary Assistance to Needy Families (TANF)*, § D.1 (Jan. 2001) (“OCR Guidance”) available at www.hhs.gov/ocr/prohibition.html. The U.S. Dep’t of Justice has also stated that welfare agencies must simplify a lengthy and complex application process for public benefits as a reasonable modification to ensure that otherwise eligible clients with mental disabilities have access to those benefits. U.S. Dep’t of Justice, *ADA Title II Technical Assistance Manual*, § II-3.6100 (1993), available at www.usdoj.gov/ctr/ada/publicat.htm.

mental retardation have equal access to benefits. The same is true for individuals with psychiatric disabilities.

In New York City, as part of the application process, an applicant must:

- Submit an eleven-page application and supporting documentation⁴ at the Job Center⁵ that serves her zip code, which is often far from home;
- Attend an Eligibility Verification Review (“EVR”) appointment located in downtown Brooklyn;
- Attend an appointment in either downtown Manhattan or Brooklyn to obtain an Electronic Payment File Transfer (“EPFT”) card so the applicant can access benefits if the application is approved;⁶
- Attend an employment planning interview at the Job Center;
- Attend a financial eligibility interview at the Job Center;
- Attend a three-day employability assessment conducted by a private company contracted to perform a Skills Assessment and Job Placement;⁷
- Attend up to six weeks of job search;⁸
- Return for another employment planning interview to finish developing an employment plan if she does not find a job during job search;⁹ and

⁴ 18 N.Y.C.R.R. § 351.1(b). HRA uses one joint application for cash assistance, food stamps, and Medicaid. *See* Exhibit A.

⁵ In New York City, the offices responsible for processing public assistance applications and serving public assistance recipients are known as “Job Centers.”

⁶ 18 N.Y.C.R.R. § 383.3.

⁷ New York City Human Resources Administration, Family Independence Administration, *Individualized Employability Assessments and Employability Planning for Family Assistance Recipients and Participants: How to Help Applicants/Recipients Achieve Full-Time Employment and Self-Reliance*, Policy Directive # 99-35RR at 5 (“Policy Directive # 99-35RR”) (Exhibit B.)

⁸ *Id.*

⁹ *Id.*

- Attend a mandatory finger printing appointment.¹⁰

In addition, some applicants must:

- Attend an appointment at the Substance Abuse Case Control program in Manhattan;¹¹ and/or
- Travel to the Office of Child Support Enforcement,¹² which does not have an office in every borough;
- Visit other agencies to obtain documents needed to verify eligibility such as the New York State Department of Labor, the United States Social Security Administration, the New York City Board of Education, and the New York City Bureau of Vital Statistics.

Furthermore, applicants who claim they have a disability that limits their ability to work must:

- Attend many appointments over a four-day period at HS Systems, a private organization under contract with HRA to conduct disability assessments.¹³ HS Systems does not have an office in every borough.

HRA's daunting public assistance application process is exacerbated by practices that discourage applicants from completing the process.¹⁴ Applicants are routinely forced to wait for

¹⁰ 18 N.Y.C.R.R. § 384.

¹¹ *Id.* § 351.2(i).

¹² *Id.* §§ 369.2(b)(1)(iii)(b); 369.7.

¹³ New York City Human Resources Administration, Family Independence Administration, *Expansion of the HS System (HSS) Responsibilities*, Policy Directive # 00-38R at 3 (“Policy Directive #00-38R”) (Exhibit C). HRA has contracted with HS Systems to conduct disability assessments for HRA in the Family Assistance and Safety Net programs and to develop and monitor wellness programs containing rehabilitation plans for individuals with disabilities who receive disability assessments, are found to be ineligible for SSI, and have disabilities that prevent or limit the ability to work. HS Systems contract, Art.1 § 1.3.2A. The current contract between HRA and HS Systems, dated June 28, 2000, is for the period April 1, 2000 through March 31, 2003. A copy of the contract has previously been provided to OCR.

¹⁴ In *Reynolds v. Giuliani*, Judge Pauley in the Federal District Court for the Southern District of New York found that HRA made the benefits application process more

hours and even days at Job Centers to apply for benefits or to see a worker, even when they have a scheduled appointment. Many applicants give up in frustration, or because they do not understand the process. Waiting rooms are crowded, noisy and stressful. Job Centers sometimes lack working bathrooms, water fountains, or places to purchase food nearby. Moreover, HRA provides little information about the process or how long an applicant can expect to wait to be seen.

A variety of problems, including unreasonably high caseloads, poor working conditions, and inadequate training cause low worker morale, which in turn, frequently results in poor treatment of applicants. As difficult as the application process is to navigate for individuals who do not have disabilities, it is an insurmountable obstacle for many individuals with psychiatric disabilities.¹⁵

The complex and burdensome application process is compounded by HRA's failure to inform applicants that help is available for individuals with disabilities who need assistance with the application process.¹⁶ HRA also fails to make specific offers of help to individuals who appear to be having difficulty with the application.¹⁷ Instead, HRA's policy is limited to helping

rigorous after welfare reform and that a variety of practices by HRA staff in the Centers, including turning people away without allowing them to submit applications, pressuring individuals to withdraw applications, and failing to consider whether individuals were eligible for emergency benefits, caused a decline in the number of applications submitted and was a violation of federal Medicaid and food stamp laws. *Reynolds v. Giuliani*, 35 F. Supp. 2d 331 (S.D.N.Y. 1999).

¹⁵ A study by the Bazelon Center for Mental Health Law found that the atmosphere in waiting rooms of government agencies and the attitude of front line agency staff present a significant barrier to individuals with psychiatric disabilities in accessing government benefits and services. The report recommended sensitivity training for staff of government agencies regarding psychiatric disabilities, limiting waiting times, and making other changes to create a more hospitable environment for individuals with psychiatric disabilities seeking services. *Opening Public Agency Doors: Title II of the Americans with Disabilities Act and People with Mental Illness: A Collaborative Approach for Ensuring Equal Access to State Benefit and Service Programs* (Aug. 1995) ("Bazelon Report").

¹⁶ Providing assistance to individuals with disabilities who need assistance with the application process as a result of their disabilities is a reasonable modification under the ADA and Section 504. 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.8(b)(1)(vii). The OCR Guidance states that providing help with filling out applications for TANF benefits would help ensure equal access to these benefits. OCR Guidance §D.2.

¹⁷ Both the ADA and Section 504 require state and local government agencies to provide notice to applicants, recipients and members of the public about these laws and how

applicants fill out the application if they need help because of a disability only when the applicant asks for that assistance.¹⁸

J.V., who attended the Urban Justice Center's legal clinic,¹⁹ typifies many of the problems faced by individuals with psychiatric disabilities who attempt to apply for benefits. J.V., has been diagnosed with schizophrenia, bipolar disorder, a learning disability, and a neurological problem. His symptoms include hearing voices, serious memory problems, twitching, and convulsions. J.V. has described his attempts to apply for and stay on welfare benefits as "horrific" and "a nightmare." Though J.V. has received cash assistance intermittently over the years, he has been unable to keep his case open and has had enormous difficulty navigating the application process when he has tried to reapply for benefits. He has been overwhelmed by day-long waits in Job Centers, large crowds, long lines, and a lack of information about who he was waiting to see.

J.V.'s hospital psychiatrist and social worker notified HRA in writing about J.V.'s psychiatric disability and asked HRA to help J.V. obtain emergency benefits, but HRA provided no help. J.V. could not even figure out how to get carfare from HRA so he could return to HS Systems to pick up his disability assessment. On December 3, 2002, a social work intern from the Urban Justice Center spent four hours with J.V. at the Waverly Job Center trying to help J.V. get emergency benefits because he had no food and only 70 cents in his pocket. After J.V. became increasingly agitated from hours of waiting, the intern told an HRA intake worker that J.V. has a disability and needed to be seen quickly. The worker said J.V. would have to wait. When the HRA worker interviewed J.V. at 7:15 p.m, she said

they apply to the programs and services of the agency. 28 C.F.R. § 35.106; 45 C.F.R. § 84.8(a). See Section E.1 below. Notice of the right to assistance in filling out an application, which is a reasonable modification, should be included in this notice. Targeted offers of help are necessary, and required by the ADA and Section 504, because some individuals, as a result of their disabilities, cannot read consumer education materials or are unlikely to request help.

¹⁸ New York City Human Resources Administration, Family Independence Administration, *The Americans with Disabilities Act (ADA)*, Policy Directive # 99-09 ("Policy Directive # 99-09") at 2 (Exhibit D).

¹⁹ J.V.'s experiences, and those of other individuals advised or represented by the advocates filing this complaint, are described in greater detail in Appendix A.

it was too late to give him emergency benefits and he would have to return the following day. The intern asked if J.V. could have a specific appointment time so he would not have to miss a doctor's appointment already scheduled for the following day. The intake worker said no. The intern asked if HRA made accommodations for people with disabilities during the application process. The worker said no. J.V. couldn't bear the thought of waiting at the Job Center another day and he didn't want to miss his doctor's appointment, so he didn't return to the Job Center.²⁰

Remedy

To address these serious violations of law and to insure fair treatment of applicants with disabilities, OCR should require HRA to undertake a series of corrective measures, including, but not limited to:

- Simplifying its application process;
- Assisting individuals with disabilities with filling out applications;
- Informing all applicants orally and in writing of the right to reasonable modifications in the application process and making targeted offers of help to those applicants who appear in need of assistance;
- Providing help gathering documents; and
- Providing flexibility regarding application requirements.

2. HRA Fails to Provide Reasonable Modifications to Applicants for and Recipients of Public Assistance and Medicaid with Psychiatric Disabilities Who Have Difficulty Attending Appointments.

HRA violates the ADA and Section 504 by failing to provide reasonable modifications in the appointment process to individuals with psychiatric disabilities who need them to have an equal opportunity to apply for and obtain public assistance and Medicaid benefits.²¹ HRA does this by:

²⁰ Exhibit E.

²¹ 28 C.F.R. §§ 35.130(b)(1)(ii), 35.130(b)(7); 45 C.F.R. §§ 84.4(b)(1)(ii), 84.4(b)(1)(vii), 84.52(a)(ii).

- Denying the applications or discontinuing or reducing the public assistance and Medicaid benefits of individuals with psychiatric disabilities who miss appointments without determining whether the individual’s disability contributed to missing the appointment;
- Failing to appropriately refer applicants and recipients with psychiatric disabilities to HRA’s special unit for homebound individuals with disabilities (“Homebound Unit”); and
- Failing to review closed cases and denied applications to evaluate whether non-compliance with a program rule was related to the individual’s disability.

HRA’s actions also violate State regulations that require that local districts to exempt individuals from any eligibility requirements if the individual establishes good cause, which includes having a physical or mental disability that prevents compliance.²² HRA’s actions also directly contradict its own ADA policy, which requires some modifications in appointments, specifically, by providing earlier appointments for those who cannot wait for appointments and by providing home visits through the Homebound Unit.²³

HRA’s failure to provide reasonable modifications in appointments to applicants for and recipients of public assistance and Medicaid frequently results in the loss of basic subsistence benefits and much needed health care to the very vulnerable - individuals with psychiatric disabilities, many of whom have difficulty attending appointments because of memory problems, disorganized thinking, fear of leaving home, fear of public transportation, and profound difficulty waking up for morning appointments.

a. HRA Denies the Applications of Applicants and Discontinues Benefits of Recipients with Psychiatric Disabilities Who Miss Appointments Without Determining Whether the Individual’s Disability Contributed to Missing the Appointment.

HRA’s general practice is to deny the applications and discontinues the benefits of individuals who miss appointments, including individuals with psychiatric disabilities who miss

²² 18 N.Y.C.R.R. § 351.26.

²³ Policy Directive # 99-09 at 2. The Bazelon Report recommended providing flexible appointment policies and limiting waiting times to accommodate individuals with psychiatric disabilities. Bazelon Report at 43-44.

appointments as a result of their disability.²⁴ In *Reynolds v. Giuliani*, the court found that when applicants failed to attend even one of the many appointments required to qualify for benefits, HRA denied their applications.²⁵ HRA routinely reduces or discontinues the assistance of recipients who are late or miss appointments, even when HRA knows or should know that the recipient has a disability that might make it difficult to attend the appointment. While HRA regulations prohibit HRA from taking adverse action on a case if it finds “good cause,” for non-compliance,²⁶ HRA does not review proposed negative case actions to determine whether the individual had good cause on the basis of disability, much less find good cause when individuals with psychiatric disabilities have disability-related reasons for not attending appointments.²⁷

R.M. has paranoid schizophrenia and is homeless. The Urban Justice Center wrote to HRA informing the agency about her psychiatric disability and her difficulty attending appointments. The letter stated that as a result of R.M.’s paranoia, she did not believe the notices sent by HRA were trustworthy and often threw them away. Nevertheless, HRA discontinued her public assistance on at least one occasion because she failed to attend an appointment. On another occasion, when R.M. was applying for public assistance after HRA closed her case was closed, R.M. called HRA to notify the agency that she could not attend an appointment, but no reasonable modification was provided and her application for public assistance and Medicaid was denied.²⁸

A.V. is a rape victim who has been diagnosed with depression. She has panic attacks when she leaves her home. HRA sent A.V. a notice that her cash assistance would be reduced because she failed to attend a work program appointment at HRA.²⁹

²⁴ HRA’s ADA policy requires its workers to give individuals with disabilities who come to Job Centers an earlier appointment or referral to the Homebound Unit if they can’t wait to be seen, but does not require HRA to provide modifications in appointments to those who miss appointments altogether. Policy Directive # 99-09 at 2.

²⁵ *Reynolds*, 35 F. Supp. 2d at 346.

²⁶ 18 N.Y.C.R.R. § 351.26.

²⁷ HRA also denies the applications and closes the cases of individuals who fail to attend appointments at HS Systems, as discussed in Section B.2 (a) below.

²⁸ Exhibit F.

²⁹ Exhibit G.

M.O. suffers from major depression, spinal stenosis and asthma. HS Systems found her temporarily unemployable and HRA instructed her to report to the PRIDE program, a program for individuals with substantial work limitations. She failed to attend the appointment, and HRA sent her a notice that her benefits would be reduced for failing to attend the appointment.³⁰ This violated HRA policy, which requires the PRIDE program to call an individual who does not attend an initial interview or assessment appointment in the PRIDE program, and then to send a letter or conduct a home visit if the phone call is not effective, before sanctioning the individual for non-compliance.³¹

b. HRA Either Fails to Assign Individuals with Psychiatric Disabilities to the Homebound Unit When They Need it Or, When it Does Assign Them, Ignores that Assignment.

Although HRA has a Homebound Unit for individuals who cannot wait for appointments because of disabilities,³² HRA does not offer this reasonable modification to all individuals with psychiatric disabilities entitled to it. Even when HRA agrees to assign an applicant or recipient to the Homebound Unit, it often continues to treat the person as if she had not been assigned, and sends her notices to report to the Center or elsewhere for appointments.

S.W., who has chronic depression and leg ulcers, and receives public assistance for herself, her husband, and their eight children, starkly illustrates this failure. Although the Dekalb Job Center found her eligible for services from the Homebound Unit and a supervisor at the Dekalb Job Center assured S.W.'s attorney on many occasions that this change had been entered into HRA's computer system, over a one year period, HRA sent S.W. seven different notices instructing her to report to the Dekalb Job Center or to HS Systems, and she and her husband received a total of four notices stating that S.W.'s, or the entire family's, public assistance benefits would be discontinued because she failed to attend these appointments. After S.W. received the first few notices, her attorney contacted the administrator for the Dekalb Job Center to ask why S.W. was not being treated as if she was homebound. The administrator promised to fix the problem, but nothing changed.

³⁰ Exhibit H.

³¹ New York City Human Resources Administration, Family Assistance Administration, *PRIDE 2000*, Policy Directive # 99-90 at 8-11. (Exhibit I).

³² Policy Directive # 99-09 at 2.

Even after S.W. appealed the discontinuances and won a fair hearing, HRA continued to send S.W. appointment notices, rather than serving her through the Homebound Unit. S.W. currently has another fair hearing pending on the issue.

D.M. has multiple, severe psychiatric disabilities that make her afraid to leave her home, use public transportation, be in crowded places, and use elevators. Nevertheless, HRA requires her to return to HS Systems every three months to be re-evaluated. These evaluations are very difficult for D.M. She takes medication to control her anxiety, cries before each trip, and barely makes it through the process. Although the Social Security Administration found D.M. to be sufficiently disabled to qualify for home visits to determine her eligibility for SSI benefits, HRA has never offered or provided this modification to her.

HRA's failure to properly utilize the Homebound Unit is caused, in part, by computer system limitations.³³

c. HRA Fails to Review Discontinuances of Benefits and Denied Applications to Evaluate Whether the Individual's Disability Contributed to the Noncompliance.

HRA's ADA policy also requires HRA to review discontinuances of benefits and denied applications when an individual disagrees with the decision, in order to evaluate whether the discontinuance or denial was related to the individual's disability;³⁴ HRA, however, does not conduct such reviews. There is no indication that HRA conducted this review for any of the individuals mentioned in Section A.2(a) above.

Moreover, even if such a review were to take place, HRA ADA policy does not require HRA to provide the individual with reasonable modifications or support services to address the barrier that caused the infraction to prevent it from occurring again.

³³ A supervisor at the Dekalb Job Center informed an attorney at Brooklyn Legal Services Corp. A that the computer rejected the code for homebound status for S.W. In connection with another client, an Administrative Assistant to the Director at the Dekalb Job Center informed Brooklyn Legal Services Corp. A that the computer system is not programmed to deal with applicants or recipients in the Homebound Unit when the household has income other than public assistance.

³⁴ Policy Directive # 99-09 at 2.

Remedy

To address these violations of law, OCR should require HRA to:

- Adopt and comply with a flexible appointment policy that avoids denying applications or discontinuing public assistance for failure to attend one or more appointments;
- Contact applicants and recipients with known or suspected disabilities who did not attend one or more appointments to find out whether the reason they did not attend was related to a disability, to offer screening and assessment if appropriate, and to offer reasonable modifications and support services to facilitate future compliance;
- Not deny applications or discontinue public assistance where the failure to attend an appointment was related to HRA's failure to identify and provide reasonable modifications for an individual with a disability;
- Provide adequate notice to applicants and recipients about the Homebound Unit and the right to request this modification;
- Make the computer changes necessary to provide the Homebound Unit to those who qualify for it; and
- Provide the staff training necessary to ensure that individuals who qualify for the Homebound Unit can obtain this reasonable modification.

B. DISABILITY AND EMPLOYABILITY SCREENING AND ASSESSMENT

1. HRA Does Not Screen Applicants and Recipients to Identify Possible Psychiatric Disabilities.

HRA violates the ADA and Section 504 by failing to screen applicants for and recipients of public assistance and Medicaid for psychiatric disabilities. This screening is needed to identify individuals who need in-depth disability assessments for psychiatric disabilities, which in turn are necessary to provide appropriate work activities and work exemptions, as well as to identify the need for reasonable modification and support services. The failure to adequately screen for psychiatric disabilities is a method of program administration with a discriminatory effect³⁵ and it denies people with psychiatric disabilities an equal or meaningful opportunity to participate in

³⁵ 28 C.F.R. § 35.130(b)(3)(i); 45 C.F.R. § 84.4(b)(4)(i).

and benefit from TANF programs.³⁶ OCR Guidance makes clear that TANF programs must conduct an initial screening to identify possible disabilities for those who want to be screened, using trained staff and screening tools that have been “properly validated.”³⁷

HRA’s failure to screen occurs first during the application process. HRA’s public assistance and Medicaid application form does not include a single question designed to identify psychiatric disabilities. Rather, it asks applicants only if they have a *medical* condition which limits their ability to work.³⁸ This question not only excludes many psychiatric disabilities, but is likely to discourage many applicants from disclosing *any* disability, because applicants may see this question and assume that if they say they are unable to work, they will not get benefits. The application does not explain that by disclosing a disability, the applicant will not decrease the chance of receiving benefits, and may in fact be exempt from work requirements, entitled to reasonable modifications that make it possible to work, or other reasonable modifications. Unless HRA informs applicants about the advantages of disclosing a disability, applicants will not be able to make an informed decision about whether to disclose a disability.³⁹

F.B. suffers from severe psychiatric disabilities, including paranoid schizophrenia, chronic depression and agoraphobia, yet he answered “no” to the question on the public assistance application form asking whether he had a medical condition that limits his ability to work because he thought answering “yes” would make it more difficult to get benefits since he would be admitting he has trouble working. Despite his severe and apparent disabilities, which should have been obvious to anyone who took the time to interview him, F.B. was not referred to HS Systems for a disability assessment.

³⁶ 28 C.F.R. § 35.130(b)(1)(ii); 45 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2); *Alexander*, 469 U.S. at 301. In the Letter of Findings in *Ramos v. McIntire*, (OCR Complaint No. 01-98-3055) (decided Jan. 19, 2001), OCR found that the failure of the Massachusetts Department of Transitional Assistance to screen for learning disabilities denied people with learning disabilities an equal opportunity to participate and benefit from the agency’s programs. Letter of Findings, available at www.masslegalservices.org/OCR-to-McIntire.pdf.

³⁷ OCR Guidance § D.1

³⁸ Exhibit A.

³⁹ U.S. Dep’t of Health and Human Serv., Administration on Children and Families and Office of Assistant Secretary for Planning and Evaluation, *Screening and Assessment in TANF/Welfare-to-Work: Ten Important Questions TANF Agencies and Their Partners Should Consider* 35 (March 2001)(“Ten Important Questions”) (discussing the importance of explaining to individuals in welfare programs the advantages of disclosing a disability), available at www.urban.org/pdfs/screening_and_assessment_TANF-WtW.pdf.

R.M., who has paranoid schizophrenia and is homeless, has very little insight into her illness, and therefore does not tell anyone that she has a disability. HRA found her employable and gave her a workfare assignment without ever referring her for a disability assessment, presumably because HRA did not screen for psychiatric disabilities during the application process. R.M.'s advocate provided HRA with documentation of R.M.'s psychiatric disability and persuaded HRA to exempt her from work requirements. Later, however, when her case was closed and she reapplied for benefits, HRA found R.M. employable without referring her for a disability assessment, even though HRA already knew about her psychiatric disability.⁴⁰

HRA also fails to conduct disability screening of recipients during periodic eligibility recertification. Instead, recipients are provided with a form that mirrors the application and are, once again, asked whether they have a *medical* condition that would limit their ability to work, but not whether they have a psychiatric disability.

Remedy

OCR should:

- Require that HRA :
 1. Screen applicants for psychiatric disabilities during the application process and recipients at recertifications of eligibility;
 2. Use appropriate screening tools validated for use with TANF applicants and recipients;
 3. Provide oral and written information on the benefits of disability screening and assessment, as well as the consequences of failing to be screened and assessed; and
 4. Refer individuals whose screening indicates a possible psychiatric disability that may affect their ability to work or the need for reasonable modifications or supportive services, as well as those who request a psychiatric assessment, for an in-depth voluntary disability assessment.
- OCR should create a work group comprised of OCR staff, HRA staff, staff of other relevant City and State agencies, the advocates filing this complaint, other relevant advocates, and medical and mental health professionals to hear from experts

⁴⁰

Exhibit F.

and identify screening tools and protocols appropriate to identify whether applicants for and recipients of public assistance programs may have a psychiatric disability and should be referred for a voluntary mental health assessment conducted by qualified professionals. Work group members must be mutually agreed upon by HRA and the advocates filing this complaint. Members should have the right to review drafts of protocols and policies and comment in writing before policies and protocols are finalized.

2. HRA Does Not Provide Reasonable Modifications to Individuals with Psychiatric Disabilities in the Disability Assessment Process.

HRA violates the ADA and Section 504 by failing to provide, or ensure that HS Systems provides, reasonable modifications in the disability assessment process.⁴¹ As the OCR guidance makes clear, “[i]t is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal opportunity to benefit from . . . [] . the assessment process.”⁴² To have this equal opportunity, some individuals with disabilities need reasonable modifications. HRA violates its obligation to provide reasonable modifications in the following ways:

- HRA does not provide reasonable modifications for HS Systems appointments;
- HRA does not help, or require HS Systems to help, people with disabilities gather medical documentation;
- HRA discourages applicants and recipients with disabilities from bringing someone with them to the HS Systems assessment even when necessary for a disability-related reason;
- HRA fails to provide reasonable modifications to individuals with disabilities in wellness programs operated by HS Systems; and
- HRA fails to provide other reasonable modifications in HS Systems services.

⁴¹ 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

⁴² OCR Guidance § D.1.

a. HRA Does Not Provide Reasonable Modifications for HS Systems Appointments.

HRA is responsible for ensuring that HS Systems complies with the ADA and Section 504 in the services it provides to HRA’s clients as part of its public assistance programs.⁴³ According to the OCR Guidance, “contractual and financial relationships do not eliminate TANF agencies’ responsibility to ensure that TANF beneficiaries are not subjected to disability-based discrimination, even if such discrimination is more directly the result of unlawful treatment by TANF contractors and vendors.”⁴⁴

HRA violates the ADA and Section 504 by failing to provide flexibility in HS Systems appointments when required as a reasonable modification and by not requiring HS Systems to provide this flexibility.⁴⁵ Many individuals with disabilities who can not come to an HS Systems appointment and need to change the appointment have no way to do so, because many HS Systems appointment notices do not have a phone number to call to reschedule the appointment. Moreover, these notices convey the message that individuals are not entitled to any reasonable modifications in the appointment process by stating:

FAILURE TO KEEP THIS APPOINTMENT OR COOPERATE WITH STATE AND FEDERAL EMPLOYMENT RULES MAY RESULT IN THE DISCONTINUANCE OR REDUCTION OF YOUR PUBLIC ASSISTANCE AND FOOD STAMP BENEFITS.⁴⁶

When an applicant or recipient misses an HS Systems appointment, neither HRA nor HS Systems contacts the individual to find out whether there was a disability-related reason she did not attend, to reschedule the appointment, or to offer reasonable modifications to facilitate future attendance. Instead, HRA’s policy is to deny the application or discontinue public assistance for the alleged failure to cooperate with the assessment process.⁴⁷

⁴³ Many ADA requirements apply to government programs and services provided indirectly by private organizations under contractual, licensing or other arrangements. 28 C.F.R. §§ 35.130(b)(1), (3). Section 504 applies to programs and activities receiving federal financial assistance, including federal TANF funds, regardless of whether those programs and activities are provided by government agencies or private contractors.

⁴⁴ OCR Guidance § D.1.

⁴⁵ 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

⁴⁶ Exhibit J.

⁴⁷ Policy Directive # 00-38R at 13-15.

While HRA regulations prohibit HRA from taking adverse action on a case if it finds “good cause,” for non-compliance,⁴⁸ neither HS Systems nor HRA reviews the proposed adverse actions related to missed HRA appointments to determine if there was good cause.

Several examples highlight the flagrant violations of law:

J.V.’s psychiatric disabilities are so severe that he is unable to navigate even simple HRA procedures. Yet, when he was referred to HS Systems, he was turned away because he arrived late for a 7:30 a.m. appointment. J.V. returned to HS Systems but never completed the disability assessment because he was confused about what he was supposed to do to complete the assessment process and how to get carfare from HRA so he could return to HS Systems. No reasonable modifications were provided to him, even though HRA knows J.V. has a psychiatric disability because his psychiatrist and social worker wrote to HRA informing the agency about J.V.’s disabilities.⁴⁹

M.F.B.,⁵⁰ who has an anxiety disorder, panic attacks and claustrophobia, could not attend his appointment at HS Systems because HS Systems would not accommodate his elevator phobia by allowing him to use the stairway to get to the appointment. HRA sent him an adverse notice because he did not attend the appointment. HRA knew about M.B.’s disability, because he had told his HRA worker, who wrote a letter to HS Systems informing them about it and requesting reasonable modifications.⁵¹

M.B., who has been diagnosed with delusional disorder and major depression, missed an appointment at HS Systems because she was afraid to leave her house and use public transportation. M.B. and her daughter tried to call to reschedule the appointment, but they were unable to reach anyone. A few days later, when M.B.’s daughter was able to coax M.B. into going to HS Systems, security guards would not allow M.B. and her daughter into the HS Systems offices

⁴⁸ 18 N.Y.C.R.R. § 351.26.

⁴⁹ Exhibit E.

⁵⁰ This individual is referred to as “M.F.B.” to distinguish him from another individual with identical first and last initials whose experiences are described in Appendix A.

⁵¹ Exhibit K.

to explain the situation because she did not have an appointment. M.B.'s public assistance was reduced due to her failure to attend the appointments.⁵²

b. HRA Does Not Help, or Require HS Systems to Help, People with Disabilities Gather Medical Documentation.

HRA violates the ADA and Section 504 by failing to assist applicants or recipients with psychiatric disabilities who need help gathering medical documents to present to HS Systems, when they need this help as a reasonable modification, and failing to require HS Systems to provide this assistance.⁵³ State law requires applicants and recipients to submit all medical documents concerning their physical and/or psychiatric limitations to HS Systems within four business days after the assessment is conducted,⁵⁴ and prohibits consideration of any medical documents submitted after this deadline.⁵⁵ Many individuals with psychiatric disabilities are unable to make multiple phone calls or travel to doctor's offices and hospitals to gather documents within this time frame. HRA's one allowance for individuals who fail to submit documents on time is an exception for good cause,⁵⁶ but HRA does not require HS Systems to inform individuals of this exception and does not inform individuals itself. Moreover, in violation of the ADA and Section 504, HRA does not require HS Systems to help individuals gather these documents. Without help, some individuals are unable to gather the documents even if they are given additional time.

c. HRA Discourages Applicants and Recipients from Bringing Anyone With Them to the HS Systems Assessment Even When They Need to for a Disability-Related Reason.

HRA violates the ADA and Section 504 by discouraging applicants and recipients with disabilities from bringing anyone with them to the HS Systems assessment, even when they need to bring someone to have an equal and meaningful opportunity to participate in and benefit from the assessment process.⁵⁷ Many applicants and recipients with psychiatric disabilities need a

⁵² Exhibit L.

⁵³ 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

⁵⁴ Soc. Serv. Law § 332-b(2)(b).

⁵⁵ *Id.*

⁵⁶ 18 N.Y.C.R.R. § 351.26.

⁵⁷ 28 CFR § 35.130(b)(1)(ii); 45 C.F.R. §§ 84.4(b)(1)(ii); 84.52(a)(2); *Alexander*, 469 U.S. at 301.

friend or family member to accompany them to the disability assessment because they are afraid to travel or wait alone, or need help getting organized, interacting with HS Systems staff, or providing relevant information. Although HRA requires all HS Systems medical facilities to have “sufficient size to accommodate all individuals scheduled for initial assessments, monitoring visits and follow-up visits, in addition to children, friends, interpreters and/or any others who may accompany them so that no individual will have to wait outside the facility,”⁵⁸ HRA’s notices for HS Systems appointments actively discourage people from bringing anyone with them to the assessments by stating: “*You are requested not to bring other people with you to your examination as there is limited seating in the reception area at the HS Systems office.*”⁵⁹ The notices do not mention any exceptions for individuals with disabilities who need someone to accompany them and many notices lack a number to call to request an exception. At a minimum these notices discourage some individuals with psychiatric disabilities who need to bring someone with them to the appointment from doing so. In some cases it makes it impossible for individuals with psychiatric disabilities to obtain disability assessments, and as a result, to obtain benefits.

D.M., who has been diagnosed with depression, agoraphobia, claustrophobia, and several physical problems, is required by HRA to travel to HS Systems every three months for an assessment to prove that she is still unable to work. These trips are a grueling experience for D.M. She cries uncontrollably before each trip and has to take medication to control her anxiety to make it through the assessment process. D.M.’s husband always accompanies her to HS Systems, which may be why she is able to show up at all,

⁵⁸ New York City Human Resources Administration, Family Independence Administration, Request for Proposals, Title: Medical Examinations For Employability Assessments, at 8 (June 19, 1999). The Request for Proposals is incorporated by reference into the HS Systems contract. HS Systems contract, Art.1; Art. 1 § 1.4.1. The contract has several other provisions to address overcrowding and waiting times for appointments, all of which should also decrease crowding in waiting rooms. *See* Art. 1 § 1.4.3(i) (stating that scheduling should occur to avoid overcrowding and confusion); Art. 1 § 1.4.3 (iii) (limiting waiting times to 30 minutes from the time of the scheduled appointment for individuals who arrive on time); Attachment D (also limiting waiting times). This language was included because in the past clients were forced to stand for hours waiting for their HS Systems appointments due to serious overcrowding in the waiting room. Overcrowding also resulted in a lack of privacy during medical examinations and interviews, making it impossible for individuals to engage in confidential discussions with HS Systems medical examiners. Elisabeth Franck & Miranda Leitsinger, “*System Failure: The Comptroller Says HS Systems Overcharged for Screening Disabled Welfare Recipients. So Why Did the Company Win a Fat New Contract?*” VILLAGE VOICE, May 23, 2000, at 23 (Exhibit M).

⁵⁹ Exhibit J.

but HS Systems security guards usually do not allow him to accompany her into the waiting area or examination rooms, and instead make him wait by the elevator. On at least one occasion he was able to accompany D.M. into the waiting area only because he snuck in when the security guard left his post.

d. HRA Fails to Provide Reasonable Modifications in Wellness Programs Operated by HS Systems.

HRA violates the ADA and Section 504 by failing to provide reasonable modifications to individuals with psychiatric disabilities in its “wellness programs;”⁶⁰ failing to require HS Systems to provide these modifications; and permitting HS Systems to design wellness programs that have a discriminatory effect on individuals with psychiatric disabilities.⁶¹ The HS Systems contract requires that HS Systems develop “rehabilitation plans” containing “wellness programs” for individuals found ineligible for SSI who have conditions that may initially prevent or limit their ability to work.⁶² Compliance with these plans is a condition of receiving benefits.⁶³

HRA requires HS Systems to monitor compliance through regular phone contact with recipients and by requiring recipients with disabilities to return to HS Systems for monitoring visits.⁶⁴ Some plans require individuals to call HS Systems on the same day that they attend other appointments, to report that they attended the appointment.⁶⁵ HS Systems must report non-compliance with the wellness plan to HRA so that HRA can initiate proceedings to reduce or discontinue public assistance.⁶⁶ The very characteristics that make a recipient with a psychiatric disability eligible for a wellness program are likely to limit that person’s ability to make the

⁶⁰ 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

⁶¹ 28 C.F.R. § 35.130(b)(3)(i); 45 C.F.R. § 84.4(b)(4)(i).

⁶² HS Systems contract Art. 1 § 1.3.2A. HRA policy states that individuals found by HS Systems to be exempt from work requirements who are considered to have the potential to be restored to self-sufficiency through rehabilitation are given rehabilitation plans. Policy Directive # 00-38R at 5. A copy of a wellness plan is attached as Exhibit N.

⁶³ Policy Directive # 00-38R at 5.

⁶⁴ HS Systems contract, Art. 1 § 1.3.2D.

⁶⁵ Exhibit O. The wellness plan for this individual states: “Must call HSS with condition status following appointment (same day).”

⁶⁶ HS Systems contract, Art. 1 § 1.3.1D(v).

phone calls and monitoring visits required within the mandated time frame. Imposing these requirements, and requiring strict compliance with them as a condition of receiving benefits, discriminates against individuals with psychiatric disabilities by imposing program eligibility requirements that screen out qualified individuals with psychiatric disabilities.⁶⁷

M.S., who has cardiovascular disease and depression, failed to call HS Systems to report her attendance at a doctor's appointment, as her rehabilitation plan required. As a result, HRA sent her a notice that it was terminating her benefits. HS Systems made no effort to contact Ms. S. to find out if the doctor's visit had taken place or why she failed to call, and instead reported her non-compliance to HRA, which in turn sent her a notice initiating sanction proceedings. Even after M.S. contacted HS Systems and explained that she had been too tired to call after the appointment and had memory problems, the case worker said there was nothing she could do. Ultimately, M.S. was found to be sufficiently disabled to qualify for SSI. However, neither HRA nor HS Systems provided her with any reasonable modifications to her wellness plan.⁶⁸

HRA also violates the ADA and Section 504 by failing to help recipients, or to ensure that HS Systems helps recipients, arrange for the medical or mental health treatment required under their rehabilitation plans. Many rehabilitation plans require recipients to make appointments with doctors or other treating professionals, attend those appointments, and report to HS Systems that they attended the appointment.⁶⁹ However, some recipients with psychiatric disabilities are not receiving any mental health treatment, and some are too sick to arrange this treatment on their own. Helping these recipients locate and arrange for mental health care is a reasonable modification under the ADA and Section 504,⁷⁰ but HRA policy prohibits HS Systems from recommending treatment providers unless an individual asks for a recommendation.⁷¹ Since HRA does not require HS Systems to inform recipients of their right to obtain help finding appropriate treatment, recipients who need help will generally not know of their right to ask for it.

⁶⁷ 28 C.F.R. § 35.130(b)(8); 45 C.F.R. § 84.4(b)(1)(vii).

⁶⁸ Exhibit O.

⁶⁹ Exhibit N.

⁷⁰ 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

⁷¹ HS Systems contract, Art. 1 § 1.3.1A(viii).

e. HRA Fails to Ensure That HS Systems Provides Other Reasonable Modifications.

HRA fails to ensure that HS Systems provides reasonable modifications after it has determined that an individual is entitled to a modification and instructed HS Systems to provide a modification.

For example, M.F.B. has an elevator phobia. Although he told HS Systems that he needed to use the stairs to get to his HS Systems disability assessment appointment, HS Systems would not allow him to use the stairs. Even after HRA determined at a conciliation meeting that M.F.B. had good cause for missing the appointment and HRA gave him a letter to bring to HS Systems requesting an accommodation for his elevator phobia, HS Systems still refused to allow him to use the stairs. HRA apparently failed to follow-up with HS Systems to ensure that HS Systems provided this modification. M.F.B. obtained a disability assessment only because a janitor and guard were willing to break HS Systems rules and sneak him into the stairwell.

Remedy

OCR should require that HRA:

- Develop, or ensure that HS Systems develop, a comprehensive reasonable modification policy for all services provided by HS Systems under contract with HRA that:
 1. Allows applicants and recipients with disabilities to bring someone with them to HS Systems appointments;
 2. Provides for flexible appointment scheduling;
 3. Requires outreach to applicants and recipients who miss appointments to determine why they missed the appointment and,
 4. if reasonable modifications are needed to insure they are able to comply with the assessment process, provide them with those modifications; and
 5. Informs applicants and recipients of their right to reasonable modifications.
- Refrain from discontinuing public assistance benefits simply because an applicant or recipient fails to attend an HS Systems appointment;

- Inform applicants and recipients in HS Systems appointment notices of the right to reschedule their appointments and provide a telephone number, which applicants and recipients can access with reasonable effort to reschedule their HS Systems appointments;
- Provide applicants help gathering medical documentation from treatment providers;
- Provide recipients who have rehabilitation plans help locating and arranging for medical and mental health services;
- Develop, or require HS Systems to develop, rehabilitation plans that do not require recipients to perform tasks HRA or HS Systems know they are unlikely to be able to do, but instead, help recipients develop the skills necessary to comply with HRA's welfare to work and other requirements without imposing harsh penalties for non-compliance;
- Provide assistance and other reasonable modifications to recipients with rehabilitation plans to enable them to comply with these plans;
- Refrain from discontinuing public assistance benefits where a recipient has failed to comply with a rehabilitation plan requirement without determining whether the non-compliance was related to the recipient's disability; and
- Provide additional time to applicants and recipients with disabilities who need that time to gather medical documentation, and inform them of the right to this modification.

3. HRA Does Not Conduct Adequate Assessments of Psychiatric Disabilities.

HRA violates the ADA and Section 504 by failing to conduct adequate assessments to determine whether an applicant or recipient has a psychiatric disability, the nature and severity of that disability, the impact of that disability on the ability to work, and the reasonable modifications and support services needed. Without adequate assessments of psychiatric disabilities, HRA cannot provide appropriate work activities, exemptions, support services, and reasonable modifications to recipients with psychiatric disabilities. OCR recognizes that "[I]t is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal

opportunity to benefit from TANF programs and the assessment process.”⁷² HRA’s disability assessments are inadequate and discriminatory because:

- HRA conducts assessments in a manner that fosters mistrust and compromises accuracy;
 - HRA does not seek or consider documents from applicants’ or recipients’ physicians and other treating professionals;
 - HRA guidelines recommend that HS Systems find unemployable recipients with severe psychiatric disabilities able to work; and
 - Disability assessment results lack information concerning the abilities, limitations, and needs of recipients with psychiatric disabilities.
- a. Disability Assessments are Conducted in a Manner that Fosters Mistrust and Compromises Accuracy.**

The accuracy of a medical or psychiatric assessment depends in part on the recipient’s ability to trust the person conducting the assessment.⁷³ Many individuals with psychiatric disabilities, particularly paranoid schizophrenia and anxiety disorders, have great difficulty trusting anyone. Yet, HS Systems staff frequently fail to introduce themselves or identify their professional qualifications to the individuals they assess, thereby engendering considerable distrust. Significantly, some individuals with psychiatric disabilities have expressed doubt that the person who conducted their assessment was a medical or mental health professional.⁷⁴ Although the HS Systems contract requires those conducting the assessments to sign their names

⁷² OCR Guidance § D.1. In the *Ramos v. McIntire* Letter of Findings, OCR found that the failure of the Massachusetts Department of Transitional Assistance to conduct adequate assessments for learning disabilities meant that the welfare agency had no basis for determining what reasonable modifications were needed by individuals with learning disabilities to ensure equal access to programs and services.

⁷³ See *Ten Important Questions*, Chapter 4.

⁷⁴ J.V. expressed doubt that the staff person at HS Systems who conducted his mental health exam was a mental health professional. R.Y. and M.S. reported that they were not interviewed by a psychiatrist at HS Systems. Appendix A.

to the evaluations,⁷⁵ the Review Team Recommendation form (“RTR form”), which HS Systems uses to summarize assessment results,⁷⁶ has no place to do so.⁷⁷

b. HRA Disregards Documents from Applicants’ and Recipients’ Own Doctors or Other Treating Professionals, and When it Does Ask Treating Professionals For Information, Does Not Always Give them the Option of Saying the Applicant or Recipient Can Not Work.

New York State law requires HRA to “review and consider all records or information provided by the recipient or the recipient’s treating health care practitioner that are pertinent to the claimed medical condition,”⁷⁸ but HRA does not require HS Systems to obtain this information. Instead, HRA gives HS Systems full discretion to decide whether to contact an individual’s medical or mental health provider to obtain relevant information.⁷⁹

In practice, HS Systems rarely contacts recipients’ treating professionals directly to request relevant information. Although HS Systems gives some individuals a form to take to their treating professionals to fill out, one of the forms used does not give the treating professional the option of saying that his or her patient can not work, but asks “what type of work the patient can perform” and asks about “work limitations.”⁸⁰ Moreover, HS Systems routinely ignores the medical information individuals bring to their disability assessment appointments.

HS Systems refused to consider A.D.’s doctor’s letter, which described his tuberculosis, Hepatitis C, anxiety disorder, seizures and back problems and stated that he could not work.

Other individuals with disabilities have reported similar experiences.

⁷⁵ HS S AMystems contract, Art. 1 § 1.5.1.

⁷⁶ The Review Team Recommendation form is discussed in Section 2.c below.

⁷⁷ See Exhibit P.

⁷⁸ Soc. Serv. Law § 332-b(4)(a). The HS Systems contract contains similar language. HS Systems contract, Art. 1 § 1.3.1(i).

⁷⁹ HS Systems contract, Art. 1 § 1.3.1(ii).

⁸⁰ Exhibit Q.

c. Disability Assessment Results Lack Information Regarding the Abilities, Limitations and Needs of Individuals with Psychiatric Disabilities Necessary to Make Appropriate Placements and Reasonable Modifications.

HRA violates the ADA and Section 504 by using a disability assessment process that does not produce the essential information needed by HRA to make appropriate work placements and provide appropriate reasonable modifications and support services to individuals with psychiatric disabilities. Although the HS Systems contract requires that the assessment describe “in detail” what an individual can do and the type of work assignments appropriate for that individual,⁸¹ the one-page RTR form used by HS Systems to summarize disability assessment results does not satisfy this requirement.⁸² The RTR form does not ask for a diagnosis. Nor does it require HS Systems to identify the services, supports and accommodations the recipient needs in order to work or participate in other activities.

HRA does not inform HS Systems of the requirements of the work activities to which the recipient may be assigned, nor of the conditions of the particular site where the work activity will take place. In fact, HRA typically refers recipients to worksites at other government agencies or

⁸¹ HS Systems contract, Art. 1 § 1.3.1B(iv).

⁸² The RTR form contains only a space for a numerical code representing one of eight functional assessment categories, a space for “medical limitations,” and “other considerations,” and a pre-printed “list of suitable jobs.” The functional assessment categories are (i) functional assessment completed - no functional limitations; (ii) functional assessment completed - employable with limitations; (iii) functional assessment completed - employable with limitations even though limitations may be severe - abilities indicated which require specialized supported employment plan; (iv) functional assessment completed - substance abuse indicated; (v) temporarily deferred - applicable only to specific time-limited conditions for which rehabilitation plan is not indicated; (vi) HIV assessment complete - participant eligible for referral for HRA’s HIV/AIDS Services Administration; (vii) development of Rehabilitation Plan/Wellness Program; (viii) SSI or other disability benefit eligibility-application submitted. HS Systems contract Art. 1 § 1.3.1C. *See also*, Policy Directive # 00-38R at 3-5.

A November 17, 2000 RTR form included the following “List of Suitable Jobs”:
“Answer phones; Make appointments; Give general information; Make copies and collate; Type information; Issue forms/supplies; Process vouchers; Sew costumes; Interpret; Write Messages; Greet and Direct visitors; Keep simple records; Data enter information; Operate postage meter; Post expenses; Do simple bookkeeping; Provide information.” A more recent July 17, 2001 RTR form contains the same jobs, plus the following additional jobs: “File papers into filing cabinet;” “Empty wastebaskets;” “Make minor repairs;” “Inspect grounds, floors, windows;” “Staighnten[sic] up after activities;” “Write messages;” “Process routine papers;” “Set up meeting rooms;” “Issue forms/supplies;” “Dust and polish;” and “Replace restroom supplies.” Copies of RTR forms are attached as Exhibit P.

not-for-profit organizations and allows the work site to designate the specific work activities as well as the conditions under which the recipient will work. Consequently, HS Systems lacks any information about the actual work activity to which the recipient may be assigned when its staff completes the RTR form. Thus, RTR forms generally do not accurately reflect what recipients with disabilities found to be employable with limitations can actually do at the work site. For example, whether a particular recipient with an anxiety disorder can do office work may depend on the size of the office, the number of other employees with whom she would have to interact, the hours of operation, whether she has a separate workspace, and other factors that HS Systems staff do not know when they are filling out the RTR form.

In addition, individuals found to be “employable with limitations” by HS Systems are generally found to be able to do all of the jobs listed on the RTR Form regardless of diagnosis, symptoms, and severity. Although HS Systems sometimes includes some of the recipient’s functional limitations on the form, jobs are not crossed off the pre-printed list.⁸³

HRA’s assessment process is even less adequate for recipients with psychiatric disabilities. The RTR form does not ask about any psychiatric limitations. When an individual has a psychiatric disability, HS Systems often just puts the letters “MH,” which presumably stand for “mental health,” in the space for “other considerations” on the form, though no explanation or detail is given. This notation provides HRA and supervisors at work activity sites no information about the recipient’s specific needs, abilities, and limitations.

R.Y. has multiple medical and psychiatric disabilities, including asthma, Hepatitis C, fibromyalgia, chronic polyarticular joint pain, and an anxiety disorder that causes severe panic attacks, fear of crowds, social situations, and public transportation. Her RTR form described some of her physical limitations, but none of the limitations caused by her psychiatric disabilities. The only possible indication on the form that she has psychiatric disabilities is the notation “MH.”

A.V., who has major depression and panic attacks, was found by her psychiatrist to have a limited ability to work because of problems with concentration, social interactions, tolerating crowds and the likelihood that she will decompensate. Her RTR form listed A.V.’s physical limitations, but did not mention limitations caused by her psychiatric disabilities. The only indication that A.V. has psychiatric disabilities was the notation “MH.” No jobs on the standard list of jobs were crossed off.⁸⁴

⁸³ See Exhibit P for a sample of RTR forms. Other RTR forms can be found in Exhibits G, K & R.

⁸⁴ Exhibit G.

d. HS Systems Finds Many Recipients with Severe Psychiatric Disabilities Employable When They Are Unable to Work.

HRA violates the ADA and Section 504 by failing to exempt individuals with psychiatric disabilities who are unable to work from work requirements, and requiring HS Systems to use guidelines that grossly overstate the abilities and understate the limitations of some individuals with psychiatric disabilities. In doing so, HRA violates its obligation to provide reasonable modifications to individuals with psychiatric disabilities⁸⁵ and violates the central ADA and Section 504 principle of providing “individualized treatment” to people with disabilities.⁸⁶

The HS Systems contract’s “Employability Code Guidelines”⁸⁷ recommend that only recipients who have been unable to do *any* activities of daily living for at least one year should be considered to have a permanent psychiatric disability, and only recipients with active hallucinations should be considered to be currently unemployable. Recipients with no hallucinations, normal physical examination findings, and normal laboratory results, who receive mental health treatment are categorically considered to be “employable with limitations.” The guidelines do not consider the impact of any psychiatric symptoms other than hallucinations and the failure to perform all activities of daily living for at least one year. In fact, however, many recipients with psychiatric disabilities cannot work, even if they do not have active hallucinations or have been able to do some activities of daily living in the past year.

HS Systems routinely finds individuals with severe psychiatric disabilities able to work, even when their own treating professionals have found them not employable. Often, HS Systems’s findings strain common sense. The examples below are just a small sample of the individuals who have experienced discrimination by being found able to work despite having disabilities that render them incapable of working, and despite overwhelming evidence that they could not work. Some should not have been found employable even under the existing “Employability Code Guidelines.”

⁸⁵ The OCR Guidance provides, as an example of a modification practice that would help the TANF agency ensure equal access for people with disabilities, exempting an individual with a disability who cannot work with or without a reasonable modification from work requirements. OCR Guidance § D.2.

⁸⁶ According to the OCR Guidance, the concept of individualized treatment is “of particular importance to administration of TANF programs in a manner that ensures equality of opportunity for individuals with disabilities.” *Id.* § B. The Guidance explains that “[i]ndividualized treatment requires that recipients with disabilities be treated on a case-by-case basis consistent with facts and objective evidence. . . [] not . . . [] on the basis of generalizations and stereotypes.” *Id.*

⁸⁷ HS Systems contract, Attachment A.

S.D. has been diagnosed with schizophrenia, depressive disorder and psychosis, causing active hallucinations and suicidal thoughts. Nevertheless, HS Systems found her “employable with limitations” despite her doctor’s opinion that she was unable to work. HRA later discontinued her public assistance benefits when she did not report to a workfare assignment for a disability-related reason.

V.H., who suffers from depression, gave HS Systems a letter from her psychiatrist stating that she suffered from major depression and was unable to work at the time due to her condition. A few weeks later, V.H. received a letter from HS Systems informing her that she was employable because her doctor found that her condition had stabilized, though she had provided no new information to them from her doctor and had not been reassessed.

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R.Y. has an anxiety disorder causing severe panic attacks in social situations and obsessive thoughts, and several medical problems. HS Systems found her to be able to perform the following jobs: “meet and greet visitors,” “provide information and directions,” “answer telephones,” all of which were impossible given the nature and severity of her disabilities.

Remedy

OCR should:

- Require that HRA:
 1. Adopt an individualized approach to assessing the abilities and limitations of recipients with disabilities;
 2. Draft assessment results, or ensure that HS Systems drafts assessment results, that contain sufficient, client-specific information necessary to make appropriate, individualized placements and provide reasonable modifications and support services for recipients, including information about diagnosis, functional limitations, tasks and jobs that the individual can perform, and the reasonable modifications and supports needed to do those jobs;

3. Provide recipients with copies of their assessment results and written notice that they have a right to request underlying test and examination results from HS Systems;
 4. Require HS Systems to mandate that staff conducting disability assessments identify themselves to those being assessed and write their name, professional qualifications and contact information on the assessment result forms provided to individuals; and
 5. Require those conducting assessments to make efforts to gather medical and mental health documentation from treating professionals of the individuals they assess and to accept, review, and give appropriate consideration to that documentation.
- OCR should create a work group comprised of OCR staff, HRA staff, staff of other relevant City and State agencies, the advocates filing this complaint, other relevant advocates, and medical and mental health professionals to review assessment protocols, hear from experts, and identify assessment tools and protocols appropriate for use by HRA to identify whether an individual has a disability; what disability the individual has, whether the individual can work; what specific work or other activities an individual can do; and what services, supports, and reasonable modifications an individual needs in order to work. Work group members must be mutually agreed upon by HRA and the advocates filing this complaint. Members should have the right to review drafts of protocols and policies and comment in writing before policies and protocols are finalized.
- e. **HRA Assumes Individuals are Employable When their Temporary Exemption Period Ends Without Giving them an Opportunity to be Reassessed or Otherwise Demonstrate that They Continue to be Unemployable.**

HRA violates the ADA and Section 504 by assuming individuals with disabilities who have been exempted from work activities on the basis of disability are employable when their exemption period ends. HRA's actions violate the ADA and Section 504 by denying individuals with disabilities the opportunity to demonstrate their need for a continuing exemption from work activities, which is a reasonable modification under the ADA and Section 504,⁸⁹ and by denying individuals adequate notice of their right to this reasonable modification under the ADA.⁹⁰ HRA assumes that individuals are employable when their exemption period ends even when medical

⁸⁹ 28 C.F.R. § 28.35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii). OCR Guidance § D.2.

⁹⁰ 28 C.F.R. § 28.106; 45 C.F.R. §§ 84.8; 84.52(b) .

documentation already in HRA's possession indicates that an individual has a severe and chronic medical or mental health condition that is unlikely to be cured or sufficiently improved to enable the person to work at the end of the exemption period.

When HRA grants an individual an exemption from work activities on the basis of a health problem or disability, these exemptions are often time-limited, even when the individual has a chronic medical or mental health problem that is not likely to change. When the temporary exemption period ends, HRA sends the individual a notice to report to HRA or to a WEP assignment, even if HRA has no evidence that the individual's condition has improved. HRA gives the individual no opportunity to demonstrate that she needs a continuing exemption or to obtain another assessment on her own, or through HS Systems, to determine whether she can participate in work activities. Under HRA policy, HS Systems is required to schedule a reassessment at HS Systems for individuals at the end of a *temporary* exemption from work activities for a *time-limited* condition such as a broken leg or recent surgery.⁹¹ HRA, however, does not offer reassessment to individuals with chronic physical and psychiatric disabilities who are much less likely to have improved sufficiently be able to work at the end of a time-limited exemption.

M.B., who has been diagnosed with delusional disorder and major depression, was found to be temporarily unemployable by HS Systems after OTDA, after a fair hearing, ordered HRA to conduct a disability assessment. When the exemption expired, without any new documentation demonstrating that she had improved, and without offering M.B. an opportunity to be reassessed, HRA informed M.B. that she was employable, even though she was still paranoid and having hallucinations.⁹²

J.H., who suffers from major depression, was placed in the PRIDE program, a program for individuals found to have substantial limitations. HRA then sent J.H. a notice requiring her to report for a workfare assignment, even though HRA had no evidence that her condition had improved, and HRA did not conduct or even offer her an opportunity to be reassessed or to present her own medical documentation showing that she continued to be able to participate. J.H. did not attend the appointment because she thought she was still in the PRIDE program, and HRA reduced her household's cash assistance cash assistance and food stamps.

Remedy

⁹¹ Policy Directive # 00-38R at 5.

⁹² Exhibit L.

OCR must require that HRA:

- Provide individuals given exemptions from work activities on the basis of a physical or mental health condition the opportunity to be reassessed or otherwise demonstrate that they continue to be unable to participate in work activities; and
- Send a written notice to individuals given exemptions from work activities on the basis of a physical or mental health condition informing them of the date the exemption ends, the right to be reassessed and the right to submit additional documentation to HRA demonstrating that they continue to be unable to participate in work activities.

4. HRA’s Policy of Requiring Recipients to Obtain Unnecessary Disability Assessments Violates the ADA and Section 504 by Serving as an Unnecessary Barrier to Work Exemptions and Benefits.

HRA violates the ADA and Section 504 by requiring all applicants and recipients with disabilities that limit work activities to obtain an assessment from HS Systems, regardless of the quality, amount, and recency of the documentation they already have. Although state law gives HRA the discretion to accept the documentation provided by an individual’s treating professionals as sufficient evidence that the individual is unable to work, or is work-limited,⁹³ HRA policy instructs its staff to “make sure . . . [the applicant or recipient] understands that HS Systems is the *only* medical verification acceptable for exempting a recipient from participation in a work activity.”⁹⁴ (Emphasis added.) This policy discriminates against individuals with psychiatric disabilities by creating unnecessary hurdles to obtaining work exemptions and continued benefits that some cannot satisfy.

Remedy

- Cease referring for disability assessments recipients who have adequate, recent documentation of their disabilities, abilities, and limitations to HS Systems.

5. HRA Fails to Provide, and Fails to Require HS Systems to Provide, Recipients with Information They Need to Request Appropriate Placements and Reasonable Modifications.

⁹³ Soc. Serv. Law § 332-b(3).

⁹⁴ Policy Directive # 99-35RR at 9.

HRA violates the ADA and Section 504 by failing to provide assessment results to individuals with disabilities who obtain assessments from HS Systems. HRA neither provides these results directly to individuals who are assessed, nor requires HS Systems to provide these results to these individuals. The right to reasonable modifications, appropriate work placements, work exemptions, and support services under the ADA and Section 504 is compromised if recipients with disabilities are not provided with the information they need to request appropriate placements and modifications. Failing to provide disability assessments also runs counter to the “self-sufficiency” purpose of the federal and State welfare laws.⁹⁵

HRA policies and practices prevent most individuals from obtaining any information about their assessments from either HS Systems or HRA. For example, although state law requires HS Systems to provide a recipient with an opinion about the presence or absence of the claimed medical condition after an assessment,⁹⁶ the HS Systems contract requires HS Systems to report only abnormal test results to individuals⁹⁷ but not other information, such as a summary of assessment results.⁹⁸ Moreover, the HS Systems contract provides that if a recipient asks for a copy of her medical records, HS Systems must provide them,⁹⁹ but it does not require HS Systems to inform recipients of their right to make this request.

Additionally, the HS Systems Patient Care Policy and Procedures Manual¹⁰⁰ states that because HS Systems is not the individual’s treating practitioner, it is not required to provide information about diagnosis, treatment and prognosis to individuals; instead, individuals can get this information from their treating practitioners, to whom the information is forwarded.¹⁰¹ However, neither HRA nor HS Systems inform individuals that the information is forwarded to

⁹⁵ 42 U.S.C.A. § 601(a)(2); Soc. Serv. Law § 331(1).

⁹⁶ Soc. Serv. Law § 332-b(4)(c).

⁹⁷ HS Systems contract, Art. 1 § 1.6B.

⁹⁸ The contract prohibits HS Systems from providing “original” records and reports to assessed recipients, and does not say whether HS Systems is permitted to provide individuals with copies of these records, or assessment summaries. *Id.*

⁹⁹ *Id.*, 1 §1.6B.

¹⁰⁰ This manual is Attachment D to the HS Systems contract.

¹⁰¹ HS Systems contract, Attachment D at 18. This rationale for withholding diagnostic, treatment, and prognostic information is inconsistent with New York’s medical records access law, which gives a recipient the right to obtain health assessments and examination results from HS Systems regardless of whether HS Systems is the recipient’s treating professional. Pub. Health Law § 18.

their treating practitioners and that is where they should get it. Requiring individuals to go to their treating practitioners to get copies of the assessment results violates the ADA and Section 504 by denying access to assessment results to individuals who do not currently have treating practitioners and by creating another unnecessary hurdle to obtaining this information, one that some individuals will be unable to overcome due to their disabilities.¹⁰²

In practice, HS Systems fails to provide many individuals with assessment results. It gives some individuals a copy of the RTR form but nothing else. It gives others, like R.Y. and A.V., a copy of their assessment in a sealed envelope.

HS Systems instructed R.Y., who has an anxiety disorder, to give her assessment to HRA without looking at it, and told her that if she looked at the assessment it would be “voided” and she would be assigned to a work activity without consideration of the assessment. She became so agitated by these instructions that she had a panic attack after she left HS Systems and had to be taken to Elmhurst Hospital, where she was given anti-anxiety medication.

In addition, HRA itself fails to provide individuals with a copy of the assessment results. According to the HS Systems contract¹⁰³ and HRA policy,¹⁰⁴ HS Systems is required to give HRA the assessment summaries and underlying medical documentation after completing the assessment, and HRA, in turn, is supposed to give the recipient a copy of the assessment results along with instructions to give the results the WEP (workfare) worksite coordinator.¹⁰⁵ In practice, HRA does not provide assessment results to recipients, so they have no information to share with WEP supervisors. Since HRA and HS Systems often do not provide recipients with the results of their own assessment, there is no way that supervisors in most welfare work activities have access to this critical information. Moreover, HRA policy does not even address how supervisors at any work activities *other* than WEP are supposed to obtain this information.

Remedy

¹⁰² This practice is therefore a discriminatory method of program administration in violation of 28 C.F.R. § 35.130(b)(1)(ii); 45 C.F.R. § 84.4(b)(4).

¹⁰³ HS Systems contract, Art. 1 §1.5.2.

¹⁰⁴ See New York City Human Resources Administration, Family Independence Administration, *Individualized Employability Assessment and Employment Planning for Safety Net Applicants and Recipients*, Policy Directive # 00-30 at 17 (Exhibit S).

¹⁰⁵ *Id.*

OCR must require HRA to:

- Promptly provide recipients with copies of disability assessment results and inform recipients of their right to obtain copies of underlying test and examination results;
- Inform all recipients receiving disability assessments of the advantages of disclosing relevant assessment results to work activity supervisors and education and training programs and of requesting reasonable modifications; and
- Assist recipients in disclosing relevant information from assessments to work activity supervisors when recipients consent to disclosure.

6. HRA Fails to Monitor HS Systems’s Compliance with the ADA and Section 504 With Respect to Individuals with Psychiatric Disabilities.

HRA violates the ADA and Section 504 by failing to monitor whether HS Systems complies with the ADA and Section 504 by providing meaningful and equal access to people with psychiatric disabilities and by making reasonable modifications for individuals with psychiatric disabilities.¹⁰⁶ The OCR Guidance provides: “[i]n order to ensure that the [TANF] agency’s policies and practices do not subject individuals to disability-based discrimination, the TANF agency should: . . . conduct regular oversight of TANF programs and services to ensure that people with disabilities have equal access; . . .”¹⁰⁷ HRA fails to conduct such monitoring.¹⁰⁸ HRA

¹⁰⁶ The HS Systems contract does not require HS Systems to submit information to HRA from which it could monitor ADA and Section 504 compliance.

¹⁰⁷ In the *Ramos v. McIntire* Letter of Findings, OCR found that the failure of the Massachusetts Department of Transitional Assistance to monitor the ADA and Section 504 compliance of its programs provided under contract by private contractors was a discriminatory method of program administration.

¹⁰⁸ On August 13, 2001, Complainant Welfare Law Center made a Freedom of Information Law (“FOIL”) request for all documents related to HRA monitoring of HS Systems for compliance with the ADA and Section 504. In response, HRA provided only a July 19, 2001 quality oversight monitoring report written by the New York County Health Services Review Organization. The report addressed a few disability issues such as communication policies and physical access, but did not address whether HS Systems provides meaningful access and reasonable modifications to individuals with psychiatric disabilities. In response to Complainant’s December 27, 2001 FOIL requesting HS Systems ADA compliance plans, HRA

cannot possibly ensure that HS Systems is complying with the ADA and Section 504 without such monitoring

Remedy

OCR should require HRA to routinely monitor HS Systems compliance with the ADA and Section 504 by taking steps that include, but are not limited to, conducting:

- Periodic unannounced visits to HS Systems offices to assess familiarity with ADA and Section 504 requirements and to observe how staff interact with applicants and recipients;
- Reviews of (1) HS Systems's training materials; (2) reasonable modifications policies developed by HS Systems; and (3) data on the number and nature of the modifications requested from and provided by HS Systems; and
- A periodic random sample of HS Systems disability assessments, underlying tests and examinations related to those assessments, related medical documentation provided by the individual being assessed or his or her treating practitioner, and other relevant information related to those assessments to determine the adequacy of those assessments.

7. HRA's Payment Scheme for Disability Assessments Has a Discriminatory Effect on Applicants and Recipients with Psychiatric Disabilities.

HRA's payment scheme for disability assessments is a discriminatory method of program administration under the ADA and Section 504 that creates a disincentive for HS Systems to conduct full and adequate disability assessments of applicants and recipients with multiple or severe disabilities, including recipients with serious psychiatric disabilities, or both physical and psychiatric disabilities.¹⁰⁹

HRA pays HS Systems \$166.50 for each completed functional assessment in the first year of their contract; \$173.16 for the second year; and \$180.09 for the third year.¹¹⁰ These rates apply

responded that it had no responsive materials. Copies of all FOIL requests referred to in this complaint are attached as Exhibit T.

¹⁰⁹ 28 C.F.R. § 35.130(b)(4)(i); 45 C.F.R. § 84.4(b)(4)(i).

¹¹⁰ HS Systems contract, Attachment E. These rates are for the first 50,000 assessments conducted during a year. For every additional assessment over 50,000, the rate

regardless of the number of tests and examinations needed to conduct a thorough assessment. This payment scheme creates an incentive to conduct assessments as quickly as possible and use the fewest number of examinations and tests. It also creates a disincentive for HS Systems to contact the individual's treating professionals or to fully review medical or mental health records. Thus, for individuals with severe or multiple disabilities who need more thorough examinations and tests, or who need HS Systems to review documentation from their treating practitioners, the payment structure has a discriminatory effect.

The payment scheme also creates a disincentive for HS Systems to reach out to applicants and recipients and to encourage them to complete the assessment process when they fail to attend initial appointments at HS Systems. Under the contract, if an individual fails to return after an initial appointment with an internist, HS Systems still receives 50% of the full functional assessment fee. If the individual returns for specialty examinations after the internist's evaluation is completed, HS Systems receives 75% of the full functional assessment fee.¹¹¹ In fact, HS Systems receives a fee, albeit a small one,¹¹² if the individual simply begins the intake process for the assessment, but is never examined.¹¹³

For individuals with psychiatric, but not physical, disabilities, the examination by a mental health specialist is the most important part of the assessment. Yet HS Systems is still paid 75% of the assessment fee when it fails to conduct this examination. This fee structure has a particularly harmful effect on individuals with psychiatric disabilities and other medical conditions who require an assessment by specialists.

The OCR Guidance recognizes that payment schemes by welfare agencies for contracted services can have a discriminatory effect on people with disabilities.¹¹⁴ While the Guidance uses outcome-based reimbursement schemes in which providers are paid only when individuals complete a TANF program as an example of a payment method that may have a discriminatory effect, the broader point is that TANF agencies should reimburse providers "in such a way as to facilitate, rather than impede, equal opportunity for individuals with disabilities to benefit from the TANF program."¹¹⁵ The Guidance states that one means of preventing this type of discrimination is for "the TANF agency [to] take[] into consideration the additional costs of

drops to \$89.25, \$92.82, and \$96.53 for the first, second and third years, respectively.

¹¹¹ *Id.*, Art. 3 § 3.1A.

¹¹² The fee is \$10. HS Systems contract, Attachment E.

¹¹³ *Id.*

¹¹⁴ OCR Guidance § D.1.

¹¹⁵ *Id.*

providing services to persons with disabilities to that service providers do not reject such persons, or provide them with inappropriate or inadequate services . . .”¹¹⁶ HRA has not done so in the HS Systems contract.

Remedy

OCR must require that HRA:

- Modify the current contract with HS Systems to take into account the additional costs of conducting adequate assessments for applicants and recipients with multiple or more severe disabilities; and
- Design future contracts with HS Systems and successor entities to take into account the additional costs of conducting adequate assessments for applicants and recipients with multiple or more severe disabilities.

8. HRA’s Employability Assessment and Planning Process Discriminates Against Applicants and Recipients with Psychiatric Disabilities by Ignoring Psychiatric Disabilities and Failing to Address the Range of Modifications and Supports Needed by People with Disabilities.

HRA violates the ADA and Section 504 by ignoring psychiatric disabilities in the employability assessment process and failing to address the range of reasonable modifications and supports needed by people with disabilities, thereby denying individuals with psychiatric disabilities an equal and meaningful opportunity to benefit from the employability assessment and planning process.¹¹⁷

According to HRA policy, recipients who are not referred to HS Systems and determined to be exempt from work activities at the initial stage of the application process must go through an employability assessment and planning process.¹¹⁸ This policy requires employment planners at HRA to conduct an initial screening to address “barriers to employment” and refer the recipient to a private contractor under contract with HRA to perform a Skills Assessment and Job Placement (“SAJP”) review. The private contractor conducting the SAJP review must try to place the recipient in unsubsidized employment, and if it is unable to do so, conduct an

¹¹⁶ *Id.*

¹¹⁷ 28 C.F.R. § 35.130(b)(1)(ii); 45 C.F.R. § 84.4(b)(1)(ii); *Alexander*, 469 U.S. at 301.

¹¹⁸ Policy Directive # 99-35RR. HRA has a separate policy for employability assessment and planning for Safety Net applicants and recipients. Policy Directive # 00-30.

employability assessment and make recommendations about an employment plan. The SAJP contractor then refers the recipient back to the employment planner who develops an employability plan and assigns the recipient to a work activity.¹¹⁹ HRA discriminates against recipients with psychiatric disabilities in several ways in the administration of this process.

First, HRA requires employment planners to discuss obstacles to employment “such as medical conditions,”¹²⁰ and ask applicants and recipients to fill out a Task List if they say they are “physically unable” to participate in a work activity,¹²¹ but it does not require planners to ask recipients about psychiatric disabilities that are an obstacle to employment or require planners to ask these recipients to identify tasks that they cannot do. Moreover, the Task Lists used by employment planners ask only about physical tasks, such as sitting, climbing and lifting. They do not ask about the activities that are often limited by psychiatric disabilities, such as sleeping, concentration, being in noisy or crowded places, or interacting with others.¹²² As a result, psychiatric disabilities are likely to be ignored in the employability assessment and planning process.

Second, HRA denies applicants and recipients with psychiatric disabilities who need a disability assessment, but were not referred to HS Systems during the initial stage of the application process, an equal and meaningful opportunity to obtain a referral for a disability assessment. HRA policy instructs employment planners to refer individuals to HS Systems for a disability assessment if the individual claims to have, or the planner believes the individual has, a medical disability that prevents the individual from working.¹²³ Individuals who claim or appear to have psychiatric disabilities that prevent them from working are not mentioned in the policy.¹²⁴

¹¹⁹ Policy Directive # 99-35RR at 6-7.

¹²⁰ *Id.* at 8.

¹²¹ *Id.*

¹²² Exhibit U.

¹²³ Policy Directive # 99-35RR at 6-7.

¹²⁴ HRA lacks detailed information about the disabilities of many work-limited individuals for another reason: HRA policy also instructs employment planners to try to persuade those who claim to be completely unable to work to say that they are able to work but have limitations, at which point the planner is not supposed to refer the individual to HS Systems for a disability assessment. Only individuals who continue to insist that they are completely unable to work, and those the worker believes have a disability, are supposed to be referred to HS Systems. *Id.* at 8-9.

Third, HRA fails to require employment planners to consider and arrange for the full range of reasonable modifications to which individuals are entitled. HRA policy instructs employment planners to “determine whether any accommodations need to be made for the participant’s special needs,”¹²⁵ but only four possible accommodations are identified.¹²⁶ HRA instructs employment planners to refer individuals who are able to work but who have limitations to an SAJP contractor for an employability assessment, but also states that only individuals who would have no barriers, and those whose barriers have already been addressed, should be referred.¹²⁷ HRA is silent on how employment planners are supposed to address barriers so individuals can qualify for a referral. The policy also requires SAJP contractors to determine what “supportive services” are needed, but car fare and transportation are the only services mentioned.¹²⁸

Finally, HRA violates the ADA and Section 504 by failing to address the needs of individuals with disabilities in the final employment plan. HRA’s employment plan form has no place to identify the recipient’s disabilities, their affect on work and program participation, and the supportive services and reasonable modifications needed by the individual.¹²⁹ Thus, these plans lack information on the services, supports, and reasonable modifications needed by people with disabilities.

Remedy

OCR must require HRA to develop and implement an employment planning process that:

- Seeks information regarding any disability that affects work, even if the disability does not completely prevent work, and addresses these limitations in employment planning;

¹²⁵ *Id.* at 21.

¹²⁶ They are: (1) addressing the needs of recipients with domestic violence; (2) referring recipients for substance abuse treatment; (3) referring individuals found to be unable to work with conditions that can be corrected or accommodated to a vocational rehabilitation agency; and (4) giving individuals who are “employable with limitations” a work assignment consistent with their limitations. *Id.* at 21-22.

¹²⁷ *Id.* at 10.

¹²⁸ *Id.* at 14.

¹²⁹ This form is an attachment to Policy Directive # 99-90.

- Seeks information regarding the functional limitations of individuals with psychiatric disabilities and addresses these limitations in employment planning;
- Offers recipients with physical and psychiatric disabilities that may limit employment the opportunity to receive a disability assessment;
- Includes and considers a wide range of supportive services and reasonable modifications needed by individuals with psychiatric disabilities; and
- Provides detailed information for employment planners and other HRA staff on how to arrange for these services and modifications.

C. WORK ACTIVITIES

1. HRA Fails to Provide Reasonable Modifications in Work Activities to Recipients with Psychiatric Disabilities.

HRA violates the ADA and Section 504 by failing to provide recipients with psychiatric disabilities the reasonable modifications they need at work activity placements, and by failing to ensure that work activities supervisors or coordinators provide modifications.

S.D. has been diagnosed with schizophrenia, depressive disorder and a learning disability. Nevertheless, HRA found her employable with limitations and assigned her to WEP (workfare). S.D.'s psychotropic medication prescribed by her doctor to control her hallucinations, made her too drowsy to work. She tried to do without the medication so she could comply with the WEP assignment. Her hallucinations returned, so she resumed taking the medication, and eventually failed to report to the WEP assignment on a few occasions. HRA discontinued her public assistance as a result. Although S.D. eventually won a fair hearing and was found to be unable to work, HRA's failure to recognize that S.D.'s work assignment was inappropriate given her disabilities, and its failure to recognize her need for reasonable modifications such as reassignment to a different position, schedule, work site or work activity, left S.D. to choose between receiving necessary mental health treatment and receiving welfare benefits.

F.B., who has medical reports documenting that he has schizophrenia, depression and agoraphobia, was sent by HRA to a job readiness program operated by a private contractor. He tried to give his supervisor at the program a letter stating that he had a disability and requesting reasonable

modifications, but his supervisor refused to accept it because it was not signed by a doctor.

Remedy

OCR must require HRA to:

- Ensure that supervisors at work activities and education and training programs provide a wide range of reasonable modifications needed by recipients with psychiatric disabilities; and
- Have procedures in place to provide these reasonable modifications.

2. HRA Fails to Provide Temporary Exemptions from Work Requirements for Recipients Appealing a Decision About Their Employability.

HRA violates the ADA and Section 504 reasonable modification requirements by failing to provide temporary exemptions from work requirements to recipients with disabilities while they are waiting for fair hearings appealing a determination that they are employable. Although state law prohibits HRA from making work assignments in this circumstance unless the individual agrees to a limited work assignment that is not inconsistent with the claimed medical condition,¹³⁰ HRA frequently assigns recipients to work activities and sends them multiple notices requiring them to attend work-related appointments after they have requested fair hearings to appeal a decision that they are employable.

HRA sent E.F., who has depression and generalized anxiety disorder, notices for four different work-related appointments at the Dekalb Job Center after she was granted a temporary work exemption while her fair hearing was pending.¹³¹

A.V., who was diagnosed with major depression, requested a fair hearing to challenge the decision that she was employable. Nevertheless, HRA sent her a notice to report to the Job Center for a mandatory work program intake appointment. Even after Ms. V. presented evidence of her disability and a letter explaining her temporary exemption, she received a notice stating that her Public assistance would be reduced for her failure to cooperate. An HRA Deputy Regional Manager admitted to A.V.'s attorney

¹³⁰ Soc. Serv. Law § 332-b(6).

¹³¹ Exhibit V.

that HRA staff are not trained about the right of recipients to be exempt from work requirements while they are awaiting a fair hearing to appeal employability decisions.¹³²

Remedy

OCR must require HRA to:

- Train its staff on the right of individuals to be exempt from work activities pending the outcome of a fair hearing timely requested to challenge an employability determination; and
- Make necessary computer system changes and implement necessary procedures to ensure individuals are and remain exempt pending the outcome of a fair hearing timely requested to challenge an employability determination.

D. REASONABLE MODIFICATION POLICIES

1. HRA Does Not Have an Adequate Reasonable Modification Policy.

HRA violates the ADA and Section 504 by failing to require reasonable modifications in many situations where the ADA and Section 504 mandates them.¹³³ The OCR Guidance provides that in order to ensure that a welfare agency's policies and practices do not discriminate, that agency should "establish a clear written policy that incorporates modifications to policies, practices and programs made to ensure access for persons with disabilities; . . ."¹³⁴ Without a comprehensive written reasonable modification policy, HRA cannot meet its legal obligation to provide reasonable modifications.¹³⁵

¹³² Exhibit G.

¹³³ 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

¹³⁴ OCR Guidance § B.c.

¹³⁵ In the Letter of Findings in *Ramos v. McIntire*, OCR found the failure of the Massachusetts Department of Transitional Assistance to have a comprehensive reasonable modification policy, and the agency's failure to modify existing policies and procedures to ensure that people with learning disabilities had an equal opportunity to participate and benefit from the program, were evidence of discrimination against individuals with learning disabilities.

HRA's written reasonable modification policy¹³⁶ is deficient in two primary ways. First, it identifies only four reasonable modifications:

- 1) providing applicants assistance with completing application forms;
- 2) providing an earlier appointment if the applicant or recipient cannot wait due to a disability;
- 3) referring an applicant or recipient with a disability to the Homebound Unit when the applicant or recipient cannot wait for an appointment; and
- 4) reviewing decisions to discontinue a recipient's benefits or deny an application to determine whether the discontinuance or denial was related to the individual's disability.¹³⁷

The policy does not include reasonable modifications to work requirements, job search, the disability assessment process, time limits, rehabilitation plans, or any other aspect of the Family Assistance and Safety Net Assistance programs. Nor do HRA's policy directives on specific aspects of the Family Assistance and Safety Net Assistance programs, such as HS Systems and the PRIDE 2000 program, incorporate reasonable modifications for people with disabilities.

Second, HRA's reasonable modification policy is inadequate with respect to the modifications it does identify.¹³⁸ For example, the policy instructs HRA staff not to deny an application or discontinue public assistance for failure to attend an appointment if the individual was, or should have been, coded as Homebound, but it does not instruct staff to take steps to ensure that this problem is corrected in the future.

Remedy

OCR should:

- Require HRA to Develop a written comprehensive reasonable modification policy that sets forth its obligation to provide reasonable modifications in all of its policies and practices; and
- Create a work group comprised of OCR staff, HRA staff, staff of

¹³⁶ Policy Directive # 99-09.

¹³⁷ *Id.* at 2. The Policy Directive uses the term "reasonable accommodations," a term used nowhere in Title II of the ADA or implementing regulations. Title II implementing regulations require "reasonable modifications" in policies, practices and procedures practices when necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7).

¹³⁸ Some of these inadequacies are discussed in Sections A.1 and A.2(a) above.

other relevant City and State agencies, the advocates filing this complaint, and other relevant advocates, to develop a written comprehensive reasonable modification policy. Work group members should be mutually agreed upon by HRA and the advocates filing this complaint. Members must have the right to review drafts of protocols and policies and comment in writing before policies and protocols are finalized.

2. HRA Has No Reasonable Modification Policy for Services Provided by HS Systems.

HRA does not have a written reasonable modification policy covering the services provided by HS Systems under contract, and it has not required HS Systems to develop its own written policy.¹³⁹ Although the HS Systems contract requires HS Systems to comply with the ADA and Section 504,¹⁴⁰ HRA has failed to translate this boilerplate language into specific requirements or to ensure that HS Systems has done so. Thus, HRA's actions are inconsistent with the OCR Guidance requirement that "[c]lear written policies that describe in detail how to respond when a TANF participant has a disability should be provided to all TANF agency *and provider staff who have contact with beneficiaries with disabilities.*"¹⁴¹ (Emphasis added.)

Remedy

OCR should:

- Require HRA to develop, or ensure that HS Systems develops, a written comprehensive reasonable modification policy for all services provided under contract by HS Systems; and
- Create a work group comprised of OCR staff, HRA staff, staff of other relevant City and State agencies, the advocates filing this complaint, and other relevant advocates, to develop a written comprehensive reasonable modification policy. Work group members should be mutually agreed upon by HRA and the advocates filing this complaint. Members must have the right to

¹³⁹ No documents were provided in response to Complainant's August 13, 2001 FOIL request for all documents concerning HS Systems' obligation to provide reasonable modifications for people with disabilities. (Exhibit S).

¹⁴⁰ See, e.g., HS Systems contract, Art. 1 §§ 1.4.1; 1.4.1C(ii); 1.4.3(iii); 5.10; 13.2; RFP provision on Medical Screening Site; and Attachment D to the contract.

¹⁴¹ OCR Guidance § D.2.

review drafts of protocols and policies and comment in writing before policies and protocols are finalized.

E. OTHER DISCRIMINATORY POLICIES AND PRACTICES

1. HRA Provides Inadequate Notice to Applicants, Recipients and the Public About the ADA and Section 504.

HRA violates the ADA and Section 504 by failing to provide adequate notice to applicants, recipients and members of the public about the ADA and Section 504, including how they apply to public assistance and Medicaid programs, and what applicants and recipients can do if their rights have been violated. Title II of the ADA requires public entities to make available to applicants, participants, beneficiaries, and other interested persons, information about Title II and its applicability to the services, programs, or activities of the public entity.¹⁴² Section 504 requires recipients of federal financial assistance such as HRA to take “appropriate initial and continuing steps” to notify applicants, participants, and others of Section 504’s non-discrimination requirements.¹⁴³ HRA’s notices fall far short of these requirements.

HRA’s only consumer education materials on the ADA or Section 504 consist of a brochure, a flier and a poster on the ADA.¹⁴⁴ These materials provide notice only of the right to assistance in filling out an application and the availability of accommodations for those who cannot wait for an interview.¹⁴⁵ They fail to mention the numerous other reasonable modifications to which applicants and recipients with disabilities are entitled.¹⁴⁶

¹⁴² 28 C.F.R. § 35.106.

¹⁴³ 45 C.F.R. § 84.8(a).

¹⁴⁴ These materials, attached to Policy Directive # 99-09, were the only documents provided in response to Complainant’s August 13, 2001 FOIL request for all consumer education materials about the ADA and Section 504 provided to HRA program applicants and recipients.

¹⁴⁵ The flier and brochure do not even mention these reasonable modifications; rather they instruct people to notify the receptionist if they have difficulty filling out forms or waiting for an interview.

¹⁴⁶ The OCR Guidance contains the following sample language for notices: “Let us know if you have a disability. If you cannot do something we ask you to do, we can help you do it or we can change what you have to do. Here are some ways we can help: We can call or visit if you are not able to come to our office. We can tell you what this letter means. If you are on [name of program], we can help you not do something in your plan. We can help you devise an employability plan that allows you to work even though you have a disability. We can help you

HRA’s consumer education materials on the ADA and Section 504 also fail to inform the reader of the range of conditions covered by the ADA. The posters, brochure, and flier all ask in bold letters: “**Are You Disabled?**” Many applicants and recipients do not think of mental health problems as disabilities, or do not think HRA considers these problems to be disabilities.

The more detailed brochure is also inadequate. Although it includes “mental illness” among the conditions that constitute disabilities, many applicants or recipients with mental health problems, particularly those with undiagnosed psychiatric disabilities, do not think of themselves as “mentally ill,” or find the term stigmatizing, and would therefore be unlikely to come forward and request reasonable modifications in response to this language. To be effective, notice about the ADA and Section 504 should include the conditions likely to be common in program applicants and recipients, using terms that are not stigmatizing, and should even include some of the symptoms and effects of these conditions.¹⁴⁷

HRA’s consumer education materials are not merely incomplete; they are misleading. The only image on all three documents is the wheelchair access symbol. On the flier, the question “Are You Disabled?” is superimposed on an enormous wheelchair access symbol. The poster has a large wheelchair access symbol on it. On the brochure, this question is framed in a border made up of miniature wheelchair access symbols. This conveys the misleading message that the ADA primarily protects wheelchair users.

HRA also violates the ADA and Section 504 notice requirements by failing to inform applicants and recipients of what they can do if their rights have been violated. The flier and poster are silent on the issue. The brochure only instructs applicants and recipients to request a fair hearing. None of the three materials inform the reader of the availability of HRA’s ADA or Section 504 grievance procedure, the OCR complaint process, New York City and New York State Human Rights administrative complaint mechanisms, or the right to commence legal action.

Finally, HRA’s policy states that (1) receptionists at Job Centers must distribute the brochure to all applicants; (2) eligibility specialists must give the brochure to each participant at recertification; (3) fliers must be included with every application; and (4) posters must be

appeal. If you need some other kind of help, ask us. Call your caseworker or call . . .” OCR Guidance § D.2.

¹⁴⁷ Sample language for notices in the OCR Guidance states: “If you have a physical or mental condition that substantially limits one or more major life activities, you may have rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Physical and mental conditions include, for example, a learning disability, mental retardation, a history of drug or alcohol addiction, depression, a mobility impairment, or a hearing or vision impairment.” OCR Guidance § D.2. In Tennessee, all TANF, food stamp and Medicaid notices inform readers: “If you have a health, learning or nerve problem, you may have legal rights under the Americans with Disabilities Act.”

prominently displayed in all Job Center waiting areas.¹⁴⁸ In practice, HRA does not routinely distribute the brochures to applicants or to recipients at recertification, fliers are not included with every application, and posters are absent from some Job Centers.

Remedy

OCR must require that HRA:

- Develop written consumer education materials on the ADA and Section 504 which:
 1. Convey the wide range of individuals who have rights under the ADA by including not just diagnoses of covered individuals, but symptoms and problems that may indicate that an individual has a disability and that include diagnoses of individuals protected by the ADA, as well as common symptoms and problems and functional limitations that might be the result of disabilities;
 2. Convey the wide range of modifications HRA must provide to individuals, including reasonable modifications at work sites, education and training programs, and contract agencies including HS Systems; and
 3. Inform individuals of how to exercise their rights under the ADA.
- Fully disseminate all written ADA and Section 504 consumer education materials developed in accordance with this remedy.

2. HRA Does Not Have an Adequate ADA Grievance Procedure and Does Not Inform Clients of Their Right to File Grievances.

HRA violates the ADA and Section 504 by failing to have an adequate grievance procedure and failing to inform applicants and recipients of their right to file grievances. ADA regulations require every public entity with at least 50 employees to “adopt and publish” a grievance procedure providing for “prompt and equitable resolution” of complaints of ADA violations.¹⁴⁹ Section 504 requires a grievance procedure in all social service programs receiving federal funds that have more than 15 employees.¹⁵⁰

¹⁴⁸ *Id.* at 1.

¹⁴⁹ 28 C.F.R. § 35.107(b); 45 C.F.R. § 84.7(b).

¹⁵⁰ 45 C.F.R. § 84.7(b).

HRA has a grievance procedure,¹⁵¹ but it is inadequate for four reasons. First, while the procedure requires applicants and recipients to file grievances within 30 days of the applicant or recipient becoming aware of the potential violation, it has no time frame in which HRA must resolve grievances. Second, the grievance procedure does not state that individuals filing grievances are entitled to receive assistance with filing a written grievance or to file the grievance orally if their disability impairs their ability to file a written grievance. Both are required as reasonable modifications under the ADA and Section 504.¹⁵² Third, HRA fails to mention the grievance procedure in its ADA poster, flier and brochure, or in its ADA Policy Directive. Without adequate notice to applicants and recipients about the procedure, the procedure cannot be considered to meet HRA's obligation under the ADA. Finally, HRA does not train staff about the grievance procedure.¹⁵³ The consequence of this failure is evident. Although HRA created the grievance procedure over six years ago, no one, to HRA's knowledge, has ever used it.¹⁵⁴

Remedy

OCR must require that HRA:

- Modify its grievance procedure to resolve complaints within a specified, prompt time frame;
- Inform applicants and recipients of their right to receive assistance with filing a written grievance, or to file the grievance orally if their disability impairs their ability to file a written grievance;
- Inform applicants and recipients of the grievance procedure in written consumer education materials at the time of application, recertification of

¹⁵¹ New York City Human Resources Administration, *Americans with Disabilities Act Grievance Procedure for Clients/Applicants*, Procedure No. 95-16 (June 14, 1995) (Exhibit W).

¹⁵² 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

¹⁵³ HRA provided no documents in response to Complainant's August 13, 2001 FOIL request for copies of all training materials used to train HRA staff on HRA's ADA grievance procedure and documents identifying which staff have been trained about the procedure and the frequency of the training.

¹⁵⁴ In response to Complainant's December 27, 2001 FOIL request for copies of all grievances filed under HRA's ADA grievance procedure, HRA informed Complainant that HRA had no materials responsive to the request. Exhibit T.

eligibility, and mandatory appointments, as well as by posters displayed in all Job Centers.

3. HRA Does Not Have an ADA or Section 504 Coordinator.

HRA violates the ADA and Section 504 by failing to have an ADA or Section 504 coordinator. The ADA requires agencies with over 50 employees to have a “responsible employee” to coordinate ADA compliance efforts, including the investigation of complaints, and to make available to all interested individuals the name, address and telephone number of the coordinator.¹⁵⁵ Section 504 requires entities receiving federal financial assistance with more than 15 employees to designate a Section 504 coordinator.¹⁵⁶ HRA has failed to designate a coordinator.¹⁵⁷

Remedy

OCR should require that HRA:

- Appoint an ADA and Section 504 coordinator to oversee ADA and Section 504 compliance and oversee the resolution of ADA and Section 504 grievances; and
- Provide the name and contact information for the ADA and Section 504 Coordinator on all informational materials about the ADA and Section 504.

4. HRA’s Failure to Adequately Train Staff, and to Ensure That HS Systems Trains Staff, on a Wide Range of Topics Necessary for Compliance with the ADA and Section 504, Exacerbates Discrimination Against Applicants and Recipients with Psychiatric Disabilities.

HRA fails to adequately train staff on a range of topics necessary to avoid discriminating against persons with psychiatric disabilities, including (1) what psychiatric disabilities are, and how to interact with and adequately serve individuals with psychiatric disabilities; (2) how to screen for psychiatric disabilities; (3) the types of reasonable modifications persons with

¹⁵⁵ 28 C.F.R. § 35.107.

¹⁵⁶ 45 C.F.R. § 84.7.

¹⁵⁷ No ADA or Section 504 Coordinator is mentioned in HRA’s ADA poster, flier, or brochure. None is mentioned in HRA’s ADA grievance procedure or in any other information provided in response to FOIL requests.

psychiatric disabilities might need; (4) what ADA and Section 504 concepts like equal access and non-discriminatory program administration mean as applied to TANF programs; (5) HRA's reasonable modification procedure; (6) HRA's ADA grievance procedure; and (7) the programs and services that are available in the community for persons with psychiatric disabilities. The OCR guidance makes clear that to avoid discrimination, TANF agencies must train their staff to provide equal access to programs for individuals with disabilities.¹⁵⁸ HRA's failure to train staff on these topics denies applicants and recipients a meaningful and equal opportunity to participate in and benefit from TANF programs,¹⁵⁹ and denies people with psychiatric disabilities the reasonable modifications to which they are entitled.¹⁶⁰

HRA has also failed to ensure that HS Systems trains its staff on the range of topics necessary to avoid discriminating against persons with psychiatric disabilities. The OCR Guidance makes clear that TANF agencies must ensure that service providers with contractual or vendor relationships with the TANF agency must be trained as well.¹⁶¹

Remedy

OCR must require that HRA:

- Train and periodically retrain its staff on (1) what psychiatric disabilities are and how to interact with and adequately serve applicants and recipients with psychiatric disabilities; (2) how to screen for and recognize psychiatric disabilities; (3) the types of reasonable modifications people with psychiatric disabilities may need; (4) what ADA and Section 504 concepts like equal access and non-discriminatory program administration mean as applied to TANF programs; (5) HRA's reasonable modification policy; (6) and ADA grievance procedure; and (7) the services, programs and supports available in the community that might be needed by applicants and recipients with psychiatric disabilities; and

¹⁵⁸ OCR Guidance § B.b.

¹⁵⁹ 28 C.F.R. § 35.130(b)(1)(ii); 45 C.F.R. § 84.4(b)(1)(ii); *Alexander*, 469 U.S. at 301. In the Letter of Findings in *Ramos*, OCR found that the failure of the Massachusetts Department of Transitional Assistance to train staff about learning disabilities denied people with learning disabilities an equal opportunity to participate in and benefit from the welfare agency's programs.

¹⁶⁰ 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(b)(1)(vii).

¹⁶¹ OCR Guidance § B.b.

- Ensure that HS Systems and all other entities under contract with HRA provide necessary staff training on these issues.

F. OTHER RELIEF SOUGHT

In addition to the relief requested above, OCR should require that HRA:

- Conduct a diagnostic review of its policies and practices in the public assistance and Medicaid programs to determine whether they have a discriminatory effect on individuals with psychiatric disabilities;
- Modify all policies and practices identified in the diagnostic review that have a discriminatory effect on individuals with psychiatric disabilities in a manner that ensures that individuals with psychiatric disabilities have an equal and equal opportunity to participate in and benefit from these programs;
- Conduct ongoing monitoring of HRA's compliance with the ADA and Section 504 in the administration of the public assistance and Medicaid programs, by
 1. Conducting periodic visits to Job Centers to monitor compliance with the ADA and Section 504 in the application process and appointment policies; and
 2. Conducting a periodic random sample of employability plans, disability assessments and work assignments to ensure that they are appropriate for recipients with psychiatric disabilities; and
- Review the case files of recipients of Family Assistance and Safety Net Assistance whose public assistance was reduced or discontinued as a result of non-compliance with program requirements to determine whether:
 1. Any of these individuals have psychiatric disabilities;
 2. If they do, whether non-compliance with program requirements was due in part to HRA's failure to screen, assess, or accommodate these disabilities by providing appropriate placements, work exemptions, flexible application of program rules and other reasonable modifications, or to comply with the ADA in any other manner; and
 3. Where this was the case, restore all public assistance improperly withheld.

G. CONCLUSION

For all of the forgoing reasons, we request that you promptly investigate this complaint and grant the requested relief.

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APPENDIX A

EXAMPLES OF INDIVIDUALS WHOSE RIGHTS UNDER THE ADA AND SECTION 504 WERE VIOLATED BY HRA

Below are examples of individuals with psychiatric disabilities who have experienced many of the barriers raised in the complaint. All of these individuals are current or former clients of Brooklyn Legal Services Corp. A or MFY Legal Services, or are individuals who sought legal assistance from the Urban Justice Center's legal clinic. The experiences of these individuals typify those of many individuals with psychiatric disabilities who are applicants and recipients for public assistance benefits in New York City, and illustrate broader, systemic problems affecting thousands of other individuals.

1. A.D.

A. D. attended the Urban Justice Center's law clinic. He is 53 years old. He has been diagnosed with ultra-pulmonary tuberculosis, hepatitis C, and an anxiety disorder. In addition, a metal plate that replaced A.D.'s right scapula cracked and the pins came out, making it difficult to move this arm. A.D. also has seizures and a bad back.

In 1998 or 1999, A.D. was evaluated by HS Systems. He brought a letter and supporting documents from his treating physician to HS Systems stating that he couldn't work due to his physical and psychiatric conditions. However, HS Systems refused to look at the letter and documents. HS Systems found A.D. employable with limitations and HRA assigned him to a job removing asbestos from an HRA building, which was clearly inappropriate for him given his medical problems. To make matters worse, no masks or gloves were provided at the work site. A.D. returned to the Center and requested reassignment to a different work site, but when A.D. went to the new assignment he discovered it was just the other side of the same building. A.D. returned to HS Systems with another letter from his doctor. Eventually, he was classified as temporarily unemployable, and is now required to return to HS Systems every three months for another assessment.

2. A. V.

A.V. is client of Brooklyn Legal Services Corp A. She is a 51 year old rape victim who has been diagnosed with major depression. She has panic attacks when she leaves her home. In the summer or fall of 2000, she gave her HRA worker a letter from her psychiatrist which stated that she was being treated for recurrent major depression. The letter also stated that A.V.'s

ability to work at this time is limited; she has difficulty in sustaining concentration under stress and can decompensate easily. Ms. ___ has problems with social interaction, feeling very uncomfortable in crowded places. Her adaption skills are limited and may panic when confronted with changes.

HS Systems found her to be temporarily unemployable. In November 2000, HRA referred A.V. to HS Systems for another disability assessment. In December 2000, HS Systems gave A.V. a Review Team Recommendation form summarizing her disability assessment results in a sealed envelope. The form indicated that HS Systems found her employable with limitations. The form contained a list of A.V.'s physical limitations, but did not mention any limitations caused by her psychiatric disabilities. The only indication that A.V. had a psychiatric disability were the letters "MH" under the category "medical limitation." The form had a list of jobs A.V. could perform. None of the jobs on the pre-printed list were crossed off.

A.V. requested a fair hearing to appeal the employability determination. She was exempted from HRA's work requirements pending a hearing decision. Nevertheless, HRA sent her an appointment notice requiring her to attend a mandatory work program appointment on January 3, 2001. She did not attend the appointment, and on January 31, 2001, HRA sent her a notice that it would reduce her cash assistance for failure to attend. A.V. requested a fair hearing. In March, 2001, HRA sent A.V. another notice to a mandatory work program intake appointment at the Dekalb Job Center on March 29, 2001. A.V. went to the appointment and presented a new report from her psychiatrist dated March 22, 2001, which stated:

Patient panics when she's outside. . . . she becomes short of breath and feels like she's going to pass out. Those symptoms have occurred on buses, trains, on unfamiliar environments. Because of her trauma, being raped, she's withdrawn and feels uneasy when she leaves her house.

A.V. also presented a letter from her attorney explaining that she had already been granted work exemption pending a ruling in her fair hearing, and should not be given a work assignment until the fair hearing was decided.

In early April 2001, HRA sent A.V. a conciliation notice stating that she failed to cooperate with the intake assessment process. On or about April 15, 2001, A.V.'s attorney called the conciliation supervisor at the Dekalb Job Center and explained that A.V. had a temporary work exemption pending her fair hearing. The supervisor said she had never heard of exempting clients from work requirements when they request a hearing to appeal an employability determination. The supervisor refused to settle the conciliation in A.V.'s favor. A.V.'s attorney then called HRA Deputy Regional Manager, who admitted that HRA needed to train Job Center staff about fair hearing medical exemption procedures and codes. A.V.'s fair hearing was held on May 1, 2001. Her attorney presented documents from A.V.'s psychiatrist. The ALJ ruled in her favor on the basis that HRA failed to produce copies of A.V.'s HS Systems evaluations at the hearing, and because the finding of employability was incorrect. The ALJ ordered HRA to give A.V. a 3 month exemption from work requirements. She also ordered HRA to refer A.V. to HS Systems for a new medical evaluation that includes a psychiatric evaluation before finding A.V. employable in the future. If A.V.'s attorney had not intervened,

A.V.'s benefits would have been reduced for failure to comply with the work requirements.¹

3. D.M.

D.M. is a 44 year-old woman who attended the Urban Justice Center's law clinic. She has been diagnosed with claustrophobia, agoraphobia, depression, asthma, bronchitis, and arthritis. Her symptoms include fear of crowds, elevators, public transportation, and leaving her home. She has made several suicide attempts, has difficulty breathing and walking, and has swelling in her legs.

D.M. has been on welfare for approximately twelve years. To preserve her cash assistance, Medicaid, and food stamps, she must travel to HS Systems every three months for an assessment to prove that she is still unable to work. These trips are a grim experience for her. Even though D.M. takes medication to control her anxiety, she cries uncontrollably before each trip and barely makes it through the process. First she must ride the subway to get to the HS Systems appointment. Then she always encounters a large crowd at HS Systems, and she must wait in line to be put in a crowded elevator. D.M.'s husband always accompanies her to HS Systems but HS Systems security guards usually do not allow him to accompany her into the waiting area or examination rooms, and instead make him wait by the elevator. On at least one occasion he was able to accompany D.M. into the waiting area only because he snuck in when the security guard left his post. D.M. hasn't asked for accommodations because she is afraid to do so. None were offered by HS systems.

D.M. reports that her claustrophobia, agoraphobia, and other disabilities are all listed in letters she brought to HS Systems from her doctor. She has applied for SSI. Due to her disabilities, the Social Security Administration has agreed to conduct home visits to determine whether D.M. is eligible for SSI. She would like to have a similar arrangement with HS Systems, or to avoid the regular disability assessments entirely, but this program modification has never been offered to her.

4. E.F.

E.F. is a client of Brooklyn Legal Services Corp. a. She is 46 years old and has been diagnosed with depression and generalized anxiety disorder. In November 2000, E.F. was found "employable with limitations" by HS Systems. In January 2001, HRA sent E.F. a notice stating that it would reduce her cash assistance and food stamps because she did not comply with employment requirements. E.F. requested a fair hearing to appeal the decision and was granted a temporary exemption from work requirements pending a decision on the fair hearing. Nevertheless, Dekalb Job Center called her in to four separate work-related appointments. At one appointment, E.F. showed the welfare worker a letter from her attorney explaining that she

¹ Documents related to A.V.'s case are attached as Exhibit G of the complaint.

had a temporary exemption from work requirements. In response, the worker yelled at E.F. and told her she had to comply with work requirements. The attorney reported the incident to the Deputy Regional Director, who said that HRA staff don't understand that when an individual requests a fair hearing to appeal a denial of a work exemption based on a health condition and the state grants aid continuing, workers are supposed to change a code in the computer so that HRA doesn't send the individual appointment notices for work-related appointments. She admitted that HRA staff need training on the issue. E.F. won her fair hearing on the basis that HRA failed to produce a notice at the hearing and failed to submit evidence that E.F. was employable with limitations. The ALJ directed HRA to exempt E.F. from work requirements on a temporary basis until she was re-evaluated by HS Systems. E.F. was eventually exempted from work activities.²

5. F.B.

F.B. attended the Urban Justice Center's law clinic. He is a 48 year-old man whose mother took care of him until she died in the spring of 2001. F.B. suffers from paranoid schizophrenia, chronic depression, and agoraphobia. He goes to bed at 7 p.m. and wakes up at 2 a.m. to give himself 5 hours to perform rituals to prepare for the day. If F.B. does not have a reason to leave the apartment, he spends from 2 a.m. to 7 p.m. preparing, eating, and cleaning up from meals. He does not have a psychiatrist but he is trying to find one.

When he applied for welfare in the summer of 2001, F.B. believed that if he didn't say that he was able to work on the application, it would be more difficult to get benefits. He was in dire need of income, so he answered "yes" to the question of whether he could work. He was not referred to HS Systems for a disability assessment, and was instead referred to a job-readiness program. In August, 2001, he handed a letter to the welfare supervisor that said:

I suffer from paranoid schizophrenia, chronic depression, and agoraphobia. I am severely disabled and I have applied for SSI. Please accommodate my disabilities by doing the following:

- a) limit the number of appointments I must attend to one two-hour appointment a week;
- b) hold as many appointments as possible at my home;
- c) do not make me work outside, with other people, or in a situation where I must see many people; and
- d) do not make me work more than four hours per week.

The supervisor refused to take the letter because it was not signed by a doctor. Nor did the supervisor refer F.B. to HS Systems to obtain additional information about F.B.'s condition,

² Exhibit V.

and whether he had a psychiatric disability that affected his ability to work or required reasonable modifications.

6. J.H.

J.H., who attended the Urban Justice Center's legal clinic, has been diagnosed with major depression. She is 26 years old and has two children, ages 3 and 4. She goes to the Euclid Center in Brooklyn. J.H. was placed in PRIDE 2000, a program for individuals whose work limitations are substantial as a result of a disability or other reasons.

When J.H. was in the PRIDE program she was assigned an HRA intern who made home visits. The intern, without notice or explanation, stopped coming. No one told J.H. that she was supposed to do anything else or that she was no longer in the PRIDE program. J.H. then received a notice in June or July 2000 to report to WEP (workfare), even though no there had been no new disability assessment conducted by HS Systems or any other evidence that J.H.'s condition had improved. J.H. ignored the notice because the PRIDE intern told her that she was exempt from WEP. HRA then closed her case for failure to report to WEP.

The Urban Justice Center requested hearing for J.H. and asked for aid continuing so she could receive cash assistance and be exempt from work requirements until a decision was issued after the hearing. Her household's cash assistance and food stamps were reduced anyway. The Urban Justice Center won the hearing on the basis that HRA failed to provide evidence to support its decision and HRA was ordered to restore her benefits. After winning the hearing the Urban Justice Center had to advocate on the J.H.'s behalf for several months to get HRA to restore her benefits.

7. J.V.

J.V. attended the Urban Justice Center's law clinic. He is 57 years old. He has been diagnosed with depression, bipolar disorder, schizophrenia and a learning disability. He reports hearing voices. He has memory problems, difficulty speaking, and neurological dystonia, which causes tics. J.V. reports that he experiences memory blackouts for several days at a time. He has been hospitalized several times for his disabilities.

HRA knows that J.V. is ill. In addition to J.V.'s own statements to HRA and the fact that his neurological disorder is visible, his former hospital psychiatrist and social workers have written letters to HRA. In May 1998, J.V.'s psychiatrist wrote a letter to HRA which stated:

[J.V.] is suffering from . . . major depression and has been unable to work. He just began treatment at for this at [a hospital outpatient center for mental health]. Please do not cut off either his Public Assistance or his Medicaid benefits as he needs them in order to get treatment and return to work. If you have questions, please call us at . . .

In July of 1999, J.V.'s hospital social worker wrote in a letter to HRA:

[J.V.] has been hospitalized . . . At the present time he doesn't have any source of income. Please assist him in obtaining emergency food stamps and financial help .

...

Nevertheless, HRA has not provided J.V. with any help in applying for and staying on benefits. J.V. has received Safety Net Assistance and other benefits intermittently in the past, but he can't keep his case open and he has had tremendous difficulty navigating the application process when he has tried to reapply for benefits. J.V. describes his attempts to get welfare as "horrific" and "a nightmare." He estimates that he has tried to obtain public assistance, cash, and food stamps at least four times in the past three years. Despite help from his former psychiatrist and social worker and from advocates, he has met with limited success. At every step he has encountered numerous appointments, many of which seem to him to be unnecessary; waits that last hours, and sometimes days; large crowds and long lines in waiting areas; great difficulty obtaining carfare; and intimidating workers.

On one attempt, J.V. went to a Job Center and waited from 9 a.m. to 5 p.m. for four days straight, to see someone who would help him apply. The waiting area was very crowded. He felt unsafe; at one point, fights broke out and the police came. He didn't understand who he was supposed to see, and eventually he gave up.

On another occasion J.V. tried to obtain an emergency grant to pay a utility bill to prevent Con Ed from shutting off his electricity. Again, he encountered long waits and crowds at the Job Center, and didn't understand who he was supposed to see. Finally, someone from HRA took the utility bills he brought in, but then disappeared. He never contacted J.V., and J.V. couldn't find him again, so he gave up.

J.V. believes that at one point his psychiatrist made an appointment for HRA's Protective Services for Adults (PSA) to come to his apartment and help him to get benefits. J.V. and his psychiatrist waited in his apartment a good part of the day, but no one came. A few weeks later, HRA sent him a notice stating that he would not receive welfare.

In the fall of 2000, J.V. tried to apply for benefits again. He made it through an initial appointment at the Job Center. He was told to go to an appointment at HS Systems, but he couldn't figure out how to get carfare from HRA to make the trip. J.V. scrounged together money to go to a 7:30 a.m. appointment but arrived an hour late. The people downstairs at HS Systems told him he couldn't go upstairs to the appointment, so he had to schedule another appointment. J.V. had to attend two appointments at HS Systems for physical examinations before he received a mental health assessment. The mental health assessment took only fifteen minutes. According to J.V., the person who conducted the assessment was hostile. She asked him a few preliminary questions such as whether he could spell "world" backwards, whether he heard voices, then ended the interview. J.V. did not believe the person conducting the assessment was a mental health professional.

J.V. was confused about what he was supposed to do next. After hours of waiting at his Job Center, someone told him he had to return to HS Systems to get a document. Once again, he couldn't figure out how to get carfare from HRA to make the trip, so he never returned to HS Systems.

On December 3, 2001, J.V. went with a social work intern from the Urban Justice Center to the Waverly Center to apply for benefits. He had no food, and only 70 cents in his pocket at the time. J.V. and the intern waited in line for an application, but by the time they got to the front of the line none were left. Eventually they were given an application and they had to wait in line again to hand it in. The waiting room was crowded, and by the time J.V. handed in his application he was extremely nervous, his head spasms had increased and he was experiencing memory lapses.

After turning in the application, J.V. and the intern waited over 3 hours to meet with a worker. During their wait in the lobby, other people were pacing about, and every time a name was called other people who were waiting would yell things like "what about me?" and "I've been here since 9:00 a.m.!" Many people were complaining to the security guard. One of the people who was waiting said she had just been released from the hospital where she had been treated for a brain tumor. She was extremely upset. She said to an HRA worker "I can't wait in line forever. Do you want to see the shunt in my head?" but she was told to wait.

Less than an hour after turning in the application, the Urban Justice Center intern asked the HRA worker in the waiting area to make sure J.V. would meet with a worker. She explained that J.V. has a disability and needed to be seen quickly. The worker said J.V. would have to wait. An hour later, the intern spoke to a supervisor at the Center and asked if any accommodations could be made for J.V. for his disabilities, because J.V. might not be able to return to the Center if he wasn't seen that day. The supervisor said J.V. would be seen that day, but no accommodations were offered.

By the time J.V.'s name was called at 7:15 p.m., his spasms, twitching, and concentration problems were significantly worse. J.V. was shaking so badly that he had difficulty filling out and understanding the paperwork. The worker offered him no help. J.V. told the worker that he had only 70 cents for food and needed emergency grants for food, clothing and shelter. The worker said she couldn't give him emergency assistance. She told J.V. to return the next day. The intern asked if the worker could give J.V. a specific appointment time, because J.V. had a doctor's appointment the following day. The worker told J.V. to reschedule the doctor's appointment. She gave J.V. a piece of paper without a time or caseworker's phone number in it. The intern asked whether HRA accommodated clients with disabilities in the application process. The worker said no.

J.V. couldn't bear the thought of waiting another day at the center, and we was worried about missing his doctor's appointment, so he didn't return to the Center the following day. His application was denied for missing the appointment. Meanwhile, J.V. had no money or food.³

8. M.B.

M.B., who attended the Urban Justice Center's legal clinic, is 53 years old. She has been diagnosed with delusional disorder and major depression. She has auditory hallucinations and is very disorganized in her thinking. Creole is her primary language. Her adult daughter often accompanies her to meetings. M.B. has very little insight into her illness.

In 1998, HRA found M.B. employable without any assessment by HS Systems. M.B. and her daughter requested a hearing to appeal the decision, and at a hearing held in October 1999 the ALJ ordered HS Systems to conduct a disability assessment of M.B. In early 1999, HS Systems found M.B. temporarily unemployable and exempted her from work requirements. Then without any new evidence or a disability assessment, HRA informed M.B. on July 27, 1999 that she was employable, even though she continued hearing voices and was still delusional and paranoid. The Urban Justice Center requested a hearing for M.B. and presented documentation of M.B.'s illness at a fair hearing. The HRA representative who attended the hearing agreed to refer M.B. to HS Systems for another assessment, and the hearing was withdrawn pending the assessment results.

The HS Systems appointment was scheduled for October 27, 1999. On the day of the appointment, M.B. was too afraid to leave the house and use public transportation, as a result of her psychiatric disability so she did not attend the appointment. M.B. and her daughter tried to call to reschedule the appointment, but they were unable to reach anyone. A few days later, M.B.'s daughter was able to coax her into going to HS Systems, but security guards at HS Systems would not allow M.B. and her daughter into the HS Systems offices to explain the situation. HRA then sent M.B. a notice stating that HS Systems found M.B. employable based on the results of an assessment conducted on October 27, 1999, even though there had been no medical or mental health assessment. On December 4, 1999, HRA sent M.B. a letter stating that it would discontinue her public assistance benefits and Medicaid for failure to attend the appointment. The Urban Justice Center requested a hearing to appeal this determination.

In December 1999, the Urban Justice Center wrote to Participant Services at HRA, informing them about M.B.'s disability, the history of her fair hearing, her missed appointment at HS Systems, and the fact that HS Systems would not allow M.B.'s daughter to accompany M.B. to her appointments. The letter asked HRA to provide a flexible appointment at HS Systems for a mental health assessment, or in the alternative, to make an employability determination on the basis of documentation from M.B.'s own treating professional. Participant

³ Exhibit E.

Services responded that because a fair hearing had already been scheduled, they could not address the issue.

The fair hearing took place in January 2000. M.B. and another witness testified that M.B. was too sick to attend the appointment at HS Systems in October 1999. The ALJ ordered HRA to schedule another appointment for M.B. at HS Systems. The Urban Justice Center was able to persuade HRA that M.B. could not work and could not attend an assessment at HS Systems, and referred M.B. to the PRIDE program, which helped M.B. apply to SSI. M.B.'s application for SSI was approved, and she is now receiving SSI benefits.⁴

9. M.F.B.

M.F.B. is a client of MFY Legal Services, Inc. He is 34 years old. He has been diagnosed with nervous disorder, panic attacks, and claustrophobia. His initial appointment at HS Systems for a disability evaluation was scheduled for May 2001, at the HS Systems office in Manhattan, which is located on the 8th or 9th floor. M.F.B. explained to the HS Systems security guard that he cannot use elevators because he has an elevator phobia. The guard did not allow him to use the stairs to get to the appointment because it was against the rules. As a result, M.F.B. was unable to attend the appointment. HRA sent him a conciliation notice. At the conciliation meeting, he was found to have good cause for missing the appointment and he was given a new appointment.

M.B. went to the second HS Systems appointment with a letter from his welfare worker that said: "Please allow client to use the stairway because he is [sic] claustrophobia. Specific phobia - closed spaces." M.F.B. showed the letter to the guard at HS Systems, but he still wasn't allowed to use the stairs. Finally, another security guard and a janitor snuck M.F.B. into the stairway. The guard told him to ask the receptionist to contact security to take him back down the stairs when he was ready to leave. When he asked the receptionist to do this, she got very angry and yelled at him. Eventually he made it out of the building.

The HS Systems' evaluation concluded that M.F.B. was employable with limitations and in need of a specialized supported employment plan. The list of jobs HS Systems considered to be suitable for him on his Review Team Recommendation form included working as an elevator operator. M.F.B. appealed the employability determination and won a fair hearing on the basis that HRA was not prepared for the hearing.⁵

⁴ Exhibit L.

⁵ Exhibit K.

10. M.O.

M.O. is a client of MFY Legal Services, Inc. She suffers from major depression, severe back pain caused by spinal stenosis, and asthma. In March 2001, HRA gave M.O. a form to be filled out by her doctor. M.O.'s doctor completed the form and stated that M.O. could not work due to her asthma and severe back pain, and that she suffered from these conditions, and from depression, for over five years. HS Systems found M.O. temporarily unemployable and sent her a notice instructing her to report to the PRIDE program on May 31, 2001. M.O. did not attend this appointment because she had severe back pain and she was depressed. No one called her to find out why she didn't attend the appointment, whether there was a disability-related reason, and whether she needed an accommodation to make attendance possible. Nor was she offered another appointment. Instead, HRA sent M.O. a conciliation notice directing her to come to the PRIDE Center to explain why she missed the appointment, even though HRA policy requires the PRIDE call individuals who do not attend the initial interview to find out why they didn't attend and to assign another appointment. M.O. attended the conciliation meeting and explained the reason she didn't attend the meeting, and she submitted a letter from her psychiatrist discussing her depression and recommending that she not work. The conciliation was not successful, and HRA then sent M.O. a notice stating that her benefits would be reduced because she failed to attend the PRIDE appointment.⁶

11. M.S.

M.S. is a 54 year old client of Brooklyn Legal Services Corp. A. She has been diagnosed with cardiovascular disease and depression. M.S. and her fifteen year old daughter both received Family Assistance until M.S.'s application for SSI was approved. Currently, only M.S.'s daughter receives Family Assistance.

On February 28, 2001, M.S. had a heart attack. One week later she had coronary bypass surgery. In April 2001, she went to an appointment at Bushwick Job Center and showed a worker medical documentation from her hospital stay. The worker said that he would make sure that M.S. received an appointment at HS Systems, where they might be able to help apply for SSI.

In August, 2001 HRA sent M.S. a notice informing her that she had to attend an appointment at HS Systems. M.S. attended two days of appointments. At some point during the two days M.S. was examined by a doctor, but she doesn't think she saw a psychiatrist. She gave someone at HS Systems her medical documents, including a list of her medications, an appointment card from a hospital psychiatric clinic, and some letters from another hospital's cardiology clinic. At the end of the appointment, HS Systems gave M.S. a "Diagnostic Status Report" stating that she had uncontrolled angina pectoris and cardiovascular disease and controlled hypertension, depressive disorder, and an old myocardial infarction. HS Systems also

⁶ Exhibit H.

gave her a wellness program rehabilitation plan which required her to call HS Systems on October 3, 2001, the same day as her appointment at a cardiac clinic, and required her to make follow-up phone calls to HS Systems every two weeks thereafter.

On October 3, 2001, M.S. came home after her appointment at the cardiac clinic exhausted and went straight to sleep without calling HS Systems. A few days later, HS Systems sent her a notice terminating her rehabilitation plan because she failed to contact HS Systems after her doctor's appointment. Soon after, HRA sent her a notice stating they were discontinuing her household's public assistance benefits because she failed to meet with HS Systems. In response to this notice, M.S. called HS Systems and told the person that she is supposed to report to that she was sorry she forgot to call her, but she was exhausted after the doctor's appointment and extremely forgetful. The worker told her there was nothing she could do. HRA sent M.S. a notice dated October 9, 2001 stating that her rehabilitation plan would be terminated for failure to contact HS Systems after her appointment. A few days later, HRA sent her a notice that it was discontinuing her cash assistance. M.S.'s niece requested a fair hearing on her behalf. On or about October 16, 2001, M.S. received a decision from the Social Security Administration approving her SSI application, so she is no longer subject to work requirements, including the wellness program.⁷

12. R.M.

R.M., who attended the Urban Justice Center's legal clinic, is 58 years old. She has been diagnosed with paranoid schizophrenia and she is homeless. R.M. has very little insight into her illness and is very paranoid, so she does not tell anyone that she has a disability. She has been hospitalized at Bellevue Hospital for her psychiatric disabilities.

In June 1999, HRA closed R.M.'s case and she lost her cash assistance, food stamps and Medicaid after she failed to attend a recertification appointment at HRA. R.M.'s case worker in her supportive housing program asked the Urban Justice Center to represent her. The Urban Justice Center requested a fair hearing for R.M., which was held on December 3, 1999. The hearing was resolved with a disposition in which HRA agreed to take no further action on the case. Shortly afterwards, HRA notified R.M. that she had to report to HRA for an initial interview about a WEP (workfare) assignment.

At around this time, R.M.'s supportive housing caseworker informed the Urban Justice Center that R.M. was not taking the medication prescribed to treat her schizophrenia, that she had become increasingly paranoid, and was throwing away her mail as a result. In December 1999, the Urban Justice Center wrote to Participant Services at HRA on R.M.'s behalf. The letter informed HRA about R.M.'s psychiatric disability and stated that R.M. was currently unstable and unlikely to attend the WEP appointment even with the encouragement of her caseworker and the Urban Justice Center. The letter requested that HRA provide R.M. with a flexible appointment at HS Systems for a mental health evaluation to determine her employability, or that

⁷ Exhibit O.

an employability determination be made on the basis of documentation from R.M.'s own treating professionals. At some point, HRA exempted R.M. from work requirements on the basis of documentation provided by the Urban Justice Center.

R.M. moved from one shelter or drop-in center to another. HRA closed her case, and she later reapplied for benefits in February 2001 at a different Job Center. Because one symptom of her disability was that she was not able to acknowledge or talk about her condition, it is very unlikely that R.M. volunteered information about her disability to HRA when she reapplied for benefits. Although HRA had knowledge of R.M.'s serious psychiatric disability and her difficulty attending appointments, and HRA had exempted her from work requirements in the past on the basis of her disability, when R.M. reapplied for benefits, HRA did not make use of the information it had, but instead treated R.M. as they would treat any other applicant for public assistance. HRA did not refer her to HS Systems for a disability assessment, but instead, found her employable. HRA required R.M. to attend a "job readiness" appointment in March 2001. R.M. called HRA to notify them that she could not attend the appointment, but HRA did not give her another appointment date. When she did not attend the appointment, HRA stopped processing her application.

In June 2001, R.M. had a fair hearing to appeal the failure to process her application. She testified that she was unable to attend the hearing due to her disabilities and weather conditions. The hearing officer held that the HRA should not have delayed processing her application. Eventually, R.M. was able to obtain benefits.⁸

13. R.Y.

R.Y., who attended the Urban Justice Center's legal clinic, is 50 years old. She has several debilitating medical problems, including chronic asthma, Hepatitis C, fibromyalgia, and chronic polyarticular joint pain, and allergic rhinitis. She also has an anxiety disorder which causes severe panic attacks and a fears of crowds, social situations and public transportation. She also worries excessively about her health and her daughter, and she experiences intrusive, distressing thoughts and obsessions.

In late 1999, R.Y. appealed a decision by HRA that she was employable, won the hearing, and HRA was ordered to conduct another disability assessment. R.Y. went to HS Systems on January 10, 2001 for the assessment. She was given a brief physical exam and her blood was tested, but according to R.Y. she never met with a psychiatrist. R.Y. gave HS Systems reports from her treating physician. On January 19, 2001, when R.Y. returned to HS Systems to pick up her assessment, HS Systems gave her a sealed envelope and told her to present it unopened to her worker at HRA. HS Systems told her that if she tampered with the envelope, the assessment would be "voided" and she would be given a work assignment without it.

⁸ Exhibit F.

Riding back on the subway, R.Y. became so agitated about the assessment and the prohibition on looking at it that she had a panic attack. She was taken to Elmhurst Hospital where she was treated in the emergency room with Ativan, an anti-anxiety medication.

R.Y.'s Review Team Recommendation form summarizing her assessment results had some information about her physical limitations, but none about her psychiatric limitations. The only possible indication that R.Y. has a psychiatric disability were the letters "MH." The report listed a number of "suitable assignments" including "meet and greet visitors," "provide information or directions," "answer telephones," all of which are impossible for R.Y., given her anxiety disorder. She has requested a fair hearing to appeal this determination.

14. S.D.

S.D. attended the Urban Justice Center's legal clinic. She is 26 years old. Psychiatrists have diagnosed her with schizophrenia, depressive disorder and a learning disability. She experiences headaches, memory loss and auditory hallucinations. In an interview with Urban Justice Center staff, S.D. appeared to falling asleep and experiencing auditory hallucinations. S.D. has been hospitalized several times due to her disabilities. S.D.'s psychiatrist has described her condition in the following way:

[SD] is being treated for depression and psychosis. Her diagnosis is depressive disorder not otherwise specified and psychotic disorder. In psychotherapy, I work with her on reducing the effects of auditory hallucinations and any stressors which may bring them about. I also work on reducing symptoms of depression, including suicidal thoughts.

In my opinion her symptoms have a significant negative effect on her ability to organize her life including the ability to attend all required appointments with the welfare system. I also believe, that at this time, [S.D.] is unable to work.

Nevertheless, HS Systems found S.D. employable with limitations and gave her a WEP (workfare) assignment at Goodwill industries. S.D. found that if she took her medication to stop the auditory hallucinations, she was too drowsy to work. For a while she chose work over medication and tried to tolerate the hallucinations. This was difficult, so she began to take her medication again, and as a result missed a few days at WEP. HRA then closed her benefits case, though S.D. doesn't remember receiving a notice about it. She learned that her case was being closed when she called her worker about her WEP assignment.

The Urban Justice Center requested a fair hearing on whether S.D. had good cause for missing days at the WEP assignment. S.D. won the hearing on other grounds, and eventually obtained a fair hearing decision that she was not employable. Without persistent advocacy by the Urban Justice Center, S.D. would have lost her benefits.

15. S.W.

S.W., a 48 year old mother of eight children, is a client of Brooklyn Legal Services Corp. A. Her husband is employed full-time. S.W. has been diagnosed with chronic depression and chronic leg ulcers. Her household receives Family Assistance, Medicaid, and Food Stamps. In July, 2000, S. W.'s physician told her to stay off her feet as much as possible. In August 2000, after receiving medical documentation of S.W.'s condition, a top level administrator at the Dekalb Job Center told S.W.'s attorney that she would grant S.W. "homebound" status and enter the appropriate code in the HRA computer system.

Nevertheless, in late October 2000, HRA sent S.W. a notice to appear at HS Systems. S.W.'s attorney called the Supervisor at the Dekalb Job Center and asked why the Center sent S.W. an appointment notice if she was homebound. The Supervisor checked her computer and said that S.W. was not coded as homebound. She said she didn't know the reason for this. She said that she would cancel the appointment notice and enter the computer code for homebound status.

In mid November, 2000, HRA sent S.W. a notice to appear at the Employment Office at the Dekalb Job Center on November 27. S.W.'s attorney called the Center's administrator again and asked why HRA sent S.W. the notice. The administrator said that she didn't understand why the code for homebound status was not being picked up by the system that deals with employment appointments. She said that she would try to get the appointment cancelled.

In early December 2000, HRA sent S.W. received two different notices requiring her to come for recertification appointments at the Dekalb Job Center. S.W.'s attorney called the Center administrator for the third time and asked her to cancel the appointments and make sure that S.W. was coded as homebound.

In early December 2000, HRA sent S.W. a conciliation notice stating that she was required to go to the BEGIN program at the Dekalb Job Center on December 20 to explain why she failed to keep her appointment on November 27. In late December 2000, HRA sent S.W. a notice stating that HRA was closing her public assistance case because she failed to meet with the employment team on December 16. S.W.'s attorney requested a fair hearing to challenge the decision.

In mid May 22, 2001, HRA sent S.W. yet another appointment notice requiring her to appear at HS Systems. S.W. did not attend this appointment. On or about June 13, 2000, HRA sent S.W.'s husband a notice stating that the entire household's public assistance case would be closed because he failed to attend an HS Systems appointment on June 6. S.W.'s husband does not have a disability and HRA never gave him an appointment at HS Systems, so the notice presumably referred to S.W.'s failure to attend her appointment at HS Systems. S.W.'s attorney added this issue to the fair hearing that had already been requested.

On August 1, 2001, a fair hearing was held on the decisions to close S.W.'s case and that of her entire family. On August 13, OTDA issued a decision ordering HRA to withdraw the

notices to close the family's public assistance case.

Nevertheless, this did not resolve the issue. In early October 2001, HRA sent S.W. another notice requiring her to attend an appointment at HS Systems on October 24. She did not attend this appointment. On or about October 27, HRA sent S.W.'s husband a notice stating that the household's public assistance would be discontinued because he failed to meet with HS Systems. S.W.'s attorney requested another fair hearing to challenge the case closing.

In mid November, 2001, HRA sent S.W. yet another appointment notice requiring her to appear at HS Systems on December 3, 2001. S.W. informed her attorney that she tried to leave her home to attend the appointment but she couldn't because her leg hurt badly and she didn't feel well.

In early December 2001, HRA sent S.W. another notice stating that HRA was closing her family's cash assistance case because she failed to appear at an HS Systems on December 3. S.W.'s requested that this issue be added to the fair hearing that was already requested. This hearing has not yet taken place.

If S.W.'s attorney had not intervened on multiple occasions S.W. and her entire family would have lost benefits as a result of HRA's failure to treat S.W. as if she had homebound status, which HRA said they had given her.

16. V.H.

V.H., a client of MFY Legal Services, Inc., suffers from major depression. V.H. gave HS Systems a letter from her doctor, dated June 25, 2001 stating that she suffers from major depressive disorder and was currently unable to work. Nevertheless, on July 30, 2001, without conducting their own evaluation of V.H. or receiving any additional information from V.H.'s doctor, HS Systems sent her a notice that said: "We are pleased to inform you that your treating physician has indicated that the condition for which you required treatment is now stable and you may participate in a work-related activity." In September 2001, V.H.'s doctor again informed HRA by letter that she had major depressive disorder with psychotic episodes and was unable to work. However, on November 9, 2001, HRA sent her a notice stating that it found her employable with limitations. V.H. requested a fair hearing to appeal this decision.⁹

⁹ Exhibit R.

APPENDIX B

OVERVIEW OF WELFARE SYSTEM IN NEW YORK CITY

Eligibility

In 1997, New York State enacted the Welfare Reform Act. The Act renamed the New York cash assistance program for families with dependent children the “Family Assistance” program.¹ The cash assistance program for recipients without dependent children, paid out of state funds, was renamed “Safety Net Assistance.”² The Safety Net Assistance program also provides non-cash assistance, i.e., vouchers and direct payments to landlords and utilities.³ Both programs are operated in New York City by the Human Resources Administration (“HRA”).

The Welfare Reform Act also assigned responsibility for welfare work programs to the New York State Department of Labor⁴ and assigned responsibility for the Medicaid and Health programs to the New York State Department of Health.⁵ The Commissioner of the New York State Office of Temporary Disability Assistance (“OTDA”) exercises general supervision over HRA implementation of the Family Assistance and Safety Net Assistance programs.⁶

Family Assistance recipients are subject to a sixty month lifetime limit on assistance.⁷ Months in which the family received either Family Assistance or cash Safety Net Assistance count towards this limit.⁸ There is a hardship exemption for recipients who are unable to work for reasons including, but not limited to, a verified physical or mental impairment.⁹ Safety Net Assistance recipients can receive two years of cash assistance.¹⁰ Family Assistance households

¹ Soc. Serv. Law § 358.

² *Id.*, §§ 157 - 159.

³ *Id.*, § 159(1)(b.)

⁴ *Id.*, § 363-a; L. 1996, c. 474, § 240.

⁵ *Id.*, § 330(1)(a).

⁶ *Id.*, § 34(3)(d).

⁷ *Id.*, § 350(2).

⁸ *Id.*

⁹ 18 N.Y.C.R.R. § 369.4(d)(7).

¹⁰ Soc. Serv. Law § 159(2). Some families, however, are eligible only for non-cash Safety Net Assistance. *Id.*, §§ 159(3) - (4).

who reach their 60 month limit and Safety Net Assistance recipients who reach their two-year limit of cash assistance may be eligible for non-cash Safety Net Assistance.¹¹

Work Requirements

Non-exempt cash assistance recipients must participate in work activities, unless they are over sixty or under sixteen years of age, or under age nineteen and attending secondary, vocational or technical school.¹²

Disability Exemption

New York exempts from work activities those who are “ill, incapacitated, or sixty years of age or older or deemed to be disabled . . .”¹³ State law requires local districts to determine whether the individual has any “medical condition” that would limit the individual’s ability to work during the application and recertification process and whenever the local district “has reason to believe that a physical or mental impairment may prevent the individual from fully engaging in work activities.”¹⁴ Individuals who answer yes must be told that they have ten days to provide any relevant medical documentation.¹⁵ Local districts have the discretion to accept the documentation provided by the individual as evidence that the individual is unable to work or is work-limited.¹⁶ If the district finds the individual’s documentation insufficient, it shall refer the individual to a medical practitioner certified by the State Office of Disability Determinations for an examination of his or her medical condition.¹⁷

The health care professional performing the examination is required to: (1) review and consider all pertinent records or information provided by the individual or his or her treating health care practitioner; (2) make a specific diagnosis from medically appropriate tests or evaluations; (3) provide both the individual and HRA an opinion about the presence or absence of the alleged condition; and (4) determine whether the individual is disabled and unable to engage in work activities, or, for a stated period of time, not disabled, but “work limited,” and

¹¹ *Id.*, § 159(2).

¹² Soc. Serv. Law §§ 331- 332. Non-exempt applicants for Family Assistance or Safety Net Assistance may be assigned to participate in certain work activities or to accept an offer of employment. *Id.*, §§ 131(5), (7)(b).

¹³ Soc. Serv. Law § 332 (1)(a).

¹⁴ *Id.*

¹⁵ *Id.*, § 332-b(2).

¹⁶ *Id.*, § 332-b(3).

¹⁷ *Id.*, § 332-b(4).

able to engage in work activities with limitations; or neither work disabled nor work limited.¹⁸ If the health care professional identifies another condition during the examination that may interfere with the individual's ability to fully engage in work activities, the examiner must report that condition as well.¹⁹ Individuals found to be disabled and unable to engage in work cannot be assigned to work activities.²⁰ Those found to be work-limited may be assigned to activities consistent with their limitations.²¹

When an individual requests a disability assessment or the local district has determined that an assessment is needed, the district is not allowed to assign the individual to a work activity until the disability assessment has been completed, unless the individual agrees to an interim work assignment that is consistent with the conditions and limitations the individual identifies.²² Individuals have the right to request a fair hearing to appeal an employability determination.²³ If a timely fair hearing is requested, HRA cannot assign the individual to a work activity until a hearing is held and there is a hearing decision, unless the individual agrees to a limited work assignment that is not inconsistent with the condition the individual claims to have.²⁴

Employability Assessment and Planning

Before assigning a recipient to a work activities, HRA must assess employability.²⁵ The assessment must be based on the recipient's educational level, literacy and English language and basic skills proficiency, as well as the recipient's child care and other supportive service needs.²⁶

Based on the assessment, local districts must develop an employability plan containing

¹⁸ *Id.*, § 332-b(4)(a)-(e).

¹⁹ *Id.*, § 332-b(4)(d).

²⁰ *Id.*, § 332-b(4)(e)(i).

²¹ *Id.*, § 332-b(7).

²² *Id.*, § 332-b(5).

²³ *Id.*, § 332-b(6).

²⁴ *Id.*

²⁵ *Id.*, §§ 335(1), 335-a(1). The employability assessments must be completed within ninety days of the eligibility determination for recipients of Family Assistance, but for Safety Net recipients, they must be completed only to the extent that resources are available. *Id.*, §§ 335(1), 335-a (1).

²⁶ *Id.*

the recipient's employment goals and the services that will be provided to the recipient.²⁷ "To the extent possible," the plan must "reflect the [recipient's] preferences" in a manner consistent with assessment results, the recipient's needs, and the needs of HRA to meet federal and state work participation rates.²⁸ The work activity to which the recipient is assigned must be consistent with his or her mental and physical limitations.²⁹

Sanctions

Family Assistance recipients who do not comply with work activities are subject to increasing sanctions.³⁰ The first sanction results in the removal of the non-cooperating household member from the cash assistance case until she is willing to comply; the second sanction lasts for at least three months and until the recipient is willing to comply; all subsequent sanctions last at least six months and until the recipient is willing to comply.³¹ Applicants who fail without good cause to cooperate have their applications denied.³² Before sanctions can be imposed, the local district must notify the recipient in writing of the nature of the non-compliance and the right to request conciliation and an administrative hearing before the state agency to appeal the sanctions.³³

Fair Hearings

Applicants and recipients have the right to a fair hearing to challenge the denial of an application for public assistance benefits or a termination, reduction or suspension of public assistance benefits³⁴ or a determination that they are not exempt from work requirements on the

²⁷ *Id.*, § § 335(2)(a); 335-a (2).

²⁸ Soc. Serv. Law § 335(2)(a). **(Help: SNA statute doesn't say this!)**

²⁹ 12 N.Y.C.R.R. § 1300.2(d)(13)(ii)(b).

³⁰ *Id.*, § 342(1).

³¹ *Id.*, § 342(2). Sanctions are even more severe in the Safety Net Assistance program: the first sanction results in the removal of the non-cooperating household member from cash assistance for at least ninety days and until the recipient is willing to comply; the second sanction lasts for at least 150 days and until the recipient is willing to comply; all subsequent sanctions last for 180 days and until the recipient is willing to comply. *Id.*, §§ 342(3)(a)-(c).

³² *Id.*, § 342(2)

³³ *Id.*, §§ 341(1); 341(2)(c). Family Assistance participants have ten days to request a conciliation; Safety Net Assistance participants have seven days. Soc. Serv. Law §§ 341(1).

³⁴ 18 N.Y.C.R.R. §§ 358-3.1(b)(1); 358-3.1(b)(3).

basis of disability.³⁵ Hearings are held by OTDA's Fair Hearing Unit. An aggrieved applicant or recipient has sixty days to request hearings to challenge most local district actions or inactions concerning their public assistance and ninety days to request a fair hearing concerning Medicaid,³⁶ but only ten days to request a hearing to challenge a determination that he or she is not exempt from work requirements on the basis of disability.³⁷

³⁵ 18 N.Y.C.R.R. §§ 358-3.1(b)(14).

³⁶ Soc. Serv. Law § 22(4)(a); 18 N.Y.C.R.R. §§ 358-3.5(a)(1).

³⁷ 18 N.Y.C.R.R. §§ 358-3.5(b)(6).