

New York Code of Rules and Regulations
Title 18. Department of Social Services
Chapter II. Regulations of the Department of
Social Services
Subchapter B. Public Assistance
Article 3. Authorization and Payment
Part 381. Method of Payment

TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER B. PUBLIC ASSISTANCE
ARTICLE 3. AUTHORIZATION AND PAYMENT
PART 381. METHOD OF PAYMENT

Part 381 Notes

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

§ 381.1 Definitions

(a) Unrestricted money payment. An unrestricted money payment means one which is paid to the grantee, in cash, by check, or through an electronic benefit transfer system, and without direction on the check or by letter or by agreement as a condition of receiving the payment or by other notice, that the recipient must use his or her money in a specified way or for a specified purpose. Such unrestricted money payments must be payable to:

- (1) the recipient or his or her legally appointed committee;
- (2) the grantee in family assistance;
- (3) an adult member of the household in safety net assistance.

(b) Restricted money payment. A restricted money payment is a money payment made to or on behalf of eligible individuals or families in a form other than in cash, checks, warrants, or through an electronic benefit transfer system, immediately redeemable at par with no restrictions imposed by the agency on the use of the funds by the individual.

(c) Indirect or vendor payment. An indirect or vendor payment means issuance of an order to a vendor, or payment to a vendor for furnishing food, living accommodations, or other goods or services to a recipient.

(d) Protective payment. A protective payment means a check or warrant payable to an individual, other than the eligible relative in the case of family assistance, when payment is determined to be in the best interest of the recipient in accordance with the provisions of this Part.

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Repealed and added 381.1 on 6/03/70; amended 381.1 on 1/30/76; amended 381.1 on 3/14/77; amended 381.1(a) on 6/17/98; amended 381.1(b) on 6/17/98; amended 381.1(d) on 6/17/98.

§ 381.2 General policy

(a) Payment for authorized public assistance in the family assistance and safety net assistance programs must be made by issuance of an unrestricted money payment where practicable, except when the applicant/recipient requests in writing that vendor or protective payments be made or as otherwise provided in Part 370 of this Title or when office regulations require or authorize goods or services to be purchased or otherwise provided or under the special circumstances specified in this Part.

(b) The office may contract with a public or private entity for a statewide electronic benefit transfer (EBT) system for the distribution of public assistance cash grants and allowances, Federal food stamp benefits, State/local food assistance benefits and safety net program benefits to eligible grantees

provided:

- (1) a proposed plan of operation, in accordance with office requirements, is submitted by the EBT contractor to the office for its approval prior to the implementation of the statewide EBT system;
 - (2) the EBT contractor is accessible via a toll-free telephone number to the grantees who are to be served by such contractor;
 - (3) at the time of EBT implementation within each local district or in any political or other geographic subdivision of such district, the office publishes a list of cash access points and solicits comment on the adequacy of the access;
 - (4) the office works with the EBT contractor to establish cash access points at a broad range of businesses and community facilities including community centers, senior citizen centers, education and job skills training sites and local housing authorities;
 - (5) the EBT contractor is required to give appropriate notification to the office of unaccessed payments and benefits; and
 - (6) the office makes available to each recipient, training materials and instructions about the use of the EBT system, which must include:
 - (i) transactions and services provided through the EBT system and any limitations thereon;
 - (ii) recipient rights, responsibilities and liabilities under EBT;
 - (iii) the process for reporting lost or stolen EBT access cards or for reporting unauthorized access to accounts;
 - (iv) the process for replacement of access cards and procedures to obtain needed benefits until the card is replaced; and
 - (v) a toll-free telephone procedure by which recipients can obtain account balances and transaction history; and
 - (7) each social services district is required to convert to the EBT system designated by the office as its electronic benefit distribution mechanism to the degree such system is available as soon as such system is made available by the office to the local district.
- (c) A statement to a recipient, explaining the reason for a regular or special payment, is not restrictive when so worded as to establish clearly that the explanation:
- (1) is being given in order to show the recipient how the office has arrived at the amount of the payment;
 - (2) shows no evidence of an intent to restrict the use of the grant; or
 - (3) does not direct that the assistance payments be applied to specific bills or for the purchase of specific goods or services.

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Added 381.2 on 6/03/70; amended 381.2 on 12/21/71; amended 381.2 on 1/30/76; amended 381.2 on 9/29/81; amended 381.2 on 7/07/86; amended 381.2 on 6/17/98.

§ 381.3 Restrictions on money payments

Money payments shall be restricted under the following circumstances:

(a) Restriction based on inability to handle cash. When the inability of an applicant for, or recipient of, ADC to handle cash has been demonstrated and when neither the granting of power of attorney by the recipient nor the appointment of a committee by the court is deemed practicable, payment of all or part of the grant shall be made by restricted payments. The recipient shall be sent written notice whenever a creditor requests a restricted payment for mismanagement on the basis of nonpayment of bills. Where payment is restricted, the reason for the decision to restrict shall be explained in the case record and the recipient shall be sent written notice of the restriction together with the reasons pertaining thereto. The recipient shall be sent written notice of any decision not to use a restricted payment. The local social services district shall initiate discussion concerning the client's reasons for nonpayment of bills and shall make renewed effort to help the client assume responsibility for paying his own bills.

(b) When an applicant/recipient of ADC requests in writing that vendor or protective payment be made in instances where the budget deficit is greater than or equal to the charge for the goods or services rendered or greater than or equal to the maximum amounts set forth in section 352.29(e) of this Part in those cases where the requested vendor payment is for a heat and/or domestic energy bill.

(c) Public assistance must be granted in cash; provided, however, that when the granting of cash may be deemed inappropriate by the social services district because of one of the following situations, public assistance may be granted in whole or in part by restricted payment:

- (1) an applicant or recipient has demonstrated an inability to manage funds;
- (2) less expensive or more easily controlled alternative methods of payment are available;
- (3) when vendor payments are made to landlords on behalf of individuals residing in public housing; or
- (4) an applicant or recipient requests restricted payments.

(d) Restricted payments for rent. When a recipient of public assistance has failed to fully apply the shelter allowance to his rent, the social services official shall consider such failure as an indication of inability to handle cash and shall investigate the advisability of making restricted payment of the shelter allowance directly to the landlord or his designated agent. In determining whether such restricted payments shall be made, the following considerations shall apply:

(1) Two months nonpayment of the shelter allowance or eviction notice for nonpayment of rent shall be considered rebuttable presumptive evidence of inability to handle cash. Examples of how this presumption may be rebutted include, but are not limited to:

- (i) where a recipient demonstrates that the family has experienced some emergency or extraordinary event for which it was appropriate for available funds to be spent;
- (ii) where a recipient demonstrates extraordinary expenses for necessary items not normally provided for by the public assistance grant or by the medical assistance program or for which payment is not readily available from some other source; or
- (iii) where a recipient demonstrates that the family has withheld the payment of rent as a reasonable exercise of consumer rights.

(2) When a recipient is two months or more in rent arrears, and the landlord or his designated agent desires restricted payment for rent, the landlord or his designated agent must make such request in writing to the local social services official. Prior to making such written request, the landlord or his designated agent shall attempt to collect the overdue rent from the recipient and shall provide such evidence to the social services official when the written request is made.

(3) Such payment shall not be made where a recipient's rent is in excess of the amount allowed as a shelter allowance and the recipient pays the full amount of such allowance but fails to pay part or all of the amount due above the allowance, nor shall such payments be made where the social services official has been withholding rent payments in accordance with the provisions of section 143-b of the Social Services Law.

(4) The social services official shall advise the recipient whenever a landlord or his designated agent requests restricted rent payments.

(5) The social services official shall advise the recipient of the decision to restrict rent by means of a timely and adequate notice detailing the reasons for the proposed action or shall advise the recipient of a decision not to restrict rent.

(6) When a decision to make restricted payments for rent is made pursuant to this subdivision, the decision shall be entered in the case record and the reasons underlying the decision shall be fully documented.

(e) Payments in closed cases. (1) Public assistance payments are to be made only to persons who are current recipients of public assistance and care on the date of payment except as provided below:

(i) payment must be made to former applicants for and recipients of ADC whose cases have been closed and who are owed ADC benefits for periods after July 1, 1985 if such benefits are owed solely because such persons are not current recipients of ADC and:

(a) such benefits are:

(1) requested by the former applicant or recipient or the appropriate social services district is otherwise informed that such payments are owed; and

(2) not in dispute and are acknowledged as benefits owed to the former applicant or recipient by the social services district; or

(b) such benefits have been established as owed to the former applicant or recipient as a result of a fair hearing requested pursuant to section 358-3.5 of this Title.

(ii) payment must be made on behalf of closed public assistance cases when an obligation has been authorized prior to an applicant's or recipient's death or prior to the date of closing of a public assistance case if the social services district is required to pay the cost or unpaid balance of the obligation to a vendor. Payment on behalf of a closed public assistance case under this subparagraph must be by vendor payment; or

(iii) payment must be made to former applicants for and recipients of public assistance whose cases have been closed for energy reconciliation payments, as authorized by section 352.5 of this Title, payments for net loss of cash income as authorized by section 352.7(m) of this Title, payments for extended supportive services as authorized by section 385.3(d) of this Title, replacement payments for lost or stolen checks as authorized by section 352.7(g)(1) of this Title or replacement payments for voided checks when such applicants or recipients are eligible for such payments.

(2) Support pass-through payments, as authorized by section 352.15 of this Title, and burial payments, as authorized by sections 352.7(n) and 620.3(a) of this Title, may be made in closed cases.

Section statutory authority: Social Services Law, § 143-B

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Repealed and added 381.3 on 6/03/70; amended 381.3 on 3/09/73; amended 381.3 on 4/03/75; amended 381.3 on 1/30/76; amended 381.3 on 6/02/78; amended 381.3 on 12/19/80; amended

381.3 on 9/29/81; amended 381.3 on 10/14/81; amended 381.3 on 4/04/83; amended 381.3 on 6/24/91; amended 381.3 on 10/30/92; amended 381.3(b) on 8/10/94; amended 381.3(c) opening paragraph on 8/06/03.

§ 381.4 Restricted payments in ADC

(a) The use of a protective payee, vendor or other restricted payment is required: when the relative payee has demonstrated such inability to manage funds that the best interest of the child is not served; or at the request of the recipient.

(b) In making a determination of mismanagement in ADC cases, the following considerations shall apply:

(1) Methods shall be in effect to identify children whose relatives have demonstrated such an inability to manage funds that payments to the relative have not been or are not currently used in the best interest of the child. This means that the relative has misused funds to such an extent that allowing him or her to manage the ADC grant is a threat to the health or safety of the child. Nonpayment of bills may be used as an indication that mismanagement may exist. However, a determination of such mismanagement shall not be made solely on the fact that bills are not paid on a timely basis. All relevant considerations shall be taken into account including, but not limited to the following:

(i) The fact that more than one month has passed since the bill payment was due and payment has not yet been made or notice of the termination of essential services for nonpayment of bills shall be considered rebuttable presumptive evidence of inability to handle cash. Examples of how this presumption may be rebutted include, but are not limited to:

(a) where a recipient demonstrates that the family has experienced some emergency or extraordinary event for which it was appropriate for available funds to be spent;

(b) where a recipient demonstrates extraordinary expenses for necessary items not normally provided for by the public assistance grant or by the medical assistance program or for which payment is not otherwise readily available from some other source;

(c) where a recipient demonstrates that the family has withheld the payment of bills as a reasonable exercise of consumer rights where there is a legitimate dispute as to whether the terms of an agreement have been met.

(ii) When a recipient is more than one month in arrears, and the vendor or his designated agent desires restricted payment, the vendor or his designated agent must make such request in writing to the local social services official. Prior to making such written request, the vendor or his designated agent shall attempt to collect the overdue payments from the recipient and shall provide evidence of such attempt to the social services official when the written request is made.

(iii) The social services official shall advise the recipient whenever a vendor or his designated agent requests restricted payments.

(iv) The social services official shall advise the recipient of the decision to restrict payment by means of a timely and adequate notice detailing the reasons for the proposed action or shall advise the recipient of a decision not to restrict payment.

(v) When a decision to make restricted payments is made, the decision shall be entered in the case record and the reasons underlying the decision shall be fully documented.

(vi) When a determination is made to restrict payment as a result of an action by a vendor or his designated agent, the rest of the grant will be paid as an unrestricted money payment unless additional conditions provide for further restrictions.

(2) Criteria shall be established to identify the circumstances under which restricted payments will be made in whole or in part directly to:

(i) another individual who is interested in or concerned with the welfare of such child or relative; or

(ii) to a vendor or his designated agent, that is, a person or persons furnishing food, living accommodations or other goods, services or items to or for the child, relative or essential person.

(3) Procedures shall be established for making restricted payments. Under this provision, part of the payment may be made to the family and part may be made as restricted payments.

(4) When necessary, under appropriate circumstances, foster care shall be provided.

(5) When problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle, responsibility shall be assumed by the social services official for appropriate action to protect the recipients.

(c) In those ADC cases where an applicant/recipient requests a vendor or protective payment, the following considerations shall apply:

(1) the local social services district may use any combination of protective, vendor or two-party payment;

(2) the request shall be in writing from the recipient to whom payment would otherwise be made in an unrestricted manner and shall be recorded or retained in the case record;

(3) the restriction shall be discontinued promptly upon written request of the recipient who initiated it; and

(4) the social services official shall send an adequate notice to the recipient no later than the date of commencement or discontinuance of a restricted payment pursuant to this subdivision.

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Added 381.4 on 12/19/80; amended 381.4 on 9/29/81; amended 381.4 on 10/14/81; amended 381.4 on 11/19/81; amended 381.4 (a) on 7/26/85; amended 381.4 (a) on 3/14/01.

§ 381.5 Review and termination of restriction--ADC

(a) The social services official shall undertake and continue special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family.

(b) The need for protective payee, vendor payments or restricted money payments and the way in which a protective payee's responsibilities are carried out (including a report of accountability for the disposition of funds showing expenditures for major items of maintenance on a monthly basis, e.g., rent, heat, utilities, food, clothing, incidentals) shall be reviewed as frequently as indicated by the individual circumstances or at least every six months.

(c) Provisions shall be made for termination of protective payee or vendor payments as follows:

(1) When relatives are considered able to manage funds in the best interest of the child, there shall be a return to money payment status.

(2) When it appears that need for protective payee or vendor payments will continue or is likely to continue beyond two years because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a guardian or other legal representative shall be sought, and such payments shall terminate when the appointment has been made.

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Added 381.5 on 6/03/70; amended 381.5 on 6/29/70; amended 381.5 on 7/11/72; amended 381.5 (b) on 12/19/80.

§ 381.7 Requirements governing designation of protective payees

(a) Payment to an individual other than the eligible relative in ADC (i.e., to a protective payee) shall be made only with the participation and consent of recipient or his eligible relative whenever such participation and consent normally may be obtained. After the obtaining of participation and consent, or if participation and consent is not obtained and protective payment is nonetheless deemed appropriate, payment may be made to:

(1) an interested individual concerned with the welfare of the child or relative in ADC;

(2) a staff member of a private agency, a public social services agency or any other appropriate organization;

(3) a staff member of a social services district. Selection shall be made preferably from the staff providing protective services. Such staff shall be utilized only to the extent that the social services district has adequate staff for this purpose. The social services district shall employ such additional staff as may be necessary to provide protective payees, in accordance with department regulations; and

(4) the superintendent, or his designee, of a public institution for mental diseases or a public institution for the mentally retarded, provided:

(i) no other suitable protective payee can be found; and

(ii) there are appropriate staff available to assist the superintendent in carrying out the protective payment function.

(b) Protective payment may not be made to:

(1) the social services commissioner; or

(2) the following staff members of a social services district:

(i) an executive member of his staff;

(ii) a person determining financial eligibility for the family;

(iii) special investigative or resource staff or staff handling fiscal processes related to the recipient; or

(3) landlords, grocers, or other vendors of goods or services dealing directly with the recipient except as provided in paragraph (4) of subdivision (a) of this section.

(c) (Reserved)

(d) Where possible, benefits to be paid on behalf of an individual, individual and child or pregnant woman, required under section 369.2(i) of this Title to reside with a parent, legal guardian, adult relative or in an adult supervised living situation, must be provided by the social services district to the parent, legal guardian or other relative with whom the individual, individual and child or pregnant woman resides.

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Repealed 381.7 on 1/30/76; renumbered 381.8 to be 381.7 on 1/30/76; amended 381.7 on 10/04/84; amended 381.7 on 7/26/85; repealed 381.7 (c) on 3/14/01; added 381.7 (d) on 6/12/96.

Added Part 413 on 12/05/00, expired 90 days after filing; added Part 413 on 3/05/01, expired 90 days after filing.

§ 381.8 Fair hearings on method of payment

An opportunity for a fair hearing shall be provided on any issue relating to method of payment in accordance with department regulations on fair hearings.

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Renumbered 381.9 to be 381.8 on 1/30/76; amended 381.8 on 1/30/76; amended 381.8 on 12/19/80.

§ 381.9 Limitations on reimbursement

(a) Reimbursement in ADC. Federal and State reimbursement may be claimed on all eligible grants of assistance in ADC.

(b) Reimbursement in HR. State reimbursement may be claimed on all eligible grants of assistance.

Statutory authority: Social Services Law, §§ 20, 34, 133-a, 355

Renumbered 381.10 to be 381.9 on 1/30/76; amended 381.9 on 1/30/76; amended 381.9 on 6/02/78; amended 381.9 on 11/19/81.