NEW YORK STATE OF OPPORTUNITY. Office for People With Developmental Disabilities

Memorandum

September 23, 2024

Dear Esteemed DDAC Residential Committee,

OPWDD appreciates the time and effort the DDAC Residential Committee put into making recommendations to the Housing Subsidy ADM dated May 8, 2023, that also supports ongoing efforts to advance the objectives outlined in the 2023-2027 Strategic Plan.

OPWDD has reviewed each item and is providing the following response to each item, identified in italics.

DDAC Items of Concern:

1. **The absence of clarification in the ADM as to the minimum documentation requirements for "appropriate support services and safeguards" results in regional variance when determining eligibility.**

   OPWDD will update the ADM to provide clarification. Additionally, OPWDD continues to train staff to ensure consistent implementation of policies statewide.

   ADM Language Revision, Section A (1)(iii):
   Have or will have [~~appropriate~~] support services and safeguards, both paid and unpaid, to meet their needs in non-certified community housing as documented in their Life Plan (see Section D: Additional Responsibilities for Providers and Care Managers, page 12 - 13); …

2. **The ADM does not differentiate between tenant-based (Section 8 Housing Choice Voucher program) and project-based (Section 8 Project-Based Rental Assistance) rental subsidies.**

   OPWDD will propose a change in the language to resolve the issue identified by the DDAC.

   ADM Language Revision, Section A (1)(v):
   Have applied for all other benefits they may be eligible for (e.g., SSI/SSD, [~~Housing Choice Voucher Program/Section 8~~,] Social Service Shelter Payments, Food Stamps, HEAP) each year. As part of an initial application, the person must also have applied for the Housing Choice Voucher Program/Section 8, however annual applications for Section 8 are not required; …

3. **The ADM prohibits month-to-month leases at any time, even for people who have been successfully living in month-to-month arrangements for some years already and who, as a result of the ADM, may lose their home.**

   OPWDD will align the ADM to HUD's requirement. After the initial lease period, the lease can revert to a month to month lease, if the conversion option is documented in the lease, or landlord approval is documented at the end of the initial term lease.

   ADM Language Revision, Section A(1)(ix)(a):
   Has or will have a written, signed, legally enforceable [~~non-month-to-month~~] 12 to 24 month term lease that: (1) complies with applicable landlord-tenant laws; (2) places legal and financial responsibility for the housing unit on the individual; … After the initial lease period, the lease can revert to a month to month lease, if the conversion option is documented in the lease, or landlord approval is documented at the end of the initial term lease.

4. **The ADM assigns overall burden to comply with the Housing Quality Assurance Expectations to the tenant, a low-income person with a disability, not with the landlord.**

   OPWDD does not intend for the QA Expectations to place the burden on the person to resolve QA issues in their housing. OPWDD expects that providers receiving an administrative payment will assist the person with issues so as to ensure a successful tenancy and will continue to highlight this obligation in future training.

   The appropriateness of a workgroup can be explored. .

5. **Some regions are reporting that voluntary provider agencies and care coordination organizations are reluctant to complete the QA Checklist due to a lack of training and potential liability for unidentified health/safety concerns.**

   OPWDD has developed a plain language document which a person with basic living skills can use to assess the general safety of a person's housing unit. Additionally, OPWDD staff conducted a training on the QA Checklist in March 2022. The training was recorded and is on the website.

If there are any additional specific areas of concern, OPWDD welcomes additional feedback from the committee to better understand the specific needs for additional training or guidance and to address concerns about liability.

6. **Phone and internet are now essential utilities, particularly for telehealth and telemedicine services, and should be an allowable offset.**

OPWDD will assess the financial impact of this proposed change before finalizing its response.

7. **Several regions have expressed concern that payment of the subsidy may be considered 1099 income.**

   OPWDD has provided updated guidance on the exclusion of the housing subsidy as income for individuals receiving OPWDD services.

8. **The ADM may be interpreted to mean that only those people applying for the OPWDD Housing Subsidy may apply for CTS.**

   The language states that CTS only requires a person to be eligible for the waiver service. The requirement that a person accesses a housing subsidy to qualify comes in later sections tied to the state paid Transition Stipend, however, OPWDD will revise the language to include reference to the CTS ADM.

   ADM Language Revision, ADM Section C (1)(2):
   CTS are available for individuals who are enrolled in the Home and Community Based Services (HCBS) waiver by the date of payment. These services are intended to help the individual transition from specific provider or state-operated facilities to independent, community living. Information regarding this service can be found in ADM# 2015-02R. A person who otherwise qualifies for CTS does not need to be eligible for an ongoing housing subsidy to access the service.

9. **People who otherwise qualify for an OPWDD Transition Stipend but are receiving their rental subsidy from another source (e.g., Section 8 Housing Choice Voucher) are being told they may not be eligible.**

   OPWDD will revise the language to allow for people who are income eligible for an ongoing OPWDD Housing Subsidy or another rental subsidy (such as Section 8) to access a Transition Stipend if they meet other requirements.

   ADM Language Revision, Section C:
   To access an OPWDD state-funded Transition Stipend, the individual must:
   - *i) Be eligible to receive an OPWDD Housing Subsidy and be receiving the monthly subsidy or be receiving a rental subsidy from another source (e.g., HUD Section 8 or USDA);*
   - *ii) Not qualify for CTS; and*
   - *iii) Not have received an OPWDD Transition Stipend before.*

10. **The new administrative fee process in addition to program documentation requirements, particularly completion of the Quality Assurance Expectations**

Checklist, has created a significant regulatory burden for provider agencies to implement and administer this service.

Administrative Activities outlined in the ADM are funded through an administrative fee that was implemented in 2022. This should provide sufficient resources to cover the administrative activities of the provider agency each month. Additionally, the QA Expectations Checklist is designed in a way that does not require a professional inspector.

OPWDD will modify the language to clarify what needs to be included in documentation to support billing. OPWDD welcomes additional specific feedback from the Committee to better understand the complexities providers are experiencing with Quality Assurance.

ADM Language Revision, Section D (3):
The administrative fee will only be paid if relevant administrative activities are completed and documented (see Documentation section, page 18). The form and format of the documentation can be agency-specific, but in addition to notes about the activity, the documentation must include the date of the qualifying activity and be signed by the person who completed the activity. For example, a provider may be eligible to receive an administrative fee if it develops and submits a Housing Subsidy Report to OPWDD pursuant to its contract as this is relevant administrative activity. However, a provider will not be eligible to receive an administrative fee if it finds a new housing unit for an individual who has not requested new housing, as it is not a relevant administrative activity for that individual. The payment of a housing subsidy is not sufficient activity to justify an administrative fee.

11. **The preliminary approval process is ineffective at supporting people with a smooth transition into independent living due to concerns with timing related to the final approval of subsidy calculation templates / self-direction budgets.**

    OPWDD will meet with the DDAC members to discuss specific situations and to identify potential improvements.

12. **Despite the ADM, there are continued occurrences of housing subsidy recipients suffering reductions or termination without timely and adequate notice and the opportunity for dispute resolution.**

    OPWDD continues to work internally to ensure consistent application of rules and expectations statewide. Additionally, the use of newly revised documents throughout the summer and fall of 2023 should alleviate the DDAC question around notification of changes in subsidy.

13. **Some regional offices are not approving OPWDD Housing Subsidies for people who have individual lease agreements with their landlord but live in a joint household.**

    OPWDD recommends that all people are on the same lease so it is clear who is living in a given apartment. OPWDD has proposed a change in the language to clarify this expectation.

    ADM Language Revision, Section A(1)(ix)(a):
    Has or will have a written, signed, legally enforceable [~~non-month-to-month~~] 12 to 24 month term lease that: … (4) has all adult residents listed (except for a Live In Caregiver funded through a self-direction budget);

14. **Public-facing information on the OPWDD Housing Subsidy Program provided by OPWDD requires updates.**

    OPWDD will review the related guidance and update, as needed. These items are the "Right at Home" and Landlord Information brochures.