To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

FILED AND ENTERED

ON_____2001 WESTCHESTER COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. JOHN P. DiBLASI, J.S.C.

----------x

MIAH HEDGEPETH,

Plaintiff,

Index No. 1456/01

-against-

Motion Date: 5/4/01

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.

----------x

PRISCILLA FIORE,

Plaintiff,

Index No. 2737/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.

----------x

DELIA MUNOZ,

Plaintiff,

Index No. 1571/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.

----------x

----------x
MARILYN PEREZ,
Plaintiff,
Index No. 1570/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
ELIZABETH FORESTIER,
Plaintiff,
Index No. 1572/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
ELIZABETH REED,
Plaintiff,
Index No. 1457/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
MARIBEL GONZALEZ,
Plaintiff,
Index No. 1450/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x

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LOURDES IRIZZARY,
Plaintiff,
Index No. 1453/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
SHARON CALLENDAR,
Plaintiff,
Index No. 2470/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
AIDALIZ ROSA,
Plaintiff,
Index No. 1455/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
BRASILIA RODRIGUEZ,
Plaintiff,
Index No. 1454/01
-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x

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HELEN PITMAN,

Plaintiff,

Index No. 1449/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
KIEWANNA OTERO,

Plaintiff,

Index No. 2704/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
ANGELICA FIGUEROA,

Plaintiff,

Index No. 2706/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.
----------x
TRACEY PACELLE,

Plaintiff,

Index No

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.

----------x

----------x

MARIA RODRIGUEZ,

Plaintiff,

Index No. 2701/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.

----------x

MELODY GIOIA,

Plaintiff,

Index No. 3517/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.

----------x

PERCY WYNN,

Plaintiff,

Index No. 1458/01

-against-

BRIAN J. WING, as Commissioner of the New York State Office of Temporary and Disability Assistance, and the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Defendants.

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Poverty is not a crime. Yet, at a time when our Federal and State governments find themselves amidst record budget surpluses, our State's welfare officials continue to address the issue of homelessness by, in effect, penalizing many of our citizens, including helpless and faultless children, whose only failing appears to be that they are poor. These eighteen separate but related

lawsuits (collectively hereinafter “the Hedgepeth litigation”) brought by recipients of public assistance who challenge the sufficiency of shelter allowances are but one consequence of the treatment of our State’s poor as if they had committed some wrongful act, rather than as unfortunates who suffer from an economic condition that no rational individuals would seek for themselves or their children.

Presently before this Court are motions brought by each of the eighteen plaintiffs. On each motion, a preliminary injunction is sought which orders defendants New York State Office of Temporary and Disability Assistance (OTADA) and Brian J. Wing, as Commissioner of OTADA (the Commissioner), to direct the Westchester County Department of Social Services (Westchester DSS) to pay certain monies as ongoing rent and accrued arrears in order to prevent plaintiffs from losing their apartments and becoming homeless. Based upon the showing made by each plaintiff and in order to preserve the status quo pending a final determination of these lawsuits, the Court grants each plaintiff the interim relief sought.[1]

[1] Notwithstanding that these actions are not joined for trial, the Court has determined that addressing the motions filed by each plaintiff in a single decision will advance the goal of judicial economy since the legal issues raised on each motion are the same. A separate order will issue in each case that sets forth the Court’s ruling upon each motion and the relief that will be granted.

I. CONSTITUTIONAL AND STATUTORY FRAMEWORK

Under our State Constitution “[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine" (NY Const, art XVII, §1). As our Court of Appeals has held, under this section of the State Constitution, “[t]he provision of assistance to the needy is not a matter of legislative grace but is specifically mandated“ (Jiggetts v. Grinker, 75 N.Y.2d 411,416 [1990]).

One of the programs established to satisfy this constitutional requirement is Family Assistance (FA). The FA program, like its predecessor, Aid to Families with Dependent Children (AFDC), is “designed to provide support to needy families with children” (see, id., at 416) Under that program, the costs of which are borne by the Federal, State and County governments, two forms of assistance are provided: cash grants for food and other necessities and shelter allowances. While the cash grants are determined by the Legislature on a State-wide basis, shelter allowances are administratively set on a district-wide basis.[2] Pursuant to this scheme, defendants have promulgated regulations under which FA families receive shelter allowances equal to their actual rent up to fixed maxima that vary depending upon the number of family members and the district in which a family resides (18 NYCRR §352.3[a]).

The sufficiency of public assistance grants, including shelter allowances, is measured against the requirement that "[a]llowances

[2]Each county is a separate district except for the five counties of New York City, which together constitute one district.

shall be adequate to enable the father, mother or other relative to bring up the child properly, having regard for the physical, mental and moral well-being of such child, in accordance with the provisions of [Social Services Law] section one hundred thirty-one-a ... and other applicable provisions of law" (Social Services Law §350[1][a]). Moreover, all "[a]llowances shall provide for the support, maintenance and needs of one or both parents if in need, and in the home" (ibid. [emphasis supplied]).

II. THE 1988 SCHEDULE

The shelter allowances provided by OTADA and its predecessor, the New York State Department of Social Services (State DSS), have been adjusted but three times, the most recent being in 1987, effective 1988. In its present form, the shelter allowance schedule (the 1988 schedule) provides for payment of shelter grants at the 65th percentile, that is, it was based upon the 65th percentile of rents actually paid in 1986, with a 6% adjustment for inflation to account for the fact that the new schedule was not effective until 1988.

The 1988 schedule for Westchester County is as follows:

Family Size	Shelter Allowance (with heat)	Shelter Allowance (without heat)
1	$271.00	$259.00
2	$314.00	$300.00
3	$361.00	$345.00
4	$393.00	$376.00
5	$426.00	$407.00
6	$440.00	$421.00
7	$474.00	$438.00

8+	$536.00	$480.00

III. THE JIGGETTS LITIGATION

At about the same time that the 1988 schedule was established, a challenge to the sufficiency of the shelter allowances was brought by recipients of AFDC in the district composed of the five boroughs of New York City. On appeal from the trial court's decision granting certain interim relief and denying a motion for dismissal (Jiggetts v. Grinker, 139 Misc.2d 476 [Sup. Ct. N.Y. Co. 1988]), the Appellate Division reversed and dismissed the complaint, concluding, inter alia, that the determination of the amounts to be provided as shelter allowances was a matter within the discretion of the Commissioner (Jiggetts v. Grinker, 148 A.D.2d 1 [1st Dept. 1989]). Confronting the issue on the AFDC recipients' appeal, the Court of Appeals disagreed with the Appellate Division (Jiggetts v. Grinker, supra, 75 N.Y.2d, at 421). Relying upon its analysis of Social Services Law §§350(1)(a), 344(2) and 350-j(3), the Court concluded that the Legislature had "determin[ed] that family units should be kept together in a home-type setting" and had "impos[ed] a duty on the Department of Social Services to establish shelter allowances adequate for that purpose" (id., at 417). Addressing the sufficiency of shelter allowances, the Court held that "[a] schedule establishing assistance levels so low that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard" set forth in Social Services Law §350(1)(a) (ibid.).

Based upon that determination, the dismissal of the complaint in Jiggetts v. Grinker was reversed and the matter was remitted for

further proceedings. On remittal, Justice Karla Moskowitz granted a motion for preliminary injunctive relief requiring the Commissioner to compel State DSS to pay the plaintiff's ongoing monthly rent of $650 and her rent arrears of $12,272 on condition that the plaintiff continued to meet the public assistance eligibility requirements. Challenged by the Commissioner and the Department, the preliminary injunction decision was affirmed (Jiggetts v. Perales, 202 A.D.2d 341 [1st Dept. 1994]).

Subsequently, a three and one-half month trial was conducted by Justice Moskowitz. After hearing the evidence presented, including expert testimony concerning the relationship between shelter allowances and homelessness, in April 1997 Justice Moskowitz rendered a decision finding that the 1988 shelter allowances "do[] not bear a reasonable relation to the cost of housing in New York City" and declaring that the 1988 shelter allowance schedule for the New York City district "is contrary to law" (Pl. Reply Mem., Exh.B, p.110).[3] Upon that ruling, Justice Moskowitz "order[ed] the Commissioner to develop and promulgate a schedule of shelter allowances that bears a reasonable relation to the cost of housing in New York City and is designed to enable families 'to be kept together' in a home-type setting" (ibid.).

[3] The 1988 schedule for New York City for rent including heat is as follows:

Family Size:	1	2	3	4	5	6	7	8+
Shelter Allowance:	$215	$250	$286	$312	$337	$349	$403	$421

Justice Moskowitz' decision was unanimously affirmed (Jiggetts v. Dowling, 261 A.D.2d 144 [1st Dept. 1999]). As explained by the Appellate Division, "[a]ccording the trial court's findings of fact appropriate deference [citation omitted], a fair interpretation of the evidence supports its findings that the shelter allowance schedule for AFDC recipients living in New York City bears no reasonable relation to the cost of housing in the City, and that there is a direct correlation between the inadequate shelter allowances and homelessness" (id., at 145). Thus, that Court agreed with Justice Moskowitz that by setting the shelter allowances for the New York City district at the levels established by the 1988 schedule, the Commissioner of State DSS, now the Commissioner of OTADA, "failed to discharge his statutory duty under Social Services Law § 350 (1) (a) to provide for 'adequate' shelter allowances so as to prevent large numbers of AFDC families from becoming homeless" (ibid.). The appeal from that decision was subsequently dismissed (Jiggetts v. Dowling, supra, mot. for lv. to appeal dismissed 94 N.Y. 2d 796 [1999]).

IV. THE DUNHAM LAWSUIT

In 1990 an action captioned Love v. Perales (Westchester County Index No. 12708/90), later captioned Dunham v. Wing (Westchester County Index No. 02445/98), was commenced in Supreme Court in Westchester County to challenge the adequacy of the 1988 schedule established for this county. Although originally filed as a class action, the class action claims were withdrawn pursuant to an agreement whereby the defendants therein would treat all Westchester County AFDC families

similarly if it was determined that the 1988 schedule violated governing law.

Under a procedural arrangement of the parties' creation, other AFDC families were permitted to intervene in the Dunham v. Wing lawsuit (the Dunham lawsuit) by stipulation. In addition, it was agreed that pending the outcome of the Dunham lawsuit, each of the intervenors would receive supplementary shelter assistance from Westchester DSS provided they remained eligible for FA and had a shelter need that exceeded the allowance established by 18 NYCRR §352.3(a).

Upon a finding that the plaintiffs in the Dunham lawsuit had received their relief, that action was dismissed by Justice James R. Cowhey. Moreover, based upon his conclusion that a landlord for one of the FA recipients had been brought into the litigation without any basis, since no relief was sought against that landlord, Justice Cowhey awarded the landlord attorney's fees to be paid by Westchester/Putnam Legal Services, counsel for the plaintiffs in the Dunham lawsuit and the Hedgepeth litigation.

Although the order dismissing the Dunham lawsuit is under appeal, FA recipients who seek to challenge the sufficiency of the shelter allowances established for Westchester County were left without a procedural setting in which to assert their claims. Consequently, in an effort to have the Commissioner's promulgation of 1988 schedule declared in violation of Social Services Law §350(1)(a), plaintiffs at bar have instituted their separate actions.

V. OVERVIEW OF THE HEDGEPETH LITIGATION

The eighteen plaintiffs in the Hedgepeth litigation all receive public assistance under the FA program. Although their family sizes and circumstances differ in various respects, each attacks the 1988 schedule as failing to satisfy the mandate recognized by the Court of Appeals in the Jiggetts litigation, namely, that the Commissioner establish FA shelter allowances that are reasonably related to the cost of housing in each district so as to be adequate enough "to prevent large numbers of [FA] families from becoming homeless" (see, Jiggetts v. Dowling, supra, 261 A.D.2d, at 145).

In similarly worded complaints, each plaintiff asks for a judgment declaring, inter alia, that defendants' "failure to promulgate and implement adequate housing allowance schedules for the housing of families in need of public assistance in Westchester County, under which public assistance families can obtain and retain decent, safe and adequate housing in racially and economically mixed neighborhoods ... violates the rights of public assistance families under" applicable sections of the Social Services Law and Federal laws (see, e.g., Hedgepeth Complaint, p.13). Plaintiffs further seek permanent injunctive relief requiring defendants, inter alia, "to promulgate and implement adequate housing allowance schedules for the housing of families in need of public assistance in Westchester County, under which public assistance families can obtain and retain decent, safe and adequate housing in racially and economically mixed neighborhoods", to pay additional shelter allowances sufficient to meet their actual current rents and to pay for rent arrears that each has accrued (id., p.13-14).

At the time each complaint was filed in the Hedgepeth litigation, an order to show cause was presented to this Court to bring on a motion for preliminary injunctive relief. The specific relief sought on each motion is an order, pending the outcome of the respective plaintiff's action, which requires defendants to direct Westchester DSS to pay each plaintiff's actual ongoing rent by providing a supplemental shelter allowance, and to satisfy each plaintiff's rent arrears.

When the first twelve motions were presented[4], the Court heard oral argument limited to the issue of whether a temporary restraining order (TRO) should issue which granted the same relief as sought on the respective motions, during the time that each motion was awaiting determination. The same procedure was followed when orders to show cause were presented in the next six actions.[5] Upon consideration of the arguments presented, the Court issued a TRO in each case. All eighteen motions are now fully submitted for decision.[6]

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[4] Initially, there were thirteen actions simultaneously filed. One of those actions was settled before the return date of these motions.

[5] While the first eighteen motions were awaiting their return date, another sixteen were filed. It appearing to the Court that the position of each side of this litigation differs minimally, if at all, from one case to the next, the Court has adopted the procedure of accepting written submissions from the parties with respect to each new plaintiff's request for a TRO.

[6] The following papers numbered 1 to 79 were read on these eighteen motions.

	PAPERS NUMBERED
Order to Show Cause/Affidavit/Affirmation (Hedgepeth)	1-3
Affirmation in Opposition (Hedgepeth)	4
Order to Show Cause/Affidavit/Affirmation (Fiore)	5-7
Affirmation in Opposition (Fiore)	8
Order to Show Cause/Affidavit/Affirmation (Munoz)	9-11
Affirmation in Opposition (Munoz)	12
Order to Show Cause/Affidavit/Affirmation (Perez)	13-15

VI. PLAINTIFFS' CLAIMS

Each of the plaintiffs receives FA for himself or herself and one or more children. Each contends that the shelter allowance that he or she receives is insufficient to meet either a presently existing rent obligation or a rent that will become due under a lease agreement that he or she wishes to enter into with a landlord for an apartment that has recently been found. A description of their particular circumstances follows.[7]

A. MIAH HEDGEPATH

Ms. Hedgepeth, who has been pursuing a college degree in Social Work, had resided with her mother until it was learned in February 2000 that Ms. Hedgepeth was pregnant. At that time her mother asked her to leave their home. She then started looking for an apartment, however, those she saw "were either in attics or basements and they were not in good condition" (Hedgepeth Affid., par.4). In April 2000 Ms. Hedgepeth found a one-bedroom apartment in Yonkers which rented for $750 monthly.

Between May and August 2000 she paid $400 of the rent from her employment income and her mother paid the difference. When, in August, she could not continue working due to her pregnancy, she applied for and was granted public assistance benefits. Upon her son's birth in

[7] The facts recited as to each plaintiff are as set forth in their respective affidavits in support of their motions for preliminary injunctive relief. Because defendants do not dispute the facts as alleged by each plaintiff with regard to their particular family and financial situations, the Court accepts these claims as true for the purpose of deciding each motion.

September 2000, her monthly grant was increased to $532, of which amount $314 is her shelter allowance.

Since December 2000 Ms. Hedgepeth's mother has been unable to pay more than $50 towards the rent obligation because of her mother's need to put aside funds for college for Ms. Hedgepeth's 15-year-old sister. Until she can obtain employment, Ms. Hedgepeth requires an additional shelter allowance of $386 monthly to pay $700 of the monthly rent, with the remaining $50 to be provided by her mother. In addition, as of January 31, 2001, Ms. Hedgepeth owes her landlord arrears of $314. According to Ms. Hedgepeth, she has no friends or family with whom she and her son can reside and if evicted from her apartment, they will become homeless.

B. PRISCILLA FIORE

The mother of two children ages seven months and five years, Ms. Fiore lived with her aunt, her aunt's husband and their adult daughter in Queens until Ms. Fiore learned that she was pregnant, at which time her aunt asked that she leave the home because it was overcrowded. In her search for an apartment all of those she saw "were either in attics or basements and they were not in good condition" while "the [monthly] rents for studio or one bedroom apartments in well maintained buildings ranged from $750 to $900" (Fiore Affid., par. 4).

In September 2000, Ms. Fiore found a two-bedroom apartment in a house owned by a friend, where she was permitted to stay rent-free for one month, until the house was sold. The new owner agreed to a monthly rent of $722. At approximately that same time Ms. Fiore began receiving public assistance.

Ms. Fiore receives a grant of $532 monthly for herself and her two children, of which $361 is allocated for rent. She requires an additional $361 monthly as a shelter allowance, as well as $1,444 to satisfy accumulated rent arrears resulting from her monthly shortfall. Because she currently has no other source of income, and no family or friends with whom she can reside, if she is evicted from her apartment, she and her children will be rendered homeless.

C. DELIA MUNOZ

Ms. Munoz, the mother of two children ages three and one, receives FA in the total amount of $652 per month. Of that amount, $361 is her shelter allowance, $53 is restricted to utility bills and the $238 balance is to cover food, clothing and other necessities.[8] Approximately one year ago, she spent more than one month looking for an apartment. Because apartments in more prosperous areas of the County were too expensive, she found that she had no choice but to look for an apartment in what she describes as a poor neighborhood. She succeeded in finding her present apartment, which is subject to the Emergency Tenant Protection Act, but is in a neighborhood that she describes as populated mostly by "Black and Latino people" who are poor (Munoz Affid., par.14).

When she moved into the apartment, her monthly rent was $635, which was paid in part by her monthly shelter allowance. Her sister, who resided with her, paid the $274 difference each month, until her

[8] When a portion of a grant is "restricted", that money is paid directly to the person or entity, such as a utility company or a landlord, who is providing particular services to the FA recipient.

sister moved out. Since then, Ms. Munoz has faced a shortfall of $274 each month. Consequently, she has accumulated arrears in the amount of $1,691.62, and currently requires an additional shelter allowance of $297.81 to meet her rent obligation.

In December 2000 her landlord commenced a non-payment eviction proceeding against her in Yonkers City Court. Notwithstanding that "[her] neighborhood is not that good and [her] apartment building is in bad condition, [she] want[s] to stay in [it]" because she "know[s] that apartments are hard to find and [she] do[es] not want to go into a shelter with [her] two young children" (id. par.15).

D. MARILYN PEREZ

Because she is employed, Ms. Perez, a working-mother of children ages five and nine, receives only $59.80 monthly as a shelter allowance which is restricted to her landlord. In addition, she receives food stamps and benefits for child care. Her children's father paid some child support between 1991 and 1996, but was deported from the United States after being jailed for an unspecified crime.

She and her children previously lived in a two-bedroom apartment in Yonkers which rented for $800 monthly. When her former landlord sought a rent increase to $900, she looked for a new place to live. That search, which took several months, resulted in her seeing many two-bedroom apartments that rented for $800 to $1,000 per month, and none less expensive than the $700 apartment in which she now lives in Yonkers.

Ms. Perez has found a reliable child care provider in her neighborhood and is able to take public transportation to her job in Valhalla in Westchester County. Using her employment income she is able

to meet her non-housing expenses including $40 for telephone services, $75 for utilities, $30 for laundry, $20 for transportation and $20 “for miscellaneous costs such as school supplies” (Perez Affid., par.18). But because she is unable to pay her rent with her limited income and the small monthly shelter allowance, she has accumulated rent arrears of $4,072.90 and has received a demand for rent from her landlord. Thus, she requires the payment of the arrears and an additional ongoing shelter allowance of $339 to avoid the loss of her apartment.

E. ELIZABETH FORESTIER

Ms. Forestier is employed as a secretary for a limousine company. Previously, she and her three children, ages nine, six and four, lived in a Yonkers apartment which rented for $600. Faced with a rent increase to $675, she searched for several months until she found a one-bedroom apartment that she could afford. Her present apartment, also in Yonkers, rents for $625 per month.

Because of her employment income, Ms. Forestier receives only a shelter allowance under her FA grant. That allowance, of $393, is insufficient to meet her rent. As a result, she has incurred arrears in the amount of $552 and needs an additional shelter allowance of $232 monthly.

Ms. Forestier’s landlord commenced a non-payment proceeding against her in January 2001 and has obtained a judgment permitting her eviction unless she pays the arrears. Westchester DSS refuses to pay the arrears because Ms. Forestier cannot demonstrate an ability to pay her rent in full on an ongoing basis. Because her apartment is located close to her place of work and the residence of her mother, who

provides care for her youngest child, which permits her to maintain her work schedule, Ms. Forestier fears the loss of this apartment.

F. ELIZABETH REED

Ms. Reed, who has a bachelor's degree in Management Information Systems, had been employed through a temporary agency from which she obtained assignments as either an information technician or an administrative assistant. Her employment allowed her to care for her daughter and son, now ages 12 and 10, respectively, and pay the $800 rent for an apartment in Mount Vernon where she and her children resided for three years. That employment did not, however, provide her with sick leave or medical benefits.

When she had to move from her Mount Vernon apartment, Ms. Reed looked for another one, a search that took four months. During that time she "looked at seven to ten apartments within [her] budget but they were all either in bad neighborhoods or in substandard condition" (Reed Affid., par.3). Moreover, "[t]he apartments that [she] found that were suitable had average rents above $900" (ibid.). Beginning in March 1999, while still employed, she leased her current two-bedroom apartment in Mount Vernon for $765 per month.

In August 2000 her son "started to exhibit emotional instability" and engaged in several forms of extremely dangerous behavior (id., par.5). One month later she left her employment to seek appropriate care for him. Her son was hospitalized for his behavioral problems in October and November 2000. When he returned to her home in November, she applied for public assistance.

Under her FA grant, she receives $652 monthly, of which $361 is her shelter allowance. Because she has no friends or family with whom she and her children can live, and her husband, who is subject to an out-of-state support order, fails to support them, she is unable to pay the $404 difference between her $765 rent and her shelter allowance. As a consequence, she owes her landlord arrears of $3,170, which are the subject of a demand for payment served upon her. Although she intends to seek employment once her son's condition stabilizes, absent the satisfaction of her arrears obligation and an additional monthly shelter allowance of $404, she and her children face eviction.

G. MARIBEL GONZALEZ

Until July 2000, Ms. Gonzalez and her three-year-old son lived with her parents, her brother and her sister in an apartment in Yonkers that had three small bedrooms. She began looking for her own apartment in April 2000 when her parents told her that she and her son had to move out because the apartment was overcrowded. After looking at several apartments in Yonkers that rented for $700 or more per month, she found a one-bedroom apartment in Yonkers at a rent of $600.

As a two-person family unit, Ms. Gonzalez' FA grant is a total of $532, of which $314 is restricted to her landlord. In order to be able to take the apartment, Ms. Gonzalez needed assistance from her parents. They were able to pay the $286 difference between the rent and the shelter allowance until shortly after she moved into the new apartment. At that time, Ms. Gonzalez' mother lost her income as a child care provider. With only her father's income to support themselves and their

two other children, Ms. Gonzalez' family could no longer provide her with financial assistance.

In view of the continuing shortfall in paying her rent, Ms. Gonzalez has accrued rent arrears in the sum of $2,002. Her landlord has served her with a written demand for payment of the arrears. To stave off eviction she requires payment of that obligation as well as an additional monthly shelter allowance of $286. Because she has no family or friends with whom she and her son can reside, if they are evicted they will be rendered homeless.

H. LOURDES IRIZZARY

For 16 years Ms. Irizzary has rented the same apartment in Mount Vernon. She currently receives a shelter allowance of $426 for herself, her three children and a grandchild who resides with her, which is restricted to her landlord as partial payment of the $675 monthly rent, which includes heat. She is responsible for payment of the bills for electricity and cooking gas. Her apartment has five rooms and is located in close proximity to the schools her children attend.

Ms. Irizzary is presently participating in a mental health program and has been determined to be temporarily unemployable. In addition, she is pursuing language courses in English. Lacking employment or any friends or family who can provide her with shelter, she faces eviction unless she is provided with an additional monthly shelter allowance of $249 and her accumulated rent arrears of $3,342, which have been reduced to a judgment, are paid.

I. SHARON CALLENDAR

Because she was a victim of domestic violence, after living in an apartment with her children that she had rented for two years, in 1997

Ms. Callendar and her children had to move to a homeless shelter. Thereafter, she and the children lived in the Coachman Family Center in White Plains for one year, during which time she searched for an apartment. She had been able to pay the $750 monthly rent for her previous apartment only with assistance from an uncle, who provided $400 monthly.

Ms. Callendar found a two-bedroom apartment in Mount Vernon where she now resides with her five children, who range in age from 12 years to 9 months. Based upon the immigration status of her and her oldest child, they are not included in the FA grant for the family. As a result, Ms. Callendar receives a shelter allowance of $393, which is $357 less than the $750 monthly rent for her apartment, and has accumulated arrears in the total of $1,400. Her landlord has already made a demand for the arrears, and she faces eviction if the arrears are not paid and if she does not receive an additional shelter allowance. Lacking family or friends with whom she and her children can reside, her family will be rendered homeless unless she receives this additional assistance.

J. AIDALIZ ROSA

At age 15, when she lived with her mother and siblings in a homeless shelter, Ms. Rosa was removed from the household by Child Protective Services and began living with her brother in the Bronx. In 1995, when she learned she was pregnant, she moved into the Yonkers residence of her boyfriend’s parents. Following the birth of her daughter in October 1995, her boyfriend’s parents told their son and Ms. Rosa that they had to leave because the home was overcrowded. Consequently, they and the child went to live in a homeless shelter.

Her boyfriend was subsequently ordered to leave to shelter after he assaulted Ms. Rosa. She remained there for several months after he left.

Ms. Rosa then found an apartment in Yonkers, but was later evicted for non-payment of rent, which resulted from the fact that her shelter allowance of $314 was insufficient to meet the $600 rent. To avoid returning to a shelter, Ms. Rosa and her child lived in a series of furnished rooms. Life in these rooms was problematic because other residents sometimes ate her food that she kept in a shared refrigerator, the buildings were not well-maintained and were mice and roach-infested, and occasionally there was no heat or hot water.

Although she found an apartment, she moved out of it less than two years later because it was vermin-infested and the landlord failed to make necessary repairs. In September 2000, when she was unable to pay the $750 monthly rent for another apartment found by her, she moved into another Yonkers apartment with a friend. Shortly thereafter, when her friend was planning to leave that apartment, the landlord agreed to rent it to Ms. Rosa for $625.

Because she has income of $325 per month from her work as a child care provider, the FA grant received by Ms. Rosa for herself and her child, now age five, consists of only $314 as the shelter allowance and $179 for expenses other than rent and utilities. Her inability to pay the rent in full has resulted in arrears of $933. She has no friends or family with whom she can reside and will be evicted from her apartment unless her arrears are paid and she receives an increase in her shelter allowance of $311 monthly.

K. BRASILIA RODRIGUEZ

For approximately one year Ms. Rodriguez has resided in an apartment in Yonkers with her 18-month-old son and her two daughters, ages seven and eight. Her daughters attend school in Yonkers while she attends school in White Plains. She has found “quality and affordable child care” near her apartment which “helps [her] maintain [her] studies at school so that [she] can become economically independent” (Rodriguez Affid., par.13).

She had to search for several months until she found her current apartment and none that were available were less expensive than the one she found, which rents for $850. Her FA grant, adjusted to reflect child support payments that she receives, consists of $393 for housing, $68.60 of which is restricted for utilities, and $139.40 for food, clothing and other needs. The shortfall between her shelter allowance and her rent has resulted in accumulated arrears of $2,934, payment of which has been demanded by her landlord. Unless her shelter allowance is increased by $489 and the arrears are paid, she faces eviction from her apartment.

L. HELEN PITMAN

Since 1994 Ms. Pittman has lived in her present apartment in Yonkers with her son, who is now seven years old. Prior to finding this apartment, which rents for $500 monthly, she searched for an apartment for several months and did not find one that was less costly.

Ms. Pittman is employed in Hastings and uses public transportation to travel to work. Because of her employment income, she does not receive the full FA grant of $652 for a two-person family, but instead receives a shelter allowance of $296, which is restricted to her landlord. She has been unable to pay her full rent and requires an

increase in her shelter allowance of $204 per month together with payment of accumulated arrears in the amount of $3,458.

M. KIEWANNA OTERO

After moving from an apartment she had shared with a boyfriend, Ms. Otero spent several months seeking a new residence. Her efforts to locate an apartment in the area of White Plains or Greenburgh was unavailing, because the rents in those two areas were greater than she could afford. After a six month search, she found her present apartment in Yonkers, where she has lived since June 1998.

At first, she shared this one-bedroom apartment with a roommate. Upon the birth of Ms. Otero's daughter, who is now fifteen months old, it was necessary for the roommate to move out because of the limited space in the apartment. This left Ms. Otero with the obligation to pay the entire $600 monthly rent, half of which had previously been paid by her roommate.

Ms. Otero's apartment is rent stabilized, giving her an additional reason why she is concerned that she is not evicted. Because of her schedule in a five-day per week educational program, she has been unable to maintain employment. Her FA grant, which includes a $314 shelter allowance, has been insufficient to meet her rent. Presently, she owes arrears in the amount of $1,826, and her landlord has commenced an eviction proceeding against her. Thus, she is seeking payment of those arrears and a $214 increase in her shelter allowance.

N. ANGELICA FIGUEROA

It took Ms. Figueroa approximately two months to locate her present two-bedroom apartment, where she lives with her three children, ages 3,4 and 5, and her 19 year-old-brother. Previously, for a four-

month period, she and her children had lived in a room rented in another person's apartment. During her search for an apartment, she found none that rented for less than the $700.31 that she currently pays.

Ms. Figueroa's apartment is located only one block from the school attended by her two older children. Her youngest child is cared for by a babysitter who resides in the same apartment building. She attends school in Yonkers, where she is taking courses to improve her English-language skills and receives computer training that she hopes will gain her employment.

Although her brother had been paying the difference between the rent and the shelter allowance, he recently lost his job and is unable to assist with the rent payment. Apart from a $393 shelter allowance, Ms. Figueroa receives only $375.50 that must be used to pay for food, clothing and other necessities. Thus, she needs an additional shelter allowance of $301.31 as well as payment of arrears of $1,229.24 that have accumulated. She fears eviction because her landlord has made repeated demands for the outstanding arrears.

O. TRACEY PACELLE

Ms. Pacelle and her 23-month-old child live in an apartment in White Plains that currently rents for $601.90 per month. Until February 2001, the apartment, which has been her residence for nine years, was part of the Section 8 housing program. Under Federal guidelines, the program paid $520.90 toward the rent and Ms. Pacelle paid the balance.

Now that the landlord has opted out of the Section 8 program, the rent must be paid using her FA grant and part of the SSI benefits that she receives. Her total FA grant is $408 monthly, of which $271 is her

shelter allowance. She receives $553 per month from SSI, and is willing to pay $110.60 toward the rent,[9] but still faces a monthly shortfall of $219.92.

She is currently completing a certification program in elementary education and intends to begin teaching in September 2001. Until she is employed and able to support herself and her child, she seeks a $219.92 increase in her shelter allowance and payment of accumulated rent arrears of $1,041.84.

P. MARIA RODRIGUEZ

Prior to June 1998, Ms. Rodriguez rented a room for $200 per month in Yonkers. When she became pregnant, her asthma condition worsened and she could no longer climb the stairs to her room in her building. For that reason, and to provide necessary space for herself and her expected child, in June 1998 she arranged to rent a one-bedroom apartment with a roommate.

Until September 2000, she and her roommate paid equal shares of the $569 rent. That month her roommate assaulted her and it was agreed that the roommate would move out of the apartment. After a period of two months, she was unable to pay the full rent by herself. As a

[9] According to her counsel, Ms. Pacelle is willing to contribute 30% of her monthly SSI income towards the rent, which is consistent with the requirement imposed upon a public housing tenant who receives SSI payments (see, 42 U.S.C. §1437f[o][2][A][i]). The Court merely notes that 30% of $553 is $165.90, while the sum Ms. Pacelle offers to pay is actually 20% of her monthly SSI benefits.

result, she has accumulated arrears of $2,276, and her landlord has obtained a judgment of eviction against her which was stayed so that she could join in this litigation. If the arrears are not satisfied and she is not granted an allowance of $255 in addition to the $314 shelter allowance she receives under her FA grant, she will be evicted from her apartment.

Q. MELODY GIOIA

Between 1992 and July 2000, Ms. Gioia lived in several apartments, homeless shelters and a shelter for victims of domestic violence. In July 2000, she and her 13 and 11 year-old children moved into a three-bedroom apartment in Yonkers which is shared by her boyfriend. Both Ms. Gioia and her boyfriend currently suffer from medical problems which have rendered them unable to work. Specifically, Ms. Gioia has a thyroid condition that will soon require surgical intervention.

Ms. Gioia's FA grant is $768 monthly, of which $393 is her shelter allowance. This does not provide her with sufficient shelter benefits to pay the $900 monthly rent. The monthly shortfall accounts for $2,623 of her current arrears of $6,300. Due to her outstanding rental obligations, her landlord has commenced an eviction proceeding. To avoid the loss of her apartment, she requires payment of the arrears in full and an additional shelter allowance of $507.

R. PERCY WYNN

Mr. Wynn resides in a two-bedroom apartment with his two daughters and 19-year-old son. In September 2000 the company that he worked for as an ambulette driver went out of business and he was unable to obtain unemployment benefits. He then applied for and was granted public assistance.

The FA grant for his family is $768 monthly, of which $393 is the shelter allowance. In addition, he receives $333 in food stamps. Unable to meet the $800 monthly rent for his Yonkers apartment, which he has leased for the past three years, Mr. Wynn seeks an additional shelter allowance of $407 and payment of his accumulated rent arrears of $1,628, satisfaction of which has been demanded in writing by his landlord. If evicted for non-payment of rent, Mr. Wynn and his three teen-age children will be rendered homeless because they have no family or friends with whom they can live.

VII. DEFENDANTS' POSITION

In opposition to the motions, defendants offer a series of arguments that relate to the specifics of each plaintiff's claims as well as to the relief sought in general. Briefly characterized, defendants' challenges to the factual circumstances of the eighteen plaintiffs fall within one of the following: (1) that plaintiffs have failed to offer a legal basis for the relief sought; (2) that none of them have demonstrated entitlement to relief in their individual situations; (3) that each cannot be heard to seek relief that will prevent his or her eviction because each has failed to join his or her respective landlord as a party; and (4) that no relief as to accumulated arrears may be granted because each plaintiff has failed to pursue available administrative remedies.

VIII. INJUNCTION STANDARD

Although the relief sought by each plaintiff on these motions is, in fact, an order compelling action by defendants, each plaintiff has

properly fashioned his or her application as one seeking a preliminary injunction. As such, each motion requires proof of three elements: (1) likelihood of plaintiff's ultimate success on the merits; (2) irreparable injury to plaintiff absent granting of the preliminary injunction; and (3) a balancing of the equities in plaintiff's favor (W.T. Grant Co. v. Srogi, 52 N.Y.2d 496,517 [1981]).

Although, as noted, defendants do not offer any factual claims in contradiction to those put forth by plaintiffs concerning their particular family and financial situations, there is a dispute as to whether the 1988 shelter allowances are reasonably related to current housing costs in Westchester County, and if the shelter allowances are not adequate, whether they have resulted in homelessness among FA recipients. One of defendants' general arguments is that if key facts are in dispute, preliminary injunctive relief must be denied. While, surprisingly, plaintiffs join in this interpretation of the law, this standard has not been controlling for more than four years.

Effective January 1, 1997, subdivision (c), headed "Issues of Fact", was added to CPLR 6312. That subdivision states in full that:

> Provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any of such elements shall not in itself be grounds for denial of the motion. In such event the court shall make a determination by hearing or otherwise whether each of the elements required for issuance of a preliminary injunction exists. (Emphasis supplied).

As has been recognized (see, Independent Health Association, Inc. v. Murray, 233 A.D.2d 883,884 [4th Dept. 1996]), this amendment obviates the harsher approach previously taken by some courts under which the

existence of a sharp factual dispute precludes the granting of a preliminary injunction (see, Faberge International, Inc. v. DiPino, 109 A.D.2d 235,240 [1st Dept. 1985]). Consequently, notwithstanding the factual disputes that exist on these motions, a preliminary injunction may be issued to any plaintiff in the Hedgepeth litigation who makes a showing sufficient to satisfy the applicable three-part standard (see, W.T. Grant Co. v. Srogi, supra, 52 N.Y.2d, at 517).

Moreover, even where the showing of likelihood of prevailing on the merits of the underlying action is minimal, preliminary injunctive relief may be awarded. For instance, "[w]here denial of injunctive relief would render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be accordingly reduced" (see, Republic of Lebanon v. Sotheby's, 167 A.D.2d 142,145 [1st Dept. 1990]). So too, "the existence of a factual dispute will not bar the granting of a preliminary injunction if one is necessary to preserve the status quo and the party to be enjoined will suffer no great hardship as a result of its issuance" (see, Mr. Natural, Inc. v. Unadulterated Food Products, Inc., 152 A.D.2d 729,730 [2d Dept. 1989]).

With these controlling principles in mind, the Court turns to an analysis of the proofs presented by each side of the litigation with respect to the preliminary injunction applications.

A. LIKELIHOOD OF SUCCESS ON MERITS

A party moving for a preliminary injunction "must demonstrate a strong probability of ultimate success and thus a clear right to the relief sought" (Rick J. Jarvis Associates, Inc. v. Stotler, 216 A.D.2d 649,650 [3d Dept. 1995]; see, Merrell Benco Agency, Inc. v. Safrin, 231

A.D.2d 614,615 [2d Dept. 1996]). Here, defendants contend that plaintiffs have not shown a right to the relief sought or a likelihood that they will succeed at the trial of their individual lawsuits. The Court does not agree.

1. RIGHT TO INCREASED SHELTER ALLOWANCES

Plaintiffs' initial hurdle is to establish that they have a right to the relief sought on their motions. Specifically, they must demonstrate that there is a legal basis for the granting of enhanced shelter allowances and the payment of arrears pending the disposition of their individual actions. Defendants contend that this showing cannot be made because the relief sought exceeds the ultimate relief that plaintiffs would be entitled to if they prevailed in these actions, that is, that there is "no law which entitles them to the respective monetary amounts which they seek in excess of the current shelter allowance[s]" (Def. Mem., p.4).

If defendants' position is that the Court cannot order an increase in the shelter allowances granted to FA recipients in Westchester County, they obviously ignore the holding of the Court of Appeals in the Jiggetts litigation. As set forth in the clearest of terms by this State's highest Court, defendants are mandated to establish a shelter allowance schedule that is "reasonably calculated" to provide shelter allowances that are adequate to enable a parent to bring up a child properly and to do so in a home-type setting (see, Jiggetts v. Grinker, supra, 75 N.Y. 2d, at 421). Thus, if a violation of that requirement is found after the trial of any of these actions, the plaintiff in that action will be entitled to relief that is designed to ensure that defendants provide him or her with a shelter allowance increased to a

level that is reasonably related to housing costs in Westchester County (see, Jiggetts v. Dowling, supra, 261 A.D. 2d, at 145 [Affirming trial court's judgment directing, inter alia, promulgation of shelter allowance schedule reasonably related to housing costs in New York City]).

To the extent that defendants' argument is that there is simply no legal ground for the granting of specific additional shelter allowances for each plaintiff, it misses the mark. Assuming that the Court found the current assistance levels to be insufficient, notwithstanding that plaintiffs' complaints ask the Court to direct defendants to provide them with shelter allowances equal to their respective actual rents, it need not do so in order to remedy the failure to provide sufficient shelter allowances. Rather, as the trial court did in the Jiggetts litigation, this Court could order defendants to promulgate a shelter allowance schedule that provides aid reasonably related to the cost of housing in Westchester County. In that instance, the preliminary injunctive relief, including a directive that allowances be paid in amounts equal to the actual rent of each plaintiff, would be, as in the Jiggetts litigation, merely an interim form of relief designed to maintain the status quo while defendants took whatever time reasonably necessary to establish sufficient shelter allowance levels.

Although defendants contend that this Court has no legal basis for directing the payment of varying additional sums as shelter aid, they are plainly wrong. The authority of the Supreme Court to grant just such relief has already been recognized in the Jiggetts litigation, where the Appellate Division, First Department affirmed the preliminary injunction order entered by Justice Moskowitz. That order, like the

ones sought at bar, directed the Commissioner to pay a shelter allowance of $650 monthly pending the outcome of the lawsuit, an amount equal to the actual rent of the plaintiff involved therein, and to satisfy in full that plaintiff's accrued rent arrears exceeding $12,000 (Jiggetts v. Perales, supra, 202 A.D.2d, at 342-343). Therefore, it is evident that in order to prevent the eviction of plaintiffs and their children, and thus preserve the status quo, this Court may invoke its authority to enter an injunctive order that mandates continued payment of actual rents and the satisfaction of rent arrears (see, id., at 342).

2. EXHAUSTION OF REMEDIES

As a specific challenge to each plaintiff's right to seek payment of his or her accumulated rent arrears as part of the interim relief in these cases, defendants maintain that all plaintiffs have failed to exhaust their administrative remedies. In particular, defendants contend that none of the plaintiffs have administratively requested rent arrears payments under 18 NYCRR §352.7(g)(4), and that "in any event, [each] has not established her eligibility for such rent arrears assistance" (see, Steckelman Affirm., Hedgepeth v. Wing, par.4).[10] In response, plaintiffs argue that since they are unable to meet their future rent obligations, they are not required to pursue relief under the applicable administrative provision, which they cite as 18 NYCRR §352.7(g)(3).

[10] In each case the same argument has been put forth in an affirmation by Assistant Attorney General Rachel B. Steckelman, in behalf of both the Commissioner and OTADA.

Both 18 NYCRR §352.7(g)(3) and 18 NYCRR §352.7(g)(4) permit the payment of rent arrears in a variety of emergency situations. Relief under either provision, however, is conditioned upon, inter alia, a demonstration by the recipient of "an ability to pay shelter expenses in the future, including any amounts in excess of the appropriate local agency maximum monthly shelter allowance" (see, 18 NYCRR §352.7[g][4][ii]).[11] In each of these eighteen cases, the plaintiff admits that he or she is unable to pay the current rent now or in the future. Consequently, none of them could prevail in an administrative proceeding seeking payment of arrears under either 18 NYCRR §352.7(g)(3) or 18 NYCRR §352.7(g)(4).

Certainly, it is true that "[a] litigant who seeks to challenge a determination of an administrative agency must exhaust all possibilities of obtaining relief through administrative channels before appealing to the courts" (Matter of Frumoff v. Wing, 239 A.D.2d 216,217 [1st Dept. 1997]). Nevertheless, an exception to that rule exists "when resort to an administrative remedy would be futile" (Watergate II Apartments v. Buffalo Sewer Authority, 46 N.Y.2d 52,57 [1978]).

[11] As set forth in 18 NYCRR §352.7(g)(3)(iv), "the applicant [must] reasonably demonstrate[] an ability to pay shelter expenses, including any amounts in excess of the appropriate local agency maximum monthly shelter allowance, in the future" (emphasis supplied).

Here, plaintiffs have established that they come within this exception. If they were to seek the emergency payment of their respective rent arrears, their conceded inability "to pay [their] shelter expenses in the future, including any amounts in excess of the appropriate ... maximum monthly shelter allowance" (18 NYCRR §352.7[g][4][ii]), would render each of them ineligible to obtain that relief in an administrative proceeding (see, Matter of Raitport v. New York City Department of Social Services, 260 A.D. 2d 223,225 [1st Dept. 1999][Recipient not entitled to emergency assistance to pay rent arrears where it was apparent that he was unable to meet his rent obligations under his lease from his available income]). Because their resort to an administrative request for payment of their rent arrears would be futile, each of them is excused from the requirement of exhausting their administrative remedies before seeking relief from this Court (see, Watergate II Apartments v. Buffalo Sewer Authority, supra, 46 N.Y.2d, at 57). Thus, this ground does not bar the Court from granting preliminary injunctive relief directing the payment of plaintiffs' respective rent arrears.[12]

3. INSUFFICIENCY OF THE 1988 SCHEDULE

[12] Although not argued by plaintiffs, another exception to the general rule requiring exhaustion of remedies applies in the Hedgepeth litigation. As has been recognized, resort to an administrative remedy is not required "when its pursuit would cause irreparable injury" (Watergate II Apartments v. Buffalo Sewer Authority, supra, 46 N.Y.2d, at 57). Because, as discussed below, the loss of plaintiffs' apartments constitutes irreparable injury, their request for preliminary injunctive relief including the payment of arrears pending the outcome of their challenge to the 1988 schedule is not precluded (see, Matter of Parkway Hospital v. Axelrod, 178 A.D.2d 644,645-646 [2d Dept. 1991], appeal dismissed 80 N.Y.2d 921 [1992]).

The central dispute, of course, relates to the adequacy of the shelter allowances provided to FA families under the 1988 schedule. Since plaintiffs' claims will prevail or fall at trial based upon their ability to establish that the current shelter allowances fail to satisfy the "adequacy" mandate of Social Services Law §350(1)(a), on these motions the parties focus on the sufficiency of these allowances.

As to this aspect of the motions, each side has presented an affidavit from an economist who has analyzed data related to available apartments and the size of the FA assistance population. Relying upon their interpretations of their data, these experts have offered conflicting views of the adequacy of the current shelter allowances and the relationship between the amounts of the allowances and the problem of homelessness in Westchester County. Although, as discussed above, the mere existence of conflicting factual claims as significant as these would previously have supported denial of a preliminary injunction motion, the Court may now determine whether such relief is warranted even without conducting a hearing, if possible under the circumstances presented (see, CPLR 6312[c]). On these motions, the Court concludes that such an approach is both possible and appropriate.

i. PLAINTIFFS' EVIDENCE

The required analysis begins with the showing made by plaintiffs. In each of their cases, they have demonstrated that they are unable to pay their current rent obligations because the shelter allowances provided under the 1988 schedule fall far short of rents that are currently being charged for apartments in Westchester County. Although in some of the cases, plaintiffs were able to maintain their apartments with assistance from other family members and friends, they have since

lost that additional assistance. In other instances, shared housing provided a means of living within the limitations of the shelter allowances, but overcrowding or other problems, including violence in the home, required a break-up of the shared housing relationship. A final group involves plaintiffs who have searched for housing and have not been able to find decent, safe apartments within the rent range that would be fully satisfied by the current allowances, placing them in the situation where they must seek assistance to lease a higher-rent apartment.

Plaintiffs have also presented proof that apartment rents in Westchester County far exceed the maximum shelter allowances under the 1988 schedule. First, they have offered a year 2000 survey conducted by Westchester Residential Opportunity, Inc., which indicates that average rents for one and two-bedroom apartments in the cities of Yonkers and Mount Vernon are $795 and $1,023, and $800 and $1,092, respectively[13], while monthly rents in most other municipalities in this county generally range from $1,000 to $1,200 for one-bedroom apartments and $1,300 to more than $2,000 for two-bedroom units (Creekmore Reply Affirm., Exh.A).

They also rely upon the fair market rents (FMRs) promulgated by the United States Department of Housing and Urban Development (see, 24 C.F.R. §888.113). That agency's (HUD) year 2001 FMRs for Westchester County (Renwick Reply Affid., Exh.2), are as follows:

Number of	0	1	2	3	4

[13] Consideration of the rents in these two cities is particularly appropriate since almost without exception the plaintiffs in the Hedgepeth litigation live in those areas, which include substantial populations of poorer families.

Bedrooms:

FMR: $720 $939 $1,144 $1,486 $1,774

As plaintiffs correctly observe, by way of example, the FMR for a two bedroom apartment is 291% of the $393 shelter allowance received by a four person FA family.

Additionally, plaintiffs point to the "Westchester County Department of Social Services Homeless Data" (Creekmore Reply Affirm., Exh.B). In that data collection, Westchester DSS reports that the average advertised rental costs for the fourth quarter of 2000 for a vacant two-bedroom apartment in Yonkers and Mount Vernon were $1,100 and $1,053, respectively (id., p.2). As further reported therein, the average for Westchester County for that period was $1,550 for a two-bedroom unit (ibid.).

Next, plaintiffs have offered evidence of the reduced value of the shelter allowance since it was last increased in January 1987 with its 1988 effective date. Specifically, they assert that from January 1987 to March 2001 "the seasonally adjusted U.S. average Consumer Price Index for rent of primary residence has increased from 121.2 ... to 189.6", which "represents an increase of 56 percent" (Renwick Reply Affid., par.15). They further allege that "[f]or the New York City, New Jersey, Long Island Metropolitan Area, the increase in the rent component of the Consumer Price Index was even greater, increasing from 125.4 to 211.8 or 75 per cent" (ibid.). According to plaintiffs, "[i]f the public assistance shelter allowance for Westchester County had kept

up with increases in the rental housing component of the regional CPI-U during this period, it would be $688 per month" (ibid.).[14]

Based upon these proofs, plaintiffs contend that they have sufficiently demonstrated a likelihood that each of them will prevail at the trial of their claims. Defendants, of course, offer a different view, supported by several arguments related to the availability of housing in this county, the limited number of homeless families, the applicable standard for determining housing costs, the additional forms of assistance received by FA families and the economic options that can be exercised by recipients of shelter allowances.

ii. AVAILABILITY OF HOUSING

As an initial matter, defendants assert that there is more than adequate housing available to FA families in Westchester County. In their view, as explained by their expert, Charles DeSeve, there are currently 24,631 private market units which rent for $500 or less per month in Westchester County. According to DeSeve, since the vacancy rate for the county was 4.2% in 1999, there are sufficient numbers of apartments to accommodate defendants' estimate of 600-700 homeless public assistance families.

Although facially appealing, this argument is not persuasive. What is obviously absent from DeSeve's "absorption" analysis of available housing is any information concerning the number of low-income families who do not receive public assistance and are competing with FA families for the lower-rent apartments in the county. Further, DeSeve fails to

[14] Plaintiffs do not explain what size of family would be entitled to this $688 figure.

provide any data demonstrating that the overall vacancy rate in the county is applicable at all rental levels. Consequently, it cannot be determined that there is an equal distribution of available apartments across the rental spectrum. Moreover, DeSeve's analysis, relying upon rents for currently occupied apartments, does not take into account the fact that upon vacancy of an apartment, a landlord would in all likelihood seek to increase the existing rent to the extent permitted by law. Lastly, DeSeve's analysis does not consider whether any of the lower-rent apartments are available only because, as suggested by plaintiffs, "they are not habitable or are located [in] neighborhoods which are not safe" (Renwick Reply Affirm., par.4), a factor that is apparently not a concern to defendants, nor more importantly, to the shelter allowance schedules.

iii. RELIANCE UPON FMRs

Similarly unconvincing is defendants' contention that the FMRs "are an inappropriate measure of the rent levels to accommodate public assistance recipients" (DeSeve Affid., par.14).[15] Certainly, the FMRs include the costs of items other than contract rent, such as utilities other than telephone, ranges, refrigerators and maintenance, which other items are not covered by the shelter allowance. Nevertheless, the FMRs have value as some evidence of the levels of housing assistance that are needed by FA recipients because they reflect the rent charged

[15] Although not considered in determining these motions, the Court notes that the judgment of the trial court in the Jiggetts litigation, subsequently affirmed, was based, inter alia, upon Justice Moskowitz' finding of fact that the FMRs are "a reasonable estimate of the price which would be required to be paid in order to obtain privately owned, existing, safe and sanitary rental of modest nature" (Pl. Reply Mem., Exh. B., p.33).

for standard quality rental housing in a specific area. Since the FMRs are set at the 40th percentile, they offer evidence of the real cost of housing because they mark the line below which 40% of standard quality rental housing is rented. Thus, a trial court attempting to determine the sufficiency of the shelter allowances may properly rely upon the FMRs as some proof of the actual cost of adequate housing in Westchester County.

That the FMRs may include other non-contract rent items does not undermine their value in the Hedgepeth litigation. Significantly, the inclusion of such items as non-telephone utilities does not amount to a "double-counting" of utility costs. Contrary to defendants' assertions, FA families are not receiving other payments that fully cover utility costs. Indeed, by way of example, as set forth in defendants' papers, the combined additional payments received as the 1981 Home Energy Allowance (HEA) and the 1986 Supplemental Home Energy Allowance (SHEA) for families of three and four people, amount to only $53 and $68.70, respectively. These sums are barely sufficient to pay for utility needs of FA recipients, as demonstrated by the experience of plaintiffs in this litigation. Moreover, even if these additional payments are considered part of the shelter allowance, as discussed below, when compared to the actual cost of housing in Westchester County, the shelter allowances could be found to be insufficient to meet the controlling standard of adequacy. Thus, the Court does not agree with defendants that the FMRs are an inappropriate standard for determining the adequacy of the current shelter allowances.[16]

[16] The Court has considered the additional challenges made by defendants to reliance upon the FMRs and finds them unpersuasive.

iv. ECONOMIC CHOICE

The most cynical aspect of defendants' position is also its centerpiece. It is expressed by DeSeve as follows:

> The ability to make choices and be self-sufficient is fundamental in our society. Money is money, and there is no reason to expect each PA household will choose to spend exactly the shelter allowance for shelter. Some spend below the allowance, some above it. Many PA households have additional earned income. Others receive and allocate as they wish the basic grant plus additional grants such as the home energy and fuel component. In part, this demonstrates the use of other forms of income or assistance available to PA recipients above their shelter allowance and other PA grant components. Such assistance may include Supplemental Security Income (SSI), earned income which is disregarded in calculating public assistance grants, third party contributions, other unearned income, gifts from family or absent father, etc. Whatever their source of funds, households make rent decisions within the context of their entire market basket for shelter, food, clothing, entertainment and all other items. Some prefer to allocate more of their budget to shelter, others less. This is as it should be, and economic theory teaches that allowing choice in spending increases consumer welfare. (DeSeve Affid., par. 22 [emphasis supplied]).

As is evident, in defendants' view, it is not that plaintiffs receive insufficient shelter assistance from the State, but that they simply do not know how to properly exercise their spending choices. An examination of defendants' own data supports plaintiffs' position that for FA families in Westchester County, the "choice" described by defendants is illusory.

This aspect of the Court's analysis starts with the data concerning families paying rents above the 1988 shelter allowances. As is plain from a reading of the affidavit of Robert L. Sharkey, OTADA's Director of Policy Development, out of the 2,645 families which receive

public assistance and vie for private apartments, only 1,009 rent apartments at or below the shelter maxima. Although defendants claim support from the fact that of the other families, 669 have rents that are only between 101-130% of their shelter allowances, it cannot be denied that even using defendants' figures, 1,636 families, or 62% of those receiving public assistance who compete for housing in the private apartment market, cannot meet their rent obligations using only the shelter allowances.[17] Moreover, by defendants' own accounting, of those 1,636 families, 967 must pay rents that exceed their shelter allowances by more than 30 per cent.

Defendants attempt to avoid the obvious implication of this data in two ways. First, they argue that information available to them shows that of the two groups of recipients whose rent exceeds the 1988 schedule allowances, 404 of the 669 and 639 of the 967 appear to have other income. Second, relying upon a statistical analysis performed by DeSeve, they maintain that a substantial number of these families are

[17] As explained by Sharkey there are actually 3,209 such families. Of those, 564 had been intervenors in the Dunham lawsuit, and by stipulation, were receiving enhanced shelter allowances pending the final disposition of that litigation. Whether they continue to receive additional sums for shelter following the dismissal of that action is unclear from the papers submitted. Assuming that they do still receive increased shelter allowances, subtracting them from the total of 3,209 families results in the figure of 2,645 upon which defendants base this part of their argument.

able to pay their rent notwithstanding the shortfall between their rents and their shelter allowances.

As to the first contention, the Court observes that defendants offer no proof as to the extent of the additional or unbudgeted income allegedly received by these 1,636 families. Thus, it cannot be determined that these families, or any significant portion of them, have so much additional income that they can readily meet their housing costs.

With regard to their second argument, DeSeve's statistical claims do not survive close scrutiny. For example, in the first of his graphic displays, he shows the relationship between actual rent and total income of FA families (DeSeve Affid., Exh.4). Although he places great reliance upon the fact that, according to his data, only a small percentage of such families pay rent that exceeds their total income, even if true, this is without controlling significance. Nowhere in the Court of Appeals decision in Jiggetts v. Grinker does that Court define the Commissioner's obligation as being satisfied if, however low the shelter allowance may be set for a particular family size, it will be adequate if a family, using all, or even most, of their remaining household income, can scrape up sufficient funds to pay their rent.[18]

[18] Again, although not controlling upon this Court, Justice Moskowitz reached the same conclusion after the trial of the Jiggetts litigation. As she explained:

> The Commissioner also contends that "[t]he Court of Appeals did not dictate that a family use only the shelter allowance to pay rent" [citation omitted]). The Commissioner is correct in this contention. What he fails to understand, however, is that a family's freedom to divert inadequate resources meant for food and other basic needs in no way

If anything submitted by the parties supports plaintiffs' position that they have a strong likelihood of prevailing on the merits of their claims, it is DeSeve's second data graph, which relates rent paid as a percentage of maximum shelter allowances to the total income of recipient families (DeSeve Affid., Exh.5). This graph indicates, inter alia, that by far the majority of FA families pay rents that are 150% or more of their monthly allowances, a fact that is also evident from the data cited by Sharkey. In defendants' view, this fact is proof positive that notwithstanding that the shelter allowances have not been increased in 13 years, the allowances must be sufficient.

Like their first argument, this statistical analysis is unavailing as evidence that the adequacy standard has been met. Rather, it further supports plaintiffs' claim that FA families are being forced to expend more than they can afford of their remaining funds to satisfy a housing expense that the shelter allowance is mandated to meet.

Indeed, as is plain, defendants do not deny this fact. Rather, they maintain that plaintiffs' plight is not the result of inadequate support from the State, but is caused by plaintiffs' choice of not expending sufficient portions of their total income on their housing costs. This argument is absolute nonsense, and evidences the punitive approach taken by the State in its care of the poor.

> affects the Court of Appeals' determination that he has a statutory duty to establish shelter allowances reasonably related to housing costs. (Pl. Reply Mem., Exh. B, p.107 [emphasis supplied]).

In his affidavit, Sharkey sets forth the sample budget for three and four-person households receiving FA in Westchester County. These are as follows:

Form of assistance:	Three people	Four people
Basic grant	$238.00	$307.00
HEA	$ 30.00	$ 38.70
SHEA	$ 23.00	$ 30.00
Shelter allowance	$361.00	$393.00
Food Stamps	$341.00	$434.00

In addition, each family unit receives a payment known as “HEAP” in the sum of $263.00 annually (Sharkey Affid., par.23).

Including the $19.67 monthly proportion of the annual HEAP payment, absent some other form of income to the household, three and four-person FA families have total monthly incomes of $1,012.67 and $1,222.37, respectively. It is defendants’ position that notwithstanding that actual rents incurred by FA families require expenditure of a substantial percentage of these monthly total incomes, all that matters under Social Services Law §350(1)(a) is “if [the FA recipients] can rent, wherever on the distribution [of available rent levels] they may decide to rent” (DeSeve Affid., par 21), since the manner in which they “choose” to allocate their budget “is fundamental in our society” (id., par.22).

An examination of the sample budgets set forth above demonstrates how meaningless that choice is to FA families. Consider a three-person family with no income except its FA total of $1,012.67 to meet all of its expenses each month. If, for example, such a family had to pay rent for a one-bedroom apartment in the City of Yonkers at the HUD fair

market rate of $939, it would have only $74 monthly, or 82 cents per person per day, to pay for utilities and telephone services, food and all other necessities. Assuming that the same family leased the same apartment at the average determined by Westchester Residential Opportunity, Inc. for the year 2000, after paying its $795 rent, it would have $217.67, or $2.42 per person per day, to meet all other expenses. Even if the same family found the sample apartment at the lowest rate paid by any of the three-person families involved in the Hedgepeth litigation, that being the $635 paid by Ms. Munoz, the balance available to the family would be only $377.67, or only $4.20 per person per day.

The daily per person amounts that remain after payment of rents as reflected in the FMRs and the data of Westchester Residential Opportunity, Inc., or more significantly, as evidenced by the experiences of plaintiffs in the Hedgepeth litigation, are woefully insufficient to meet the needs of parents and children.[19] Thus, for the purposes of these motions, plaintiffs have sufficiently demonstrated that the option to spend more on housing is in reality a hollow choice

[19] Not surprisingly, a similar result is found when the situation of a four-person family is evaluated. After paying rents as determined by HUD and Westchester Residential Opportunity, Inc. for a one-bedroom apartment, such a family would have merely $2.36 and $3.56 per person per day, respectively, from their $1,222.37 total monthly income, with which to meet all other expenses. If such a family was permitted the "luxury" of renting a two-bedroom apartment to house its four members, the available funds for other costs, most notably food and clothing, would be even less, amounting only to 65 cents and $1.66 per person per day if the rent is as determined by HUD and Westchester Residential Opportunity, Inc., respectively. No three or four-person FA family having no income beyond its grant could meet the average two-bedroom rent in Westchester County as determined by Westchester DSS, which was $1,550 for the year 2000 (Creekmore Reply Affirm., Exh.B, p.2).

between either having a roof over the heads of helpless children, or feeding and clothing them, but not both.

This conclusion is not undermined by defendants' arguments concerning the availability of other forms of income, including earned income from employment and child support from absent parents. Certainly, the Court is aware that subject to an established formula, some portion of earned income may be retained by an FA family and not counted against its budget. Nevertheless, defendants have not offered specific proof that as to the Hedgepeth litigation plaintiffs, earned income provides any of them with the means to obtain shelter in this County without expending so much of their total monthly income that not enough remains to meet their other necessities. Nor do defendants address the issue of the extent to which employment-related expenses, such as transportation and clothing acceptable in a work environment, must be satisfied from that portion of earned income that is not considered in determining the grant to be received by a family under the FA program.

Likewise, defendants' argument concerning the recovery of child support from absent parents as an additional income source is unpersuasive. Defendants fail to explain how such recoveries would impact upon the adequacy of current shelter allowances when, by law, a custodial parent receiving aid under the FA program is entitled only to a maximum of $50 monthly from child support recovered by a county Social Services department (see, Social Service Law §111-c[2][d]). Contrary to defendants' view, even if plaintiffs were each receiving child support, the benefit that they would directly derive would not materially impact upon the adequacy of shelter allowances which, on

average, constitute but 40 to 50 percent of the actual rents that plaintiffs must pay, and an even smaller percentage of the FMRs and the average rents as set forth in the homelessness data base of Westchester DSS.

Considered in its entirety, the proof put forth in behalf of each plaintiff is sufficient to meet their respective burdens of demonstrating a strong likelihood that each will prevail at the trial of their lawsuits.[20] Therefore, the Court turns to the second prong of the three-part preliminary injunction test.

B. IRREPARABLE INJURY

The second element that must be established by each plaintiff on these motions is irreparable injury (W.T. Grant Co. v. Srogi, supra, 52 N.Y.2d, at 517). Thus, each must make a showing that he or she will be irreparably injured unless the interim relief sought is granted (ibid.).

Here, plaintiffs allege that by reason of the inadequacy of the 1988 shelter allowances, they face eviction from their apartments, or the inability to rent apartments recently found. According to plaintiffs, unless their shelter allowances are increased pending the outcome of the Hedgepeth litigation and their existing rent arrears are immediately paid, they and the children they care for will be rendered homeless because they are unable to find adequate shelter that can be

[20] In reaching this conclusion, the Court notes that it has considered the additional arguments put forth by defendants in the affidavits of DeSeve and Sharkey and has found them wanting.

rented for the sums provided as shelter allowances under the 1988 schedule. As has been recognized in the Jiggetts litigation and elsewhere, the irreparable injury element is satisfied by proof "of a possible eviction if the relief sought [is] not granted" (see, Jiggetts v. Perales, supra, 202 A.D.2d, at 342; see also, McNeill v. New York City Housing Authority, 719 F.Supp. 233,254 [S.D.N.Y. 1989]["The threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable injury"]).

For their part, defendants offer three arguments in support of their position that plaintiffs have failed to satisfy this element of the three-prong standard. One of these is a procedural challenge, while the other two are related to the factual showing made by plaintiffs.

Defendants' procedural attack is a claim of failure to join necessary parties. Specifically, defendants maintain that "to the extent plaintiffs suggest that they face the likelihood of eviction if they have absolutely no other means to pay the current rent and/or rent arrears, then it is the landlord who established the rent-- not the County/State- which is the party threatening the imminent harm to plaintiff" (Def. Mem., p.6). Relying upon CPLR §1001, defendants contend that the non-joinder of each plaintiff's landlord has resulted in such prejudice that dismissal of each complaint in the Hedgepeth litigation is required. This argument is completely frivolous.[21]

CPLR §1001(a) provides in relevant part that "[p]ersons who ought to be parties if complete relief is to be accorded between the persons

[21] The Court does not reach the issue of whether defendants may seek dismissal of the complaints in the Hedgepeth litigation without making a motion for this relief.

who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants." Under this rule, "[a] determination as to whether parties are so `indispensable' that in their absence a matter should not proceed is limited to those cases where the determination will adversely affect the rights of nonparties" (Matter of Llana v. Town of Pittstown, 245 A.D.2d 968,968-969 [3d Dept. 1997], lv. denied 91 N.Y. 2d 812 [1998]).

In the Hedgepeth litigation, the relief sought relates solely to the adequacy of the current shelter allowances. Plaintiffs do not challenge the rents charged by their landlords or the landlords' rights to seek eviction of those plaintiffs who are in arrears in their rent payments. No determination that will be rendered by the court which hears the trials of these actions will affect any rights of the respective landlords. Thus, it is hardly surprising that defendants fail to identify any right of any landlord that they claim will be adversely affected in the Hedgepeth litigation. Weighed against the standard applicable under CPLR §1001(a), it is beyond credible contention that plaintiffs' respective landlords are not necessary parties to this litigation (see, id.).

Moreover, as plaintiffs observe, an attempt to join a landlord as a party in the earlier Dunham lawsuit resulted in the imposition of sanctions against their counsel for engaging in frivolous conduct. Although, contrary to plaintiffs' suggestion, this Court is not bound by Justice Cowhey's decision imposing that sanction, since it is not the law of the case in these lawsuits, plaintiffs are properly concerned that they could again face sanctions if they had haled their landlords into the Hedgepeth litigation without having any legal or

factual basis to do so.[22] Thus, defendants' argument that failure to join the landlords as defendants bars the granting of preliminary injunctive relief is obviously nothing more than an attempt to divert the Court's attention from the relevant facts.

[22] Notably, defendants do not suggest any cause of action that plaintiffs might assert against their landlords.

Defendants' other two arguments are related. First, they assert that "plaintiffs have failed to allege or demonstrate that they have no other sources of income or monies or no other sources of financial assistance (e.g., from family, relatives or friends, or from the father of their child[ren]) with which to pay the rent" (Def. Mem., p.6 [parenthesis as in original]). Second, defendants claim that "even if plaintiffs had to leave their current apartments because of their inability to afford the rent, they have not established that they cannot move to live in [sic] with their parents or other relatives or with friends" (id., p.7) and "[t]hey [] have not established that lower priced apartments are wholly unavailable throughout the County" (ibid. [emphasis supplied]).[23] As is evident, these arguments are but an effort to relieve defendants of their statutory duty under Social Service Law §350(1)(a).

Defendants' legal duty, as explained by the Court of Appeals in Jiggetts v. Grinker (supra), is to establish a schedule of shelter allowances that is reasonably related to housing costs in each Social Services district. Insofar as relevant to the Hedgepeth litigation, that duty requires that the shelter allowances provided to FA families

[23] In addition to making these arguments generally as to all plaintiffs, defendants have offered similar challenges to the motions of individual plaintiffs. For example, they contend that Ms. Hedgepeth presented "no good reason why she left her mother's home in April 2000, other than that her mother simply requested that she do so after she found out that Ms. Hedgepeth was expecting a child" (Steckelman Affid., Hedgepeth v. Wing, par.3). Defendants do not explain what a person in Ms. Hedgepeth's position was required to do when told that she was no longer welcome to reside with her mother. If defendants' position is that Ms. Hedgepeth cannot have relief on her motion because she simply refused to move out when told to do so, it is rejected by the Court as without support as a matter of law.

in Westchester County are sufficient to permit them to rent adequate apartments so that they may avoid homelessness. The Jiggetts v. Grinker decision does not provide any support for defendants' view that the shelter allowances are adequate if, combined with support from others, such as parents, friends and siblings, who bear no legal duty to support plaintiffs, the latter will be able to afford to pay rents that would otherwise be beyond their reach given the current shelter allowances. Thus, it is not surprising that this burden-shifting argument is proffered by defendants without citation to any statutory or common-law authority.

No more compelling is defendants' assertion that preliminary injunctive relief should not be granted because plaintiffs have failed to demonstrate that they cannot live with their parents, other relatives or friends. This, in sum, is an argument that absent proof that plaintiffs cannot find shelter by "doubling up" with other families, they have no basis to challenge the 1988 schedule, and is another reflection of the punitive approach taken by the State in its treatment of the poor.[24]

As with their position that plaintiffs must first prove that others, not responsible for their support, cannot help pay for their

[24] Typical of the argument made with respect to the claims of plaintiffs individually is defendants' assertion that Ms. Munoz has not demonstrated irreparable injury because she has failed "to establish that she has ... sought another roommate who could assist her in paying the rent as her sister did" (Steckelman Affirm., Munoz v. Wing, par.3). Obviously, defendants take the position that once an FA family has shared an apartment with another family or received financial assistance from a friend or relative, it is not entitled to an adequate shelter allowance but must forever find "double-up" housing or obtain assistance from persons not otherwise legally obligated to provide financial support. The mere statement of this position exposes its complete lack of merit.

shelter, the claim that plaintiffs cannot have relief in the Hedgepeth litigation without demonstrating the unavailability of "double-up" housing finds no support in the Court of Appeals decision in Jiggetts v. Grinker. Moreover, as Justice Moskowitz concluded after the trial of the Jiggetts litigation, "[d]oubling-up damages family stability in the 'guest family' and has been characterized as equivalent to homelessness" (Pl. Reply Mem., Exh.B, p.103). Because this Court agrees, at least for the purposes of this motion, that shelter allowances are not adequate if they only afford FA families the ability to find shelter in "doubled-up" situations, the Court rejects this aspect of defendants' argument that plaintiffs have not established irreparable injury on their motions.

Also unpersuasive is defendants' contention that injunctive relief cannot be granted unless plaintiffs prove that less expensive apartments are "wholly unavailable" throughout Westchester County. At bar, the evidence sufficiently establishes that these plaintiffs share the experience that it takes months to find minimally decent housing in Westchester County, and that even when found, such apartments rent for sums that are, on average, two to three times the current shelter allowances. Plaintiffs have also demonstrated that if they lose their current apartments, or are denied shelter allowances sufficient to lease apartments that they have recently found, they have little likelihood of avoiding homelessness. This is sufficient proof that they will be irreparably injured absent the granting of interim relief (cf., McNeill v. New York City Housing Authority, supra, 719 F.Supp., at 254 [Recognizing that "the likelihood of eviction coupled with the slight

prospect of finding alternative, affordable housing ... constitute[s] sufficient threat of irreparable harm"]).

Viewed in terms of their individual situations, each plaintiff has sufficiently demonstrated that unless this Court grants the preliminary injunctions sought on these motions, he or she and his or her children will be rendered homeless. That showing satisfies their respective burdens with respect to the second element of the preliminary injunction standard (see, Jiggetts v. Perales, supra, 202 A.D.2d, at 342 ["Plaintiff established entitlement to preliminary injunctive relief pending determination of the underlying action by demonstrating the irreparable harm of a possible eviction if the relief sought was not granted"]).

C. BALANCING OF THE EQUITIES

As their final burden, plaintiffs must each show "a balance of the equities in their favor" (see, Aetna Insurance Company v. Capasso, 75 N.Y.2d 860,862 [1990]). This requires a demonstration "that the irreparable injury to be sustained is more burdensome to the plaintiff than the harm caused to the defendant through the imposition of the injunction" (Klein, Wagner & Morris v. Lawrence A. Klein, P. C., 186 A.D.2d 631,633 [2d Dept. 1992]).

In each of their cases, plaintiffs have tendered proof that unless they receive the additional financial assistance that would be provided by the preliminary injunctions, they and their children will lose their current housing. They have also demonstrated that in view of the difficulty finding decent shelter at affordable levels in Westchester County, the inability to stave off eviction or, in certain of the

cases, to proceed to lease newly found apartments, will render them homeless. As plaintiffs assert, the risk of homelessness has been deemed sufficient to tilt the balance of equities in favor of a public assistance recipient "so as to [warrant] maintain[ing] the status quo while awaiting a final determination of [her] claim" (see, Jiggetts v. Perales, supra, 202 A.D.2d, at 342).

Defendants offer a contrary view. As claimed by them, "the County (with State reimbursement) already pays plaintiffs a substantial amount of taxpayer monies for their shelter allowance, as well as other aspects of their public assistance grant" (Def. Mem., p.7). It is their position that given the extent of the State's support of its poor, "[p]reliminarily enjoining the payment by the County/State of even more monies to plaintiffs so that they can compete with low-income working families for apartments provides plaintiffs with an unfair economic advantage, as well as an economic disincentive to work their way out of the public assistance program" (id., p.7-8). They further contend that "many of the plaintiffs have not established or explained why they cannot resort to their family, relatives or friends for either financial assistance or housing, rather than seeking court-ordered taxpayer support to maintain their respective housing accommodations" (id., p.8). Upon these arguments, defendants maintain that the equities do not favor plaintiffs, thereby foreclosing the granting of these motions.

Certainly, the adverse impact upon the public fisc that will result from the granting of these motions is a valid consideration (cf., Delaware County Board of Supervisors v. New York State Department of Health, 81 A.D. 2d 968,970 [3d Dept. 1981][Considering as factor

"the substantial public interest in protecting against potential health hazards"]). Nevertheless, the need for additional expenditures of public monies does not outweigh the potential harm that results from homelessness (see, Jiggetts v. Perales, supra, 202 A.D.2d, at 342; see also, Tucker v. Toia, 54 A.D.2d 322,326 [4th Dept. 1976][Irreparable harm faced by plaintiffs outweighed damage faced by State by enjoining implementation of statute changing eligibility for "home relief" form of public assistance]).

Nor is the Court persuaded by defendants' claim that the granting of the interim relief sought will provide these plaintiffs with an unfair advantage by permitting them to compete for apartments with low-income working families. As an initial matter, this argument is irrelevant to the balancing of equities between plaintiffs and defendants. Further, it constitutes nothing more than a view that FA families must be penalized for accepting financial assistance from the State. That is, these families, all of which include children, are told by defendants, in behalf of this State, that while they may receive some amount of shelter support, they cannot expect that they will be permitted to obtain the same type of decent, safe housing that "working" families are seeking. Apparently, in defendants' view, unless FA families are willing to commit sums well beyond their shelter allowances or can find additional support from other family members or friends, all they are entitled to obtain as shelter are those apartments that the working poor would not even find acceptable, presumably because they are in unsafe neighborhoods or do not constitute minimally decent housing. This Court rejects such an approach to caring for this State's financially-disadvantaged families.

Finally, to the extent that defendants complain that plaintiffs have not shown that they cannot obtain financial assistance from others or live in "doubled-up" situations, this argument is but a repetition of that put forth with respect to the irreparable injury element of the three-prong standard. Once again, this effort by defendants to shift to others their statutory burden under Social Services Law §350(1)(a) is without support in the law.

Weighing the harm that plaintiffs face if the preliminary injunctive relief they seek is not granted against the additional financial burden faced by the State if the motions are granted, the Court agrees with plaintiffs that they have demonstrated that the equities are in their favor (see, Jiggetts v. Perales, supra, 202 A.D.2d, at 342). Thus, they have satisfied their final burden on their respective motions.

IX. THE "POLITICAL CARD"

"Injunctive relief, which had its origins in the courts of equity, has always been perceived as discretionary, to be granted or withheld by our courts in the exercise of responsible judicial discretion" (Matter of Gerges v. Koch, 62 N.Y.2d 84,94-95 [1984]). Whether a preliminary injunction should be granted "depends not alone on the right of the party seeking it but as well on the appropriateness of its issuance in the circumstances in which it is sought" (id., at 95). As is evident from defendants' papers in opposition to the motions in the Hedgepeth litigation, it is their central position that under the

circumstances of these cases, plaintiffs are not entitled to "court-ordered taxpayer support" to assist them with their problem of obtaining decent and affordable housing, notwithstanding defendants' obligation to provide shelter allowances reasonably related to the cost of housing in Westchester County.

To advance that position, however, defendants did not limit themselves to their opposition papers. Rather, they attempted to pursue a course now often resorted to by our political leaders.

Specifically, at the oral arguments heard with respect to the application for the issuance of TRO's as to the second group of motions in this litigation, defendants, through their counsel, the Attorney General of the State of New York, argued in sum that if this Court grants interim relief, the "word" will get out that this Court is "giving away" taxpayer monies to any FA family that merely requests an additional shelter allowance. This argument was a thinly-veiled attempt to intimidate this Court by labeling it with the political "L"-word, that is, to announce to the public that this is a free-spending activist court bent on advancing a social agenda at the expense of the public. Although this Court quickly rejected this argument when first put forth by defendants, it is an unfortunate development in this nation's history that elected leaders, at the Federal, State and local level, now resort to this approach to attack judicial decisions with which they disagree, confidant that they may do so with impunity because of the restrictions placed upon public comment by a court (see, Code of Judicial Conduct, Canon 3).

Contrary to the intended goal of defendants' argument, i.e., to intimidate the Court into accepting their view for fear of the

potential political consequences, "[t]he function of judges, it is manifest, is to apply the law, not to represent or champion the cause of a particular constituency" (Cox v. Katz, 22 N.Y.2d 903,905 [1968]). Throughout this nation's history its courts have provided a forum to groups lacking political "clout" who seek relief from unfair treatment, often resulting in radical social changes (see, e.g., Brown v. Board of Education, 347 U.S. 483 [1954]). It would be difficult to find a group having less political power than the poor FA families who, in the Hedgepeth litigation, seek review of shelter allowances which they attack as legally inadequate.[25] That a ruling favorable to any or all of these plaintiffs may be politically unpopular because it will cost the taxpayers of this State additional monies, plays no role in this Court's determination of the legal issues presented by plaintiffs' challenge (see, Colegrove v. Green, 328 U.S. 549,553 [1946][As observed in a different context, "[i]t is hostile to a democratic system to

[25]Typical of the treatment of the poor is the long-standing refusal of this State's Executive and Legislative branches to address the deplorable rates of compensation for counsel assigned to represent indigents in Criminal and Family Court proceedings and recent reductions in funding for civil legal services. At least one writer has suggested that cuts in legal services funding are a "back-door" effort to undermine challenges to the 1988 schedule by depriving the poor of sufficient numbers of competent counsel to represent them in Jiggetts-type lawsuits (see, Reining In Interim Relief's Cottage Industry: A Call To Resolve Jiggetts, 64 Albany Law Review 397,406 [2000]).

involve the judiciary in the politics of the people"]). Thus, in addition to being unprofessional, the attempt by defendants to play the "political card" with this Court is of no effect.

Moreover, the history of the related Dunham lawsuit, as well as the State's response to Justice Moskowitz' judgment in the Jiggetts litigation, establishes the blatant hypocrisy of the argument that the granting of these motions will result in the public being unfairly forced to see their hard-earned tax dollars distributed so that FA families can avoid homelessness. For example, it is alleged by plaintiffs, and not disputed by defendants, that in the Dunham lawsuit, defendants' counsel and Westchester/Putnam Legal Services regularly prepared stipulations pursuant to which intervenors in that litigation received supplementary shelter allowances (see, e.g., Creekmore Affirm., Munoz v. Wing, par.6), and that in the past, defendants had agreed "to a simple enhancement of an individual family's rent capped at no more than double the standard shelter allowance" (id., par.33).[26] So too has the State apparently continued to pay enhanced shelter allowances to plaintiffs in the Jiggetts litigation, because the preliminary injunctions granted by Justice Moskowitz in that action have continued in effect to date, due to defendants' failure to

[26] It is interesting that in opposition to each motion, defendants make the same argument that "plaintiffs claim, without legal authority, an entitlement to whatever amount would pay 100% of the current rent of their respective current apartments, even though there is no basis in law for such a varying standard" (Def. Mem., p.5). How defendants reconcile this position with their former practice of paying enhanced grants up to a "varying" maximum of double the shelter allowance of the particular FA family is not addressed in their papers. Nor do they explain how they arrived at the "cap" of double the shelter allowance that they previously agreed to pay to FA recipients.

promulgate a new shelter allowance schedule for New York City, notwithstanding both the passage of almost four years from the entry of the trial judgment and the affirmance of that judgment on appeal.

As is evident from the approach taken by defendants, they are quite willing to expend taxpayers' monies without limit, so long as they do not have to acknowledge that the 1988 shelter schedule is inadequate. Thus, it is disingenuous for defendants to raise the specter that granting the preliminary injunctions sought by plaintiffs will have catastrophic effects upon public finances.

X. CONCLUSION

Poverty has a face. It is the face of a Westchester County Family Assistance program child who, through no fault of his or her own, finds himself or herself facing the loss of a stable apartment and living environment due to the family's inability to pay a rent that far exceeds the shelter allowances provided under a schedule promulgated more than 13 years ago. It is the face of a parent of that child who is reduced to the plight of Oliver Twist, forced to say to defendants, and then in turn, to the courts, "Please, sir, I want some more".[27]

[27] Dickens, The Adventures of Oliver Twist, Trident Press International, 1999 Edition, p.13).

Clearly recognizing that under New York's Constitution and relevant Social Services Law provisions, this State's poor are not to be forced to beg in this manner, over one decade ago the highest Court of this State told defendants in the plainest of terms that they were legally bound to establish a schedule of shelter allowances reasonably calculated to meet the cost of housing in each district. In each of the cases in the Hedgepeth litigation, plaintiffs have sufficiently demonstrated a strong likelihood that they will prevail on the merits of their claims that defendants have failed to meet that legal obligation, that they will be irreparably injured unless their requests for injunctive relief are granted, and that the equities are balanced in their favor (see, Jiggetts v. Perales, supra, 202 A.D.2d, at 342). Upon that showing, the Court grants each of their motions, and shall exercise its "power as a court of equity to grant a [preliminary] injunction which mandates" defendants to pay plaintiffs' current arrears and ongoing rent pending the final outcome of this litigation (see, McCain v. Koch, 70 N.Y.2d 109,116 [1987]).[28]

[28] The Court is mindful of the requirement that an undertaking be ordered as a condition of the issuance of a preliminary injunction (CPLR 6312[b]; see, Times Square Stores Corp. v. Bernice Realty Company, 107 A.D.2d 677,681 [2d Dept. 1985]). Here, however, the parties have not addressed either the need for or the appropriate amount of an undertaking. Accordingly, in view of the fact that plaintiffs are obviously indigent, the Court shall not order an undertaking to be posted. If defendants are of the view that any of these plaintiffs should be directed to post an undertaking, they may make a written application for such an order, unless the parties can stipulate to the amount of an appropriate undertaking (see, Cohn v. White Oak Cooperative Housing Corp., 243 A.D.2d 440,441 [2d Dept. 1997]). In such event, the Court directs all parties to address the issue of whether an undertaking should be directed to be posted by a public assistance recipient, and if so, in what amount, particularly considering the authority conferred upon a Social Services Department official to recoup "any overpayment ... to a public assistance recipient" (Social Services

The foregoing shall constitute the decision of the Court.

Dated: White Plains, New York
May 31, 2001

HON. JOHN P. DiBLASI, J.S.C.

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