



Storm Response Pro Bono Training

DISASTER RELIEF DISPUTES AND APPEALS

November 15, 2012

Training Goals

- Update on NYLAG's Storm Response Unit and its post-storm work
- Quick review of major disaster relief programs from FEMA and the Small Business Administration
- Submitting strong applications and avoiding denials and inadequate benefits
- Administrative appeals from FEMA, SBA and DUA
- Role of pro bono and volunteer attorneys working with NYLAG

New York Legal Assistance Group

- Founded in 1990, the New York Legal Assistance Group provides high quality, free civil legal services to low-income New Yorkers who cannot afford attorneys. Our comprehensive range of services includes direct representation, case consultation, advocacy, community education, training, financial counseling, and impact litigation.
- NYLAG served more than 57,000 individuals in 2011
- NYLAG Units
 - General Legal Service
 - Matrimonial and Family Law
 - Immigrant Protection
 - Holocaust Compensation
 - LGBT Law Project
 - LegalHealth
 - Special Education
 - Special Litigation
 - Total Life Choices

NYLAG's Storm Response

- NYLAG has mobilized a legal aid disaster relief program to help victims of the storm deal with a range of issues
 - **NYLAG's Mobile Legal Help Center**, the country's first-ever legal services office and courtroom on wheels
 - Immediately post-Sandy, the MLHC began traveling to hard-hit neighborhoods across the city
 - Webpage: www.NYLAG.org/units/mobile-legal-help-center
 - Email: mobile@nylag.org

NYLAG's Storm Response

- **NYLAG's Storm Response Unit**

- Operating with paid staff, assistance from NYLAG's more than 100 professionals, and a network of over 800 volunteers
- Intake hotline: 212-584-3365
- Email: stormhelp@nylag.org
- Webpage: www.NYLAG.org/stormhelp

NYLAG's Storm Response, cont'd

- **Site Visits**

- NYLAG staff and our pro bono partners have been partnering with disaster relief centers and other government agencies, politicians and community and religious organizations to provide storm relief legal assistance to victims at sites throughout the affected areas.
- NYLAG will be staffing NYC's Restoration Centers

Federal Disaster Relief

- To be eligible for federal disaster relief benefits, people must have suffered specific types of losses in an area that has been declared a disaster by the President.
- In New York, individual assistance is available to people in the following counties:
 - Bronx, Kings (Brooklyn), Nassau, New York, Richmond (Staten Island), Suffolk and Queens
 - Note: other counties in NY are eligible for FEMA Public Assistance programs (NOT the same as NYC HRA public assistance), including Rockland and Westchester

www.DisasterAssistance.gov

1-800-621-3362

Federal Disaster Relief, cont'd

- Federal disaster relief programs are intended to be utilized as a “last resort” after an applicant has applied for any insurance or other reimbursement to which they are entitled.
 - FEMA: The Federal Emergency Management Agency, a federal agency within the Department of Homeland Security
 - SBA: The Small Business Administration

Applying for FEMA Disaster Relief

- Apply online, by phone or at a FEMA Disaster Recovery Site

www.DisasterAssistance.gov

1-800-621-3362

- After someone registers with FEMA, they will receive a FEMA application number. This number, along with the Social Security Number, are important for future communications with FEMA.

FEMA Disaster Relief, cont'd

- FEMA awards are based on households
 - Everyone living together is presumptively part of the household, but people can demonstrate that they live separately, for example, by showing they pay their own utilities and food
- Maximum FEMA award for a household in NY is \$31,900

FEMA Housing Needs Program

- Housing Needs Program: Can provide grants to individuals and households where property has been damaged or destroyed and where losses are not covered by insurance.
 - Temporary housing
 - Rental payments for temporary housing (a place to live for a limited period of time)
 - Moving and storage expenses related to the disaster are covered if needed to avoid additional disaster damage while disaster-related repairs are being made to the home
 - Repair and replacement of damaged property
 - Repair and replacement of essential household items not covered by insurance to make damaged dwellings safe, sanitary and functional
 - FEMA inspection is necessary for a property loss claim

FEMA Housing, cont'd

- ***Transitional Sheltering Assistance***
 - *FEMA has activated its Transitional Sheltering Assistance (TSA) program, which allows eligible survivors who are in shelters and cannot return to their homes due to storm-related damages to stay in participating hotels or motels until more suitable housing accommodations are available.*
 - *The current period of assistance is scheduled to end no later than December 15th (already one extension)*
 - *Further extensions may be made*

FEMA Other Than Housing Needs

- Other Than Housing Needs Assistance
 - Can provide grants for certain other expenses caused by the disaster, including:
 - Medical and dental expenses
 - Funeral and burial expenses
 - Clothing; household items (room furnishings, appliances); tools (specialized or protective clothing and equipment) required for your job; necessary educational materials (computers, school books, supplies)
 - Fuel for primary heat source (heating oil, gas)
 - Clean-up items (wet/dry vacuum, dehumidifier)
 - Damage to a vehicle
 - *Applicants for Other than Housing grants must first apply for an SBA loan*
- All expenses must be related to the disaster

Before Applying

- The applicant or a member of the household must have appropriate immigration status and a valid Social Security Number
 - Appropriate immigration status means: a U.S Citizen, a Qualified Alien or a non-citizen national (extremely rare)
 - Qualified Aliens include green card holders/lawful permanent residents, refugees and asylees, battered spouses and children with VAWA self-petitions filed or pending
 - Clients must be thoroughly screened about the immigration status of each household member

Before Applying, cont'd

- Before applying, applicants should gather as much of the following information as possible:
 - Social Security number
 - Current and pre-disaster addresses
 - Important to have a reliable mailing address
 - A reliable telephone number
 - Insurance information
 - Total household annual income
 - A routing and account number from the bank for direct deposit
 - A description of losses that were caused by the disaster

Denial or Inadequacy

- FEMA generally sends a decision letter within 30 days from the date of an application
 - The decision letter will
 - State whether or not eligible for assistance
 - If eligible, explain what eligible for
 - If not eligible, explain why not
 - If the decision is a denial the letter will contain appeal information about where and how to appeal

FEMA Denials

- Denial letter will include a coded reason for the denial.
 - See: <http://www.fema.gov/why-am-i-not-eligible-assistance>
- Reasons for denial include:
 - Lack of a necessary signature
 - Another member of the household is already being assisted by FEMA
 - Applicant's insurance is sufficient
 - Noncompliance with flood insurance requirements
 - Insufficient damage

Recoupments

- FEMA may seek repayment or recoupment of funds:
 - If the funds should not have been granted
 - If the funds were used for an unauthorized purpose
 - If funds were to be intended as a bridge until other proceeds became available (e.g., while waiting for insurance proceeds)

FEMA Appeals

- Applicants have 60 days from the date on their decision/denial letter to file an appeal
 - The appeal must be postmarked by this date
- The appeal must be in writing and submitted either by mail or fax:

FEMA-Appeals Officer
National Processing Service Center
P.O. Box 10055
Hyattsville, MD 20782-8055
Fax: 1-800-827-8112

FEMA Appeals

- Advocacy is important at every step of the appeals process. By developing a robust appeal package, the process can be expedited.
- FEMA must resolve the first level appeal in no more than 60 days
 - Some disputes with FEMA can be resolved very quickly, for example, by providing the missing information or signature
 - By contrast, if FEMA determines an appeal inspection is necessary, the expected range for a decision is 30 to 60 days

FEMA Appeals

- FEMA appeals can be based on denials of claims or inadequacy of awards
- Also, FEMA will audit and may seek to recoup payments
- Important to provide documentation and support at each appeals stage
- FEMA will consider 3 administrative appeals, then close the case

FEMA Appeals

- Advocates should submit a thorough letter-brief including references to the claimant's FEMA file whenever necessary, a notarized or sworn statement by the claimant and others with knowledge of the claim and supporting documentation
 - Supporting documentation should include any new information and documentation

FEMA Files

- If an appeal cannot be resolved quickly, ask for a full copy of the applicant's FEMA record by filing a Freedom of Information Act (FOIA) request.
- FEMA does not have a specific FOIA form, but the request must be made online or in writing and must include the requester's contact information (name, mailing address, phone number and an e-mail address) and a description of the records being requested, including as much identifying information as possible.
- A written authorization/record release from the applicant should expedite the processing time by eliminating certain privacy issues

FEMA FOIAs

- FEMA FOIA requests can be submitted online or in writing to:

FEMA FOIA Office
Records Management/Disclosure Branch
1800 S. Bell St., Fourth Floor, Mail Stop 3005
Arlington, VA 22202

FEMA Appeals Documentation

- It's highly recommended that the appeal include a written statement by the applicant describing the damage and why FEMA's decision was wrong.
 - The statement should be notarized or sworn to under oath
- Other supporting documentation can include:
 - Contractor's estimate of repair costs
 - If an estimate is submitted, be sure to provide contractor's contact information so that FEMA can contact the contractor if necessary.
 - Pictures
 - Receipts of expenditures
 - Insurance correspondence

Further Appeals Steps

- If an applicant is again denied at the first level appeal, a second level of administrative appeal can be submitted to the FEMA Assistant Director located at FEMA headquarters in Washington, DC

Recoupment Hardship Waiver

- In December 2011, a law was enacted allowing claimants to apply for a hardship waiver of a recoupment notice. Requirements included:
 - The improper payment did not involve fraud, presentation of false claim, or misrepresentation;
 - The improper payment was the result of an error on the part of FEMA;
 - The improper payment was not a result of fault on the part of the survivor;
 - Collection of the debt would be “against equity and good conscience” which means that it would be unfair under the circumstances of your case to collect the debt; and
 - Household income must be less than \$90,000 for a full waiver; partial waivers were available for those with higher incomes
- This waiver program only covered disaster payments received between 8/25/05 and 10
 - Would have to be amended to apply to Sandy

Small Business Administration (SBA)

- SBA provides low-interest loans to homeowners, renters and businesses to make permanent repairs to their personal property, real property and businesses
- SBA Loans are issued by SBA directly or approved SBA lenders, but SBA sets out the key terms and guidelines to be used in assessing eligibility
- To apply for SBA Loans
 - By Phone: 1-800-659-2955
 - Online: <https://disasterloan.sba.gov/ela>

SBA Loans, cont'd

- SBA Personal Property Loans: for repair or replacement of furniture, cars, appliances, and other items damaged or destroyed in the disaster or replacement of clothing
 - Maximum loan amount is \$40,000
- SBA Homeowner Loans: for permanent repairs (including replacement) of home to its pre-disaster condition
 - Maximum loan amount is \$200,000
- SBA Business Physical Disaster Loan: for replacement or restoration of damaged property to the condition it was in pre-storm, including real property, machinery/equipment, fixtures, inventory and leasehold Improvements
 - Maximum loan amount is \$2 million

SBA Loan Disputes

- If approved, the loan authorization letter will set forth financial terms as well as the uses for which the funds can be made
 - Misuse of SBA loan funds can result in SBA seeking to recover 1 ½ time the dispersed amount (also possible criminal penalties)
- There are several reasons why an SBA disaster loan application could be denied, but the two main reasons are
 - Credit History – Applicants must have a credit history acceptable to SBA
 - Repayment – Applicants must show the ability to repay all loans

SBA Loans, cont'd

- Another important issue for SBA loans is whether or not an applicant has credit available elsewhere
 - Applicants with no credit available elsewhere get lower interest rates and longer repayment terms
 - SBA determines if an applicant has credit available elsewhere
 - SBA considers that an applicant *does not* have credit available elsewhere when SBA finds the applicant does not have sufficient funds or other resources, or the ability to borrow from non-government sources, to provide for its own disaster recovery

SBA Loan Reconsideration

- Note: if an applicant for a FEMA grant is required to submit an application for an SBA loan, and that loan is denied, the applicant may not need to appeal the denial
 - The denial of the SBA loan application may result in an increase in FEMA grant that is sufficient for the applicant
- If an applicant for an SBA loan wants to appeal, they ask for *reconsideration*
 - Requests for reconsideration must be filed within 6 months of the date of the denial letter

SBA Loan Reconsideration, cont'd

- Two levels of reconsideration:
 - First level appeal is to the Disaster Assistance Processing and Disbursement Center (DAPDC) in Fort Worth, TX
 - Must be made within 6 months of the denial letter
 - Application will be assigned to a new loan processor
 - Second level appeal is to the DAPDC Director, same location
 - Second level appeal must be made within 30 days of first reconsideration decision
 - Another loan processor will assess application
- Note: if SBA notifies an applicant of a claim of *misuse* of the funds, the applicant must submit contrary evidence within 30 days of the notice

Disaster Unemployment Assistance

- Disaster Unemployment Assistance (DUA) is authorized by the federal government and administered by state agencies
 - In New York, the Department of Labor
- DUA is **NOT** available for people already receiving regular unemployment benefits
- Additional people are eligible for DUA than regular unemployment benefits, including
 - Self-employed
 - Those who could have started working but for Sandy
- Applicants must be unemployed for a reason **directly related to the storm**

DUA

- DUA is available for a maximum of 27 weeks (October 31, 2012 – May 5, 2013)
- Deadline to apply is **February 4, 2013**
- To apply call 1-888-209-8124 (from within NY) or 1-877-358-5306 (from outside NY)
 - DOL is referring people to apply by phone, not online

DUA Appeals

- First level appeal: Appeal to an NY Department of Labor (NYDOL) Administrative Law Judge
 - Claimants have 60 days from the date of the denial to appeal
 - Note: This is twice as much time as NY State claimants have to appeal regular Unemployment Insurance (UI)
 - By regulation, ALJ's decision must be made within 30 days. 20 C.F.R. §625.9(a)(1)
- First level appeals should be made in writing to: New York State Department of Labor, P.O. Box 15131, Albany, NY 12212-5131
 - Include the claimant's Social Security number and/or case number in the appeal letter

DUA Appeals, cont'd

- Second level appeals:
 - Appeals from the decision of an ALJ are made to the U.S. Department of Labor (DOL) regional office
 - Must appeal within 15 days of the ALJ's decision
- Can be sent to NY DOL which will forward to the US DOL, or directly to the US DOL regional office.
- New York is in DOL Region 1. Second level appeals can be addressed to:

Holly O'Brien

Regional Administrator, U.S. Department of Labor
Employment and Training Administration
John F. Kennedy Federal Building, Room E-350
Boston, MA 02203

DUA Appeals, cont'd

- Two issues to note:
 - In New York, claimants cannot receive regular UI benefits for a week in which they have not certified.
 - DUA regulations call for “weekly applications” to be filed in the same manner as for state applications for regular UI .
 - Accordingly, Claimants should continue to certify for DUA while awaiting the results of their appeal in order to preserve their ability to get benefits for that period
 - A claimant who receives an overpayment is on the hook for repaying the DOL whether or not the overpayment was due to the individual’s fault or misrepresentation
 - This is different than the standard for regular UI.

Updates and New Developments

- New York City has opened 6 Restoration Centers to provide information and services in such areas as:
 - NYC Rapid Repairs, a new program to send teams of contractors and inspectors to conduct speedy repairs
 - Food and nutrition assistance
 - Health and medical benefits
 - Financial assistance
 - Personal records and information
- Centers are located in Coney Island, Red Hook, Gravesend, Fort Tilden, Far Rockaway and Staten Island
- Call 311 or see www.nyc.gov for more info

Sandy Recovery To Date in NY

- According to FEMA, as of yesterday:
 - More than 192,000 New Yorkers have contacted FEMA for information or registered for assistance and more than \$392 million has been approved.
 - 100,000 have applied through the online application
 - 30 Disaster Recovery Centers (DRC) are open in 9 counties, including fixed and mobile sites, and more than 21,000 people have been assisted at DRCs in New York
 - 1,213 inspectors in the field have completed 57,196 home inspections

Recovery to Date, cont'd

- 1,083 Community Relations (CR) specialists are positioned throughout affected communities, going door to door explaining the types of disaster assistance available and how to register
- 46 Points of Distribution (PODs) are open and providing supplies to affected residents
- 8 Disaster Medical Assistance Teams (DMATs) and 1 Rapid Deployment Force (RDF) team from the Department of Health and Human Services are deployed in New York

Volunteering with NYLAG

- For storm-related volunteer opportunities, please check NYLAG's Storm Response Unit website and calendar regularly:

www.nylag.org/stormhelp

- NYLAG will continue to send out regular announcements about new volunteer opportunities by email to individuals who have signed up to volunteer with us, as well as our law firm and corporate pro bono partners
 - If you are interested in volunteering and have not yet contacted us, please email: volunteer@NYLAG.org
 - Be sure to note that you attended this training.

Thank You

- NYLAG's Storm Response Unit
 - Legal Assistance Hotline: 212-584-3365
 - Email: StormHelp@nylag.org
- NYLAG's temporary general intake line: 212-584-3300