

Seeking Orders to Gain Access to Adults Believed to be in Need of Adult Protective Services: Best Practice Guidelines

I. Purpose

The purpose of this document is to provide best practice guidelines as well as a summary of the applicable law and OCFS policy guidance to assist local district Adult Protective Services (APS) staff and attorneys representing APS staff and local commissioners of social services when dealing with this topic. (Footnote: although statute and regulations use both “PSA” and “APS” interchangeably, in this document we will use the term “APS” unless we are citing a source that uses “PSA.”)

II. Introduction

Social Services Law section 473-c authorizes a social services official to apply to the court for an order to gain access to a person to assess whether such person is in need of adult protective services. The social services official may apply when:

- The official has reasonable cause to believe such person may be in need of adult protective services; and
- The official is refused access by such person or another individual.

The law also contains provisions which:

- Require that a social services official who is refused access must assess, in consultation with a supervisor, whether or not it is appropriate to apply for an order to gain access to such person. Such assessment must be made as soon as necessary under the circumstances, but no later than 24 hours after the investigating official is denied access. The determination of whether or not to apply for an order to gain access and the reasons therefor shall be documented in the investigation file.
- Set forth the information that needs to be included in an application for an order to gain access.
- State the determination to be made by the court in order to grant the application for access.
- State how an order for access, if granted, is to be carried out.

III. Seeking Orders to Gain Access

A. Seeking Voluntary Access

Best Practice for APS workers is to use engagement and persuasive skills to seek voluntary agreement by the person who may be in need of APS or another person who may be controlling access. Explain that you are from APS, that you have received information about a concern for their safety or welfare, and that you are there for the purposes of talking with them and seeing whether they are ok.

As stated in the OCFS Adult Services Practice Model, “All adults have the right to be safe and to live with dignity and with self-determination to the extent possible.” With

respect to Engagement: “Since most vulnerable adults have the capacity to refuse offered services, best practice is for Adult Services worker to carefully and gently engage the client to make a connection and to offer services.”

As stated in the National Adult Protective Services Association (NAPSA) APS Recommended Minimum Program Standards: “Adults retain all their civil and constitutional rights, i.e. the right to live their lives as they wish, manage their own finances, enter into contracts, marry, etc. unless a court rules otherwise.” Also: “Use the least restrictive services first.”

B. What if no one is home when APS attempts a home visit? Is that a “Refusal?”

No. A petition for an order to gain access is based on an actual refusal of access, either by the person who may be in need of APS, or by somebody else. It does not apply to a situation where no one was home, or no one was answering the doorbell or a knock at the door, and there is no reason to believe that anyone was at home when APS came by to conduct an investigation or assessment.

C. Access to What? Is it Access to the Person or to the Person in their Home ?

We have heard that there is sometimes confusion as to whether there is a basis for APS to seek an access order in the case where APS has spoken to the person outside of their home, but the person or someone else has denied access to the home. This confusion may be due to the fact that the statute refers to “an order to gain access to a person.” Social Services Law (SSL) section 473-c 1. However, the statutory language goes on to say:

A social services official may apply to the supreme court or county court for an order to gain access to a person to assess whether such person is in need of protective services for adults in accordance with the provisions of section four hundred seventy-three of this article when such official, having reasonable cause to believe that such person may be in need of protective services, is refused access by such person or another individual.

The statute further states that an application for an order to gain access shall include, among other things:

(g) that the social services official seeks an order solely for the purposes of assessing the need of a person for protective services for adults in accordance with the provisions of section four hundred seventy- three of this article and applicable regulations of the department.

If the court grants the application, the court shall issue an order:

authorizing the social services official and other such officials as may be designated by such official, accompanied by a police officer, to enter the

premises to conduct an assessment to determine whether the person named in the application is in need of protective services for adults.

SSL section 473-c (4).

The law is clear that when an order to gain access is sought, the purpose of the access is to conduct an assessment of the person in accordance with applicable regulations. APS regulations require “assessing the individual’s situation and service needs.” 18 NYCRR section 457.1(d)(3). Regulations further state that for every type of APS assessment that is conducted:

The case record of each PSA client shall include a PSA assessment/services plan consisting of the following information:

- (iii) household composition;
- (iv) residence and living arrangements;
- (v) income and resources;
- (vi) medical and mental limitations
- (vii) identification of significant other persons such as family members and friends and their willingness and capability to assist the individual

18 NYCRR section 457.2(b)(1).

These and other components of the APS assessment cannot adequately be explored without access to the individual in their home to see how the individual is living in his/her home environment and to have access to records and persons found in the home. **Even if APS staff has access to the person outside of their home for an initial interview, if there is reason to believe the person may be in need of APS and that therefore an assessment must be conducted, access to the home is necessary in order to conduct a full assessment of the needs of the client.**

If the referral cites hazardous environmental conditions in the home, lack of adequate food, medicine, furnishings, utilities, or if there is any allegation of abuse, neglect or financial exploitation, these factors make it even more critical that APS have access to the home in order to conduct a proper assessment of the risks and needs of the client.

The law is also clear that when an access order is issued, it includes access to the premises, i.e. to the home, for the purposes of conducting an assessment of the person in their home, in accordance with applicable regulations.

D. Upon Refusal of Access

If the person who may be in need of APS, or another person, refuses access to APS, what are the next steps?

(a) Regulatory requirements:

If an employee of a social services district who is authorized to provide PSA is denied access to a person who is believed to be in need of PSA by another individual or by such person, the social services district must take the following action:

- (1) Enlist the aid of family members, friends, neighbors, or staff of other appropriate agencies, including law enforcement agencies, for the purposes of persuading the individual(s) responsible for denying access to a person who may be in need of PSA to permit the district to complete an assessment of the person's need for PSA; and
- (2) If the efforts initiated in accordance with paragraph (1) of this subdivision are unsuccessful, the social services district must determine whether or not to apply to the Supreme Court or the County Court for an order to gain access to a person who may be in need of PSA, in accordance with the provisions of this section. In deciding whether or not to apply for such an order, the social services district must determine if the information provided by the referral source and other persons familiar with the situation and the observations of staff of the social services district warrant such action.

18 NYCRR section 457.11 (b) (1)(2)

(b) Social Services Law.

As noted above, the SSL requires that a social services official who is refused access must assess, in consultation with a supervisor, whether or not it is appropriate to apply for an order to gain access to such person. Such assessment must be made as soon as necessary under the circumstances, but no later than 24 hours after the investigating official is denied access. The determination of whether or not to apply for an order to gain access and the reasons therefor must be documented in the investigation file. SSL section 473-c, (1)

Please note that this provision does not create a requirement that the local district petition for access within a certain time frame, or at all. It merely requires that once there has been a refusal of access, the APS worker consult with a supervisor to assess whether or not it is appropriate to petition at that point for an access order, and document the reasons for the determination to apply or not apply at that point.

(c) Policy Directives provide additional guidance.

- Administrative directive 87 ADM 6 (Orders to Gain Access). This ADM states that the APS caseworker needs to report to the supervisor when access is denied, and the caseworker and the supervisor need to discuss appropriate casework steps to take, consistent with regulations, to try to seek access. If additional efforts to obtain access are unsuccessful and if the APS caseworker continues to believe the person may be in need of APS, certain specified information must be presented to the supervisor and documented in the case record. (See section E. below regarding the

specific information that must be included in the application for an order to gain access.)

This ADM provides guidance on the next steps: If the supervisor concurs with the need for a court order to gain access, the information shall be promptly presented to the county or agency attorney. However, if the supervisor is not satisfied that sufficient efforts have been made to obtain access voluntarily, the supervisor must advise the caseworker of the additional efforts which must be made.

The ADM states that the supervisor's decision whether or not to support the need for an order to gain access, the reasons for the determination and the information obtained by the caseworker shall be recorded in the case record. If APS casework or supervisory staff need guidance about the legal sufficiency of their case for presentation to the court, they should promptly arrange to consult with the county or agency attorney.

- Administrative Directive 93 ADM 23 (APS Intake). This ADM includes the following important language:

If an adult for whom a PSA referral is received cannot be located or if the caseworker is denied access to the adult's home, prompt and continuous follow up efforts must be made to locate and to obtain access to the adult in the adult's home. Follow up efforts must include contacts with any other persons who might be of assistance in locating and/or obtaining access to the adult, including the referral source, staff of other agencies, family members, friends, neighbors, and landlord or building superintendent. Efforts to locate and/or obtain access to the adult must continue as long as there is a reason to believe that the adult may need PSA. If reasonable efforts have been made to obtain access to an adult, and access continues to be denied, steps must be taken to pursue an access order. The number and frequency of follow-up home visits must be commensurate with the severity of the case situation, as indicated by the information obtained during the intake process.

- Administrative Directive 12-OCFS-ADM-05 (Protective Services for Adults: Chapter 412 of the Laws of 2011). This ADM advises districts of the steps that must be taken to implement the provisions of Chapter 412 of the Laws of 2011, which contains the provisions of the SSL set forth in section D(b) above. The ADM states that while Chapter 412 of the Laws of 2011 does not specify the form of the supervisory consultation that must occur after a refusal of access occurs, acceptable forms of consultation are in person or by telephone, so long as there is a sufficient opportunity to discuss the pertinent details of the case. Such consultation should not occur by e-mail only. The ADM also states that since the law requires consultation with a supervisor within 24 hours of the refusal of access, the district will need to arrange to have necessary APS caseworkers, supervisors and, as needed, counsel available to make such determinations within the prescribed timeframe.

E. Required information for Application for Order to Gain Access

SSL section 473-c provides that such application shall state, insofar as the facts can be ascertained with reasonable diligence:

- a. The name and address of the person who may be in need of protective services for adults and the premises on which this person may be found;
- b. The reason the social services official believes the person may be in need of protective services for adults, which may include information provided by other agencies or individuals who are familiar with the person who may be in need of protective services for adults;
- c. The person or persons who are responsible for preventing the social services official from gaining access to the person who may be in need of protective services for adults;
- d. The efforts made by the social services official to gain access to the person who may be in need of protective services for adults;
- e. The names of any individuals, such as physicians or nurses, or other health or mental health professionals qualified to participate in the assessment, who shall accompany and assist the social services official conducting an assessment of the need of a person for protective services for adults;
- f. the manner in which the proposed assessment is to be conducted;
- g. That the social services official seeks an order solely for the purpose of assessing the need of a person for protective services for adults in accordance with the provisions of section four hundred seventy-three of this article and applicable regulations of the department;
- h. That no prior application has been made for the relief requested or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

Any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge.

F. Once the Assessment Ordered By the Court Is Completed, What's Next?

Following the assessment, there are several possible outcomes. These include:

- Based on the assessment, a determination is made that the person is not APS-eligible. The APS case can be closed and any appropriate referrals for other assistance or services can be offered to the person.

- Based on the assessment, a determination is made that the person is APS- eligible, but has the capacity to make decisions whether or not to accept services. An APS services plan is developed and services are offered to the person. The person then decides whether or not to accept services.
- Based on the assessment, a determination is made that the person is APS-eligible, and that the person appears to lack capacity to make decisions, including whether or not to accept services. If the district believes that there is a serious threat to the person’s wellbeing, and that the person is incapable of making decisions on his or her own behalf because of impairments, the social services official has a responsibility to pursue appropriate legal intervention in accordance with law. Remember, the district must employ the least restrictive intervention necessary to effectively protect the adult. The immediacy and seriousness of the threat to the individual will determine whether crisis intervention procedures and/or other legal procedures are warranted. 18 NYCRR section 457.6(a).

Issuance of an order to gain access is for the purposes of assessment only. SSL section 473-e, which governs orders to gain access to persons believed to be in need of APS, states at subdivision five: “The provisions of this section shall not be construed to authorize a social services official to remove any person from the premises described in the application, or to provide any involuntary protective services other than to assess a person’s need for protective services for adults.” If the social services official believes that an involuntary intervention is needed, such intervention must be based on separate legal authority in accordance with section 473 of the SSL and 18 NYCRR section 457.6.

G. Model Forms

Please see Appendix A for model forms for an Access Order Petition and an Access Order.

These are meant only as samples. APS staff should consult their county or agency attorney.

H. Share with Us Your Best Practices Related to this Topic!

We are interested in hearing from local districts and others in the field what the best practices are relating to this topic. Please share your information with your Bureau of Adult Services representative or to:

Alan Lawitz
 Director, Bureau of Adult Services
 New York State Office of Children & Family Services
 Room 333, North Building
 52 Washington Street
 Rensselaer, N.Y. 12144
Alan.Lawitz@ocfs.ny.gov

ACCESS ORDER PETITION

STATE OF NEW YORK: COUNTY OF NEW YORK

X-----X

In the Matter of the Application of

as Chief Deputy Commissioner of Social Services of
_____ County,

APPLICATION FOR
ORDER PURSUANT
TO SECTION 473-c OF
THE SOCIAL
SERVICES LAW

For an Order Pursuant to Social Services Law Section 473-c

Index No. _____

to Gain Access to

a Person believed to be in Need of Protective Services for Adults

X-----X

STATE OF NEW YORK, COUNTY OF _____ SS:

_____ being duly sworn, deposes and says that:

1. I am the Chief Deputy Commissioner of the County Department of Social Services, with offices at _____, New York. I am a social services official duly authorized to apply for an order to gain access to a person believed in need of protective services for adults pursuant to Social Services Law §473-c of the New York State Social Services law.

2. Upon information and belief, the source of information being _____
_____ Caseworker, _____ County Department of Social Services and
_____ Director of Case Enforcement, Village of _____

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there is reasonable cause to believe _____ is an adult person of approximately 75 years of age who may be in need of protective services for adults and who may be found on the premises located at _____ New York. The affidavits of _____ and _____ both executed on November 17, 200_, are attached hereto as Exhibits "A" and "B" respectively.

3. The reasons for concern and the belief that _____ may be in need of protective services for adults and as set forth more fully in Exhibit "A" and "B" are as follows:

a) _____ resides at _____, New York, a residence which is without heat, electric, hot water or operative toilet facilities and which has been substantially boarded up by the Village of _____. On September 5, 200_, said residence, owned by a person other than _____ was declared by _____ in his official capacity, to be unfit for human habitation under § 55-45A(2)(a) of the _____ Village Code. In his affidavit dated November 17, 200_, _____ has stated that in his opinion said premises are in such condition as to constitute an imminent danger or threat of serious physical harm to any occupant thereof, and will continue to pose such a threat until substantial repairs are made and appropriate corrective action taken.

(b) _____, has exhibited conduct which indicates she may have sufficient impairment of judgment to plan appropriately for herself and her well-being, and is therefore possibly in need of protective services for adults. Said conduct, as described in the affidavit of _____, executed on November

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17, 200_, includes her refusal to accept the fact that she is not the owner of said premises and her conversations about “resetting” bodies at _____ Body Shop.

4. The person who is responsible for preventing the _____ Department of Social Services from gaining access to _____ is herself.

5. The _____ County Department of Social Services has attempted to gain access to _____ on November 3, 200_;; November 5, 200_;; November 10, 200_;; November 12, 200_;; November 13, 200_;; November 14, 200_;; November 15, 200_;; and November 16, 200_. Diligent efforts to access _____ to assess the need for services on a voluntary basis have been unsuccessful.

6. The names of the individuals who shall accompany and assist the social services official conducting an assessment of the need of _____ for protective services for adults are as follows:

a) _____, Adult Protective Services Caseworker,
_____ County Department of Social Services.

b) _____, M.S.W., Clinic Administrator,
_____ Mental Health Clinic.

c) _____, M.D., Medical Director,
_____ Mental Health Clinic.

d) _____, officer or officers of the _____
_____ County Police Department.

7. The proposed assessment shall be conducted by entering said _____

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apartment at _____, New York and conducting an inspection of the physical environment as well as an interview with _____ to determine if she is in need of adult protective services, to wit:

a) Assistance in moving from a situation which is, or is likely to become hazardous to her health and well-being.

b) Arranging for medical or psychiatric services to safeguard and improve her circumstances.

c) Arranging, if necessary, for commitment, guardianship or other protective placement by referral to appropriate agencies.

In addition, an assessment will be made to determine if _____ has the capacity to understand her situation and plan accordingly with or without the acceptance of services from the _____ County Department of Social Services or other agencies.

8. The order of access sought herein is solely for the purpose of assessing the need for protective services for adults in accordance with the provisions of Section 473 of the Social Services Law and applicable regulations of the _____ County Department of Social Services.

9. No prior application has been made for the relief requested herein.

WHEREFORE, your applicant requests that this Court issue an order pursuant to Social Services Law 473-c, authorizing _____, Chief Deputy Commissioner, _____ County Department of Social Services;

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_____, M.S.W., Clinic Administrator; _____

Mental Health Clinic; accompanied by a police officer or officers, to enter the premises

_____, Village of _____, State of New York, to conduct

an assessment to determine whether _____

is in need of protective services for adults.

Sworn to before me this 19th day of November, 200_

Notary Public

Notary Public State of New York

Commission Expires March 30, 200_

ACCESS ORDER

At a Trial Term Part 2 of the Supreme Court
To the State of New York, held in and for
The County of
At the County Center,
New York, on the 19th day of November,
200_.

P R E S E N T:

HON. _____, Justice.

X-----X

In the Matter of the Application of _____, ORDER PURSUANT TO
Chief Deputy Commissioner of Social Services of _____ § 473-c SSL
_____ County, _____, DIRECTING ACCESS TO
Petitioner, PERSON WHO MAY BE IN
To Gain Access to _____, NEED OF PROTECTIVE
Gain Access to _____, SERVICES FOR ADULTS
A Person believed to be in Need of Protective Services for Adults Index No. _____

X-----X

For an Order Pursuant to Social Services Law §473-c to

On reading and filing the annexed affidavit of _____, Chief
Deputy Commission, _____ County Department of Social Services, executed
on the 19th day of November, 200_; and the affidavit of _____,
Director of Code Enforcement, _____, Caseworker,
_____ County Department of Social Services, executed on the 17th day of

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November, 200_, from which it appears there is reasonable cause to believe that there may be a person in need of protective services for adults and that the said

_____, may be found at _____, New York, and

that access to the said _____ has been refused, it is hereby

ORDERED that, _____, Chief Deputy Commissioner,

_____ County Department of Social Services; _____,

Caseworker, _____ County Department of Social Services, Mental Health

Clinic; and _____, M.D., Medical Director,

_____ Mental Health Clinic, accompanied by a police officer or officers, are

hereby authorized to enter the premises _____, New York to conduct an

assessment pursuant to Social Services Law §473-c, to determine if the said

_____ is in need of protective services for adults; and it is further

ORDERED that issuance of this order shall not be construed to authorize a social services

official to remove any person from _____, New York or for a social services

official to provide any involuntary protective services to _____,

other than to assess her need for protective services for adults; and it is further

ORDERED that this access order shall be executed with two (2) days of its issuance; and

it is further

ORDERED that within two (2) business days after the execution of this access order,

_____, Chief Deputy Commissioner, _____

County Department of Social Services, shall file a report with this Court detailing the outcome of

the authorized assessment of _____ with respect to her need for

protective services for adults; and it is further

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ORDERED that the police officer or officers accompanying the said social services official may break open the door to gain entry if, after notice of his or her authority and purpose, he or she is refused admittance.

ENTER,

J.S.C.

GRANTED