Maine Municipal Association

General Assistance Manual

2014 revised edition | MMA Legal Services

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Preface

This is the 13th revised edition of the General Assistance Manual. It has been prepared in a binder and loose-leaf format, with tabbed sections, so that the administrator can keep this manual, the General Assistance Ordinance, the DHHS Policy and supplemental materials together in an organized manner. Since DHHS's audits require municipalities to demonstrate the possession of a copy of its GA policy, along with a current municipal GA ordinance, this binder should serve administrators in keeping all required material organized and readily available.

Please note however, this manual does not contain a GA ordinance. Municipalities should place a copy of the GA ordinance they have chosen to adopt after the Chapter 14 tab. The ordinance was intentionally omitted because it could not be assumed that the municipality has adopted the most recent version of the MMA model ordinance. In addition, the DHHS Policy must also be inserted (after the Chapter 15 tab) once obtained from DHHS.

Consistent with the general style of all MMA Legal Services' manuals, this manual is intended to help the administrator interpret state law, while providing practical examples, problems and possible solutions. Furthermore, where necessary, legislative history and the reasoning behind certain laws and practices are provided in an effort to assist the user in reaching a better understanding of the subject matter.

It must be emphasized that this manual is not a "law book," and specific legal questions should be directed to DHHS, the municipal attorney or the MMA legal staff.

The information in this manual reflects General Assistance law effective as of October 9, 2013. All references to state law refer to Title 22 unless otherwise stated.

Legal Services Department
Maine Municipal Association
March 2014

Terms and Abbreviations Used in this Manual

Unless it is clear from the context that something else is meant, the following abbreviations, words, and phrases have the following meanings in this Manual:

A.2d or **Me.** refers to the series of Maine Supreme Judicial Court or Law Court cases reported for this State and court region. "A.2d" means the Atlantic region reports, 2nd series. "Me." means the Maine reports. An example of a case cite would be 111 Me. 119, (1913) and 579 A.2d 58. The numbers "111" and "579" refer to the volumes of the Maine and Atlantic court reports. The numbers "119" and "58" refer to the pages on which the case begins. The number "1913" refers to the year of the court's decision.

Et seq. means "and following sections."

§ is a symbol that means "section."

Law Court is the State of Maine's Supreme Judicial Court.

Legislative body means the town meeting or the town or city council.

M.R.S. means the Maine Revised Statutes Annotated. An example of a reference to the Maine Statutes would be 30-A M.R.S. § 4401. The number "30-A" refers to Title 30-A. The number "§ 4401" refers to section 4401 of Title 30-A.

Municipal officers mean the selectpeople or councilors of a town, or the mayor and councilors of a city.

Municipal official means any elected or appointed member of a municipal government, such as the road commissioner, clerk, tax collector, treasurer or other person who takes an oath of office.

Ordinances are laws passed by the legislative body of a town, city or plantation.

P.L. means "public law" and is used as part of referring to a law passed by Maine's Legislature, for example P.L. 1977, ch. 417.

Statutes as used in this Manual means the State laws passed by the Maine State Legislature; **federal statutes** are laws passed by the U.S. Congress.

Town or City Council as used in this Manual means a council granted legislative power by a charter.

Note: Copies of the Maine statutes may be available at the town office or city hall. The statutes, court cases, and court rules of procedure also are available at the State Law Library, University of Maine law school library and possibly at the county courthouse. They are also available online. The website address for the Maine statutes is www.mainelegislature.org/legis/statutes. To access Maine Supreme Court cases from 1997 to the present, go to www.courts.state.me.us. Some Superior Court cases are available at: http://webapp.usm.maine.edu/SuperiorCourt/.

CHAPTER 1 – Introduction to General Assistance

What is it?

General Assistance (GA) is "a service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families." 22 M.R.S. § 4301(5). The key terms in this definition are: immediate, unable and basic necessities.

GA is intended to provide ***immediate*** aid, thus assistance must be granted or denied within 24 hours of an application. It is for people who are ***unable***—not unwilling—to maintain themselves or their families. Finally, GA is intended to help people with ***basic necessities***: food, shelter, utilities, fuel, clothing, and certain other items, when they are essential.

What it is not

GA provides "a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing 'grant-in-aid' or 'categorical' welfare program." 22 M.R.S. § 4301(5). Despite the stated intent that GA not be an ongoing source of income to an applicant, there is *no limitation on the number of times a person may apply for and receive GA.*

One of the most common misconceptions about GA is that it is only an emergency program and people cannot receive assistance after a certain period. Contrary to this perception, it should be noted that the state law also reads:

> "This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that person has need and is found to be otherwise eligible to receive assistance." 22 M.R.S. § 4301(5).

*In other words, there is **no limit** on the number of times people may apply for and receive general assistance if they are eligible.*

Finally, because GA is not a "categorical" welfare program, it is not limited to providing assistance to only specific groups or categories of people as is TANF,[1] to families with dependent children, or SSI for disabled people.

Theoretically GA is available to ***anyone2*** *in the state at any particular time who meets the eligibility criteria.* GA is the program of *last resort*—it is the "safety net" intended to help those people who have no other resources. GA is the only comprehensive program to help people who are not eligible for any other assistance program.

What is Required?

Ordinance, Notice of Hearing & Hearing

Each municipality is *legally* ***required*** *to administer a GA program* in accordance with the state law and an ordinance adopted by the municipal officers. 22 M.R.S. § 4305. ***Prior*** *to adopting the ordinance*, the municipal officers must hold a public hearing. Notice of the hearing should be posted publicly *at least seven days* before the hearing. Notice should be posted in the same places where the town meeting warrant is posted or other places where people commonly look for public notices. The notice must give the *date, place and time of the hearing and must contain the full text of the ordinance or indicate where copies are available for people to review (see Appendix 1 for sample notice).*

At the hearing the municipal officers should explain the purpose of the ordinance, give a brief summary of its provisions, and then open the public hearing for comments from the citizens. After people have had a reasonable period to discuss the proposed ordinance, the hearing should be closed and the municipal officers should proceed with their discussion.

After the municipal officers have considered the ordinance and any changes, one of the officers should make a motion that is seconded by another and voted upon by the majority. There must be a record of the vote. It is suggested that the clerk be present to record the minutes, the motion and the votes. After the ordinance has been adopted, the municipal

1 Previously AFDC.

2 With the passage of the Personal Responsibility and Work Opportunity Authorization Act of 1996 (Welfare Reform) some limitations apply to 'illegal' immigrants. Should this issue arise, please call DHHS for more information.

officers must send a copy of it, plus samples of any GA forms and notices the municipality uses, to:

Department of Health and Human Services
General Assistance Unit
State House Station #11
Augusta, ME 04333

Any amendments made in the future must be adopted in the same manner as an entire ordinance, and the amended parts of the ordinance must be sent to the Department of Health and Human Services (DHHS). ***Don't forget to adopt (by October 1st of each year or as soon as possible thereafter) the new Appendixes A-C*** containing the yearly GA maximums, which MMA sends to all municipalities. DHHS must also receive confirmation that the municipality has adopted the appropriate maximums each year.

(For further information see Chapter 11, Q & A, "Miscellaneous").

GA Program Public Notice

Each municipality ***must*** *post a public notice informing the citizens* that the municipality has a GA program administered in accordance with a local ordinance. The notice must also state when and where people may apply for assistance and where they may review the ordinance and the state's General Assistance statutes, as those statutes are made available to each municipality by DHHS for the purpose of citizen review. The notice must also inform people of the municipality's obligation to issue a written decision regarding eligibility within 24 hours of receiving an application for assistance, and the name of the municipal official applicants should contact for assistance in emergencies.

Depending on the size of the municipality, the administrator may want to post the Police Department's telephone number and inform people to contact the police if it is an emergency and assistance is needed at a time when the GA office is closed. The police, in turn, could contact the GA administrator. Finally, the posted notice must contain the **DHHS toll-free telephone number 1-800-442-6003.** The law does not specify where or in how many places notice should be posted, but DHHS regulation requires that the notice be posted so that it is visible 24-hours a day. Therefore, at a minimum, the notice should be posted on a window or glass doorway facing out at the municipal building where GA applications are taken. The same notice can also be placed on bulletin boards or other locations where people commonly look for public notices *(see Appendix 2 for sample notice).*

Standards

The purpose of the GA ordinance is to establish procedures for administering the program and standards of eligibility. *At a minimum, the ordinance **must** state:* how eligibility is determined and the type and amount of assistance applicants are eligible for; that **no one** may be denied the opportunity to apply; and that a **written** notice of the administrator's decision will be given within **24-hours** of the submission of an application whether assistance is granted or denied; and that applicants have the right to appeal the administrator's decision. 22 M.R.S. § 4305(3).

The ordinance describes what type of assistance a person may receive and the maximum amount the municipality will grant. Since December 23, 1991, with the enactment of 22 M.R.S. § 4305(3-B), GA law refers to—and GA ordinances contain—two types of "maximum levels of assistance": an overall maximum level of assistance which is determined by law, and maximum levels of assistance for the specific basic necessities, which are determined by local ordinance.

The overall maximum level of assistance is a predetermined number of dollars that represents the maximum GA grant (except in certain emergency circumstances) that can be issued to a household with zero income. Effective October 2005 that predetermined number is supposed to be 110% of the federal Department of Housing and Urban Development (HUD) Fair Market Rent standards as published annually in the federal register. However, the maximum level of assistance has been "temporarily" changed on several occasions since 2005, due to a weak economy and budget constraints at the state level. Please review the most recent version of 22 M.R.S. § 4305 to ensure you are using the correct formula used to calculate the overall maximum level of assistance. As will be discussed in detail under the chapter covering the determination of eligibility *(see Chapter 2)*, these overall maximum levels of assistance are used to determine an applicant's gross eligibility for GA. *The gap between the applicable overall maximum level of assistance and the applicant's income is referred to as the applicant's **"deficit."***

The other type of **"maximum level of assistance"** referred to in the law are the various maximum levels that the municipal ordinance creates for any specific basic necessity, such as food, housing, electricity, etc. These maximum levels must be reasonable and sufficient to maintain health and decency. 22 M.R.S. § 4305(3-A).

As another test of GA eligibility, in addition to determining the applicant's "deficit," the maximum levels for the specific basic needs are also used as guides to determine a person's need and how much the applicant is eligible to receive. A detailed discussion of this test of

eligibility is found in Chapter 2 (see "The Deficit Test"). The specific "basic need" maximum levels are also used as caps on the amount of GA issued for any particular basic need.

For example, if an applicant was eligible for $520 worth of assistance, but the applicable maximum for rent was $430, the administrator would typically issue only $430 over a 30-day period for rent, and the applicant's remaining $90 worth of assistance would be reserved for other basic needs, up to the particular maximum level of those other necessities.

There are two important aspects about maximum levels to keep in mind. First, the *levels must be reasonable and reflect the cost of living in the area*. For instance, if rents start at $100 a week in your area, but the ordinance only allows $70 that would be unreasonable. Secondly, if the maximum levels are reasonable, they will be valid provided that the *ordinance has provisions that permit the administrator to exceed the maximums in emergency cases.* For instance, if a family of five was about to be evicted in the middle of winter, the municipality might have to exceed its maximum levels, either for alternative housing or to pay the back rent, because to be without shelter in the winter would be an emergency.

Maximum Levels of Assistance & DHHS Regulation

Of all the statutorily defined basic necessities, there are two for which the maximum levels established by the local ordinance are potentially controlled by DHHS regulation: the standards of assistance for *food and housing*.

The DHHS rules establish as a rebuttable presumption that the U.S.D.A. Thrifty Food Plan and the HUD Fair Market Rental Statistics represent adequate levels of food and rental/mortgage assistance. The concept of a rebuttable presumption means that a municipality may adopt levels of food or housing assistance which differ from these levels of adequacy published by the federal government; but in order to do so the municipality must conduct a local fair market survey that demonstrates that the locally-developed standards are adequate.

It would be extremely difficult to develop a credible local fair market study that justified levels of food assistance which were lower than the Thrifty Food Plan. Rental rates, on the other hand, are tied to vacancy rates and the overall economy in such a way that it is entirely possible that local rental rates differ significantly from the HUD statistics. Fortunately, local fair market rental surveys are relatively easy to conduct and develop, and any municipality that feels the rental rates published by HUD are unreasonable should seriously consider employing the "rebuttable presumption" option by generating a study of actual, local rental rates. This matter is discussed in further detail under "*Housing."*

Who Administers GA?

State law requires every municipality to have a GA program (§ 4305). The people responsible for administering the program are the overseers. The overseers can be the municipal officers (selectpersons or council), or the municipal officers may appoint someone to administer the GA program. 22 M.R.S. § 4301(12). If no one is appointed to serve as the overseer, the municipal officers must assume the responsibility.

People appointed by the municipal officers to administer the program must be both sworn and bonded prior to assuming their duties. For the purpose of these bonding requirements, there is no need under Maine law for the designated GA administrator to be bonded as a separate municipal official as the municipal treasurer is bonded pursuant to 30-A M.R.S. § 5601 or as the municipality may require the clerk to be bonded pursuant to 30-A M.R.S. § 2651. The bonding of the GA administrator may be accomplished as part of a blanket fidelity bond covering a number of municipal officials.

Who May Apply for GA?

Perhaps this is the easiest thing to know about GA, because ***anyone*** *may apply*. People who are rich or poor, old or young, long-time residents or newcomers may all apply. Whether they are eligible is a different matter, but no administrator should assume that a potential applicant will not be eligible and refuse to let him or her fill out an application. The most dangerous mistake an administrator can make is to prejudge people and refuse to allow them to fill out an application because the administrator "knows" that the prospective applicants could not possibly be eligible. People wishing to apply have the right to request assistance in writing each time they apply. 22 M.R.S. § 4305.

When and Where May People Apply?

Regular Hours

Each municipality must establish a GA office or designate a place where people may go to apply for assistance. The specific periods of time when people may apply are, for the most part, left to the discretion of each municipality; however, the hours must be regular and reasonable. 22 M.R.S. § 4304. Reasonable means the administrator must be available a sufficient number of hours to process applications. If very few people apply, two hours a day one day a week may be sufficient; if more people apply, the hours must be adjusted accordingly.

The administrator must post public notice of the day(s) and hours the administrator will be available to accept applications. If the administrator does not establish specific hours, he or she must accept applications *any time* a person wants to apply. If the municipality has established specific hours, for instance 6 p.m. to 8 p.m. on Mondays and Wednesdays, people may apply only during those hours on those days. If an applicant wanted to apply on Tuesday, he could be told to apply during the posted hours on Wednesday because people can be required to apply only during the designated hours—**except in emergencies.**

In an emergency people may apply for assistance at ***any time****.* It is the administrator's responsibility, not the applicant's, to determine if the request is an emergency. The administrator or designated person must be available 24 hours a day, seven days a week, to accept applications for emergency assistance. 22 M.R.S. § 4304.

Telephone Applications

In emergencies, the administrator must take applications over the telephone if the person cannot apply in person. Reasons why a person may need to apply by telephone include: illness or disability which prevents people from applying in person, lack of transportation, lack of childcare, or an inability to send an authorized representative to apply in person. 22 M.R.S. § 4304. In the event an exception is made to the general rule of requiring an "in person" application, the applicant should be instructed that he or she will be required to stop by the municipal office as soon as possible thereafter (or at least by the time of next application) in order to sign an application. It is not unreasonable for the municipality to require that an applicant provide his or her signature on an application. It is also not unreasonable to generally require an "in person" application, conducting telephone applications only in exceptional cases. *(See Chapter 5 for further discussion).*

District Offices

State law allows two or more municipalities to join together to establish a district GA office. This is permitted when the number of applicants in the participating communities is too few to justify an office in each municipality. In order to establish a district office, the legislative body of each participating municipality must vote its approval, and the financial and administrative operation of the district office would be subject to the terms of an interlocal agreement established by the participating towns pursuant to 30-A M.R.S. § 2201 et seq.

The office must be located in a place that is accessible to any applicant in the district without having to pay telephone toll charges. If the district office is established, it must be open at least 35 hours a week and a person must be designated to take applications at all other times

in the event of an emergency. Notice of when and where the administrator is available must be posted in each participating municipality. 22 M.R.S. § 4304.

CHAPTER 2 – Eligibility Criteria

Residency

One issue that has been a source of confusion over the years is residency. While a GA applicant's residency is something to take into consideration when taking an application, *it is **not a condition of eligibility***. In fact, the ***only*** *purpose of discussing residency is to determine which municipality is **ultimately responsible** for providing GA to applicants.*

Residency is no longer the applicant's problem, as it was under the pauper settlement laws when indigent people could be shuttled between communities and sent back to the municipality where the applicants had their "settlement"—often their birthplace. The apparent reasoning behind settlement was that poor towns should only be required to provide support to their "own people." Under settlement, if people left one town and moved to another town they weren't considered settled until they had lived in the new town for five consecutive years without receiving assistance. If people needed assistance during the time they were trying to gain settlement in the new town, they had to receive it from the town where they were settled and they could be "removed" by their new town to their place of settlement for support. If people needed "immediate relief," the municipality where they were present had to provide it but could seek repayment from the town of settlement.

Maine courts were full of municipalities suing each other and squabbling over such arcane matters as whether people had been temporarily absent, people's personal habits, and whether "pauper supplies" had been given in good faith. Although Maine repealed settlement in 1973, it continued to have a durational residency requirement until 1976, when durational residency was also repealed.

Residency requirements in welfare laws rose to constitutional proportion in 1969 when the United States Supreme Court ruled that certain durational residency requirements were an *unconstitutional infringement on a person's right to travel* as guaranteed by the equal protection clause of the Fourteenth Amendment, and the due process clause of the Fifth Amendment. *Shapiro v. Thompson* (1969), 394 U.S. 618, 89 S.Ct. 1322. The *Shapiro* case concerned a challenge to the requirement adopted by most states that people be residents of a state for one year before being eligible to receive AFDC. The Supreme Court ruled that the one-year residency requirement was unconstitutional because it did not promote a "compelling governmental interest" and that there was no rational basis for making a distinction between longtime and new residents.

Durational residency requirements, which unreasonably restrict people from moving to or from a state by limiting their access to public benefits, are unconstitutional. Although the constitutionality of durational residency requirements which would act to restrict *intrastate* travel was never fully reached in the most pertinent Maine case. *Wyman v. Skowhegan*, 464 A.2d 181 (Me. 1983), it is probable that durational residency requirements would be found equally suspect, from a legal perspective, if people could be denied public assistance by various municipalities within Maine solely on the grounds of the applicants' length of residency. The issue of "right to travel" is no longer particularly relevant, however, because there is an express prohibition on durational residency requirements in the law (§ 4307(3)), and along with that prohibition there is the concept of "municipality of responsibility."

Municipality of Responsibility

Generally, Maine law states that municipalities have the responsibility to provide GA to all eligible persons who are:

- residents—people who are **physically present** in a municipality with the **intention of remaining there** and establishing a household; or

- non-residents—people (including transients) who apply for assistance who are not residents of that municipality or any other.

In short, there is ***no*** *durational residency requirement.* If a person is applying for assistance in a municipality and he or she does not live there but isn't a resident anywhere else, that person is considered a resident of the municipality where the application is made and that municipality must grant GA if the person is eligible. Municipalities cannot refuse to grant aid to people merely because they are not residents. ***Residency is not an eligibility condition!*** 22 M.R.S. § 4307.

Example: Laura Green has lived in Litchfield all her life, where many members of the Green family live. One day Laura packed up and left Litchfield and moved to Shapleigh, where she applied for GA. Shapleigh felt certain that Laura was Litchfield's responsibility and told her she would have to apply in Litchfield. Shapleigh's decision was wrong because Laura was 1) physically present in Shapleigh, 2) intended to remain there to maintain or establish a home and 3) had no other residence...therefore, for the purpose of GA, Laura was a resident of Shapleigh.

Example: Alvin Eliot has been a transient most of his life. One summer he drifted through Maine, moving from town to town and working odd jobs. One week he received some

assistance from Augusta, and a month later he was in Castine, where he applied for more food assistance. Castine called MMA to find out if Alvin was the responsibility of Augusta or of Castine. MMA said that Alvin was the responsibility of Castine because he was applying in Castine and he was a resident of ***no*** municipality, and his case contained none of the *relocation* or *institutional* complications that make exceptions to the general residency rule *(see below).*

Example: Dawna Jones applied for GA in Presque Isle, even though she lived in New Sweden, because she was told that New Sweden didn't appropriate any funds for GA and because the administrator did not believe she was a resident. The Presque Isle administrator contacted the New Sweden administrator and told him each town had to have a GA program to help eligible people and diplomatically attempted to convince him to accept an application from Dawna Jones. Luckily, the New Sweden administrator agreed to take the application. If e had disagreed, Presque Isle could have suggested that New Sweden call the Department of Health and Human Services or MMA for advice. However, if New Sweden refused to take the application, Presque Isle would have been required to take the application and issue the assistance for which Ms. Jones was eligible because there was a *dispute between the municipalities.*

Disputes & Inter-municipal Cooperation

The only way the complexities of residency determinations can be dealt with efficiently is if the various municipalities within a residency issue communicate and cooperate with each other. The whole point of eliminating a durational residency requirement was to prevent applicants from being treated as volleyballs and being caught in the middle of a dispute between municipalities. State law is clear: *"nothing (in the law) may…permit a municipality to deny assistance to an otherwise eligible applicant when there is a dispute regarding residency."* 22 M.R.S. § 4307(5).

In other words, if two municipalities disagree about which town is financially responsible to issue GA to a person, one of the municipalities is required to assist the applicant if he or she is eligible. The eligible applicant must receive assistance; the municipalities can argue about who is responsible for paying the bill later. Ultimately, it is DHHS who resolves these disputes. 22 M.R.S. § 4307(5).

When there is a dispute regarding which municipality is required to provide the assistance sought, the municipalities involved should first seek guidance from MMA or DHHS.* If a resolution cannot be reached, the municipality in which the application is filed must provide the assistance and then seek a final determination from DHHS. DHHS must reach a decision

regarding such a dispute within 30 working days; if the municipality that did not pay is deemed to be responsible; then it has 30 working days from the decision to reimburse the municipality that did pay. If reimbursement is not made within those 30 days, DHHS will seek reimbursement from state funds (such as revenue sharing) that are due to the responsible municipality.

* ***NOTE:*** *Due to potential conflicts of interest, MMA Legal Services can involve itself or facilitate communications on such issues only if all municipalities involved agree to MMA's involvement.*

It should also be pointed out that § 4307(1) provides that "any municipality which… illegally denies assistance to a person which results in his relocation…shall reimburse twice the amount of assistance to the municipality which provided the assistance to that person." Obviously, it is hoped that this type of financial penalty would not be necessary, but to the extent municipalities can self-police each other's actions and otherwise work cooperatively so that all eligible applicants get their assistance in an efficient manner, the less likely it will be that the Legislature will step in and place even stiffer penalties in the law.

Complications to Residency

Moving/Relocating

From time-to-time applicants may request assistance to help them move to another town. *Municipalities may help people relocate upon the* ***applicant's request*** *under certain circumstances*. It is illegal under Maine law, however, to send a person out of town solely to avoid granting assistance. For instance, it would be illegal for an administrator to tell applicants that there are not any jobs in town, that the town has no intention of supporting them for the rest of their lives, and that they should leave town, and then force them on a bus to another town or state!

It is legal, however, to help an applicant relocate to another town if he or she requests that type of assistance and if such assistance makes sense (i.e., relocating the applicant is the only way to provide him or her with shelter). Examples of when relocation would be reasonable include when the applicant is hired for a new job in another town and needs help to move, or when a family is evicted and there are no other suitable places to live in town. It is important to note the difference between the **authority** of a town to help an applicant relocate and an **obligation** of a town to relocate an applicant on demand. Under Maine GA law a municipality is not obligated to relocate an applicant, provided the basic necessities are available within the municipality.

It is also important that municipalities communicate with one another when GA is used for the purpose of relocation. A sample form which can be used by a "sending municipality" to notify a "receiving municipality" that a GA recipient has been relocated is found in Appendix 3.

If a municipality helps applicants move to another municipality, the municipality which provides the relocation assistance continues to be responsible for those applicants for the first **30 days** after relocation. The law extends this obligation **from 30 days to 6 months** if the relocation is to a hotel, motel or other place of temporary lodging in the other municipality (see "Complications to Residency—Institutional Residents" below). It is for this reason that municipalities should always avoid placing GA recipients (even temporarily) in temporary lodgings. In the event no permanent housing arrangement can be found, always call DHHS to see if other alternatives exist before placing a GA recipient in a temporary dwelling.

In other words, if Milbridge paid a family's first month's rent to help them move to Cherryfield, Milbridge would be responsible for assisting the family with other basic necessities for which the family was eligible (food, electricity, fuel, etc.) during the first month. Once recipients relocate to the new town they can apply for assistance in the new town, or if the town of former residence is not far and they have adequate transportation they can apply directly to the municipality of responsibility during the first 30 days. If it is impractical to apply in the town where they previously lived, the administrator in the new town must take the application, notify the municipality of responsibility and upon its approval grant assistance according to that town's ordinance or have that town provide the assistance directly.

The most important factors to keep in mind regarding people who have received relocation assistance are:

- If applicants are applying for the *first time* in your town, ask them if the municipality where they lived previously helped them move, so you can determine if the other municipality is still responsible. Ask all applicants where they lived previously and whether they received GA.

- If applicants received GA to help them move, notify the other municipality ***prior*** to granting assistance; if you fail to provide such prior notice the responsible municipality does not have to reimburse you. 22 M.R.S. § 4313.

- If the municipality which is legally liable for the applicants' support refuses to reimburse your municipality without a good reason, you *must* assist the applicants and attempt to recover the expense from the other municipality another way, including court. *(In situations like this you can encourage the uncooperative town to call DHHS or MMA for clarification of the issue, or if negotiations are futile you can report the situation to DHHS.)*

It is important to emphasize that the **30-day** responsibility falling on the "sending town" **only** applies when the sending municipality has provided relocation assistance; there is no continuing responsibility if the applicant relocated without municipal assistance, except when the relocation was to an institutional setting *(see below)*.

Institutional Residents

In 1983 the Legislature attempted to address the problem faced by municipalities that have one or more institutions in their communities to which people from surrounding areas come and later often need assistance. People who are in an *institution six months or less* are considered to be the responsibility of the municipality where they were residents immediately prior to entering the facility (*Example 1 below*); if they are there *more than six months* they are the responsibility of the municipality where the institution is located (*Example 2 below*). The only exception to this is if an applicant has been in an institution more than six months but has a residence in another town that the applicant has maintained and to which he or she intends to return. In that very rare circumstance, the applicant continues to be the responsibility of the municipality where that residence is located (*Example 3 below*), 22 M.R.S. § 4307(4(B).

Example 1: Dan Gordon from Limerick entered a halfway house for substance abusers in Eliot. He had been there four months when he was told he could stay as long as he wanted but he would have to pay for his food. Mr. Gordon applied to Limerick for food assistance because that was where he lived prior to entering the rehabilitation program and he had been in the institution less than six months.

Example 2: Beverly Fogg and her two children had been in a shelter for abused families in Oakland for eight months. She felt strong enough to go out on her own, and started looking for apartments in Oakland and also Waterville, where she lived prior to entering the shelter. She found a place in Waterville and applied for GA there. Waterville told her that Oakland was responsible because she had been at the shelter longer than six months. The GA administrator called Oakland and discussed the situation. Oakland agreed that Ms. Fogg was the responsibility of Oakland.

Example 3: Joan Kaplan's mother had been in a nursing home in Skowhegan for eight months. She was in the nursing home recovering from an operation because Joan could not give her the care she needed at the family's home in Bingham. However, as soon as she recuperated, Joan's mother was going to return to Joan's home in Bingham where she had lived prior to going into the hospital. Unexpectedly, Joan's mother developed pneumonia and died at the nursing home.

Joan did not have any money for the funeral so she applied for GA in Bingham. The Bingham GA administrator noted that Joan's mother had been out of town in an institution for more than six months and therefore felt that Skowhegan should be responsible. Skowhegan felt that Bingham should be responsible because according to the doctor, Joan's mother intended to return home and she would have returned if the pneumonia had not developed unexpectedly. As a result, Bingham should have assisted Joan because that was where her mother lived prior to her death and her home, to which she intended to return, was located there. This should be distinguished from a case where people enter a nursing home but have no home to return to despite their desire to "go home."

Shelters for the Homeless

Shelters of various kinds are generally recognized as institutions (§ 4307(4)(B)). Individuals in those shelters who are applying for GA could be the responsibility—for up to six months—of the municipality where they resided immediately prior to entering the shelter **if** the conditions found at § 4307 are met (e.g., the municipality moves an applicant into another municipality to relieve itself of the responsibility for the GA recipient at issue). In addition, § 4313's notification of the municipality of responsibility requirement must also be met.

The municipality of responsibility is a fairly straightforward determination for *domestic violence* and *substance abuse shelters* because the people in those shelters often had a clearly established residency immediately prior to entering the shelter.

Shelters for the homeless, however, present a unique challenge to municipal administrators with regard to the determination of municipality of responsibility. A resident of a homeless shelter often has a complicated residential history, and it is difficult to determine if the last town in which the shelter client was physically present was, in fact, that client's "residence" as residency is defined in GA law.

As discussed above, there are two factors that determine whether a person is (or was) a GA "resident" of a town. First, the person must be (or must have been) **physically present** in the

municipality. Second, the person must have demonstrated some sort of **intention** to remain in that municipality.

For the purposes of determining residency in institutional circumstances, it is not enough merely to determine that the shelter client was physically present in Town X before entering the shelter. The shelter client's intention to remain in Town X must also be established. "Intention to remain" might be determined by evaluating how long the person resided in Town X; whether the person made any attempt to secure housing in Town X; whether there were reasons beyond the person's control, such as eviction or domestic violence, which caused him or her to leave Town X and ultimately end up in the homeless shelter, etc.

*It is important to note that transients are the responsibility of the municipality where they are **physically** present. Therefore, it is fair to say that **most** applicants applying for GA from a homeless shelter are the responsibility of the municipality where the shelter is located.*

Shelters for the homeless, like any institution, do not want to be perceived as a burden to their host municipality. One way to protect the host municipality is to make sure the GA requests coming out of the shelter are targeted to the responsible municipality so that the host municipality does not have to deal with GA applicants for whom there is no local responsibility.

Therefore, it is not unusual for shelter operators to assist shelter clients in filling out GA applications and sending those applications to the town the shelter operator feels is the municipality of responsibility. Administrators should carefully evaluate the issue of residency when receiving such applications, because it is possible that the shelter's interpretation of residency law conflicts with the interpretation given here. As is the case with any residency issue, DHHS is the ultimate arbiter.

Hotels, Motels & Places of Transient Lodging

In addition to what would commonly be understood as an "institution" (such as a hospital, nursing home, emergency shelter, etc.), § 4307(4)(B) defines a "hotel, motel or similar place of temporary lodging" as an "institution" when the municipality has provided assistance or otherwise arranged for a person to stay in such temporary lodging facilities. Therefore, if the municipality has provided assistance for an applicant to stay in a place of temporary lodging in another municipality, the "sending" municipality would become the "municipality of responsibility" for the first six months of the applicant's stay in those temporary facilities.

As a matter of DHHS General Assistance regulation, temporary housing is further defined as any facility that is licensed as an "eating and lodging place or lodging place as defined at 22 M.R.S. § 2491." Therefore, if a municipality provides assistance for a recipient to move to a licensed rooming house in another municipality, the "sending" municipality would be responsible for that recipient's GA needs for up to six months from the date of relocation, unless the recipient subsequently relocated to permanent housing, in which case the responsibility would drop to 30 days from the date of that second relocation. In any circumstance, a municipality that is providing out-of-town relocation assistance to any recipient would be well advised to make sure that the relocation is to permanent housing.

Example: Lilian Gould and her family applied for shelter assistance in Kenduskeag. There were no rental units immediately available in Kenduskeag, and so while Lilian was looking for an apartment, Kenduskeag met her short-term shelter needs by putting the family up in a motel in Bangor. A Kenduskeag selectperson received a call six weeks later from the Bangor General Assistance office informing him that the Gould family was seeking assistance to relocate from the motel into an apartment in Bangor. Kenduskeag carefully read § 4307, and correctly reasoned that Kenduskeag was the municipality of responsibility for the relocation because it had provided assistance for the family to live in an out-of-town motel. Kenduskeag also would remain responsible for 30 days after the relocation to the new apartment at which time Bangor would become responsible.

Initial vs. Repeat Applications

Before going into detail about the eligibility determination process, it will be helpful to review the differences between "initial" and "repeat" applicants insofar as the determination of a person's eligibility is concerned.

Initial Application/Repeat Application

The underlying purpose of drawing a distinction between an initial applicant and a repeat applicant is to provide a person applying for GA the opportunity to learn about the rules of the program before those rules are applied. For example, most adult GA recipients who are unemployed and are physically and mentally capable of being employed are required to diligently look for work as long as they are receiving GA. If a repeat GA applicant is unwilling to make a good faith search for employment, that applicant can be disqualified from the program for 120 days. A person who never applied for GA before, however, would presumably not be aware of this rule and it would be unfair to apply a 120-day ineligibility status to an initial applicant for the reason that he or she had not been diligently seeking employment prior to seeking help from the town.

As another example, § 4315-A places a responsibility on all GA recipients to use their income on basic necessities and establishes a procedure whereby income received into the recipient's household over the 30-day period prior to an application for assistance *and not spent on basic necessities* is still counted as income available to the household. This procedure, however, only applies to repeat applicants. The law presumes that the initial applicant was not aware of such a requirement.

Having some foreknowledge of the rules of the program is the premise underlying the concept of "initial applicant." While retaining that underlying premise, the law was changed with regard to the definition of "*initial applicant*." Since July 1, 1993, an "initial applicant" is very simply a person who has *never before* applied for GA in any municipality in Maine. *Any person who has applied for GA before*, even though it might have been two, three, four or more years ago, *is a "repeat applicant."*

Prior to this change in the law, an initial applicant was any person who had not applied for GA within the last 12 months. Because of this change, a significantly greater number of applicants will be "repeat" rather than "initial" applicants because they have a history of applying for GA. The result of this change in definition will be a larger pool of "repeat applicants" applying for assistance, and GA administrators can expect these repeat applicants to possess a general understanding of GA program requirements.

The primary effect of this law is that it requires all repeat applicants to report their use of income over the last 30 days, and in response to the information provided by the applicant, administrators are authorized to consider any "misspent" income as "available" income. For a more in-depth discussion of this procedure, please refer to the section of this chapter entitled *"The Availability of Misspent Income."* Furthermore, municipalities are authorized under this definition of "initial applicant" to withhold the issuance of emergency General Assistance to "repeat" applicants when those applicants could have averted the emergency with the appropriate use of their own income and resources. For a more in-depth discussion of limiting emergency assistance, please refer to the section of this manual dealing with emergency GA, particularly the section entitled *Misuse of Income* in this chapter.

In summary*, under current GA law, **initial** applicants are all people who have **never** before applied for General Assistance in any municipality in Maine. **Repeat** applicants are people who have, **at some time** in the past, applied for General Assistance to any town or city in Maine.*

Having laid out the current status of the law, it should be noted that there are a couple of irrational results stemming from an overly literal application of this change that should be avoided.

As has been mentioned, the primary effect of this change is to hold all repeat applicants accountable for their spending decisions over the last 30 days. Another common expectation of all repeat applicants is that they have adequately performed any work search obligations that were placed on them at the time of their last application. Typically, any unemployed but otherwise employable recipient is required to make a **good faith effort** to look for a job a certain number of times per week between applications for GA.

Because a "repeat" applicant is now defined as a person who has applied for GA at some time in the past, it is now the case that a person applying for assistance after being off the program for a number of years is a repeat applicant. As a repeat applicant, that person could be held responsible in a technical sense for documenting a work search effort spanning the several years since his or her last application. While it would clearly be appropriate to inquire about such an applicant's actual work history during an extended period of time, and while it would also be entirely appropriate to inquire about such an applicant's work search efforts over the last month, it would be neither reasonable nor appropriate to disqualify such an individual for failing to produce a documented work search effort spanning an extended period of time during which the individual was neither applying for nor receiving GA. This is an area of GA administrative practice that requires the application of good common sense and reasonableness.

Another irrational result that could occur from too zealously applying the concept of "initial applicant" concerns the definition of "applicant." In MMA's model General Assistance Ordinance, the definition of "applicant" clarifies that a *person is an applicant for General Assistance when the individual applies for GA* ***or*** *when an application is submitted to the administrator on an individual's behalf*. A typical example of such a circumstance would be the husband or boyfriend who never comes into the office when his wife or girlfriend applies for assistance. Because the definition of an "initial" or "repeat" applicant has been amended by law, it is important to formally recognize that *people are still "applicants" even though they get other people to apply for GA on their behalf.*

Given that definition of an "applicant," the MMA model ordinance goes on to clarify that a person will not be considered to be a repeat applicant if the last time that person applied for General Assistance was as a dependent minor in a household. This model ordinance language is designed to flush out the statutory standards in accordance with some semblance of

reasonableness. Adults who make an effort to avoid the face-to-face application process but still obtain and enjoy the GA benefits should be subject to the rules that govern all GA recipients. On the other hand, dependent children in a household could very well be unaware of the fact that the household is receiving GA, not to mention the various rules and responsibilities to which the adults in the household are subject. MMA's model GA ordinance, therefore, considers an *individual an initial applicant if he or she has never applied for GA before* ***or*** *if the only time he or she applied for GA was as a dependent child within an adult-supervised household.*

Eligibility–Need

If knowing who may apply for assistance is the easiest part of administering GA, knowing who is *eligible* is the most difficult. In order to determine an applicant's eligibility the administrator must have a thorough knowledge of the state law, DHHS policy and local ordinance. There are many variables that must be considered when determining a person's eligibility. *The first eligibility test is* ***need***.

Need

The purpose of GA is to help people who are in need. "Need" is defined in the law as "the condition whereby a person's income, money, property, credit, assets or other resources available to provide basic necessities for the individual and the individual's family are *less than the maximum levels of assistance established by the municipality*."

An applicant's "need," therefore, is a function of the maximum levels of assistance established in the municipal ordinance, and there are *two types* of maximum levels of assistance by which this analysis of need is calculated:

- an overall maximum level of assistance which is determined by law, and
- maximum levels of assistance for the specific basic necessities, which are determined by local ordinance.

Therefore, there are two tests of eligibility that must be calculated before a household's exact eligibility is known with certainty.

As a general matter of GA practice and for the purposes of this manual, these two tests of eligibility are respectively known as the ***"deficit"*** *test and the* ***"unmet need"*** *test. The deficit test is the difference between the* ***applicant's household income*** *and the appropriate overall*

maximum level *of assistance. The unmet need test is the difference between the applicant's household* ***income*** *and the household's* ***30-day need****, as guided by the ordinance maximum levels for the specific basic needs*. Both of these tests rely on a determination of the applicant's household income.

A comprehensive discussion concerning the determination of income, types of income and other income issues can be found below in this chapter. For now, and for the purposes of determining an applicant's eligibility, it will be assumed that the precise household income has been calculated.

The Deficit Test

In an effort to control the overall cost of the GA program to the state and municipalities, the Legislature in 1991 enacted a provision of GA law § 4305(3-B) that created an "aggregate" or overall maximum level of assistance for every applicant/household; that is, the maximum amount of GA available to a household for a 30-day period if the household has zero income.

The law sets that overall maximum at the greater of: (a) 110% of Fair Market Rent (FMR) levels established by the federal Department of Housing and Urban Development (HUD); or (b) the prior year's calculated overall maximum as increased by the percentage change in the federal poverty levels over the past year. **Note**, however, that the Legislature changed the formula for calculating the overall maximum for the period **July 1, 2012 to June 30, 2013 (see § 4305(3-C) and again changed this formula for fiscal years 2013-2014** ***and*** **2014-2015 (see § 4305(3-D)). Please refer to state statute to ensure you are using the most recent formula established for calculating the overall maximum level of assistance.**

The **FMRs** are calculated by HUD based on accumulated market data concerning the average rent-plus-energy costs for housing in the state's 16 counties.

Although the overall maximums established by this law are based on federal fair market rent surveys, the GA administrator should not confuse these overall maximum levels of assistance with the maximum levels of assistance in the ordinance for housing. *The overall maximum level of assistance is a hard number that applies to the total GA grant for a* ***30-day period****.*

As a result of the current law that establishes two tests of eligibility for GA, MMA has suggested two distinct names for the purposes of distinguishing these two tests of eligibility: the "deficit" test, and the "unmet need" test. The first screen or test of GA eligibility is accomplished by determining the applicant's deficit. *The deficit is a strictly* ***mathematical***

subtraction *of the applicant's* ***income*** *from the applicable* ***overall maximum*** *for that household size for the appropriate county as designated in the municipal ordinance.*

It should be noted that an applicant is not automatically eligible for his or her deficit. It is possible (although not typical) for an applicant to have a deficit of a certain amount but have no real need for that amount of assistance when the applicant's actual expenses are taken into account. For this reason, the deficit test should always be supplemented with the unmet need test, as described below. *The way GA law works, an applicant is eligible over the course of a 30-day period for the household deficit* ***or*** *the unmet need,* ***whichever is less****.*

The only circumstance by which an applicant can be found eligible for more than his or her deficit is when the administrator makes a finding that the applicant is facing an ***"emergency situation."*** The determination of eligibility for emergency GA and issues surrounding emergency assistance are discussed below in this chapter. It should be noted here that the analysis of eligibility for emergency GA will necessarily involve more than a determination of the applicant's deficit. *The emergency analysis will require an analysis of the applicant's* ***unmet need.***

The point to remember is that the overall maximum level of assistance upon which the deficit is based is a somewhat arbitrary number that may or may not reflect the amount of money a household needs to get by for 30 days. *The* ***unmet need****, on the other hand, more accurately reflects the household's actual requirements*.

The Unmet Need Test

The determination of need, whether it is an initial or subsequent application, is achieved by reviewing the *household budget.*

The household budget is simply an analysis of the household's ***prospective 30-day*** *financial need for basic necessities.* It is important to remember that the analysis of need is prospective; that is, the "needs analysis" looks forward over the next 30 days and does not, generally, include expenses or debts which have already been incurred.

The GA program is designed to pay **current bills** for **basic necessities**. Debts incurred by the applicant **prior to applying for GA** or debts incurred by the applicant for **non-essentials are not considered in the 30-day budget**. While it is possible the applicant is eligible for emergency GA to alleviate a legitimate emergency situation which results as a consequence of past debts, the need for an emergency GA grant would be an independent analysis,

calculated separately from the 30-day budget analysis (see the section entitled "Emergencies," below in this chapter).

MMA's GA application form takes the administrator and the applicant through the budget process under the application section entitled "Expenses." Under that section, for each of the various identified basic necessities, there are two columns in which to report information. Under the column heading "Actual Cost for Next 30 Days," the applicant should enter the actual 30-day cost for the household's basic necessities, such as food, rent, utilities, fuel, etc.

It is the responsibility of the applicant to supply documentation sufficient to verify the household's actual expenses. Under the column heading "Allowed Amount," the administrator should enter either the actual amount as indicated by the applicant or the maximum amount for that basic necessity as fixed in the municipal ordinance, *whichever is less*.

There is one glaring exception to the general rule that the administrator enter as an "allowed amount" either the actual 30-day cost or the ordinance maximum, whichever is less. The exception applies to the food category.

Federal law, at 7 U.S.C. § 2017(b), reads as follows:

> "The value of benefits that may be provided (under the Food Stamp program) shall not be considered income or resources for any purpose under any Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of benefits under the chapter."

Because of this federal law, the GA administrator **cannot consider the value of an applicant's food supplement benefit** when considering how much food assistance should be budgeted for the applicant. State regulation now parallels the federal law by requiring the administrator to budget the full food maximum that is a part of the municipal GA ordinance (DHHS General Assistance Policy Manual, Section IV, "Food").

The theory behind the federal law is that the food supplement benefit was intended to supplement and not replace all other existing food programs, and the federal Congress wanted to avoid the food supplement benefit from becoming the overall food assistance maximum.

In any event, to stay on the right side of the federal law and the state regulation, the administrator must budget the maximum food allowance for all applicants.

Another important exception to the general rule that the applicant is allowed only the lesser amount between the actual 30-day cost of the basic necessity and the ordinance maximum applies to applicants receiving federal fuel assistance benefits (HEAP/ECIP). 42 U.S.C. § 8624(f) provides that HEAP benefits ***cannot*** *be considered as "income or resources,"* but case law has interpreted the restriction to mean that eligibility for local assistance must be determined as though the recipient paid for the HEAP supplied energy.

Accordingly, under the MMA model ordinance, the administrator should enter into the "allowed amount" column the actual heating fuel costs up to the ordinance maximum for applicants who just received or are about to receive a HEAP benefit. The administrator can then reserve the issuance of that amount of assistance until the recipient can demonstrate an actual need for heating energy assistance.

It is important to note that in addition to the basic application, there is room in the budget analysis for the administrator to include other expenses to be incurred by the household which the administrator determines to be essential. *For example, some medical expenses, essential prescription drugs, non-prescription drugs, essential clothing and portions of a telephone cost (if a telephone is medically necessary)* ***are*** *basic necessities* that may be incurred by the household.

It might also be the case that a household is facing a special expense for goods or services which are not specifically identified as "basic necessities" in GA law. The GA program is flexible enough to allow the administrator to consider such an expense a basic necessity, and budget that expense into the household's 30-day budget.

The result of the budget process is a "bottom line" calculation of the household "need" over the next 30-day period. By subtracting from that "need" the household's income, the administrator reaches the determination of the household's *unmet need.* The unmet need, if it is less than the applicant's deficit, is the amount of "regular" or "non-emergency" GA that can be made available to the household over the 30-day period, in accordance with the household's request for assistance.

Example: The following is an example of a budget work up for the hypothetical applicant, Patricia Flannagan. Pat was divorced recently and lives in Sorrento with her two children, ages three and five. The only household income is the monthly TANF check of $526. The

date of the application is August 15. Pat is able to present adequate documentation to verify all her claims, and she is not presently in an emergency situation of any kind. Pat is a first-time applicant so the administrator did not require proof of how Pat spent her last month's income. The overall maximum level of assistance for a household of three in Hancock County is $913, and so after subtracting Pat's income of $493 the administrator determined Pat's deficit to be $387.

Pat was instructed to fill out the first column of the application, "Actual Cost for Next 30 Days." She was asked to put a figure beside each category which represents her actual cost of the particular basic necessity over the next 30 days. After Pat was finished with this section of the application, the administrator went over it with her, explaining the reason for the figures he was entering in the column "Allowed Amount."

Miscellaneous "Household Composition" Issues

Determining household composition (who is a member of the household for purposes of GA) is an essential step in calculating eligibility. Although it is one of the easier steps involved in the GA eligibility calculation process, complications sometimes arise—especially in an age where the "traditional" family composition is continuously changing.

- **Incarceration.** Although it may seem obvious, it is worth mentioning that incarcerated individuals should not be counted as members of a household for purposes of GA. *While in prison they receive all the basic necessities*—thus incarcerated family members have no "needs" relative to GA.

Furthermore, while incarcerated, they are not "shar[ing] a dwelling" with family which is key to the definition of "household" (§ 4301 (6)) and thus they are not members of the "household" for the duration of their incarceration.

- **Child Custody.** Another issue concerns the provision of GA to divorced (or separated) parents sharing legal custody of a child. In order to determine within which household the child belongs (for GA household composition purposes), ***residency*** *is a key factor*.

First, should a GA administrator receive information that a child may be living in more than one home, due for example to a divorce, the administrator should inquire as to where the child is registered to attend school. Although this may not in every situation reveal the actual residency of a child, it should generally provide the administrator with pertinent information.

Second, court documents such as "child custody orders" and "custody agreements" should also provide information as to who has custody of a child and for how many days a week, etc. If a parent has been given "sole" custody, and the child actually spends most or all of his/her time with that parent, that custodial parent would be entitled to receive the entire amount of GA designated for that child.

Note: *In such a case, there exists a corresponding presumption that the other parent should be (or is) contributing child support for the child. If child support is not being received, the GA applicant as a condition of future eligibility should be made to contact DHHS's unit of Child Support Enforcement. Because child support is considered a resource, parents are obligated to pursue its receipt as a condition of GA eligibility.*

Example. Johnny's parents are divorced. He spends half of the week with mom and half of the week with dad. Both parents reside in Wayne and he is registered for school in Wayne. Mom applies for GA and reveals that he lives with his father half of the week. The GA administrator should provide mom with only half of whatever amount she would otherwise be entitled to if Johnny were with her full time (i.e., the prorated amount).

Furthermore, since Johnny is under 25 years of age he remains the legal responsibility of both parents for support, which means the municipality could attempt to collect whatever funds are expended for Johnny from his father. The administrator should ask the mother whether she is receiving the child support Johnny's father has been ordered to pay. If she is not, she should be required to contact the Department of Health and Human Services Support Enforcement Unit in order to seek enforcement of the father's child support obligation.

Example. Sue's parents are separated. She spends most of the time at her father's home in Augusta and also attends school in Augusta. Sue's mother lives in Old Orchard Beach. Sue's mother applies for GA in Old Orchard Beach. Sue will be visiting her for a weekend sometime this month. Sue's mother requests rental assistance because she lives in a one- bedroom apartment and wants to move into a two-bedroom apartment so she can accommodate her daughter with a bedroom of her own whenever she comes to visit. The GA administrator is told about the situation and performs the eligibility review based on a household of one—leaving Sue out of the household composition.

Needless to say, child custody issues relative to GA eligibility must be handled on a case-by-case basis. Chances are they will never be as clear cut as the previous examples. However much living arrangements may seem "untraditional" to administrators, information will have

to be objectively analyzed and DHHS or MMA should be called when dealing with situations which are unclear.

Income

If one half of the "need" analysis concerns the applicant's overall eligibility as *though the household had access to zero income*, the other half concerns the household income calculation. Since need is determined by considering the applicant's income, it is important to understand what is meant by *income.* The state law defines income as "any form of income in cash or in kind received by the household." 22 M.R.S. § 4301(7). This definition refers to the net amount of earned income as well as retirement benefits, TANF, disability insurance, workers compensation benefits, social security income, alimony, support payments, or other forms of discretionary cash or in-kind contributions that may come into the household from friends, relatives or any other source.

Excluded Income

There are some forms of income that Congress has expressly prohibited from being considered as income. These include the food supplement benefit and fuel assistance benefits (HEAP). Also excluded by federal law is income earned under the Americorp program and VISTA job-training program. In addition, state law excludes from income property tax rebates issued under the Maine Residents Property Tax Program (so-called "Circuit Breaker" program). 36 M.R.S. § 6216. Effective August 1, 2013, however, the Circuit Breaker program was repealed and replaced with the "Property Tax Fairness Credit" program. Benefits obtained under the new program are counted as income unless used to provide for basic necessities. 22 M.R.S. § 4301(7).

Also excluded are funds from "Family Development Accounts" (known as FDAs). FDAs are accounts which can hold savings of up to $10,000, and the family can still remain eligible for GA (in addition to other benefit programs e.g., the food supplement benefit) provided the funds in FDAs are used only for specific designated purposes such as: purchasing a car or home, or paying for education, health care, or other things approved by the Department of Health and Human Services. 10 M.R.S. § 1078. The earned income of any children *under 18 years old who are* ***full-time students*** and are working part-time also **cannot** be included as part of the household income. Finally, a person's tools, such as a tractor or skidder used to earn a living, cannot be considered assets. 22 M.R.S. § 4301(7).

GA law also excludes work-related expenses such as withholding taxes, union dues, retirement funds, contributions, and reasonable work-related travel expenses and childcare

costs from income. As a result, these items are subtracted from a household's total income when conducting the GA financial analysis (see *MMA's GA application, line "O" Section 4*).

Calculation of Income—Initial Applicants

When determining whether applicants are in need, the administrator should first determine if the applicant is an initial or repeat applicant. For initial applicants, the administrator should calculate the applicant's income for the next 30-day period from the date of application. If the applicant's total, *prospective* 30-day income is more than the total amount needed by the applicant for the next 30 days, in accordance with the maximum levels of assistance established by the ordinance, the applicant will not be considered in need. If an initial applicant received a paycheck two days ago, that money could not be used to calculate need. Instead, the administrator would add up the amount of paychecks to be received during the next 30 days. However, if the applicant had any money left over from the last paycheck, that cash-on-hand would certainly be included as a resource that is available to meet the need. *Applicants are required to use their income for basic necessities and the administrator should explain this, **both orally and in writing**, when people first apply.*

Example: The Laing family's only income is its monthly TANF check, and Mrs. Laing is applying for GA for the first time. The family spent its entire check within the first week, but not all of the TANF was spent on basic needs. Some was spent on a court fine for an OUI conviction, and some was spent on an expensive sound system for the family car. At the time of application, the family needs assistance for heating fuel and personal supplies. This household would be eligible for some assistance because the total *prospective* household income is less than the overall maximum level of assistance allowed in the ordinance, and the Laings had no money to secure some basic needs. The administrator has every right to find out how an *initial applicant's* previously received income was spent in an effort to determine that the income is no longer available. What the administrator cannot do is financially penalize an *initial* applicant for misspending previously received income. *The financial penalties for misspending income **only** apply to repeat applicants, as discussed below*.

Calculation of Income—Repeat Applicants

All applicants who are not initial applicants are considered "repeat" applicants. *(Remember, an initial applicant or first-time applicant is a person who has **never applied for GA anywhere** in the state.)* For "repeat" applicants, the administrator should calculate the *prospective 30-day income* just as would be done for initial applicants. In addition, the administrator should also calculate all income received by the household within the last 30 days which was not spent on basic necessities. The income figure used in the calculation of eligibility for repeat applicants is the combination of the income they expect to receive during

the next 30 days *plus* any "misspent" income they spent during the 30 days before they applied on items that are not basic necessities. In other words, *money that is misspent is considered* ***available****.*

The law governing the availability of misspent income (22 M.R.S. § 4315-A) warrants some discussion. To begin with, § 4315-A confers two separate authorities upon municipalities:

1. The requirement that the municipality consider as available to repeat applicants any income that was misspent during the 30 days previous to application; and

2. the discretionary authority to establish formal use-of-income guidelines which can be applied to all GA recipients. As each of these two authorities is distinct and separate, each is discussed immediately below under separate headings.

The Availability of "Misspent" Income

The first half of § 4315-A reads as follows:

> "All persons requesting general assistance must use their income for basic necessities. Except for initial applicants, recipients are not eligible to receive assistance to replace income that was spent within the 30-day period prior to the application on goods or services that are not basic necessities. The income not spent on goods and services that are basic necessities is considered available to the applicant."

There are several aspects to remember about this section of GA law. First, generally speaking, the determination that misspent income is available to the household applies only to repeat applicants. This certainly does not mean that an administrator may not inquire about the manner in which an initial applicant's recently received income was spent. *GA administrators clearly have the authority to request sufficient evidence to determine if any GA applicant, initial or subsequent, has any cash on hand*. The distinction that is made by this provision of law between initial and repeat applicants is that for an initial applicant, as long as his or her recently received income was actually spent, *how it was spent would not affect the initial applicant's eligibility for non-emergency assistance*.

Although there is no legal requirement that applicants must have been given formal notice of their responsibility to spend their income on basic necessities, it is recommended that administrators notify applicants about this provision as a matter of fairness and municipal good faith.

Beyond the issue of notice, there remains an issue of municipal discretion. A strict reading of the law would suggest that municipalities **do not** have the discretion to ignore or waive a review and determination of misspent income for any repeat applicant. Administrators may find in some circumstances that this apparent requirement of law restricts an applicant's eligibility for assistance too harshly. After all, the law allows an administrator to "consider" misspent income as available even when that income is clearly not available to the household.

By way of illustration, take an "on-again—off-again" applicant who is not an initial applicant but who has nonetheless not applied for many months or years. A sudden financial circumstance, such as a layoff, might have caused this applicant to apply for GA, but the layoff surprised the applicant in such a way that he or she had purchased some non-necessities within the past 30 days. Should the administrator, in such a situation, financially penalize the applicant by considering such "misspent" income as available?

A related issue revolves around the question of what is and what is not an allowable expenditure of income. There is, after all, a difference between the commodities and services that an administrator will budget for when determining an applicant's eligibility for assistance and the commodities and services that are reasonably necessary for a household to purchase with its own income. The statute defines the basic necessities, and the MMA model ordinance now describes some absolute non-necessities (e.g., cable TV, tobacco/alcohol, etc.).

What about everything in between? Common sense and reason must prevail here. First, all reasonable and documented expenditures for the statutory basic necessities, up to the ordinance maximums, *must* be allowed. Furthermore, all GA administrators have the discretionary authority to consider any other commodity or service a basic necessity, and that discretion should be liberally applied when reviewing a household's expenditures for the purpose of considering misspent income as available.

For example, a household's expenditures for liability car insurance or health insurance, reasonable car payments or licensing/registration expenses where an automobile is necessary, expenditures for necessary capital improvements, utility or rental security deposits, property taxes, necessary school supplies, and other reasonably necessary purchases should be allowed. An administrator may even wish to allow a small percentage of income *expenditure* (e.g., 10%) for sundry contingencies, without requiring inordinate verifying documentation.

Proceeding even further with this line of thought, what about household purchases that are made during the last 30 days for basic necessities, but at levels of expenditure over the ordinance maximums? If an applicant spent $475 on rent when the ordinance maximum is

$425, should the administrator consider that $50 difference as "available"? Probably not, at least until the recipient has had an opportunity to look for more affordable housing. But, what if the applicant has a receipt showing that her entire TANF check of $453 was spent on food, when the ordinance maximum for food for her family is only $277. Should the administrator consider the $176 difference as "available"? In this case, such a determination would be reasonable.

The primary purpose of this provision of law is to provide the administrator with some satisfaction that the income received during the last 30 days is not still in the applicant's pocket. A related purpose is to provide the administrator with some leverage to ensure that future use-of-income is 1) well documented and 2) directed toward clearly necessary purposes. To put it another way, *the law should* ***not be applied*** *in an overly punitive manner, but rather as a tool to influence repeat recipients toward appropriate spending habits*.

Example 1: Jeremy Bentham receives $312 a month TANF for his 12-year-old son and regularly applies for GA. On October 15 he applies for assistance and the administrator asks Jeremy how he spent his October TANF check. Jeremy did not pay his rent or electric bill, nor did he purchase any fuel oil. In fact, Jeremy is unable to document any expenditures. He says he bought some food and had to buy some school supplies for his son. The administrator asked what the school supplies were, where he purchased them, and how much he spent on those supplies. In response to these questions, Jeremy indicated the expenditure was only $10. The administrator allows for the $10 school expenditure and a $90 expenditure for food, which represents the ordinance maximum for food for the two weeks between the receipt of the income and Jeremy's application. When the $100 allowed expenditure is subtracted from Jeremy's October income, it is determined that $212 worth of Jeremy's October TANF is considered still available. That "available" income is added *(see Section 4, line N of MMA's GA application)* to his November's TANF benefit when determining Jeremy's income.

Example 2: John Mill applies for GA infrequently. He last applied just before Christmas last year. In August his hours at work were cut back and in September he applied to the town for help with his rent. Right after his hours were cut back, John used his last full two-week paycheck to buy a second oil tank and 500 gallons of fuel oil at its low pre-season price. John thought the 500 gallons of fuel oil could carry him through most of the winter. The administrator immediately recognized the good sense behind John's purchase and considered no previously received income as "available."

Example 3: Willamena and Henry James apply regularly to the town for help with a variety of needs for their large family. Willamena receives SSI and Henry works in the woods. They have six children, and a combined income of $1,000 a month, after Henry's work-related expenses are subtracted. The last time the Jameses applied, the administrator took some time to explain very carefully the applicants' responsibility to spend their income on basic needs and document those expenditures. The next time the Jameses applied they were able to show that they had made their $650 mortgage payment and their $150 payment arrangement with the utility company, and the rest of the money had gone toward food and household supplies except for $26 which had been spent on cable television. The administrator had specifically told Willamena that money spent on cable would not be replaced with general assistance, and so that $26 was considered available and added to the Jameses prospective income in the determination of their eligibility. The administrator also considered the fact that both the mortgage and utility payment arrangement were over the ordinance maximum, but she chose to allow those expenditures because they were necessary, actually paid, responsibly documented, and no more cost-effective alternative housing or electric services were available.

Use-of-Income Guidelines

The second part of 22 M.R.S. § 4315-A creates the authority for municipalities to establish use-of-income guidelines. The law reads:

> "A municipality may require recipients to utilize income and resources according to standards established by the municipality, except that a municipality may not reduce assistance to a recipient who has exhausted income to purchase basic necessities. Municipalities shall provide written notice to applicants of the standards established by the municipalities."

The use-of-income standards that a municipality may establish under this section of GA law are simply guidelines developed by the municipality which explain to all GA recipients how the municipality expects them to spend their income. The law does not require municipalities to establish these guidelines; it simply authorizes them to do so if they wish. Rather than dictate the exact form or substance of these use-of-income guidelines, the law allows municipalities to establish their own guidelines which can be more or less specific in nature according to local policy.

Despite this flexibility allowed by the law, there are a few limitations imposed on a municipality's use-of-income guidelines:

- The municipal guidelines may not establish standards of eligibility which are *more restrictive* than the standards of eligibility established by state law;

- If a municipality wishes to establish use-of-income guidelines, a *written notice* detailing the guidelines must be provided to all GA applicants;

- Even when a recipient spends his or her income in a manner contrary to the municipal guidelines, the administrator *cannot* penalize that recipient by reducing his or her assistance *if the recipient actually exhausted the household income on* ***basic necessities***.

For example, let us suppose that the town of Sabattus has a policy that requires GA recipients to pay their rent with household income. Oskar Petersen, a regular GA applicant who was well aware of the Sabattus use-of-income policy, applies to the town for help with his rent. The administrator asks Oskar how he spent his recently received pension check, and Oskar provides receipts showing that he used his whole check to buy some fuel, pay his light bill, and purchase some groceries. Oskar would remain eligible for GA for his rent, even though he violated the town's use-of-income guidelines, because he had in fact exhausted his income on basic necessities. Even if Oskar had no good reason (i.e., "just cause") not to pay his rent first, Sabattus could not penalize him for making the financial decisions he did. The law, which allows municipalities to establish use-of-income standards, makes it clear that such standards are merely guidelines. *A municipality's use-of-income guidelines* ***do not****, in themselves, carry the force of eligibility standards*.

Since the law allows a municipality to establish its own use-of-income standards, there could eventually be developed a great number of unique and effective standards. As examples of the variety of guidelines a municipality might consider, three sample "use-of-income" model policies can be found at Appendix 4: the use-of-income policy which is part of MMA's model GA ordinance, and the policies of the City of Augusta and the Town of Wells. These three samples represent a spectrum of policy-making possibility.

The policy established by MMA's model ordinance simply informs all applicants of their obligation to spend their money responsibly and *reserves the municipality's right* to specifically direct a recipient's use-of-income when and if that recipient demonstrates an inability or unwillingness to make responsible financial decisions or accurately document household expenditures. The policy behind the MMA model ordinance language is to not make financial decisions for a GA recipient unless it becomes clear that the recipient cannot or will not make appropriate and responsible financial decisions for him or herself.

The Augusta use-of-income policy directs all applicants to exhaust their income on their basic needs, and those needs are ranked in an order of priority, starting with rent/housing needs and proceeding through energy needs (fuel oil, electricity), personal care, food and an "other" category. By these guidelines, a recipient of GA who has an income of $500 per month would be required to, if nothing else, pay the rent. If after the rent obligation was taken care of there is income left over, that income must be used to pay the electric bill or purchase fuel oil, and so on. Whenever an applicant applies for assistance in Augusta (excepting initial applicants), he or she must demonstrate that the household income was spent according to this priority list.

Unlike the MMA use-of-income policy, the Augusta standards are uniformly applied to all repeat applicants without consideration of their previous financial behaviors. The Augusta director finds that the City's policy: 1) encourages Augusta recipients towards improved management of their financial resources; 2) reduces the need to issue emergency assistance, especially to stop evictions or utility disconnections; and 3) simplifies the process of verifying eligibility, both for the City and recipients, by clearly establishing what receipts or other paperwork the recipient must bring in whenever he or she next applies.

The policy of the Town of Wells falls somewhere in between Augusta's policy and MMA's. Just like the Augusta sample, the Wells requirements direct all applicants to spend a percentage of their income toward specific basic needs, which are listed in an order of priority. Unlike the Augusta requirements, however, the Wells guidelines do not require an exhaustion of income. For example, GA recipients who have an income of approximately $350 are required to direct approximately $280 of that income (80%) toward their rent. The rest of the household income must be spent on basic needs, but recipients are allowed to spend that money with some discretion. The policy behind this approach appears to recognize a balance between the municipality's interest in ensuring that applicants meet as much of their financial obligation as possible and the recipients' interest in having some income on hand to meet day-to-day contingencies.

If it is agreed that use-of-income guidelines are a good idea and worth the administrative effort, GA administrators, under the direction of their municipal officers, should feel free to develop a set of standards they are entirely comfortable with. Whatever form the guidelines take, care should be taken to word the written notice describing the guidelines in such a way that applicants are not misled into thinking that failure to conform to the use-of-income requirements would automatically result in their ineligibility for GA. One way to accomplish this would be to simply restate the provision of law to read something to the effect: "Nothing in these guidelines permits the administrator to reduce assistance to a recipient who has exhausted his or her income to purchase basic necessities."

Lump Sum Income

As discussed above, the analysis of income for the purpose of determining eligibility is generally prospective; the administrator calculates from the best available information what the household income will be for the next 30 days, and any surplus income in that 30-day period cannot be rolled over into a subsequent 30-day period. In 1990, the Legislature amended the definition of "income" (§ 4301(7)) to allow an exception to this general rule. This exception applies when a repeat GA applicant receives a **lump sum payment.**

A lump sum payment is defined at § 4301(8-A) as essentially a one-time, windfall payment received prior or subsequent to applying for assistance. Examples of lump sum payments would include retroactive SSI payments, workers' compensation settlements, inheritances, lottery winnings, etc. The 1990 amendment to the statutory definition of GA income allows administrators to consider lump sum payments received by repeat GA applicants as available to the applicant-household for periods longer than 30 days in certain *carefully controlled circumstances.* The process of spreading out a lump sum payment over an extended period of time and presuming it to be available is called *lump sum proration.* In 2002 the Legislature amended § 4301(8-A) and § 4308 to explicitly exclude "first time" applicants from this lump sum payment rule. 22. M.R.S. § 4308(3). The lump sum proration process is also found in the TANF program. A TANF recipient who receives a lump sum payment can expect to be disqualified from receiving TANF for a period of months equal to the lump sum payment, less "disregards," divided by the applicant's monthly benefit. In keeping with the fact that GA is a final safety net program, the GA lump sum proration process does not exactly resemble the TANF process.

To correctly prorate a GA applicant's lump sum income, a number of steps have to be followed:

Step #1—Lump Sum Proration: Initial

As discussed immediately above, lump sum proration is a procedure that ***cannot*** *be applied to initial applicants*. This does not mean that lump sum payments received by initial applicants must be completely ignored. If it is determined that an initial applicant received a large, lump sum payment in the recent past, the administrator has every right to learn what was done with that money in order to determine:

1. that no amount of the lump sum payment is still available; and

2. if some of the lump sum payment was converted into an unnecessary tangible asset that can be reconverted to cash.

The administrator cannot go beyond these inquiries when dealing with lump sum payments received by initial applicants.

It should also be noted that the law formerly required that all recipients be given formal notice of the municipality's authority to prorate lump sum payments. Under that original wording of the law, a lump sum proration could not be applied even to a repeat applicant if that repeat applicant had not received written notice of the municipality's authority to prorate prior to receiving the lump sum payment. The requirement of written notice has been removed from the lump sum proration statute.

Even though the lump sum notice provision has been removed as a strict requirement of GA law, all MMA *Notice of Eligibility* forms contain a lump sum proration notice. As a matter of municipal good faith, any municipality not using MMA forms should consider informing all applicants, both orally and in writing, of the lump sum proration process and the applicants' responsibility to spend any lump sum income on basic necessities. Applicants should also be advised to document those expenditures if they wish to protect their GA eligibility.

Step #2—Lump Sum Proration: Disregards

In the event a repeat GA applicant receives a lump sum payment, the administrator must evaluate how much of that lump sum payment is "pro-ratable"; that is, what portion of the lump sum payment must be disregarded before the remainder is prorated over future 30-day periods. There are three reasons to disregard (i.e., not prorate) some or all of a lump sum payment:

1. Any part of the lump sum income which can be documented as a "*required payment*" must be disregarded. A required payment would be any part of the lump sum payment which is designated to another person, typically to pay outstanding legal or medical fees, as a condition of receipt of the lump sum payment.

2. Any part of the lump sum payment which is spent or has been *spent for basic necessities* must be disregarded. It is this part of the disregard process which will call upon an administrator's common sense, good judgment, and ability to reasonably construe what is and what is not a "basic necessity." For example, if an applicant's house or car falls into disrepair while he or she is waiting for an SSI decision, and that applicant ultimately receives a retroactive SSI check, the administrator should consider reasonable repairs to the house or car as legitimate expenditures to purchase or secure the applicant's shelter and transportation. *Any amount of the lump sum payment used for documented expenditures such as these should be disregarded*.

On the other hand, the repair and maintenance of a shelter is very different from an expansion or remodeling project, and mechanical repair to a necessary automobile is very different from a new paint job. In accordance with the general rule in GA that all household income must be used for basic needs, the applicant should be able to provide reasonable justification for all expenses made out of the lump sum payment.

Also, GA law details some particular expenditures made with lump sum proceeds that are allowed, that is, excluded from the lump sum payment for the purpose of proration assessment. These specific expenditures are: payment of funeral or burial expenses for a family member; travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; repayments of loans or credit used for basic necessities; or payment of bills earmarked for the purpose for which the lump sum is paid. 22 M.R.S. § 4301 (7).

3. Lump sum payments which represent a "*converted asset*" must be disregarded in their entirety if the recipient has replaced the asset or intends to replace the asset, or otherwise uses the *converted asset for necessary expenses*. The primary example of a "converted asset" is an insurance payment for destroyed or damaged property. If a GA applicant's house sustains a fire, and the applicant subsequently receives a $10,000 insurance payment, that $10,000 is a converted asset rather than income. Consequently, it may not be prorated as lump sum "income," unless the applicant chooses to use it as income by not replacing the asset or diverting the liquefied asset into other necessary expenses.

Step #3—Lump Sum Proration: Income Add-Backs

After all the required payments and legitimate disregards have been subtracted from the original lump sum payment, the administrator should then add to that subtotal all the regular income the household has received between the receipt of the lump sum payment and the time of application for GA. For example, if an applicant received an SSI retroactive payment of $9,000 six months ago, and since that time has been receiving $434 a month as an SSI benefit, the administrator would first determine how much of the lump sum payment was spent as required payments or legitimate disregards and then subtract that amount from the original $9,000. At this point in the calculation, the administrator would add back to this new subtotal the sum of $2,604 (6 x $434), which represents subsequently received income.

Step #4—Lump Sum: Period of Proration

Once all the disregards have been determined and the subsequently received regular income has been added back in, the remaining subtotal may be prorated. The period of proration is

achieved by dividing the proratable portion of the lump sum payment by the verified actual monthly amounts for all the household's basic necessities. The result of this division will yield the number of months for which it would be reasonable to expect the household to have sufficient income to purchase basic necessities. The law, however, requires that *no period of proration shall exceed **12 months***.

Therefore, if the result of dividing the pro-ratable lump sum income by the household's maximum need is less than 12, that result shall be the period of proration. If the result is 12 or greater, the period of proration shall be no more than 12 months from the date of that GA application. In either circumstance, the period of proration begins *when the applicant received the lump sum payment.* The period of proration is the heart of the lump sum rule. During the period of proration, the administrator may consider as available to the household a sufficient income, and the household would not be eligible for GA.

Step #5—Lump Sum: Emergency Assistance

It used to be the case that the provisions of law governing the lump sum proration process clearly stated that applicants remain eligible for *emergency GA* even during a period of proration. That is no longer the case. As of 1993, the so-called "emergency override" provision was removed from Lump Sum proration law. This means that a *household will **not** be eligible for either "regular" or "emergency" GA during a period of proration*, unless they can establish additional eligibility (e.g., for a change in household composition). However, as of July 25, 2002, notwithstanding the foregoing, the household or initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. Upon subsequent applications, that household's eligibility is subject to the foregoing.

Example: Heidi Hegel, her husband and two children live in North Berwick. A year ago Heidi lost her job due to a work-related injury, and she has since been receiving a monthly workers' compensation income of $700. Her husband sought work but his efforts proved unsuccessful. The overall maximum level of assistance for Heidi's household is $799 for a 30-day period, and so the household's deficit was $99 per month. Since Heidi's injury, either she or her husband regularly applied for the GA the household needed. A few months ago, Heidi received a surprise inheritance of $7,500. For three months after receiving the inheritance Heidi had no need for GA and did not apply. Unfortunately, during the time she was out on workers' compensation, Heidi got far behind on some of her bills. To make matters worse, during this period of time Heidi's septic system failed and she had to spend $5,000 for a replacement system. All in all, Heidi found out that the $7,500 didn't last as long as she had expected it to. Three months after receiving the inheritance, Heidi had to apply for GA again.

When Heidi first applied for GA, prior to receiving the inheritance, she had been informed of the lump sum proration process, and so she had kept a good account of her expenditures. The administrator reviewed the documentation Heidi provided and determined that Heidi's use of the lump sum payment was for necessary expenses, and there was no proration.

Example: Katy Drew and her two kids received $418 a month from TANF until Katy received $3,000 in Lottery winnings. TANF immediately disqualified Katy for seven months because of the lump sum payment, and so Katy applied to her local GA office for assistance, claiming that she had lost the $3,000 right after cashing the Lottery check. The administrator reviewed the law and divided the overall maximum level of assistance designated for the household—$670—into the lump sum payment of $3,000. The administrator's decision was that Katy was ineligible for GA for 4 1/2 months. The proration was correctly calculated because no part of the lump sum payment was a required deduction or spent in such a way that it should have been disregarded for the purposes of proration.

Income–Other Issues

Net vs. Gross Income

For the purpose of determining an applicant's income, the *administrator should use **net** income only*. At § 4301(7), GA law prohibits taxes, retirement fund contributions and union dues from being considered as income, and so the standard FICA/Social Security deductions from gross pay cannot be considered as income for the purposes of determining GA eligibility. Some employees make voluntary arrangements with their employers to have additional sums deducted from their paycheck for certain purposes. These non-mandatory deductions should be reviewed by the administrator and when the income deducted would be more appropriately devoted to the applicant's basic needs, the applicant should be directed in writing to secure the deducted income as a potential resource *(see "Use of Potential Resources," in Chapter 3).*

Work-Related Expenses

In addition to standard payroll deductions, § 4301(7) prohibits the administrator from considering transportation costs to and from work, special equipment costs and work-related child care expenses as "income." For this reason, it is necessary for the administrator to add a step in the income calculation process which identifies the actual work-travel, work equipment and work-related child care expenses and deducts that sum from the income sub-total. MMA's model application forms provide a line in the income calculation section for that purpose. When the applicant is not employed but is actively seeking employment, the actual and reasonably necessary job-search costs should also be deducted from income.

Irregular Income

Sometimes it will be difficult to determine the applicant's monthly income because of the nature of his or her work. Self-employment; piece work employment; the many people in Maine who harvest natural resources such as digging for clams or worms or working in the woods; people who work variable hours, on-call, seasonal work, or work that is available only in good weather—all these situations can make it very difficult to pinpoint a 30-day prospective income.

In these situations, the administrator may review the applicant's previously received income to get an idea of what the average earnings are and what could reasonably be projected as prospective earnings. This calculation might require contacting persons with whom the applicant does business, such as the paper mill or the wholesalers purchasing the harvested marine products, to verify any applicant claims of short-term limited markets. In cases such as these, it would probably be wise to have the applicants apply for GA on a weekly basis in order to make any necessary adjustments as a result of the income actually received.

Self-Employment Income

It is not unusual for a self-employed applicant to claim a significant offset of work-related costs against income received. If the applicant's business is doing particularly poorly, the costs of doing business will allegedly be greater than the income actually received. The GA program, however, is not a subsidy program for small business. It is also not the case that the GA program is designed to perform sophisticated analyses of profitability or capitalization efficiencies.

Against the actual income received by self-employed applicants, the administrator should only deduct the expenses that were actually incurred as a result of producing the income if those expenses have been paid or need to be immediately paid by the applicant during the 30-day income projection period. *If the applicant's business is not producing at least a* ***minimum-wage income****, the applicant should be required to perform workfare for the municipality or make a good faith effort to secure bona fide employment, or both.*

Income from Household Members

One circumstance that causes confusion in the attempt to determine eligibility is when a person applies for GA and it is determined that the applicant is living in the same dwelling unit with other people who are not members of the applicant's household. In this circumstance, whose income and whose 30-day needs are used in the calculation of

eligibility? The answer to this question turns on the determination of whether the various people living in the dwelling unit are *pooling* or *not pooling* their respective incomes.

- **Pooled Income.** If the people living in dwelling unit pool their income, that is, co-mingle their funds and mutually share both incomes (to the extent it is available) and expenses, as would a family, then the members are treated as one household and all income is included when determining eligibility. In other words, "pooling" means the actual household expenses are shared with some degree of overlap between household members, for instance one person pays the rent and fuel while the other pays for the food, light bill, etc.

"Pooling of income" is defined in GA law as follows:

"Pooling of income" means the financial relationship among household members who are not legally liable for mutual support in which there occurs any commingling of funds or sharing of income or expenses. Municipalities may by ordinance establish as a rebuttable presumption that persons sharing the same dwelling unit are pooling their income. Applicants who are requesting that the determination of eligibility be calculated as though one or more household members are not pooling their income have the burden of rebutting the presumption of pooling income." 22 M.R.S. § 4301(12-A).

This definition establishes a shifting of the burden of proof from the municipality to the applicant. By ordinance, the municipality can assert the presumption of pooling and establish guidelines whereby applicants can rebut the presumption. MMA's model GA ordinance contains some language to this effect. When an applicant wants to rebut the presumption of pooling, the applicant should bring documentation, such as receipts, banking records, and landlord or other vendor agreements that clearly show the applicant has been and is currently solely and entirely responsible for his or her pro rata share of the household expenses.

Other circumstances to review when attempting to evaluate whether the household is pooling income would be the nature of the relationship between the alleged roommates. Are the roommates related? Do they share property or bank accounts? Does the municipality have any compelling evidence to assert the existence of a close personal relationship? These are findings that could be relied upon to reject an attempt by an applicant to rebut the statutory presumption of pooling.

Legally Liable Relatives

Prior to September 30, 1989, all parents and grandparents living or owning property in Maine were financially responsible for the support of their children and grandchildren. Legislation passed in 1989 limited that financial liability to parents of children under the age of 21. In 1993, the law was again amended to clarify that grandparents have no financial obligation to support their grandchildren. However, the parental obligation to support (at least with regard to the GA program) remains until the parent's child is 25 years of age. Because the statute makes no exceptions for emancipated minors, it is MMA Legal Services' opinion that the 25-year of age rule applies even in cases of emancipation.

Therefore, if an applicant is 25 years of age or *older* and *still living* with his/her parents, the administrator cannot automatically evaluate the entire household as a whole family unit without employing the presumption of pooling as discussed immediately above.

Most administrators recognize that the parents and siblings of adults sometimes have limited willingness to provide long-term, continuing support to roommate family members. When people are living with relatives who they have no legal liability to support, it is clearly possible that the applicant is seeking assistance for only him/herself and is not pooling income with his/her parents or siblings. If such an applicant is applying for GA while intending to keep living with relatives, he or she could have a tougher burden of rebutting the statutory presumption of pooling.

It is more typical, however, for applicants in this circumstance to apply for assistance for the purposes of moving to alternative housing. In such a case, since parents have no legal obligation to support their adult children who are 25 years old or older, it is often the case that relocation assistance is supplied before the supportive family members go to the trouble of kicking their relatives out onto the street.

If the members of the household are legally liable for the support of each other (parents for children under the age of 25; spouses for each other), the income of all members of the household *must* be considered when determining eligibility. The broader issue of determining the eligibility of minors who are applying independently for assistance is taken up below, under *"Liability of Relatives."*

Roommates

Against the presumption of pooling that is now part of GA law, there is obvious fact that some people are living together merely as roommates. When members of the household are not

legally liable for each other and they do not pool their income or share expenses, they are considered to be roommates. In a roommate situation only the applicant's income and his or her pro rata share of the household expenses can be considered in the calculation of eligibility. The administrator cannot include the income of the roommate who is not applying for GA. Similarly, the administrator should not consider or subsidize the non-applicant roommate's pro rata share of the household expenses.

GA law, at the definition of "household" (§ 4301(6)), expressly provides that when an applicant shares a dwelling unit with one or more individuals, *even when a landlord-tenant relationship may exist between them*, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household. For instance, if there were two roommates and one applied for GA, consider 100% of the applicant's income but 1/2 of the shared household expenses: three roommates, consider 100% of the applicant's income but 1/3 of the shared household expenses; four roommates, 1/4 of the shared expenses, and so on.

Example: Four roommates share a house in Sullivan. Three roommates earn more than enough money to pay their expenses. However, one roommate, Bernard, only receives $300 a month in unemployment compensation. The overall maximum for Bernard, by ordinance, is $363, so Bernard's deficit is $63. With regard to Bernard's unmet need, the calculation is as follows:

For a household of four (4), the GA ordinance allows the following monthly maximums:

Rent (heated)	$ 592
Utilities	70
Food	426
Personal supplies	35
Total	**$1,123**

Bernard's share is 1/4 of $1,123 or $281. Because his income is more than his need ($300 minus $281 provides a surplus of $19) and his income exceeds the allowed maximum for his pro rata share (1/4), he is not eligible for GA.

When taking this application, the administrator should consider the applicant a household of one, even though there were three other people, because the other three were not applying for assistance since they had adequate income. However, if they *pooled* their income the administrator should consider it a household of four and all income should be considered.

Rental Payments to Private Homes

Sometimes people apply for rental assistance and their "landlord" lives in the same house or apartment as the GA applicant. The applicant's eligibility for rent in this circumstance is often questioned by GA administrators because of the possibility that the relationship between the homeowner and the tenant is not really a landlord-tenant relationship, the rate of rent being charged is out of proportion with regard to the actual shelter cost, or the rent is merely being requested for the purposes of generating an income which would not exist except for the availability of GA funding.

The statutory definition of "household" (§ 4301(6)) addresses this scenario. The pertinent part of the definition reads:

> "When an applicant shares a dwelling unit with one or more individuals, *even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit*, eligible applicants may receive assistance for no more than their **pro rata share of the actual costs** of the shared basic needs of that household according to the maximum levels of assistance established in the municipal ordinance."

A plain reading of this language reveals the manner in which the cost of the applicant's housing expenditures are determined when: (1) a number of people are living under the same roof; (2) there is no pooling of income; and (3) not all household members are applying for assistance. Simply stated, eligibility is determined by budgeting the applicant's expenses as his or her proportionate share of the actual, shared household expenses. This calculation of the applicant's prorated housing costs applies even when the applicant claims to owe a rental payment to another person in the household.

Example: Marsden Hartley applied for assistance in Georgetown. Marsden claimed that he must pay his roommate $300 a month rent for his room in the mobile home. The rent covers heating and utility costs. Marsden is responsible for buying his food and personal supplies, and so he also asked for his full food and personal care allowance. Marsden's total request is for $450 worth of GA. The Georgetown administrator explained the law to Marsden and asked for documentation describing the entire household's actual 30-day costs; namely, the total rent or mortgage costs for the mobile home, the total electric bill and the total need for heating fuel over the next 30-day period. Marsden's roommate did not want to provide that information, but reluctantly demonstrated that the actual rent the roommate had to pay to a third-party landlord was only $150. The 30-day electric bill was $40, and the mobile home's fuel tank was topped off just a few days before Marsden applied for GA. Based on this

information, the administrator *(using MMA's GA Application (Section 6))* calculated Marsden's 30-day need as:

6. Expenses

MONTHLY EXPENSES	ACTUAL COST FOR NEXT 30 DAYS	ALLOWED AMOUNT	OFFICE USE ONLY
1. Food	$ 112	$ 112	
2. Rent NAME AND ADDRESS OF LANDLORD:	$ 150	$ 75	1/2 of $150
3. Mortgage – MORTGAGE HOLDER:	$ ----	$ ----	
4. Electricity	$ 40	$ 20	1/2 of $40
5. LP Gas	$ ----	$ ----	
6. Heating TYPE: (i.e., oil, electricity, etc.)	$ ----	$ ----	
7. Household/Personal Supplies	$ 30	$ 30	
8. Other Basic Needs (please specify)	$ ----	$ ----	
	$	$	
TOTAL MONTHLY HOUSEHOLD EXPENSES:	$ 332	$ 237	

Because Marsden had zero income, the administrator calculated his 30-day need as $237. The administrator then noted that the overall maximum level of assistance for which Marsden was eligible (household of one in Sagadahoc County) was $424. With a deficit of $424 and an unmet need of $237, the administrator correctly found Marsden to be eligible for $237 worth of GA over the next 30-day period.

The final question facing the administrator in this case was to whom the GA should be issued. The administrator did not feel it appropriate to issue money to Marsden's roommate just on the claim that he was Marsden's landlord, especially where the roommate had no ownership interest in the mobile home. Accordingly, the administrator issued Marsden's share of the rent to the actual landlord, who did not live in the mobile home. The GA Marsden needed for electricity was issued to the utility company under the roommate's account number.

Although in this case the administrator chose not to issue Marsden's GA to his roommate/landlord, in special cases the administrator may issue a housing cost payment on behalf of an applicant to another person acting as landlord who lives in the same dwelling unit as the applicant. Under such circumstances, criteria to be considered include:

1. **The applicant and the landlord are not pooling income or resources.** If it is found that they are pooling income, the administrator will determine the need of the entire household.

2. **The landlord has legal interest in the property**. If the landlord has neither legal, equity **nor** tenancy interest in the property, no rental payment should be issued to that landlord or to any third party on his or her behalf. If the landlord has only equity interest in the property, the rental payment, if issued, will **not** be issued to him or her, but only to the party with legal interest. If the landlord has only tenancy interest in the property, the rental payment, if issued, should be issued only to the party who has a superior legal or equity interest in the property.

3. The rental arrangement is not being created for the sole purpose of eliciting general assistance as income to the landlord. Evidence supporting this finding could include the rental cost of the property as compared to fair market value; the rental cost of the property as compared to the applicant's pro rata share of the entire shelter cost; the landlord's history of renting the property; ties of consanguinity or affinity between the landlord and the tenant, etc. *(See also discussion below regarding "Rental Payments to Relatives.")*

When an owner of a private home regularly receives rental payments from the municipality on behalf of applicants renting rooms from that private home, the municipality may require that landlord to make a good faith effort to obtain a lodging license from the Department of Health and Human Services, Division of Health Engineering, pursuant to 10-144 A Code of Maine Regulations, Chapter 201, as a condition of that landlord receiving future general assistance payments on behalf of his or her tenants.

Rental Payments to Relatives

The municipality is **not required** to issue rental payments to an applicant's relatives. However the municipality may decide to do so if the following criteria has been met; the rental relationship has existed for **at least three months**; and the applicant's **relative(s) rely on the rental payment** for their basic needs. In other words, if the relatives are in a financial situation whereby, they need the GA benefit to assist with basic necessities provided to the GA applicant/recipient, the municipality may decide to issue the general assistance despite the fact they are living with a family member. For the purpose of this section, a "relative" is defined as the applicant's parents, grandparents, children, grandchildren, siblings, parent's siblings, or any of those relatives' children. 22 M.R.S. § 4319(2).

Sometimes providing assistance to a relative is actually the most cost-effective way to provide an eligible applicant with basic necessities and as such this is an option to explore.

Note: A similar analysis to the one above regarding rental payment to private homes should be considered by the GA administrator.

Example: Adrian Hart is recently divorced, is currently unemployed and needs a place to stay. He has been searching for employment but his job skills are poor and he is having a difficult time finding employment. Adrian has been living with his aunt but since she is elderly and on a very limited income she can no longer afford to give Adrian a free place to stay. Adrian's aunt has agreed that for $200 a month, he can stay with her. Adrian is found eligible to receive $381 in GA benefits. Because Adrian is eligible for more than the cost of room and board at the aunt's home, he has been living at the aunt's home for over three months, and because the aunt's income is such that she requires the assistance to provide the household with basic necessities, the municipality could consider providing the $200 to Adrian so that he can continue to live with his aunt.

Of course, in the above example, the municipality could perform a GA analysis based on a household of two, which will usually lower the entitlement amount *(the entitlement amount is always less for a household of two than it is for two separate individuals).* However, in a case where there is the flexibility such as here, providing the full $200 is still $181 less than what Adrian is eligible for—and if it keeps him housed and fed it may be the best option. This would certainly be more cost effective than having him move out of the aunt's home (because she cannot or does not want to keep him for less than $200) and then have to provide him with his full eligibility amount of $381.

Rental Payments to Landlords—IRS Regulations

When the municipality issues in aggregate more than ***$600*** *in rental payments to any landlord in any calendar year*, a 1099 form declaring the total amount of rental payments issued during the calendar year must be provided to the Internal Revenue Service (IRS) pursuant to IRS regulation. See Title 26 Section 6041(a) of Internal Revenue Code.

Assets

In addition to calculating income, the administrator must take into consideration (using MMA's GA application, Section 5) whether the applicant has any personal property or assets such as recreation vehicles, boats, real estate, a life insurance policy, or stocks or bonds. In order to ever enforce a requirement of asset liquidation imposed on a recipient, the administrator must give the applicant **written notice** that he or she must attempt in good faith to sell or liquidate the assets in order to receive assistance in the future.

MMA's model GA ordinance provides that recipients are allowed to keep one car if it is needed for transportation to work or for medical reasons, provided the market value of the automobile is not greater than $8,000. Also, if there are other unnecessary assets which could be liquidated to meet the applicants' need in a timely manner, the administrator can deny all

or part of the request and inform the applicants to use the resources to reduce their need. If, on the other hand, the applicant's assets would take some time to liquidate, assistance would be granted for an interim period, and the applicant would be expressly required to liquidate the assets by a time certain in order to be eligible for assistance after that date.

Another matter that is left to the discretion of local officials is the ownership of real estate. If applicants own real estate, other than a home that is occupied as their residence, the municipality *may limit ongoing assistance* if the applicants refuse to sell the property at its fair market value so that the proceeds can be used to meet the household's expenses.

Municipalities may also consider adopting language in their ordinances *(MMA's model ordinance currently contains such language at section 5.4)* establishing a maximum size of land (lot size) for a *primary residence* above which the excess will be viewed as an *available asset (resource)* ***if*** *certain conditions are met.* The conditions included in MMA's model GA ordinance (amongst other things) are that:

1. The applicant has received General Assistance for the *last 120 consecutive days*; and

2. The applicant has the legal right to sell the land (e.g., any mortgagee will release any mortgage, any co-owners agree to the sale, zoning or other land use laws do not render the sale illegal or impracticable); and

3. The applicant has the financial capability to put the land into a marketable condition (e.g. the applicant can pay for any necessary surveys); and

4. The land is not utilized for the maintenance and/or support of the household; and

5. A knowledgeable source (e.g., a realtor) indicates that the land in question can be sold at *fair market value,* for an amount which will aid the applicant's financial rehabilitation; and

6. No other circumstances exist which cause any sale to be unduly burdensome or inequitable.

NOTE: *In the event a municipality wishes to adopt a maximum size of land (lot size) requirement, other than the one found in MMA's GA ordinance at section 5.4, they should first contact MMA Legal Services to discuss the matter thoroughly.*

MMA's model language would provide for the following result: If a GA applicant (who had received GA for at least 120 consecutive days) owned a home on a 12-acre lot of land in an area where the minimum lot size due to the municipality's zoning ordinance was two acres, ***and*** *the client met* ***all six criteria*****,** the GA recipient could be made to place the additional ten acres up for sale (at fair market value) while receiving GA. Furthermore, under MMA's model, *once the applicant ceases to receive assistance the obligations under section 5.4 also cease*. Assessor's cards on the property at issue should be consulted in order to ascertain necessary information relative to the property at issue.

Expenses

Another critical part of the application process concerns the calculation of an applicant's monthly expenses. Using MMA's GA application form (Section 6), the following serves to illustrate the manner by which "expenses" are calculated.

6. Expenses

MONTHLY EXPENSES	ACTUAL COST FOR NEXT 30 DAYS	ALLOWED AMOUNT	OFFICE USE ONLY
1. Food	$ 100	$ 335.00	
2. Rent NAME AND ADDRESS OF LANDLORD:			
3. Mortgage – MORTGAGE HOLDER:	$ ----	$ ----	
4. Electricity	$ 80	$ 70.00	
5. LP Gas	$ ----	$ ----	
6. Heating Fuel TYPE: (i.e., oil, electricity, etc.)	$ 400	$ 200.00	
7. Household/Personal Supplies	$ 20	$ 40.00	
8. Other Basic Needs (please specify) **Telephone**	$ 40	$ 13.50	(Basic Rate)
Mileage	$ 250	$ 33.60	(Mileage X
Day Care	$ 40	$ 0	
	$	$	
TOTAL MONTHLY HOUSEHOLD EXPENSES:	**$ 1,405**	**$ 1,071.10**	

Food:

Under the food category, Pat Johnston had figured the family's 30-day need to be around $100 more than the food supplement benefit they received. The administrator indicated that according to GA rules, the food supplement benefit was not counted as income and budgeted in the full $335 maximum eligibility according to his ordinance.

Rent:

Under the rent category, Pat put down her actual monthly rent cost of $475, but the administrator explained that he could only budget $379 in that category, because that was the maximum rent for a three-bedroom dwelling unit allowed by his ordinance.

Utilities:

Pat had been using some electric space heaters during the winter and so her electricity bill over the last few months was running about $80. The administrator explained that the utility maximums in the ordinance were not seasonally adjusted, and so he could only budget in the ordinance maximum of $70 for utility costs for a family of three.

Heating Fuel:

Pat didn't really know exactly how much heating fuel she would need in the month of April, but estimated that she would need at least 200 gallons to fill her tank, and fuel was running at about $2.00 per gallon. Since the actual heating cost was unknown, the administrator budgeted in the ordinance maximum of 125 gallons at $2.00/gallon, or $250.00.

Household/Personal Supplies:

Pat did not really know what type of commodities this category included, so she put down $20 as a guess. The administrator explained that the category was meant to include such items as kitchen, bathroom and laundry supplies. Pat and the administrator agreed that Pat would easily be spending up to the ordinance maximum of $40 in this category.

Telephone:

Pat entered $40 under the "other" category for her phone bill. The administrator asked whether someone in Pat's household was medically unstable enough to require a telephone for medical emergencies. Pat said that her three-year old was seeing a doctor regularly for asthma problems. The administrator explained that he could only budget in the cost for basic phone service, which was $13.50 after considering the $10.50 per month "lifeline" phone bill benefit Pat was receiving through her telephone company.

Transportation:

The only additional cost Pat thought she could include was her monthly car payment of $250. Pat's husband had purchased the car on installment payments shortly before their divorce, and Pat received her car in the divorce settlement, except she had to take over the payments. The administrator explained that since Pat was unemployed, the car payment was not an

allowed expense but that he could budget in the cost of "necessary" medical travel expenses at the rate of $.28 per mile. The administrator calculated Pat would be traveling 120 miles monthly to bring her child to "necessary" medical appointments and so budgeted in a transportation cost of $33.60 (120 x $.28). He informed Pat that the next time she applied she would have to bring in statements from the doctor that Pat had to make the weekly trips to the doctor as a medical necessity.

Child Care:

When Pat prepared her budget, she included the $10 per week cost of putting her two children in a day care center for a couple of hours a week. Because this cost was not a work-related expense, the administrator did not deduct this amount from her net income. If Pat had to use the childcare facility so that she could work, the related cost would be subtracted directly from Pat's income.

Once the budget has been completed, and the income is known, the determination can be made of the household's "deficit" and "unmet need."

Deficit & Unmet Need

The Deficit & Unmet Need Tests—A Summary

Two tests exist for calculating GA eligibility: the deficit test and the unmet need test. The **deficit** is simply the *difference between the applicant's* ***income*** *and the appropriate overall* ***maximum*** level of assistance for a household of the applicant's size. The values for overall maximum levels of assistance are found at Appendix A to MMA's model General Assistance ordinance.

No applicant is automatically eligible for his or her deficit. The administrator should also calculate the applicant's unmet need, which is the second eligibility test. The unmet need is the *difference between the applicant's* ***income*** *and that household's* ***30-day need***, which is determined by calculating the household budget, as described above.

The applicant will be eligible for only the ***smaller*** *value between the* ***deficit*** *and the* ***unmet need***. No more assistance for that period of eligibility will be available to the applicant unless an emergency exists and the applicant is eligible for emergency assistance.

The administrator should be sensitive to the actual needs of an applying household where there is a large disparity between the applicant's deficit and unmet need, particularly during

the heating season. The deficit is based on a somewhat arbitrary number. The unmet need, if calculated correctly, is a much more accurate indicator of real-life "need." In every circumstance, however, the administrator must justify issuing more assistance than available to the applicant "on paper" by articulating for the record the "emergency" situation that is being alleviated. *(For further discussion regarding the deficit and unmet need tests, refer to the section on "Eligibility" found earlier in this chapter.)*

Continuing on in our analysis, again using MMA's GA application (Sections 8 and 9), the following would depict Pat's eligibility:

8. Deficit

A. **Overall Maximum Level of Assistance Allowed** (See GA Ordinance Appendix A)	$ 578
B. **Income** (See Section 4)	$ 483
C. **Result** (Line A minus line B)	$ 95

D. **Deficit** (If line A is greater than line B)	$ 95
E. ***Surplus** (If line B is greater than line A)	$ ----
* **NOTE:** If a surplus exists, applicant is not eligible for regular GA. Proceed to Section 9 to determine if "unmet need" results in eligibility for "emergency" GA.	

9. Unmet Need

A. **Allowed Expenses** (See Section 6)	$1,071.10
B. **Income** (See Section 4)	$ 483.00
C. **Result** (Line A minus line B)	$ 588.10

D. **Unmet Need** (Amount from line C, but only if line A is greater than line B)	$ 588.10
E. **Deficit** (See Section 8, line D)	$ 95.00
F. **Amount of GA Eligibility** (The lower of line D and line E)	$ 95.00

INSTRUCTIONS:

1) If Section 8, line B (income) is greater than line A (overall maximum), then applicant has a surplus of $_____ and will not be eligible for General Assistance **unless** the GA administrator determines there is need for emergency assistance.
2) If Section 9, line A (allowed expenses) is greater than line B (income), the result will be an "Unmet Need" (line D).
3) If there is both an "Unmet Need" (Section 9, line D) and a "Deficit" (Section 9, line E), the applicant will be eligible for the **lower** of the two amounts. This lower amount is the amount of assistance the applicant is eligible for in the next 30-day period, or a proportionate amount for a shorter period of eligibility (e.g., if the applicant needs one week's worth of GA assistance, they should receive 1/4 of the 30-day amount).

In this case, Pat's maximum level allowed *(amount from GA ordinance—Appendix A)* was $578). Pat's TANF income is $483. Therefore, the household "deficit" is $95 ($578 - $483). The administrator now has to compare Pat's deficit to her "unmet need" to determine eligibility for regular GA (non-emergency GA eligibility).

Determination of GA Grant

After working through both the deficit test and the unmet need test on Pat Johnston's application for GA, the administrator determined that Pat's deficit of $95 is dwarfed by her unmet need of $588.10. A disparity such as this between the deficit and the unmet need results is common. Once both the deficit and unmet needs tests have been calculated, the rule of thumb is that the applicant is only eligible for the lower of the two amounts. The result in this case is that Pat is eligible for only $95 worth of assistance (the lower of $95 and $588.10) for a 30-day period, **unless** she is facing an emergency situation.

In this case, Pat was not facing an emergency. Although her food supplement benefit could not be considered as either income or a resource, Pat acknowledged that she had enough food supplement benefit to get by and was not seeking any food assistance. Pat had not paid her August rent and was worried about being evicted, but her landlord had waited for rent in the past and had not started an eviction action at this point. Pat was also behind on her electric bill, but the electric company was not threatening to disconnect her service.

Because Pat was not facing any clear emergency situation, the administrator felt that all he could issue at this point was her $95 deficit, which Pat asked to be applied toward her electric bill. The administrator was not insensitive to the fact that Pat was getting behind financially and would clearly be facing some tough times during the upcoming fall and winter. For this reason, the administrator made it clear to Pat both orally and in writing that the town would be able to provide Pat more than the $95 per month in "emergency" GA during the winter as long as Pat would work with the town by spending her income solely on basic necessities and by actively pursuing all other resources that could reduce her need for GA.

The administrator spent an extra half hour with Pat and they worked out a "get-through-the-winter" plan whereby Pat would (1) seek more affordable housing; (2) take 90% of her TANF check in the beginning of every month and apply that income toward her rent; (3) keep receipts of all her expenditures in an organized way for the administrator's review; (4) apply for GA when necessary on the first and third Monday of every month; (5) work out a budget or special payment arrangement plan with the utility company; and (6) apply for HEAP/ECIP benefits as soon as the local CAP agency begins to accept applications.

In return, the administrator suggested to Pat that the town would be able to regularly apply GA for the purpose of Pat's energy needs, because the lack of electricity or an adequate supply of heating fuel in the winter would generally be considered an emergency situation.

Presumption of Eligibility

All of the variables affecting or determining eligibility which have been discussed above ***may be waived*** *by the administrator* under certain circumstances, that is when the applicant is in an *emergency shelter for the homeless* ***and*** *the municipality has made prior arrangements with that shelter to presume shelter clients eligible for municipal assistance. 22 M.R.S. § 4304 (3).*

This presumption of GA eligibility is made ***entirely*** *at municipal discretion;* in fact, to *presume* someone eligible for GA runs somewhat counter to the eligibility determination process as outlined elsewhere in GA law, which generally calls for a written application and decision process. The primary purpose of this type of presumption would be so that those cities dealing with large transient populations could defer, for a short period of time, the paperwork necessary to establish GA eligibility.

Emergencies

The preceding discussion has focused on the first step of the eligibility determination process, which is the calculation of the difference between an applicant's 30-day need for basic necessities and the applicant's 30-day income. This calculation of an applicant's "unmet need" and "deficit" is the first of two steps in the overall determination of an applicant's eligibility for GA. The second step involves the determination of whether the applicant is in an "emergency" situation. It should always be remembered that General Assistance is both a non-emergency and emergency assistance program rolled into one, and as a matter of law, emergency GA is specifically available to people who would not normally be eligible. 22 M.R.S. § 4308(2).

This aspect of the law has caused considerable confusion in the past. If a person is eligible for emergency assistance when they are not otherwise eligible for GA, many administrators have wondered what purpose there is in determining eligibility at all.

Although GA is not a program intended to provide emergency assistance only, almost all applicants think their requests for GA are emergencies and very often the bulk of the administrator's time is spent averting or resolving emergencies. But because GA is not just an emergency program, and because emergency situations must be handled differently, an explanation of what constitutes a GA emergency is warranted.

State law defines an "emergency" as either: (1) a life threatening situation; or (2) a situation beyond the individual's control which, if not alleviated immediately, could reasonably be expected to pose a threat to an individual's health or safety. 22 M.R.S. § 4301(4).

Although the definition is clear, determining whether an emergency exists is not always so obvious. There are very few black and white situations in GA. Is going without electricity always an emergency? Is being without food an emergency? Is running out of oil or wood an emergency? Is not having shoes? Having no transportation? The clear, straightforward answer is...it depends!

Imminent Emergencies

Section 4308(2) includes a provision relating to "imminent emergencies." An imminent emergency is one where failure to provide assistance may result in *unnecessary cost and/or undue hardship*. An example of undue hardship relative to unnecessary cost would be a client incurring court costs for an eviction notice when such costs could have been averted if the municipality assisted with the past due rent at the time the landlord threatened eviction *(as opposed to waiting for a formal notice of eviction).* In such an instance, the unnecessary cost would be the court fees added to the cost of curing the eviction. *(Of course this example presupposes that the applicant is eligible for GA).* Because the GA applicant would be eligible for the assistance, the GA administrator is able (if they so choose) to assist the applicant ***prior*** to the receipt of an official eviction notice—avoiding having the applicant incur court costs.

Emergency Analysis

The place to begin any emergency analysis is ***after*** the determination of the applicant's "unmet need" and "deficit." Generally, applicants are only eligible for GA up to their unmet need or deficit, whichever is less. If more assistance than the deficit/unmet need is required, the applicants have a burden of demonstrating that they are facing an emergency situation.

To look at it another way, applicants are eligible for an amount of GA *up to their* ***deficit/unmet need*** *(whichever is less) whether or not they are in an emergency circumstance.* Therefore, if the applicant's needs can be addressed within the maximum levels of assistance in the ordinance, the administrator need not concern him or herself with an analysis of whether the applicant's current circumstance is or is not an "emergency situation."

A careful review of the applicant's actual circumstances for the purpose of determining whether he or she is facing an emergency is only necessary when the applicant is either: 1) not

eligible for GA because there is no unmet need/deficit; or 2) eligible for some GA, but not enough *to* cover all the applicant's requested needs.

In short, it is only when an applicant is requesting GA for which he or she is not automatically eligible that an emergency analysis need occur.

In conducting an emergency analysis the administrator should consider the following facts:

- whether it is an initial application;
- the household composition (e.g., infants, children, elderly, ill, disabled people);
- whether the situation was foreseeable;
- whether the situation was avoidable;
- any unusual or major changes in the household (e.g., medical problems, a lay-off, etc.);
- the consequences to the household if GA were not granted;
- the availability of other resources to reduce or eliminate the problem;
- whether the applicants had or currently have the opportunity or ability to rectify the situation;
- whether GA is needed immediately;
- whether the applicants have an eviction or utility disconnection notice or notice of tax lien or mortgage foreclosure;
- whether the situation, if beyond the applicants' control, poses a threat to their health or safety;
- whether the situation is life threatening (i.e., the applicants could conceivably die if relief were withheld);
- whether there is an imminent emergency that may result in undue hardship and unnecessary costs.

Considering these questions in conjunction with the type of assistance requested should help the administrator clarify whether an emergency exists. For instance, if a family is over income and requests food saying they are totally out, the administrator should consider such questions as: when will they receive their next check; are there relatives who are willing and able to help; is the family totally out of food or merely out of certain type of food, etc. If the household's next paycheck is due in two days, two days' worth of GA may be in order. If a local food bank, relatives or friends are available, GA may not have to be granted provided the applicants are willing to use these alternative sources of assistance. However, if a family member such as an infant or elderly person has special dietary needs not met by the local food bank, the administrator would have to consider that fact.

Alleviating Emergencies & Imminent Emergencies

When the administrator determines that the household is, indeed, facing an emergency such that more GA than the household is otherwise eligible for will have to be provided, the next determination is whether the municipality must grant the amount or type of assistance the applicant is requesting. In many instances, the emergency situation facing the household can be alleviated more cost effectively than by simply granting the applicant's request.

For example, if Anton Arcane, with no unmet need, applies to the selectpersons in Meddybemps because the bank is threatening to foreclose on his home, and the bank will not stop the foreclosure for less than $2,000, the Meddybemps' selectpersons could issue a decision which indicates that Anton *is* or *will be* eligible for emergency GA to secure housing for himself and his family, but not at a cost of $2,000.

The decision would direct Anton to seek alternative housing (i.e., rental property) which could be secured at a cost more in line with the housing maximum in the municipal ordinance. The decision would further direct Anton to contact the selectpersons for disbursement of his GA when such housing was found.

Documenting Emergencies

By regulation, DHHS requires some degree of documentation in the applicant's case file whenever emergency GA is granted. The documentation can take the form of a simple written statement describing the emergency situation in the administrator's own words. Such a written statement would be part of either the notice of eligibility issued to the recipient or on a separate narrative statement that would become part of the recipient's case file. The documentation can also take the form of a photocopy of the eviction or disconnection notice or any other written material submitted by the applicant to document his or her emergency need.

Limitations on Emergency GA

Under GA law, there are two situations when an applicant is not eligible for emergency GA. These are: (1) when the applicant is currently disqualified for violating the GA law; and (2) when assistance is requested to alleviate an emergency situation which the applicant could have averted with his or her own income and resources. 22 M.R.S. § 4308.

Disqualified Applicants

If people have been disqualified from receiving GA because they are fugitives from justice (§ 4301(3)), committed fraud (§ 4315), didn't comply with the municipality's work requirement (§ 4316-A), or didn't attempt to use potential resources to which they were directed (§ 4317), they are ***not eligible*** *for any non-emergency GA or emergency GA during* the *time they are disqualified*. Therefore, if a woman is disqualified because she committed fraud but she applies to the town because she has an eviction notice, the administrator has no legal obligation to provide assistance during her 120-day disqualification.

It is important to remember, however, that the disqualification of a household member for a violation of a program rule does not affect the eligibility of any member of the household who is not capable of working (dependent minor children; caregivers for children under six years of age; elderly; ill or disabled persons or their caregivers). For further discussion regarding the continuing eligibility of these dependents when a household member has been disqualified, see "Dependents" in Chapter 4.

Misuse of Income

The other situation that would result in an applicant not being eligible for emergency assistance is when the applicant could have averted the emergency with available income and resources. Unlike the ineligibility for emergency assistance which occurs as a result of disqualification, this limitation on emergency assistance would affect the entire household's eligibility. Under the law, **no** emergency, no matter how short or long term the emergency has been in the making, need be alleviated by the municipality with emergency GA **if** the applicant could have averted the emergency with his or her own income or resources. The law reads as follows:

> Municipalities may by standards adopted in municipal ordinances restrict the disbursement of emergency assistance to alleviate situations to the extent that those situations could not have been averted by the applicant's use of income and resources for basic necessities. The person requesting assistance shall provide evidence of income and resources for the applicable time period.

The wording of § 4308(2)(B) creates questions and issues. For example, what happens when the applicant is really facing a life-threatening situation, such as homelessness or running out of fuel in sub-freezing weather? Would the limitation on emergency assistance still apply? What happens when the limit on emergency assistance yields eligibility that is not enough to alleviate the emergency? Does the administrator issue the assistance anyway? What happens when a *disconnection* emergency evolves into a *housing* emergency, or an applicant's emergency circumstance continues for an extended period of time? If an applicant could clearly have averted a utility disconnection, but didn't and is therefore ineligible for emergency GA, will he or she remain ineligible for emergency utility assistance from that point onward?

The answers to all these questions are not entirely clear, but it would seem that the history of this section of law may provide some guidance. The original purpose of § 4308(2)(B) was to limit the amount of assistance available to cure an unnecessary debt. Clearly, this section expands on that original purpose, but there is still evidence to suggest that when the request for emergency assistance, for whatever reason, moves from curing an unnecessary debt to providing for a prospective need, the mechanics of evaluating the emergency GA limitation, at least according to the MMA model ordinance, changes *(*see *Examples 3 and 4, below).*

A central factor governing the limitation on emergency assistance is the "applicable time period." The term "applicable time period" is found in the law at § 4308(2)(B), but is not carefully defined. It is reasonable to consider the "applicable time period" as the period of time which should be reviewed to determine an applicant's financial ability to avert an emergency situation. According to the MMA model ordinance, the applicable time period is generally the last 30 days, unless the emergency is the result of a "negative account balance," in which case the applicable period of time is the duration of that negative account balance. The following examples are offered as reasonable interpretations of the mechanics of emergency assistance limitation:

Example 1: Alfred Adler has received a seven-day eviction notice. He owes $900. He has no deficit. The $900 demanded by the eviction notice covers the last two months rent, and so the "applicable time period" of review for the purposes of determining any limit on emergency assistance is the last 60 days. A review of Alfred's income during that period reveals that he had enough money to pay his rent, as well as all his other basic needs. Alfred is therefore denied any assistance.

Example 2: Melanie Klein applies for help with her utility bill. Melanie's deficit is $90 and her unmet need is $390. The power company is threatening to turn off her electricity unless

she pays a "repair amount" of $450. The administrator learns that Melanie has not paid anything on her electric bill since a HEAP benefit was applied toward her account six months ago. Melanie is on TANF and receives, as a household of three, $493 per month. With a rental payment of $400 a month, and enormous fuel oil costs over the winter to heat her poorly insulated apartment, it is clear that Melanie may not have had a financial capacity to stay current with her electric bill. After Melanie provided proof that she had been spending her limited income on basic needs throughout the winter, the administrator processed her request for emergency assistance without imposing any limitation. If there is an imminent emergency such as a disconnection that will occur before the next paycheck is received, the municipality may choose to assist to avoid the extra cost of the reconnect fee.

Example 3: With a notice of mortgage foreclosure in hand, Otto Rank applies to the town for help. Otto was laid off from his job two months ago and is desperately trying to save his home. Early negotiations with the bank prove to be futile; the foreclosure will occur unless Otto makes a payment of $2,400. The facts of the case are as follows: The $2,400 debt represents Otto's mortgage payments for the last four months; the applicable time period, therefore, is four months, which is the period of time Otto had a negative account balance with the mortgagee. Otto's mortgage obligation of $600 per month is $50 over the applicable ordinance maximum for housing. Otto is currently receiving unemployment benefits and has no deficit and a $20 unmet need. Prior to becoming unemployed, Otto had an income *surplus* of nearly $400.

Given this information, and using the standards in the MMA model ordinance, the administrator determines that Otto is eligible for emergency assistance in response to the foreclosure not to exceed $140. The administrator came to this figure by: 1) finding that Otto had sufficient funds to meet his mortgage obligation for the first two months of the applicable time period; 2) finding that Otto was financially unable to avert the emergency during the last two months of the applicable time period by the amount of: a) the $20 per month unmet need; and b) the $50 per month difference between Otto's actual monthly mortgage payment and the ordinance maximum.

The administrator chose to use her discretion to disregard the difference between Otto's actual shelter cost and the ordinance maximum because it did not seem reasonable to hold Otto to the ordinance maximum given his recent and sudden unemployment. Upon reaching this decision, the administrator informed the bank that all Otto was eligible for to address the foreclosure was $140. The bank indicated that it would not accept the $140 payment. The administrator informed Otto of the bank's decision and asked how he wanted his assistance distributed. Otto got mad and left the office in anger.

Example 4: A week later Otto is back with a request for assistance for a new apartment. Otto still has a $20 unmet need, but costs associated with getting into the new housing forces him to request $200 in emergency assistance. As a matter of law, it would appear, the need for emergency assistance still revolves around the foreclosure, and Otto could not satisfy his burden of showing that he could *not* have averted the emergency. The same limitation on emergency assistance to $140 could still be applied, therefore, as a matter of law. But under the MMA model ordinance, since the emergency assistance request no longer involves curing a past debt, the "applicable time period" to be used to determine any limit on emergency assistance *could* be reduced to 30 days. An analysis of Otto's previous 30-day income shows that he legitimately did not have sufficient resources to avert the emergency, and so Otto would be eligible for that assistance.

With regard to the calculation of eligibility for emergency assistance, a couple of points should be noted. First, when attempting to determine whether the applicant could have financially averted the emergency, the administrator should rely on the applicant's unmet need during the applicable time period, rather than the applicant's deficit. The deficit is a somewhat arbitrary number that may or may not reflect what any particular household reasonably needs to get by over a 30-day period. The unmet need, on the other hand, is a much more accurate representation of the financial needs of the household. All emergency GA decisions made by an administrator—whether the emergency GA is granted, partially granted, denied or limited—are quickly subject to second guessing and challenge. The most an administrator can do is issue a decision that has a clear rationale; that is, the reasonableness of the decision can be clearly explained in relation to the factual circumstances and the pertinent provisions of law or local ordinance.

CHAPTER 3 – Eligibility / Other Conditions

Once the administrator has determined that the applicants are in *need* (i.e., their income is less than the maximum levels of assistance), the administrator's next step is to consider other eligibility conditions. Generally, these eligibility conditions apply only to people who are *not first-time applicants*, i.e., people who have applied for GA at some time in the past, although below we discuss several exceptions to this rule.

Fugitive From Justice

A person who is a fugitive from justice as defined in 15 M.R.S. § 201(4) is ineligible for general assistance. A fugitive from justice is essentially anyone accused or convicted of a crime in another state and whose presence is demanded by that state. (See 15 M.R.S. § 201(4) for a complete and detailed definition of "fugitive from justice".)

Work Requirement

Everyone who is able to work is expected to fulfill the work requirement (§ 4316-A). People who violate the work requirement are *ineligible to receive GA for **120 days***, except under certain circumstances *(see "Just Cause," below, and "Eligibility Regained," in Chapter 3*).

People are *considered* able to work *unless* they are mentally or physically ill or disabled, or if they are the only person in a household available to care for an ill or disabled member of the household or a child who is not yet in school.

If applicants claim they have an illness or a disability which prevents them from working, they must give the administrator a *written statement from a physician certifying that they can't work* unless their inability to work is plainly apparent, in which case the documentation would not be necessary.

GA administrators should require that medical letters from physicians include, the extent of disability (e.g., 100%), the duration the person is anticipated to be "disabled," specific work restrictions if the individual is not completely disabled, and possibly the date of next re-evaluation.

The work requirement means that in order to be eligible for assistance people must:

- look for work;

- accept work;
- register for work with the Maine Job Service;
- participate in a municipal work-for-welfare (workfare) program;
- not quit work and not be discharged for misconduct; and
- participate in an educational or work training program.

Just Cause

If people refuse or fail to fulfill the work requirement *without just cause*, they will be ineligible to receive GA for 120 days. Determining whether applicants had just cause for not fulfilling the work requirement can be very difficult, but essentially it depends on whether they can show that they had a good reason. Just cause is defined as a "valid verifiable reason that hinders the individual from complying with one or more conditions of eligibility" (§ 4301(8)). Specific excuses, which would be considered just cause, include:

- a physical or mental illness or disability that prevents a person from performing work duties;
- receiving wages that are below minimum wage standards;
- being sexually harassed at the workplace;
- inability to arrange for necessary care for children, or ill or disabled family members;
- any other reason that the administrator thinks is reasonable and appropriate.

If applicants have not complied with the work requirement and they cannot show that they had just cause, the administrator should immediately and formally (i.e., in writing) disqualify them for 120 days. Before the administrator disqualifies the applicants, however, he or she should attempt to determine if they acted with just cause.

For example, if a man quit his job because he didn't get along well with his boss, that is not just cause. But if he quit his job because he had to work nights and no one was available to care for his young son and daughter; that would be just cause. Therefore it is critical to inquire into the reasons behind someone's failure to comply with the work requirement. Just because the administrator should undertake this type of inquiry does not mean that the municipality

has a burden of proving that there was no just cause reason for the work-related failure. In fact, GA law places the burden of proof squarely on the applicant. 22 M.R.S. § 4316-A (1).

Illness

One common excuse for failing to fulfill the work requirement is illness. If a person claims a long-term physical or mental illness or disability, he or she must present a doctor's statement verifying that he or she is unable to work or detailing the work restrictions the applicant has. However, the administrator cannot require a recipient to produce medical verification if a condition is apparent or of such short duration that a reasonable person would not ordinarily seek medical attention. If the municipality requires medical verification and the person has no means to pay for the exam, the municipality must pay but may choose the doctor. 22 M.R.S. § 4316-A(5).

The question of medical verification can cause a problem when people on workfare don't show up for their assignment and attribute it to being sick. If it's just for a day, it is not necessarily reasonable that they see a doctor. Some municipalities require people to call in sick; however, if they don't have a phone and they are sick this requirement is impractical. Again, the key is reasonableness. For instance, the ordinance could require that people who claim they are sick and fail to fulfill the workfare assignment on two out of three days must have medical verification; and if they cannot produce it the administrator will disqualify them for willfully failing to perform workfare without just cause. A municipality could allow a person to miss one day without calling in if the recipient has no phone. However, if the recipient didn't show up for work and did not call or otherwise give notice to the administrator the following day, the administrator could disqualify the recipient if he or she couldn't show just cause.

If your municipality wants to develop specific standards to further clarify the general concept of "just cause," those standards should be contained in your ordinance or written out on the recipient's decision of eligibility in order for them to be enforceable.

Example: Joe Morgan was laid off from work. His unemployment compensation has expired so he needs GA. He has received GA for about one month and has been looking for work, plus doing workfare. Today when he applied, he told the GA administrator that he didn't look for work last week because he was too frustrated looking for work and always getting rejected. Although he had completed his workfare assignments, Joe said he wouldn't do any more workfare because it wasn't getting him anywhere. The administrator disqualified him for 120 days, but told him he could be eligible again if he fulfilled the work requirement.

One week later Joe came in to reapply for assistance. He gave the administrator proof that he had applied for work at the required number of places and he agreed to do workfare. Because he had fulfilled the work requirement, the administrator revoked his ineligibility status and gave him GA for a week.

Example: It was the first time Sherry Norris applied for GA. She was unemployed, her husband had just left her, and she had no money. Because she was in need and it was her initial application, Sherry was granted assistance. She was told that she would have to look for work and also do workfare. Sherry agreed to do 15 hours work for the assistance she received. She worked five hours but never came back to finish the assignment. When she applied for assistance the next week the administrator disqualified her until she completed her assignment. She agreed. When she did her remaining ten hours of work she reapplied for GA, agreed to do workfare in the future and was granted assistance. She had regained her eligibility because she complied with the workfare assignment.

Example: Jonathan and Jill London applied for GA for their family. Jonathan received Supplemental Security Income (SSI) for an undisclosed disability, but he was able to care for their two small children. Jill was informed that she would have to apply for work too at least three separate employers a week in order to be eligible for future assistance. Jonathan said that no wife of his was going to work, and informed the administrator that Jill would not be looking for any jobs. The administrator disqualified Jonathan and Jill from receiving GA for 120 days, but noted in her decision the eligibility of the London's two children. Section 4309(3) provides that no dependents (or persons whose presence is required in order to care for dependents) will lose their eligibility due to the ineligibility of other members of the household (*see "Dependents," in Chapter 4).*

Job Quit & Discharge for Misconduct

GA law has long provided that when a municipality establishes that a non-initial applicant has quit his or her job without just cause, that person shall be disqualified from receiving GA for an extended period of time, now 120 days. The policy behind this provision of law is very clear; that is, GA recipients are expected to utilize in all good faith the advantages of employment in order to reduce their need for ongoing public assistance.

Despite the clear intention of the law, municipal administrators were sometimes frustrated when employed recipients did not quit their jobs but behaved in such a way at their workplace that they were discharged from their employment for misconduct. A Maine Supreme Court decision, *Gilman v. Lewiston,* 524 A.2d 1205 (Me. 1987) ruled that the ineligibility due to job quit could not be applied to applicants who were discharged for misconduct. As a result, in

1991, the Legislature addressed the issue by amending GA law in such a way that municipalities were authorized to disqualify for 90 days (the disqualification period at that time) any *non-initial* applicant whom the administrator established was discharged from his or her employment for misconduct, as misconduct is defined in Maine law at 26 M.R.S. § 1043(23). *(See below for a full discussion of this definition.)*

A next milestone in the evolution of this ineligibility status (which has the effect of a disqualification) procedure occurred in June of 1993. The Legislature amended GA law to disqualify for ***120 days any applicant****, including any initial applicant, when that applicant quit his or her job without just cause* ***or*** *was discharged from employment for misconduct.* In making this change, the Legislature also clarified that the 120-day disqualification for job quit or employment discharge would commence *on the* ***date of separation*** *from employment.*

In this respect, the ineligibility period for unwarranted job quit or discharge for misconduct is designed differently than the ineligibility for a work search or workfare-related failure. In the case of a work search or workfare failure, only repeat applicants could possibly be subject to disqualification, and the 120-day disqualification period does not begin until the administrator becomes aware of the work search or workfare violation and formally notifies the GA recipient of their ineligibility.

In the case of ***job quit or discharge for misconduct****, the 120-day ineligibility period is to be applied to* ***all applicants****,* whether or not they are initial or repeat applicants, and the disqualification period begins automatically on the date of job separation, which typically occurred days, weeks, or even months in the past.

More About Misconduct

First, it is unclear what relationship exists, if any, between GA law and the significant body of legal precedent established as a result of processing claims for unemployment benefits pursuant to Maine Unemployment Compensation law. It is fair to say that in the context of determining eligibility for unemployment benefits, disputes often surface between the discharged employee and his or her employer as to whether the employee's actions which led to discharge were actually "misconduct" as a matter of law. These disputes are usually resolved by means of a hearing held and determination issued by a Hearings Officer with the Department of Labor.

The Hearings Officer's determination, of course, is subject to appeals into the courts, and a body of case law has developed which provides further guidance as to what is and what is not "misconduct." Because GA law specifically cites the definition of "misconduct" in

unemployment law, it is very probable that if a GA disqualification for misconduct was appealed into the courts, the judge would apply unemployment case law to the facts before the court to reach a decision.

Given this set of circumstances, GA administrators in the past often elected to put off making a decision as to whether a particular discharge was due to "misconduct" until the Department of Labor Hearing Officer had issued a determination. That is, the GA administrator was well advised to rely on the special expertise of the Hearing Officer. Currently, given the status of the law which now starts the ineligibility period at the date of job separation, it no longer makes sense to wait until a determination of the Department of Labor because by that time the ineligibility period would be partially or entirely used up. In short, one consequence of the current unemployment law for the GA program is that more pressure is on municipal administrators to determine in a timely manner and on their own whether or not the discharge from employment was due to "misconduct" or not.

Furthermore, a determination by the Department of Labor is *not* available to a discharged employee who is not eligible for unemployment benefits because the employee does not have a sufficient base of previous earnings from which to draw current benefits. Therefore, many GA recipients who may get discharged for misconduct will not have an opportunity for their case to be heard by the Department of Labor. In this circumstance, also, the municipal administrator will need to determine if the actions for which the employee was discharged reach the level of misconduct.

Because it is to the employer's financial advantage to discharge for misconduct rather than simply lay employees off, it is sometimes the case that the employer's claim of misconduct is not credible. At the very least, GA administrators should inquire as to the specific reasons the employee was discharged, what rules were violated, whether the employee had received verbal or written warnings, the nature of the employee's long-term record, whether other employees had been discharged for similar behavior, and so on.

In cases of egregious employee misbehavior, such as when the employee deliberately and willfully damages the employer's property or causes harm to fellow employees, the GA administrator can easily justify a 120-day ineligibility period.

In cases where the alleged violation is less certain, the administrator may wish to consult the municipal attorney, MMA or other sources familiar with the legal concept of employee misconduct. For more guidance, a summary of selected cases regarding the issue of misconduct are found at Appendix 5.

Misconduct Defined

The definition of misconduct up until spring of 1999 contained a very difficult standard to meet, one which required that the employer prove that the employee committed an offense which "evinc[ed] such willful and wanton disregard of an employer's interest as is found in deliberate violations…of the employer's interest…" The definition of misconduct, after the Legislature's 1999 amendment, currently reads in part:

"Misconduct" means a culpable breach of the employee's duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer.

- The new definition of misconduct also contains a non-all-inclusive list of 14 acts or omissions which are "presumed to manifest a disregard for a material interest of the employer." Acts and omissions on the list include: Refusal, knowing failure or recurring neglect to perform reasonable and proper duties assigned by the employer;

- Unreasonable violation of rules that are reasonably imposed and communicated and equitably enforced;

- Failure to exercise due care for punctuality or attendance after warnings;

- Intoxication, illegal drug use or being under the influence while on duty or when reporting to work;

- Unauthorized sleeping while on duty;

- Insubordination or refusal without good cause to follow reasonable and proper instructions from the employer.

The new definition of misconduct (subpart B) however, contains several mitigating factors, which if established, could serve to overcome misconduct otherwise established. This part of the statute provides that misconduct cannot be found solely on:

1. An isolated error in judgment or failure to perform satisfactorily when the employee has made a good faith effort to perform the duties assigned;

2. Absenteeism caused by illness or the employee or an immediate family member if the employee made a reasonable effort to give notice of the absence and to comply with the employer's notification rules and policies; or

3. Actions taken by the employee, that were necessary, to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment.

As a result, municipalities analyzing misconduct for purposes of the work requirement under the GA program must be certain to review subpart B—the mitigating factors just mentioned—whenever performing a "misconduct" analysis. *(See Chapter 13, page 211 for a copy of the entire definition of misconduct—26 M.R.S. § 1043 (23).)*

Municipal Work-for-Welfare Program (Workfare)

In addition to requiring recipients to seek work in the private sector, the municipality also has the option of establishing a *workfare* program. The workfare program allows municipalities to require GA recipients to perform work for the municipality or a non-profit organization in return for any assistance they receive (§ 4316-A (2)). For a sample agreement governing workfare referrals between a municipality and a non-profit organization, see Appendix 7 and 12. Before a municipality can institute a workfare program, the municipal officers must adopt it as part of the GA ordinance. The MMA model GA ordinance contains language authorizing the operation of a workfare program. After its adoption the municipality can require physically and mentally able people to do work for the municipality. State law specifically exempts from workfare people who are incapable of performing the workfare assignment for reasons of mental or physical incapacity. Also exempted are people who must stay home to care for a child who is not yet in school, or for any ill or disabled member of the household.

Just Cause

Once a municipality adopts workfare, if a recipient refuses to participate in the workfare program or if he or she agrees and then willfully fails to complete the assignment or performs the work assignment below average standards *without just cause*, that individual is to be disqualified for 120 days. The just cause provisions are the same as those for the *"work requirements,"* (see the first page of this Chapter).

However, **no dependents in the household can be disqualified** *merely because another household member has not complied with the workfare requirement.*

Limitations

There are some limitations on how workfare is administered:

- In no case may a person be required to perform workfare prior to receiving assistance *when that person is in need of and eligible for **emergency** GA.*

- *No workfare assignment can interfere with a recipient's existing employment*. The MMA model GA ordinance captures this non-interference rule by limiting the total workfare assignment to ***40** hours per week*. Any hours of actual employment for which the recipient is scheduled to work would be subtracted from the workfare 40-hours per week maximum. Therefore if a person is working full-time, the administrator cannot require participation in the workfare program. If a person works part-time, for instance 15 hours a week, the maximum number of hours he or she could perform workfare would be 25 hours. If a person is also expected to search for work, the administrator should make sure there is adequate time to look for work.

- The number of hours a person must work is determined by the amount of assistance granted. *The number of hours is determined by dividing the amount of assistance granted by at least the minimum wage rate*. For instance, if a person received $100 for food and rent, he or she would have to work about 13 hours ($100 divided by $7.50—State Minimum Wage). *No person may be required to work more hours than the value of the assistance received*. *Furthermore, in no event may a person be required to work more than 40 hours.*

- Workfare, as well as the work requirement, cannot interfere with a recipient's existing employment, ability to attend a job interview, or participation in an education program intended to lead to a high school diploma. Further, it cannot interfere with participation in a training program approved or determined by the Department of Labor to be reasonably expected to help the individual get a job. Workfare must be arranged around people's schedules if they are in an approved training or educational program. However, no special allowances need to be made for college students who are not in a study program operated under the control of the Department of Health and Human Services or Department of Labor.

- *Workfare cannot be used as a way to replace regular municipal employees*. In other words, a town cannot fire employees or reduce their hours simply because it wanted workfare recipients to perform the same work.

- No recipient may be required to perform workfare for a non-profit organization if that *would violate a basic religious belief of the recipient*.

Background

Because workfare is one aspect of the work requirement that municipalities have the *option of adopting* and have virtually complete control over, it is important to examine it at greater length. Although working for welfare is a concept that has been around since the days of "poor farms," and later the WPA during the Depression, workfare as it is currently known was enacted by the Legislature at MMA's request in 1977. If administered responsibly and creatively, workfare can enhance the self-esteem of the GA recipients who are pleased that they are working for their assistance, while also helping the municipality get jobs done that might never have been accomplished. A workfare program can save the municipality money by discovering those people who don't really need GA and refuse to work. Most importantly, a workfare program can give GA recipients job skills, confidence and job references which could lead to permanent employment.

A workfare program will be successful if the municipality attempts to administer the program with the idea that workfare is a worthwhile program, not a punishment or just a way to decrease GA costs and end welfare fraud. The job assignment should be for work that the municipality truly needs done; that way recipients will know that their time is being spent meaningfully. "Make work" assignments should be avoided or minimized to the extent possible since these assignments usually result in poor performances by the recipients. Not all workfare assignments are going to be attractive or exciting to the recipients, but the administrator should stress that if the recipient performs well, the administrator or the site supervisor could be used as a job reference.

If a municipality establishes a workfare program, it is critical that the municipal employees cooperate. The municipal employees should be aware that they should treat the workfare recipients decently. The employees are also a good source for suggesting possible job assignments that they know need to be done but they can't get to at all or as soon as necessary.

Another way for municipalities to help their GA recipients is to encourage those without a high school diploma to return to school or take classes to receive their GED (Graduate Exam Diploma). Since a high school diploma is the key to many job opportunities, it makes sense for municipalities to waive the workfare requirement for recipients who agree to go to school, with the understanding that if they do not attend classes they will be assigned to do workfare. For more detailed discussion about implementing a workfare program, see Appendix 6.

Workfare First

Municipalities are authorized to withhold the issuance of *non-emergency* GA until the successful completion of a workfare assignment. It should be noted at the outset that "workfare-first" is not a requirement of law; the administrator may continue to administer the town's workfare program just as it has been administered in the past. Requiring applicants to work before their welfare is issued is a procedure that the administrator may use at his or her discretion. In other words, *a **"workfare-first" system** has been established as an option available to municipal GA administrators.*

The MMA model GA ordinance includes some guidelines governing this procedure and otherwise provide the necessary protections to the workfare participants. Those guidelines cover the following "workfare first" issues.

Workfare First Guidelines—Emergency GA

Under *no circumstance* may the administrator withhold the issuance of *emergency GA while a recipient is performing workfare*. This means that if an applicant is eligible for and in need of immediate assistance to alleviate a life-threatening situation or a situation posing a threat to health or safety, that amount of assistance will be immediately issued. A workfare assignment can still be created to cover the value of that emergency assistance. It is only the case that the *recipient of that assistance cannot be compelled to perform workfare **prior** to the assistance being issued.*

Workfare First Guidelines—A Description of the Grant of Assistance

Just because the law now authorizes a "workfare first" procedure does not mean that the eligibility determination process can be delayed until a person "proves" him or herself by working for the municipality. There has been absolutely no change in GA law with regard to an applicant's right to receive a written decision of eligibility within 24 hours of applying for assistance. Furthermore, if that grant of GA is to be granted on the condition that an assignment of workfare is first performed, that written decision must include enough specific information so that the recipient clearly understands his or her rights and responsibilities. To begin with, the recipient must be informed up front about the actual grant of assistance that will be issued upon the successful completion of the workfare assignment.

For example, a "workfare first" decision might read: "You have been found eligible to receive, upon the successful completion of the workfare assignment described below, $175 for October's rent in the form of a rental voucher to your landlord, $40 toward October's light bill issued to the utility company, and $50 for heating fuel issued to the local fuel oil dealer."

Workfare First Guidelines—Minimum Hourly Rate

No workfare participant can be required to work for the municipality more than the value of the grant of general assistance divided by the prevailing minimum wage. In calculating the duration of a workfare assignment, municipalities may use a workfare "wage rate" that is higher than the prevailing minimum wage. Whatever workfare rate the municipality elects to use in this calculation, the total value of the grant, the rate upon which the duration of the assignment is calculated, and the total number of hours of the workfare assignment that must be successfully completed before the issuance of the GA benefits must be clearly *spelled out* in any "workfare-first" decision. The participant has a right to understand the specific terms of such an agreement before assenting to those terms or, withdrawing his or her application for assistance.

It is important to keep in mind that there is always the possibility that under a "workfare first" arrangement the workfare participant will perform some of the workfare assignment, but not all of it. Hopefully, it is obvious that under that circumstance the workfare participant will be unconditionally eligible for an amount of GA that equals the number of hours successfully worked times the hourly rate by which the duration of the workfare assignment was calculated. It is for this reason that it is especially important that the applicable hourly rate is a matter of record.

Workfare First Guidelines—Description of Workfare Assignment

Another component of a complete workfare decision is a general description of the workfare assignment. It would be unreasonable to expect a person to enter into a workfare contract with the municipality without having any sense of what type of work the town expects the participant to perform. Whether the assignment will be (e.g., town's transfer station to sort recyclables, the town office for clerical-type duties, the Road Commissioner for road work, the library for painting, the school for janitorial work), a brief description of the job to be done should be provided the applicant in writing, along with: (1) the day or days of the assignments; (2) the work site; (3) the time of day the participant is expected to show up at the work site; (4) the supervisor or contact person; (5) the telephone number to call in the case of absence; and (6) in the case of "workfare first," the amount of workfare that must be successfully performed before the GA grant will be actually issued.

Workfare First Guidelines—Agreement to Perform Assignment

It is very important that all workfare participants agree in writing to perform the workfare assignment given them. The successful performance of a workfare assignment is a condition of eligibility, and some applicants may decide that they do not really need the GA they are

requesting given the workfare assignment they would have to perform in return. Those applicants should be given an opportunity to withdraw their application for assistance.

The way to determine any applicant's willingness to accept the workfare assignment is by asking that applicant to sign a workfare agreement form. MMA has such a form in its package of GA materials, and a copy of the MMA workfare agreement form is found at Appendix 7. If a person is unwilling to sign a workfare agreement form, the administrator should ask the applicant if he or she intends to withdraw the application for assistance. If so, a record of that withdrawal should be placed in the case file. If not, that applicant would be disqualified from receiving GA for 120 days for a refusal to perform a workfare assignment without just cause.

The need for "good" paperwork is demonstrated in the case where a person is given a "workfare first" assignment and never shows up at the job site. In one such case, the individual accepted the fact that the GA grant would be terminated, but objected to being also disqualified for 120 days, given the fact that the town had issued no assistance to him. It seems that the most straightforward way to deal with this circumstance is to make sure that before they are asked to sign a workfare agreement form, all workfare participants are clearly informed of the consequences of failing to perform the workfare assignment. If the workfare participant is provided this information, signs the workfare agreement form, and then fails to perform the workfare assignment, he or she would be unable to then claim that the non-performance should be construed as a *de facto* withdrawal of application.

Workfare First Guidelines—Consequences of Failing to Perform Assignment

As just discussed, the other important information that should be conveyed to all workfare participants, including "workfare first" participants, concerns the consequences of failing to perform the workfare assignment.

When a person is given a "workfare first" assignment, there are three possibilities. Hopefully, the participant will successfully perform the assignment and then be issued the assistance as granted. The entirely contrary possibility is that the participant will not show up for the assignment. The third possibility is that the participant will perform some of the workfare assignment, but not all of it.

Under any type of workfare assignment, when the participant fails to perform some or all of the assignment without just cause, that individual *shall be found ineligible to receive GA for a period of **120 days***. There is a procedure, discussed below, for that individual to regain his or her eligibility within the 120-day period, but the first procedural step after it has been

determined that the participant has failed to perform the workfare without just cause is the imposition of the 120-day ineligibility period.

In addition, when the workfare assignment is a "workfare first" assignment, the GA that was conditionally granted should be terminated after a participant has failed to perform the workfare assignment. *A **termination** of a grant of GA must be communicated to the recipient **in writing**, along with the recipient's appeal rights, just like a notification of ineligibility*.

When a participant simply fails to show up for the workfare assignment or has otherwise totally failed to perform the assignment, the notice of termination to the participant would read something to the effect:

> …the entire GA grant, conditionally granted on such-and-such a date, is being terminated for a complete failure to perform the workfare assignment, without just cause, as that assignment was described in the GA decision.

It gets a little more complicated when the participant performs some of the assignment satisfactorily, but fails to perform the entire assignment. In that case, the participant is unconditionally entitled to an amount of GA equal to the number of hours successfully worked times the workfare "wage rate" used to calculate the duration of the workfare assignment. The remaining amount of the original GA grant would be terminated, and a notice must be issued to the participant that clearly spells out the value of the GA being issued and the value of the GA being terminated, the reasons for the partial termination, and the workfare participant's appeal rights.

Workfare First—A Summary

Legislation enacted in 1993 authorizes—but does not require—municipalities to grant non-emergency GA benefits conditionally on the successful completion of a specific workfare assignment. In order to implement a "workfare first" procedure, GA administrators should clearly inform all "workfare first" participants about the grant of assistance being conditionally issued, the workfare assignment and when and where it is to be performed, the way in which the duration of the workfare assignment was calculated, and the consequences to the participant of entirely or partially failing to perform the assignment without just cause.

After being provided this information, the workfare participant should sign a form that establishes the participant's agreement to perform the assignment under the specified terms and conditions. This type of paperwork should be in place for any type of workfare program, either traditional workfare or "workfare first" assignments. The only practical difference is

that under "workfare first," there is a more likely possibility that a participant will successfully perform some part of a workfare assignment and yet not receive the GA benefits to which he or she would then be unconditionally entitled. This potential for claims against a municipality can be greatly reduced with a written record of quality.

Workers' Compensation

One troublesome aspect about workfare is the possibility of a recipient being injured while performing workfare. The question of whether workfare recipients are considered "employees" for the purpose of receiving Workers' Compensation was decided by the Maine Supreme Court in *Closson v. Town of Southwest Harbor,* 512 A.2d 1028 (Me. 1986). The Court held in *Closson* that the workfare requirement is imposed on a recipient *as a* ***condition for continued eligibility*** *and as there is no contract for hire, an applicant is* ***not entitled*** *to receive compensation for injury under the Workers' Compensation Act.* Therefore liability for injuries incurred during the course of a workfare assignment falls directly on the municipality.

Municipal liability for injured workfare recipients is certainly a cause for concern and something to be aware of. As a result, prior to establishing a workfare program, a critical step is to ensure that the municipality's general liability provider ***has expressly covered workfare participants under the municipality's general liability insurance policy!***

Next, it is important for administrators to attempt to match recipients with "appropriate" work assignments—jobs that match both the physical and mental abilities of the client. This is important for both reasons of fairness and safety. It would be unwise, for instance, for a municipality to assign a man with a bad back to woodcutting and hauling heavy brush, or a woman with heart problems to shovel snow. Also potentially too risky is the use of "power tools" in workfare assignments. But there are many jobs that do not require heavy work or power equipment: typing, filing, answering the phone, photocopying, sweeping, raking, etc.

One other critical aspect to remember is that ***all workfare recipients must be supervised.*** If a municipality doesn't have sufficient staff to supervise recipients it should not require people to do workfare.

This vigilance, which is warranted in the administration of a workfare program, should not put a damper on establishing or administering a workfare program provided that the municipality assigns people sensibly and takes the necessary precautions. In summary, with the proper doses of common sense and imagination the workfare program can be a benefit both to the municipality and the recipient.

Eligibility Regained

People who *violate the work requirement*, including workfare, can be found *ineligible for **120 days***. However, the statute does provide that people ***may** become eligible again during their 120-day disqualification* period "by becoming employed or otherwise complying with the work requirements." 22 M.R.S. § 4316-A (4).

Therefore, if an applicant fails to apply for employment at the local Maine Job Service office or fails to adequately or in good faith perform a "job search" which the administrator expressly required, that applicant could be disqualified from the program for 120 days. If a week later, the same applicant applied for GA and showed the administrator that all job search requirements had been met; he or she would regain eligibility and be back in the program.

The purpose of the work-related eligibility requirements is not to arbitrarily punish people. Instead, the work-related rules are designed to encourage people to make every effort to reduce or eliminate their reliance on public assistance. Therefore, if people are disqualified for refusing to look for work or otherwise fulfilling the work requirement, they may regain their eligibility if they comply with the requirements contained in the ordinance.

Eligibility Regained—Workfare Disqualification

Workfare participants who do not complete their assignment may also regain their eligibility. A 1991 amendment to § 4316-A(4) provides municipalities with the authority to limit the number of opportunities a workfare participant must be given to regain eligibility. The municipality is now required to provide ***only one opportunity** to a workfare participant to regain eligibility after a workfare failure*, but if the participant fails to take advantage of that single opportunity, without just cause, the municipality can refuse to provide subsequent opportunities to regain eligibility for the duration of the 120-day ineligibility period.

In spite of the 1991 amendment that limited participants to one single opportunity to regain eligibility, many welfare directors reported their frustration with some participants who would get disqualified for a workfare violation, regain their eligibility by taking advantage of the single opportunity provided to them, only to subsequently become disqualified shortly thereafter and expect yet another opportunity to regain eligibility. In response, a 1993 amendment to that same subsection of law was enacted that established a two-strikes-and-you're-out procedure. The 1993 amendment makes it clear that even if a workfare participant successfully regains his or her eligibility by taking advantage of the single opportunity to regain, but then commits yet another workfare violation within the 120-day window of the original ineligibility period, then the administrator shall issue a new 120-day ineligibility for

the subsequent failure, from which there is no opportunity to regain eligibility (*Second Example below*).

Example: Jimmy Roth received $255 in GA toward his rent. Jimmy was unemployed and appeared very willing to perform workfare. The administrator explained the program to Jimmy and secured his signature on a workfare agreement form. Jimmy was assigned work at the town's recycling facility for 7.5 hours for Saturday and Sunday of each weekend for a total assignment of 60 hours for the next 30 days. The administrator gave Jimmy clear instructions in writing to call the town office if for any reason he would not be able to perform his assignment.

On the first Saturday, Jimmy showed up on time but complained all day long to everyone within hearing distance about the work assignment. He did not show up the next day and he did not call the designated supervisor as he had been instructed. After being informed about Jimmy's failure to do his Sunday workfare, the administrator sent Jimmy a notice of ineligibility in the mail that formally disqualified Jimmy from receiving GA for the 120-day period commencing on the first day after the current period of eligibility—for which he had already received assistance—was over. Jimmy didn't respond to the notice of ineligibility.

Five weeks later Jimmy applied for GA to cure an eviction notice. The administrator explained to Jimmy that he was disqualified and therefore ineligible to receive any form of GA while disqualified. The administrator further explained that Jimmy had one single opportunity to regain his eligibility. Jimmy said that he wanted the single opportunity, and he was assigned to work the next available day at the transfer station. He put in a good day's work and was readmitted into the GA program. Because Jimmy took himself out of the GA program for five weeks, the administrator limited his assistance to his deficit only. His request for more assistance than his deficit was denied because he could have averted the eviction emergency had he made more appropriate use of his resources; namely, General Assistance. Fortunately, Jimmy was able to work out a deal with his landlord to avoid eviction. Because of his uneven work history with the town, the administrator began limiting Jimmy to 7-days' worth of GA at a time for a couple of months with weekly workfare assignments, but Jimmy never again violated his workfare agreement.

Example: George Bodwell failed to show up at the High School on October 1, 2000 for his workfare assignment and he offered no excuse except that he had "girlfriend problems." The administrator disqualified George for 120 days, or until January 28, 2001.

In mid-November George reapplied for GA for some heating fuel because he was nearly out. After being reminded of his ineligibility, George said that he wanted to get back in the program and was willing to perform the workfare assignment. The administrator informed George that he would have to successfully perform the workfare assignment before he could become eligible for assistance. George said his lawyer told him that the town could not withhold emergency assistance while a person did a workfare assignment. The administrator explained that the law regarding the withholding of emergency GA pending workfare performance applied only to people who were eligible for GA, and until George made up the workfare assignment, he was categorically ineligible for any type of GA.

George agreed to perform the assignment, went to the High School that evening and the next, completely caught up on his workfare assignment, and regained his eligibility. The fuel oil was provided, as well as some food and personal care assistance that George requested.

A month later, on December 15, George again applied for GA, this time for rent. The administrator granted George the assistance he was eligible for and gave him a workfare assignment, this time at the Public Works garage. The Road Commissioner called the administrator the next day to let her know that George stopped by the garage just long enough to tell anyone that would listen that "there was no way he was going to do anything for the stupid town."

Because this second violation of workfare fell within the original 120-day disqualification period (October 1 through January 28), the administrator formally disqualified George for a new 120-day period, from December 16 through April 15, and that he would be given no opportunity to regain his eligibility during that period of time. Had George's second workfare violation occurred after the original 120-day period of ineligibility (i.e., sometime after January 28), he would still be disqualified, but a single opportunity to regain eligibility would be available to him.

Workfare & Recovery

In the *Closson* decision cited above, the Maine Supreme Court characterized the essential purpose of workfare as a GA program requirement to secure a recipient's future eligibility for GA rather than an exchange of service for compensation or remuneration. On the other hand, workfare participants do contribute their labor at a rate which is designed by law to at least conform to the prevailing minimum wage. To be in compliance with DHHS's record-keeping requirements, a careful record should be kept of all GA which a participant "works off" satisfactorily. In addition, as a matter of fairness, the workfare participant should be informed that the municipality will not be seeking recovery for the portion of the assistance "worked

off" (i.e., workfare performed). *(For further discussion on the issue of "Recovery of Expenses" see Chapter 8.)*

As a related issue, a municipality, which has issued GA for a mortgage or capital improvement payment, may place a lien on that property *(see "Mortgages," see Chapter 7)*. The municipality must deduct from the lien amount any satisfactorily performed workfare *(at a rate of at least minimum wage)* and formally discharge the lien if and when the entire value of the mortgage assistance has been worked off.

SSI Interim Assistance Agreements

The Department of Health and Human Services is authorized to recover GA issued to a recipient who is waiting for the determination of SSI eligibility. Under the terms of the so-called SSI "Interim Assistance Agreement" program that has been instituted between the state and federal governments, any GA that has been issued to a person who has applied for SSI and is waiting for a determination of eligibility may be recovered from that person's initial, retroactive SSI check if such a check is subsequently issued by the Social Security Administration to the individual. The way this process works, the retroactive SSI check is mailed directly to DHHS instead of the recipient, and DHHS has ten days to remove from that check any amount of GA that was issued to the recipient after the date he or she was found to be disabled and therefore, eligible for SSI. DHHS reimburses the municipality their portion and the remainder of the retroactive check is then immediately sent to the SSI recipient.

NOTE: Due to two 1998 cases, Coker v. City of Lewiston, 1998 Me. 93 and Thompson et al., v. Commissioner, Department of Health and Human Services and City of Lewiston (CV-94-509, Me. Super. Ct., Ken., August 28, 1998), DHHS policy currently requires that the value (calculated at a rate of at least minimum wage) of any workfare performed by the GA recipient be subtracted or offset from any refund due to the municipality.

Use of Potential Resources

In addition to fulfilling the work requirement, applicants are required to utilize ***any*** *resource that will help reduce their need for GA (§ 4317).* Resources include any state or federal assistance program such as TANF, food supplement benefit, or fuel assistance; unemployment compensation benefits; support from legally liable relatives (parents of children under 25 and spouses), and any other program or source of assistance *(see Appendix 11 for a partial list of other potential resources).*

Written Notice

After a person files an initial application the administrator must state in the written decision what potential resources the applicant is required to attempt to obtain as a condition of receiving future assistance. *The recipient must be given at least **seven days** to secure the resource.*

Eligible applicants cannot be denied assistance while they are waiting to receive the resource. However, if they do not attempt to secure the resource and they don't have a good reason (just cause) for not attempting to obtain the resource, *they **can be disqualified** until they do make a **good faith** effort to utilize the resource.*

It is important to distinguish *potential* resources from *available* resources. A potential resource is something that may or may not be available to the recipient at some point in the foreseeable future, while an available resource is something that is available to reduce or eliminate a person's need at the time of application or in a timely manner to meet the need.

For example, Phil Johnson had an $800 savings account. He was temporarily laid off from work and he didn't want to deplete his savings, so he applied for GA when he needed fuel and food. Phil had an *available resource*, his bank account. All he had to do was go to the bank and withdraw the necessary funds.

This is different from Ingrid Kimball's case. Her husband left her and their two children three days ago. Ingrid was not working and had no money so she applied for GA. The administrator told Ingrid that she was eligible but she would have to apply for TANF, food supplement benefit, fuel assistance, and attempt to receive support (using DHHS's Child Support Enforcement Unit if necessary) from her husband who had a very well-paying job. The administrator gave Ingrid these instructions in writing and told her that if she failed to follow through on these requirements, she would be ineligible until she did so.

In Ingrid's case, even though she was eligible for the other various sources of assistance, they were not available to her at the time she sought GA. She would have to fill out applications for these programs and there would be a waiting period while her applications were processed. In the case of support from her husband, even though he had money available to help Ingrid and her children, if he did not voluntarily give her any support his income was not *actually available* and Ingrid would have to initiate legal action against him. Ingrid was entitled to a seven-day written notice to attempt to secure these potential resources.

Available Charities

Two Superior Court cases in 1987 and 1988 have clarified the issue regarding the municipality's ability to require clients to use local charities. In *Fjeld v. City of Lewiston*, Androscoggin County #CV-87-4, the Court ruled that it was not permissible under §§ 4317 for Lewiston to refer the applicant to the Hope Haven Gospel Mission for his shelter needs.

The Court found that the Mission, in its regular operation, attempted to influence the religious beliefs of its clients. The Court further found that the applicant was generally uncomfortable with and unwilling to undergo the religious persuasion. Therefore, the Court found that the *Mission was a resource that **was not** available to the applicant.*

In *Bolduc v. City of Lewiston*, Androscoggin County #CV-87-248, the Court went even further. In *Bolduc* it was decided that because the Legislature had expressly eliminated "charitable resources" from the list of "potential resources" in § 4317, a *municipality **could not** require applicants to utilize charitable resources*.

The Court found that the list of "potential resources" in § 4317 were all resources "to which the applicant is legally entitled by statute, contract, or court order." When *Fjeld* and *Bolduc* are considered together, it is apparent that *municipalities **cannot avoid granting the GA** for which the applicants are eligible by referring the applicants to private charities **unless the applicants are willing** to utilize the charities **or** the municipality has established a contractual relationship with the charities by paying for the service the charity provides.*

It is highly advisable, therefore, for municipal officials to get together with local charitable organizations in order to develop agreements whereby the municipality can utilize the charity's services in exchange for either core lump sum funding or pre-arranged per-diem or per-unit rates, or both. Obviously, part of those agreements would prohibit the charity from requiring any religious observance or affiliation, or otherwise violating the recipient's constitutional rights.

Rehabilitation Services

Applicants who have physical or mental disabilities can be ***required** to take advantage of any medical or rehabilitative resources* that are recommended by a physician, psychologist, or other retraining or rehabilitation specialist.

For example, Delores Cote was working as a waitress until she was in a car accident. As a result of the accident she was out of work for three months and received GA during that time.

Finally, the doctor told Ms. Cote that she could go to work *provided* that she was not on her feet more than four hours a day and didn't lift heavy objects. He told her explicitly that she could not be a waitress. When she reapplied for assistance, Ms. Cote told the GA administrator what the doctor had said. The administrator informed Ms. Cote that she must start looking for work. Ms. Cote said she wasn't trained to be anything but a waitress. The administrator told her to sign up for vocational rehabilitation so that she could receive education and training to help her find a job. Ms. Cote did not have her high school diploma and was embarrassed at the thought of having to be trained at her age, but she told the administrator that she would sign up for training. When she applied the following week, she had not gone to the vocational rehabilitation office. The administrator disqualified Ms. Cote until she did apply. The following day, Ms. Cote mustered her courage to talk with a worker at the vocational rehabilitation office. Ms. Cote took some aptitude tests that showed that she had an aptitude for working with computers. A new training session would be starting in six weeks and she signed up to be a member of that class. That same day she went to provide the GA administrator proof that she went to the vocational rehabilitation office and that she would be attending the training session and as a result, the administrator completed a new application and granted Ms. Cote assistance.

Forfeiture of Other Program Benefits—Coordination with GA

Maine law states that not only are applicants responsible for using **any** available or potential resource that will diminish their need for GA, but they **cannot** receive GA to replace any public benefits they had received but then lost due to fraud or an intentional violation of the program rules.

For instance, Jolene Brown had been receiving GA plus $80 a week in VA benefits. Later she was disqualified from receiving his VA benefit because of fraud. Jolene applied for GA, as usual, and informed the administrator that she had lost her VA benefit. The administrator called the Veterans Administration to find out why she had lost the benefit. When she determined that Jolene had committed fraud, the administrator informed her that she would not receive GA to replace the lost VA benefit. She would receive the same amount of GA benefits as she had received in the past but she would have a total of $80 less a week (her lost VA benefit) to live on. In other words, the administrator **included** the amount of the lost VA benefit as part of the household income as if she were in fact still receiving them. In the future, the administrator will continue to consider Jolene's lost benefits as available to her for as long as she does not receive them.

It should be noted that there are many reasons why the benefit levels distributed by other programs are reduced. Many if not most of those reductions in benefits are for reasons that

are not associated with any fraud or acts of bad faith on the part of the recipient. The way the GA law dealing with forfeiture of income reads (§ 4317, third paragraph), the recipient has forfeited income if the reason for the benefit reduction in the other assistance program was caused by "fraud, misrepresentation or a knowing or intentional violation of program rules, or a refusal to comply with program rules without just cause." Municipal GA administrators, therefore, should be very careful not to jump to the conclusion that a reduction in TANF benefit, for example, for reason of "overpayment" is necessarily a forfeiture of income. It frequently requires some communication with DHHS or whatever agency is issuing the benefits to determine if the reduction in benefit was caused by client bad faith.

It should also be noted that this sanction applies primarily to fraud or other acts of bad faith committed with regard to other public assistance programs, such as TANF or SSI. Fraud committed in the GA program is discussed immediately below.

Fraud

Any person who commits fraud in an effort to receive GA faces two possible penalties:

- he or she will be *ineligible for assistance for **120 days*** and will be required to *reimburse the municipality* for the assistance he/she was not entitled to receive; and

- he or she may *be prosecuted for committing a **Class E crime*** which carries a penalty of a maximum $500 fine and a prison sentence not to exceed 1 year.

It is a case of fraud when anyone **"knowingly and willfully"** makes a false statement of a **material fact** for the purpose of causing himself or any other person to be eligible for GA (§ 4315).

"Knowingly & Willfully" Standard

This standard of "knowingly and willfully" is a very difficult standard to meet as evidenced by an April 1997, Maine Supreme Court decision, *Ranco v. City of Bangor*, 1997 Me. 65. In *Ranco*, GA recipients who had been disqualified from eligibility for 120 days for violating the GA statute's 'false representation' provision, appealed the determination and the Bangor operations committee (FHA) upheld the disqualification. The FHA's determination was vacated upon appeal to the Superior Court by the Rancos and the City of Bangor consequently appealed to the Supreme Court.

The issue in *Ranco* was whether the standard of "knowingly and willfully" was satisfied by the Rancos omitting information on their GA application regarding the existence of a house guest, who was residing in their home. While a house guest of the Rancos', the house guest himself applied for GA with the assistance of Cindy Ranco, subsequent to the Ranco's application. The city asserted the argument that the recipient's specific purpose in failing to disclose the house guest's presence was to preserve their potential eligibility for benefits afforded to separate one and two person households instead of the lesser amount allowed to a three person household.

The Supreme Court held that there was "no indication that (the house guest) attempted to or was counseled to attempt to become qualified for the higher amount." The fact that the representations made by applicants during the interviews were made for the purpose of obtaining a larger amount of GA was according to Court, "not supported by the record."

Material Fact

A material fact is any information that has a ***direct*** *bearing on the applicant's eligibility for GA.* For example, if an applicant didn't disclose that he was receiving unemployment compensation that would be fraud. However, if an applicant reported that he had been out of work for six months, but it had really been nine months, that misinformation doesn't necessarily have a direct bearing on his eligibility therefore it would not be considered fraud.

If the GA administrator believes a person has committed fraud, the administrator cannot deny the request for assistance solely because an applicant made a false statement *without* ***first*** *giving the applicant an opportunity to appeal the decision to the Fair Hearing Authority.*

In practice, the administrator usually discovers fraud after assistance has been granted since if a person made a false representation on the application and the administrator discovered it prior to rendering a decision during the 24-hour period, the administrator would deny the request if there was no need, or grant only a portion of the assistance the person was eligible for plus disqualify the applicant due to fraud (first example below).

However, if a person's request for GA was approved and the administrator later discovered that the recipient had committed fraud, the administrator would be required to notify the recipient that his assistance would be terminated but that the recipient could appeal the decision prior to the termination (second example below). Remember that *even if a household member is disqualified, eligible dependents* ***may*** *receive GA* (third example below).

Example: Michael Martin applied for assistance in Montville. He said he had recently moved from Holden. He told the administrator that he had been unemployed for over a year and his unemployment compensation had expired a month ago. Although he collected food stamps, he received no income. He requested help with rent and utilities. The administrator informed Mike of the various specific sources that would be contacted to verify his application, and told him to return the next day for the decision on his request.

After he left, the administrator called the GA administrator in Holden to find out if Mike had received GA there and to verify the information on the application. The Holden administrator said Mike had left Holden seven months earlier because he said he had been hired to work at the K-Mart in Montville. The administrator contacted K-Mart to determine if Mike was working there. The store manager confirmed that Mike started working there seven months ago. The manager also volunteered that he was a very diligent employee and earned $8.00 an hour.

When Mike returned the next day for the decision on his request for assistance, the administrator questioned him again about his assertion that he had no income. Mike said he did not, but he was hopeful about finding a job. The administrator then denied Mike's request for assistance because his income exceeded the maximum levels. The administrator also disqualified him for 120 days for fraud because he had knowingly and willfully made false representations. The administrator told Mike he had the right to appeal the decision, and provided Mike with the Town's decision in writing.

Example: Greg Thompson had been receiving GA for nearly a year. He said he had no income because he was disabled and his attempts to receive SSI had failed. However, the administrator was suspicious because she noticed that Greg always seemed to be in restaurants or at social gatherings. Finally the administrator decided to send inquiries to a number of state and federal social service agencies to see if there was anything they could do for Greg. One day the administrator received a call from the Veterans Administration (VA) and learned that Greg had been collecting over $200 a month from the VA for the past three years.

The administrator notified Greg that she had learned that he was receiving an income; that he would be disqualified from receiving GA for 120 days; that he would have to repay the assistance he was not entitled to receive; and that he had the right to appeal the decision to the Fair Hearing Authority. The administrator could not revoke, or terminate any GA which had been issued to Greg, however, until he had the opportunity for a fair hearing. Again, a

written decision describing the municipality's decision and Greg's right to appeal was provided to the applicant.

Example: Mary Jo Harris and her two children recently moved to Sullivan. She told the GA administrator that she received the food supplement benefit and $418 in TANF, but she used her entire TANF to pay the security deposit and part of the first month's rent. She requested GA to pay the balance of the rent; she also needed personal supplies. Mary Jo had received GA when she lived in Eastport so she knew she had to present documentation to the administrator. Based on all the information she presented, the administrator granted Mary Jo's request.

Later, the administrator learned that Mary Jo lived with a man and his two children, and that he was working. Because she had not reported this, the administrator wrote to Mary Jo, confronted her with this information, said she would be disqualified from receiving assistance for 120 days, said she would have to repay the town for the amount of assistance she was not entitled to receive, and informed her that she could appeal to the Fair Hearing Authority.

Mary Jo appealed the decision. The FHA denied her appeal because she had committed fraud by not reporting other household members and income. *Even though Mary Jo was disqualified, however, the children **might** be eligible for assistance depending on the household's income and expenses.*

Repayment

Once the Fair Hearing Authority determines that a recipient has committed fraud, the recipient is required to repay the municipality for the amount of assistance he or she was not eligible to receive. Recipients will not necessarily be required to repay the entire amount they received but only the amount they were not entitled to receive.

For instance, Roberta Violette reported $100 income and $500 expenses. Roberta's unmet need was $400, but because her deficit was calculated at only $208 (overall maximum of $308 minus $100 income), $208 worth of GA was issued to Roberta's landlord. During the course of some follow-up verification, the administrator learned that Roberta actually received a 30-day income of $250. The administrator disqualified her for fraud and she requested a fair hearing. The Fair Hearing Authority reaffirmed Roberta's 120-day disqualification and ordered her to repay. The Fair Hearing Officer calculated the repayment requirement at $150 after finding that Roberta received $208 in GA but was only eligible to receive her deficit of $58 ($208 minus $58 = $150).

Period of Ineligibility

Once it is determined that a person has committed fraud, the administrator should immediately disqualify the applicant from receiving assistance for 120 days. A common question concerns how to determine when the period of ineligibility commences. *Because **no one** can be denied assistance or have his/her assistance terminated solely for committing fraud, **prior** to being given an opportunity to appeal the disqualification to the Fair Hearing Authority*, the disqualification period begins:

1. the day after the person's right to appeal the disqualification ends (i.e. on the fifth working day after a person has received notice that he or she can appeal the decision); or

2. the day the Fair Hearing Authority renders its decision that the person has committed fraud; or

3. if the period covered by a GA grant has not ended by the time the recipient's right to appeal the decision has expired or by the time the Fair Hearing Authority renders its decision, the 120 day disqualification period commences the last day of the grant period.

Example: Steve had received assistance over the past three months. He told the administrator that he had been laid-off. Later the administrator learned that he had been working regularly since he was laid off, but was receiving his pay under the table. Steve was no longer receiving assistance, nevertheless the administrator notified him that he had to repay the assistance, that he would be ineligible to receive assistance for 120 days, and that he had a right to appeal the decision by September 9 (which was five working days from the date he received the written decision from the administrator).

Steve did not request a fair hearing by September 9; therefore, because he was not receiving assistance currently, his 120-day disqualification period started September 10, the day after his appeal rights expired.

Example: Betsy Bowden received a week's worth of food and one week's rent three weeks ago. The GA administrator in Mexico notified her that because she had committed fraud she would be ineligible for GA for 120 days. The administrator informed her of her rights and Betsy appealed. The Fair Hearing Authority confirmed the finding of fraud and issued its decision April 17. Betsy was ineligible for 120 days starting April 17, since the one-week period her GA grant covered had passed.

Example: On May 1, Margie Wren and her two children received a month's worth of rent, food, fuel and personal supplies. Ten days after granting the request the GA administrator discovered that Margie had committed fraud. He notified Margie and informed her of her right to appeal. Margie appealed that day. On May 16, the Fair Hearing Authority rendered its decision that Margie had committed fraud. Because Margie had received assistance for the entire month of May; however, her 120-day disqualification period did not start until June 1, the first day not covered by the month's worth of assistance already issued.

Further Appeal

The claimant may appeal any decision made by the Fair Hearing Authority to the Maine Superior Court, pursuant to Rule 80B of the Maine Rules of Civil Procedure. 22 M.R.S. § 4315.

Fraud Committed by Non-Applicants

Any person who knowingly and willfully makes a false representation for the **purpose** of causing a person applying for GA to be granted assistance is guilty of a Class E crime. For instance, if the administrator called a relative, co-worker, or landlord to verify the information provided by the applicant in accordance with verification procedures, and that third party lied to cover the applicant's false information, that third party could be prosecuted for fraud along with the applicant.

Unemployment Fraud

22 M.R.S. §§ 4317 is the statute that governs the use of potential resources other than GA. Consistent with this statute, an individual who is declared ineligible for unemployment compensation benefits because of a finding of fraud by the Maine Department of Labor pursuant to 26 M.R.S. § 1051(1) is ineligible to receive General Assistance to replace the lost unemployment benefits. The duration of the forfeiture of unemployment benefits is established by the Department of Labor and it is this period of time that the GA administrator should use when calculating benefits. To be clear, unemployment benefits will be considered as available to a client in calculating GA benefits when the client has lost unemployment benefits due to fraud.

CHAPTER 4 – Dependents

The GA law imposes eligibility conditions on recipients that they must fulfill if they expect to receive further assistance. However, the law also provides that *dependents who can't care for themselves will be eligible even if a household member is disqualified.* Dependents are members of the household who are not capable of working such as:

- dependent minor children;
- ill, elderly or disabled person;
- a person whose presence is required in order to provide care for a child under six years old, or for an ill or disabled household member. 22 M.R.S. § 4309(3).

There is a distinction between "failure to comply with the law" and being "ineligible" for assistance because the household has adequate income. If the responsible adults of the household violate the law and are found *"ineligible"* for not fulfilling the work requirement, not attempting to obtain potential resources, committing fraud, or because they are fugitives from justice, their dependents are eligible if there is insufficient household income to meet the dependents' needs, in accordance with the ordinance maximums. This section does not apply to households that have sufficient income and are ineligible because there is no need. The dependents would not be eligible to receive assistance except in unavoidable emergency situations.

Example: John and Liz York and their three children ages three, five and seven have been receiving assistance off and on during the last several months. Liz has not worked because she had to care for her children; John worked pumping gas at a service station. John decided to quit work because he was frustrated over his "dead-end" job. When he applied for assistance the administrator disqualified John for 120 days because he quit his job without "just cause." The administrator granted assistance to Liz and the three children for one week because they were dependents. The amount of assistance was based on a family of five, less the pro-rata share of the disqualified person (John). However, the administrator said that since John wasn't working, he could take care of the children and Liz would have to fulfill the work requirement, including workfare. If John found work he would regain his eligibility.

Although Liz agreed to do workfare, she never showed up to work. The administrator disqualified Liz, in addition to John, because she didn't have just cause for not doing workfare. Even though Liz and John were both disqualified the administrator had to assist the three young children.

In the case of Liz and John the household continued to receive GA even though it was a reduced amount (for a household five, reduced by the pro-rata share of the two disqualified individuals (John and Liz). Although the assistance was intended solely for the children, obviously their parents could benefit from it. The intent behind this section of the law, however, is to penalize the parents without making the children suffer for their parents' actions by being deprived of their assistance.

Example: Sandra Mitchell takes care of her 73-year-old mother who has Alzheimer's disease. Sandra is healthy and could work but she has to stay home to care for her mother since Sandra can't afford to pay someone else to care for her. Sandra and her mother are eligible, even though Sandra is able to work, because she is the only person available to care for her mother.

Example: George Lowe and his 17-year-old son, Michael, live in Lincoln. The Lowes had received assistance for about eight months. When classes ended in June for summer vacation, the administrator told Michael that he would have to get a summer job or do workfare. Michael refused saying he was on vacation from school and he shouldn't have to work. The administrator disqualified Michael because he was able to work but refused to work without just cause. His father continued to be eligible.

When determining eligibility of the household members who are not disqualified, the administrator should keep the overall maximum and category maximum at the same level but reduce that amount by the share of the disqualified person. Take, for example, a household of four where one member is disqualified for 120 days for committing fraud. They have no income and are requesting help with their $500 a month rent. The overall maximum for a household of four is $800. Only three quarters of the household is eligible to receive assistance so therefore the overall maximum would be 3/4 of $800 = $600. They would qualify for 3/4 of the rental expense, their rental eligibility would be 3/4 of $500 = $375.00.

Liability of Relatives

Maine law had long required that relatives be liable for the support of members of their family. Parents and grandparents who were *financially able* were considered a resource and were expected to support their children or grandchildren *regardless of their ages.* In fact, up until 1984, the obligation of relatives to support each other was a two-way street; children and grandchildren were expected to support their elders when necessary. The Legislature eliminated the responsibility of children and grandchildren to care for their elders in 1984—except with respect to funeral expenses *(P.L. 1983, ch. 701, 22 M.R.S. §§ 4313, 4319)*. And in 1989, the Legislature limited the liability of support to only the parents of children under the age of 21—again, except in the area of burial expenses *(P.L. 1989, ch. 370)*.

The most recent development in the evolution of a parent's financial liability for the support of his or her children, as that responsibility coordinates with the GA program, was enacted on June 30, 1993. In a partial return to pre-1989 parental liability for support, *GA law now establishes a parental liability for support for **any** applicant applying independently who is less than **25 years of age**. Furthermore, a **spouse's liability** for support is also clearly established.*

Other relatives—brothers, sisters, aunts, uncles, cousins, parents of applicants over 25 years of age, etc.—are not legally liable for each other's support but should be encouraged to help their relatives to the best of their ability.

There are four sections in the state law which pertain—directly or indirectly—to the liability of relatives:

- § 4309(4) (Eligibility of minors who are parents)
- § 4319 (Liability of relatives)
- § 4317 (Use of potential resources)
- § 4313(2) (Burial and cremation responsibilities of legally liable relatives)

§ 4309(4)

In 1991, the Legislature inserted into both AFDC (now TANF) law and GA law a provision which was intended to address a design of AFDC law which, unintentionally, was providing an incentive for young AFDC mothers or mothers-to-be to leave the homes of their parents in order to receive AFDC benefits. In GA law, that provision is now found at § 4309(4). It provides that *as a general rule minors who don't live with parents or guardians are **completely ineligible** to receive GA **if*** they are:

1. 17 years of age or younger;
2. have never been married; and
3. have dependent children, or are pregnant.

As is often the case in GA law, this general rule has a number of exceptions. Those exceptions are when a minor is otherwise eligible and:

- when such a minor is living in a foster home, maternity home or other "adult-supervised supportive living arrangement";

- when the minor's parents are not living or their whereabouts are unknown;

- when the minor's parents are unwilling to permit the minor to live in their home;

- when the minor has lived independently of the parents for at least one year prior to the birth of any dependent child;

- when DHHS determines that the minor or the minor's children would be jeopardized by living with the minor's parents; or

- when DHHS determines, in accordance with DHHS regulation, that the general ineligibility for GA should be waived.

Furthermore, the general rule of ineligibility must be waived whenever the minor's parents verify that their child had been living independently from them for a year prior to the birth of the minor's dependent child.

Finally, DHHS has the authority to require the town to provide the minor with GA after making a finding that the minor or her child would be jeopardized if found ineligible. The law expressly gives DHHS the responsibility of making the determination of jeopardy; therefore, the municipal administrator should seek DHHS advice or inform the minor applicant that she may seek DHHS intervention whenever the issue of jeopardy arises.

§ 4319

This provision of law now requires that parents provide support to their children **under the age of 25**, and that **spouses** support each other "in proportion to their respective ability." As an aside, parents remain responsible for their "emancipated" children under GA standards. In certain circumstances, the parental liability to support a minor or young adult applicant can lead to a denial of that applicant's GA request on the grounds that the applicant has "no need."

Generally, however, this section of law merely allows a municipality to recover the cost of assisting a person by suing the parent(s) or spouse in any court of competent jurisdiction, such as Small Claims Court, if the parents or spouse refuse to help their relatives. (Keep in mind that in order for the suit to be successful, the liable relatives must be financially able to contribute and either reside in or own property in Maine.)

If such a suit is brought, the court can summon the relatives and order them to repay the municipality which has expended money for their relatives' support. If the court determines that the relatives who are sued had sufficient financial ability to support their relatives, the court could require them to pay a "reasonable sum" to reimburse the town. The suit can recover only those expenditures made during the previous 12 months. Therefore, if Albion had granted assistance to Mr. and Mrs. Decker's daughter during the past 18 months, the most the municipality could recover would be expenses made during the prior 12 months, not the entire 18-month period.

The Enforcement of Parental Liability

An administrator cannot assume that parents are providing appropriate support to their children merely because they are required to do so by law. First of all, parents are only obligated to support their children under GA law "in proportion to their respective ability." Therefore, if the parents are impoverished, their support for independent minor or young adult children cannot be required. Furthermore, it may be the case that the parents are financially able to provide the necessary support, but for one reason or another they are not providing it.

§ 4319 does not allow administrators to flatly deny applications made by minors or young adults or otherwise reduce the levels of assistance for which such an applicant may be eligible on the grounds that the parents are legally required to support the minor. As discussed above, the process envisioned by § 4319 is primarily a process of recovery.

With this in mind, when a minor or young adult applies for GA, the administrator should make at least two determinations. First, are the applicant's parents willing and able to provide their children with his/her basic necessities? If this is the case, and the administrator has no reason to suspect that the parental home is a dangerous or unhealthy environment for the child, then the minor's application could be denied on the basis of "no need."

However, if either the minor or the minor's parents are able to contribute sufficient evidence to suggest that the parental home is not available to the minor because of space problems, lack of resources, because the parents threw the child out of the house, or because of suspected emotional or physical child abuse, the administrator should process the minor's application in essentially the same manner as an adult's application.

At this point, the second determination should be made, which is whether the minor's parents *are financially capable* (i.e., are they are employed, do they have adequate discretionary income, do they own significant assets, are they on public assistance, etc.). If a determination is made that the parents are financially capable of providing support, the municipality should

notify the parents of their financial responsibility to provide for their child under the GA program. If necessary, parents should be informed that the municipality will seek to collect any assistance granted to their child through civil action (e.g., small claims court) if the parent does not comply.

Obviously, the financial issue of parental liability is not the only issue regarding GA and minors which concerns administrators. Many GA administrators are reluctant to grant assistance to minors that enable the minors to live in potentially unstable or unhealthy circumstances. In 1989, the Maine Welfare Directors' Association and Pine Tree Legal Assistance coordinated their efforts in a piece of legislation which would have provided some fundamental case management to minors receiving GA through the Department of Health and Human Services. That legislative initiative was killed because of the price tag attached.

Minors, GA & Municipal Liability

Another major concern shared by administrators is the perception that the municipality or the administrators personally could be held liable in the event their granting of assistance somehow led to or contributed to the minor's injury or death. Actually, this concern is unfounded.

The Maine Tort Claims Act (14 M.R.S. § 8101 et seq.) provides ample protection from such liability. For example, 14 M.R.S. § 8111 holds in part that "[t]he absolute immunity [from personal civil liability]...shall be available to all governmental employees, including police officers and governmental employees involved in child welfare cases, who are required to exercise judgment or discretion in performing their official duties."

As a supplement to this provision of immunity in Title 14, in 1991 the Legislature amended § 4318 in Title 22 to read "a municipality that provides general assistance to a minor is absolutely immune from suit on any Tort Claims seeking recovery or damages by or on behalf of the minor recipient in connection with the provision of general assistance."

Rental Payments to Relatives

The Legislature established in 1989 that a municipality has no legal obligation under GA law to provide a rental payment to an applicant's parents (§ 4319(2)). This authority to deny a request for a rental payment to a parent was expanded in 1991 so that an administrator may now **choose** not to make a rental payment to the applicant's parents, grandparents, child, grandchild, sibling, parent's sibling or any of those relatives' children.

Under this section of GA law, the administrator may choose to deny the request for rental assistance to a relative-landlord regardless of the age of the GA applicant and regardless of whether the relative-landlord lives in the same home as the applicant or lives elsewhere. As is usually the case with GA law, there is an exception to the general rule authorizing the denial of rental assistance paid to relatives.

The exception is if the rental relationship between the applicant and the applicant's relative was **three months old or older and the relatives can demonstrate eligibility** for GA if the applicant's rent were not paid to them. It is only when **both** of these two standards are met that the administrator would have to consider paying the rent to the relatives in accordance with standard eligibility criteria.

§ 4317

While § 4319 applies primarily to liable relatives who refuse to support their dependents, § 4317, the section of law making applicants responsible for securing "potential resources," pertains to parents or spouses who are both able and willing to help their relatives. Section 4317 requires applicants to *utilize **any resource** which would reduce or eliminate their need for GA.*

Liable relatives are considered "potential resources" for the purpose of this section, and the GA applicant would be required in writing to make a good faith effort to secure the liable relative's direct assistance. At the point in time the liable relative expressed a willingness to provide direct support, that relative would become an "available resource," and the applicant's need for GA would evaporate. *If the relatives are not both able and willing to provide direct assistance, the applicant **cannot** be penalized for failing to make use of the resource.*

Example: Nineteen-year-old Rebecca Golden was angry at her parents because they complained about the way she smoked and stayed out at night. Although she had been looking for a job for weeks, Rebecca hadn't found one. However, she couldn't stand living with her parents any longer, so Rebecca went to the town office to apply for GA to help her move. The administrator denied her request because Rebecca's parents said they were willing to have her live at home, and Rebecca had no need for shelter.

Example: Twenty year old Gary Beaulieu had been employed at a paper mill until two months ago when he was laid-off. He applied for GA for his first time to get help with his rent and light bill. The administrator asked why he couldn't live with his parents, who lived

in town, until he got another job. Gary explained that his parents could barely make ends meet now for themselves and four children at home. In fact, Gary said, he had been giving his parents some money each week until he was laid-off.

After thinking about it, the administrator realized that Gary's family had received GA from time-to-time. They lived in a mobile home barely large enough to hold them. The administrator granted Gary's request because even though his family would like to help they had neither the space nor the resources.

Burials

As discussed above, in 1984 the Legislature removed all liability of children and grandchildren for the support of their parents and grandparents, in 1989 the liability of parents was limited to the parents of children under 21 years of age, and in 1993 parental liability for support was extended to allow for the recovery of benefits issued to an applicant under the age of 25 years.

None of these changes in the law affected the liability of grandparents, parents, siblings, children and grandchildren to pay for the burial costs of each other, whenever these relatives are financially able. In 2007, however, the Legislature removed "siblings" from the list of surviving liable relatives (§ 4313(2)). When a person dies without having made burial provisions and without resources or sufficient estate to cover basic burial or cremation costs, any surviving liable relatives *(parents, grandparents, children or grandchildren)* of *sufficient ability* would be responsible for the burial costs (§ 4313). The way this type of financial responsibility to bury relatives is generally enforced by the municipality is to simply deny any request for burial assistance to the extent legally liable relatives have been identified who live or own property in Maine and who appear to have a financial capacity to pay for the burial/cremation, either in lump sum or installment payments. *(For more information on "burials," see Chapter 7.)*

CHAPTER 5 – Verification

Verification, or certifying that applicants are eligible for assistance, is one of the administrator's most important duties. Applicants have the burden of proving that they are eligible for GA. The applicants must show that they need GA by providing written documentation such as wage stubs, receipts, and bills. The GA administrator is responsible for verifying that information (§ 4309). It is not the administrator's job to do the groundwork to discover if applicants are eligible.

The administrator does, however, have the obligation to check the accuracy of the applicants' statements and documents in order to make sure the applicants are in fact eligible. The administrator may gather or *verify information from other sources provided the administrator, **prior** to contacting third parties, informs the applicant (in writing is the preferred method, see Appendix 17, page 4 of the MMA GA Application) of the sources which will be contracted.* If the applicant refuses to allow the administrator to make a third party contact, the applicant's request for GA may be denied.

Generally speaking, the administrator should require applicants to bring certain documents each time they apply: bills or receipts for rent, utilities, fuel, telephone service, medical expenses, clothing and evidence of income whether it is earned income or a public benefit such as TANF or SSI. A requirement that the applicant bring such documentation should be a part of any use-of-income policy and notice, if the municipality employs such a policy *(see "Use-of-Income Guidelines," in Chapter 2)*.

If the application is not an initial application, the administrator should also expect documentation establishing exactly how the household's previous 30-day income was spent *(see "Availability of Misspent Income," in Chapter 2),* as well as proof that the applicant has fulfilled the work requirements and attempted to secure all potential resources.

Requiring applicants to fully document their eligibility can be less strictly required in some emergency situations, but the municipal authority to limit emergency assistance when the applicant could have averted the emergency situation clearly authorizes the administrator to request and expect to receive sufficient documentation to satisfy the applicant's burden of proof that the emergency was not self-created *(see "Limitations on Emergency GA" in Chapter 2)*. Even when verifying documentation is less strictly required in emergency circumstances (such as a furnace breakdown in the middle of the night), all recipients of such emergency GA would be expected to bring all necessary documentation as soon as possible, or at least by the next time they apply. 22 M.R.S. § 4310.

If an applicant's information and documentation is incomplete, the administrator should tell the applicant, in writing, what information is needed for the administrator to make a decision. If the applicant fails to provide the necessary information within 24-hours and the administrator can't determine eligibility, the administrator should deny the application pending receipt of the necessary information.

Remember, the eligibility period commences upon the administrator's ***determination of eligibility*** *for purposes of the 30-day calculation period.*

Example: Mr. Jones (a repeat applicant) applies for GA on the 1st of the month and is directed (in writing—the preferred method) to bring back pay stubs and expenditure receipts within 24-hours so that his eligibility can be determined. Mr. Jones does not bring the documentation as directed. Thus, the GA administrator *by law* ***must*** *issue a written decision* (in this case indicating ineligibility due to failure to bring in necessary documentation). Mr. Jones returns on the 3rd of the month, submitting all the necessary documentation previously requested of him. The GA administrator must initiate a new application, dated the 3rd, and the period of eligibility becomes 30 days from the 3rd (not the 1st). On the 4th (24-hours later) the GA administrator provides Mr. Jones with a new written decision.

Because the burden of proving eligibility rests upon the applicant, the administrator can ***require*** *the applicant to present the necessary information*, or the administrator can gather the remaining information personally. However, if an applicant doesn't provide the information or refuses to allow the administrator to gather the needed facts to determine eligibility, the applicant can be *denied due to insufficient information.* 22 M.R.S. § 4309.

People applying for the first time are not required to present as much documentation as recipients who have received assistance previously. Because need is the primary eligibility factor at the time of an initial application, people are not required to prove that they have looked for work, accepted work, or have met other eligibility conditions. They do, however, have to show that they are in need and must present reasonable documentation of their income and expenses.

Employment

Applicants *must* give the administrator proof of their wages. If "first time" applicants do not provide the necessary information and it is impossible for the administrator to determine their eligibility, the administrator may deny assistance due to incomplete information and documentation of eligibility *if the request is not an emergency.* If it is an emergency, the administrator should grant sufficient assistance to meet the immediate need. However, in the

written decision the administrator should inform the applicant that they must provide the required documentation in order to receive further assistance. The decision should also state that if an applicant fails to provide the requested documentation, the administrator may contact the employer to verify the employment information if the applicant hasn't provided the information within seven days.

Employers are *required by state law* to release employment information upon *written* request by a GA administrator. If employers refuse to give the information, they must give a written explanation stating the reason for the refusal within three days of the request for information. If employers do not have a good reason for refusing to comply with the request, they can be fined not less than $25 nor more than $100. In addition, giving the administrator false information is a Class E crime. 22 M.R.S. §§ 4314, 4315.

Financial Institutions

Applicants are required to inform the administrator if they have savings or checking accounts. The administrator may verify this information by making a *written* request to the bank, credit union or other financial institution. The bank or financial institution will usually require a release signed by the applicant to provide the administrator with this information. If a bank refuses to release this requested information it must give a written decision explaining why it refused. If the banking institution does not have good reason for refusing to release the information, it can be fined not less than $25 nor more than $100. 22 M.R.S. § 4314.

State Agencies

The administrator can contact the Department of Health and Human Services and any other state agency which has any information pertaining to an applicant's eligibility. Unlike inquiries to employers and financial institutions, requests for information from state agencies do not necessarily have to be in writing. Administrators can, for instance, call the Department of Health and Human Services to find out about an applicant's TANF or Food Stamp grant or call the Department of Labor to learn about an applicant's unemployment compensation benefits. 22 M.R.S. § 4314.

Emergencies & Telephone Applications

In an emergency situation, *requiring **immediate** assistance,* the GA administrator may issue "sufficient benefits to provide the basic necessities needed immediately…" as long as the following conditions (found in § 4310) are met:

- the administrator has determined, on the basis of the interview, that the applicant will probably be eligible for GA after full verification;

- when possible, the applicant submits adequate documentation to verify that he or she needs immediate assistance;

- when adequate documentation is not available at the time of application, the administrator may contact at least one other person to confirm the applicant's statement;

- in no case may the authorization of benefits provided under this section exceed 30 days; and

- in no case may there be further authorization of benefits until a full verification of eligibility has taken place.

In some cases, emergency applications may be made over the telephone. The administrator should accept telephone applications when the applicant has an immediate need and neither he/she nor any person can apply in person due to illness, disability, lack of childcare, no transportation or other good cause. If an application is taken over the phone, the administrator still has the obligation to verify the information either by making a visit to the applicant's home with his/her consent or having the applicant send or bring in the necessary information another day. 22 M.R.S. § 4304(3).

CHAPTER 6 – Confidentiality

It is important to remember that although the administrator must verify the information the applicant gives, the administrator must keep information relating to the applicant confidential. No information pertaining to applicants, including their names, information on their application forms, records of the amount of assistance granted or other communications can be released to the *general public*. When attempting to gather information from other sources, the administrator should not give out any more information than is necessary to obtain the needed information, and should inform the person that the information is confidential. If someone calls the administrator to gather information, the same rules apply. If another GA administrator or a state Human Services worker requests information about a recipient, the administrator can supply the needed information provided the information is kept confidential by the government official requesting the information and that official needs the information for legitimate reasons.

GA records cannot be released to the general public unless a recipient has given consent in writing. Determining who constitutes a member of the general public, however, can be problematic for the administrator. Basically, the general public includes *anyone who is not a government official acting in his or her official capacity.* In other words if a municipal official needs information about a GA recipient in order to fulfill her official duty, the official would not be considered a member of the general public.

Example: Ms. Rogers, a selectperson, asks the GA administrator to show her the GA records for the last fiscal year. Ms. Rogers is not involved in administering GA but has been assigned to review the administration of GA in the municipality. She is given the records because she is entitled to see how municipal monies are spent, but is reminded not to discuss the records because they are confidential.

Example: Captain Snell, of the Brewer Police department, wants to look at the GA records to see if she recognizes any names. The GA administrator refuses to give her access to the records because Captain Snell's purpose does not directly relate to the performance of her duty. However, if Captain Snell had told the administrator that the police department was looking for Sally Jacques on suspicion of armed robbery and wanted her last known address, the administrator could have provided the recipient's address.

Example: Ms. Sample has requested a fair hearing. An individual claiming to be an advocate representing Ms. Sample called the GA administrator to get some information about the case. The GA administrator refused to disclose any information to the alleged advocate unless and

until Ms. Sample gave the administrator specific permission to release her records to the advocate.

Municipalities should not involve the police department in administering the GA program for routine matters. The administrator should not give police the assignment of verifying information on an application or conducting home visits. For instance, the police should not routinely interview neighbors or landlords to find out who is in the household, and the police should not set up surveillance to see who enters the applicant's home. Also the police shouldn't accompany administrators while they are doing home visits unless the applicant has a history of violent or irrational behavior. None of these tasks are an official duty of the police and they would be considered members of the general public in these instances. The police may be called in, however, when there is evidence of fraud and the administrator needs the police to investigate. Furthermore, law enforcement personnel should be immediately contacted when the administrator is in need of protection or an unruly applicant needs to be removed from the GA office or engages in or threatens criminal behavior.

Please refer to the following Legal Service's Information Packet on "GA Confidentiality and Disclosure of Information" for further information.

General Assistance Confidentiality and Disclosure of Information

Links to the following documents are provided as examples for informational purposes only. They have not been reviewed by MMA Legal Services. Do not use any sample unless it has been reviewed by your legal counsel and tailored to meet the needs of your municipality.

This packet includes the following attachments:

- Title 22 M.R.S. § 4306
- Title 22 M.R.S. § 4314
- *Sample* Information Confidentiality Policy/Agreement
- *Sample* General Information Disclosure Form
- *Sample* Medical Information Disclosure Form

Important issues and considerations include:

- Confidentiality of General Assistance Information

Although Maine's "Right to Know" Law (Freedom of Access Act, 1 M.R.S. §§ 401-412) provides for public access to public records, certain important exceptions exist to this broad rule ***(see Information Packet on "Right to Know").*** Among others, "[r]ecords that have been designated confidential by statute" are accepted from public disclosure (1 M.R.S. § 402(3)(A)). One example of this is found in the municipal general assistance (GA) statute—the confidentiality provision at 22 M.R.S. § 4306.

Section 4306 provides in part that, "[r]ecords, papers, files and communications relating to an applicant or recipient made or received by persons charged with the responsibility of administering" the GA program are "confidential." Furthermore, this information "may not be disclosed to the general public, unless expressly permitted by [the applicant or recipient]."

It is important to note that Section 4306 concerns disclosures made to the "general public" only and not to government officials acting in an official capacity. Therefore, discussions with the Department of Health & Human Services (DHHS), other State departments, or other GA administrators for the purpose of determining eligibility would not be prohibited under the statute. In addition, because the general public does not include a government official acting in his or her official capacity, in an instance where a municipal official (i.e., selectperson appointed to review GA administration in the municipality) required information about the town's GA program or requested information regarding a GA case which appeared questionable, such an official would not be considered a member of the general public. On the other hand, if a selectperson was requesting information unnecessarily or outside the scope of his or her official duty or perhaps was unnecessarily intrusive into the facts of a case, the GA administrator should remind the selectperson of the confidentiality of such GA information.

Although GA administrators are responsible for the collection and verification of information necessary to determine a GA applicant's eligibility, they are also responsible for maintaining the confidentiality of this information. Moreover, under 22 M.R.S. § 4314 (4), State departments, financial institutions and employers obtaining "…information under this section [are] subject to the same rules of confidentiality" as the municipality.

Consequently, when a GA administrator communicates with State departments, financial institutions and employers regarding confidential information obtained during the course of

the general assistance application process, the administrator should remind these parties that the information discussed is "confidential." These discussions should be documented, and the fact that a direction of confidentiality was given should be incorporated into the documentation.

Municipalities should require court ordered subpoenas for the release of GA information if it is not clear that the release is permitted under the statute.

- GA Information Confidentiality Policy/Agreement

GA administrators are required to keep client information confidential. As a result, they should periodically remind their employees and other municipal departments that may have knowledge of a GA application (e.g., finance department) of the duty to maintain GA information confidentially. Municipalities may wish to incorporate a version of the attached "GA Information Confidentiality Policy/Agreement" into personnel manuals and have employees sign the agreement upon being assigned GA duties. While serving as a training tool and reminder for employees regarding their responsibilities, this policy/agreement also serves as evidence of a municipality's "good faith" effort to maintain the confidentiality of GA records and information.

- Disclosing GA Information

If a GA applicant or recipient wishes to have information in their GA file disclosed to a third party such as an attorney or other social service provider, Section 4306 requires that the municipality obtain express permission. Although "express" permission may be interpreted as "oral" permission, municipalities should obtain this permission in writing *(*see *General Information Disclosure Form)*. ***Janek v. Ives***, No. CV-89-116 (Me. Super. Ct., Aro. Cty, Feb. 14, 1990), specifically confirmed the interpretation that "express" permission may be interpreted as requiring a writing by a municipality. However, prior to instituting a requirement for "written" releases, municipalities should incorporate this requirement into their GA ordinance.

- Medical Information Disclosures

Although most GA client information may be disclosed upon receiving a client's general consent, municipalities are strongly encouraged to utilize specific "medical" release forms when releasing information of a medical nature.

- HIV Information Disclosures

In addition to utilizing specific medical information disclosures, municipalities should consider adopting a policy/practice that further requires a client to provide an additional "HIV" release for HIV status information contained in a client's file.

Generally speaking, due to this information's highly sensitive nature, municipalities should avoid requiring documents which substantiate an HIV diagnosis. In the event a GA applicant/recipient has HIV, the HIV status can be described as a "life threatening" illness. Pertinent information concerning the specifics of the illness can, as necessary, be confirmed over the course of a telephone conversation. For purposes of GA, whether the person has HIV or cancer for example is usually not important to the GA eligibility analysis. The GA issue(s) behind such "life threatening" illnesses usually consist of requests for assistance in order to purchase expensive medications or the issue of a GA applicant not being able to meet the "work requirement" due to the illness. As a result, for the purposes of GA, describing the client as being inflicted with a life threatening illness is generally sufficient.

The relevant provision of law (5 M.R.S. §§ 19203) requires that a person who is the subject of an HIV test makes an election in writing whether to authorize the release of that portion of the medical record containing the HIV infection status information when that person's medical record has been requested. It is important to note that Section 19203 appears to apply to health care providers and medical records, with no direct mention of municipal records. However, it is the opinion of MMA Legal Services staff that because of the sensitivity of this information, if a municipality is requiring the release of HIV related information (which is arguably not the best thing to do), it should require a specific HIV information release in addition to a general medical information release as an added precaution.

Municipalities requiring the additional HIV release must do so with the understanding that such a policy of "requiring" the additional release will provide additional protection for the municipality ***only if the policy is stringently enforced***. Should a municipality adopt such a policy and then disregard it, the municipality's risk of liability following illegal or unauthorized release of information would be heightened. In addition, if a municipality obtains documentation which verifies a client's HIV status, then the municipality becomes a custodian of this information and must guard it accordingly.

Date of last revision: 08/13

This packet is designed to provide general information and is not intended as a substitute for legal advice for specific situations. The statutes and other information herein are only current as of the date of publication.

CHAPTER 7 – Basic Necessities (Maximum Levels of Assistance)

Maine law defines "basic necessities" as food, clothing, shelter, fuel, electricity, non-elective medical services as recommended by a physician, non-prescription drugs, telephone services where it is necessary for medical reasons, and any other commodity or service determined essential by the municipality. Municipalities must budget in all of the items defined as basic necessities when determining a person's unmet need. The law also gives municipalities the option of including other items that they consider essential depending on the situation, such as sewer bills, personal supplies, transportation, furniture, and housing repairs.

Municipalities may establish *maximum levels of assistance* for each category of basic necessity to determine if a person is eligible and, if so, how much assistance to grant. Those maximum levels for each category of basic need should be distinguished from the overall maximum level of assistance, which represents the largest GA 30-day grant that can be issued for all the basic necessities put together. Unlike the overall maximums of assistance, which are somewhat arbitrary, the maximum levels established by ordinance for each basic necessity must be reasonable and adequate standards sufficient to maintain health and decency. 22 M.R.S. § 4305(3-A).

The municipal officers are responsible for establishing the maximum levels of assistance as part of the GA ordinance. (As a service to municipalities, MMA Legal Services Department generates model figures yearly in the form of Appendices A-C which are sent out in September to all member municipalities). Prior to 1985, the state law contained no reference to maximum levels of assistance. Maximum levels of assistance were a concept that developed informally through practice and case law. *Glidden v. Fairfield,* (1979) Som. County Superior Ct., #CV800-431; *Verrill v. Augusta,* (1982), Kenn. County Superior Ct. #CV 82-262. Because certain advocates for low-income people have persistently challenged municipalities' authority to set maximum levels, the state law was amended to clearly grant this authority.

DHHS Rules Regarding Maximum Levels

In 1986, the Department of Health and Human Services promulgated a rule which required municipalities, under a "rebuttable presumption," to adopt as their food maximums the U.S.D.A. Thrifty Food Plan figures. The "presumption" was that if a municipality's figures reflected the Thrifty Food Plan figures, the Department would presume those maximums to be adequate to maintain health and decency.

The "rebuttable" aspect of the rule was that if the municipality could effectively demonstrate that lower standards were adequate to support the nutritional requirements of a household, then the Department would accept those lower figures.

The authority of the Department to promulgate such a standard was challenged, and Maine's Supreme Court ruled that the Department was within its authority to impose such a requirement. *City of Westbrook v. Commissioner of the Department of Health and Human Services*, 540 A.2d 1118 (Me. 1988). Since the *Westbrook* case, the Department has promulgated a similar "rebuttable presumption" rule regarding housing maximums, this time requiring that municipal housing maximums conform to the U.S. Department of Housing and Urban Development (HUD) Fair Market Rent statistics.

The MMA model GA ordinance has been in conformance with those statistics since 1987. If the available housing within a municipality or within the region around a municipality costs remarkably less than the HUD figures, as reflected in the MMA model ordinance, that municipality might want to do its own Fair Market Rent survey and establish its own maximums. The Department's guidelines for doing a local rent survey simply require that the municipality conduct a survey of local landlords, and the survey can also make use of classified advertisements in the newspaper. The DHHS rules also provide that the survey may not be limited to only those landlords who provide housing to General Assistance clients because such a survey may produce distorted rent figures.

Maximums & the GA Budget

The maximum levels of assistance established by ordinance should be reviewed regularly by the administrator to ensure they are adequate for the region, and adjusted when necessary by ordinance amendment. When determining if applicants are eligible by applying the unmet need test, the administrator should budget the applicant's actual 30-day cost for the basic necessity or the ordinance maximum, *whichever is less (see "The Unmet Need Test," in Chapter 2).*

For example, if the ordinance allows a maximum rental amount of $375 for two people but the applicants only pay $355 for rent, the administrator would budget the lower amount ($355). The amount that is budgeted in, by the administrator, for a particular basic necessity is the allowed need for that necessity. If, as a result of the application process, it is determined that the applicant is eligible for GA, assistance can be granted up to the "allowed need" for any basic necessity.

In some circumstances the administrator may feel it necessary to consolidate the applicant's unmet need and apply it all toward a single basic necessity. In other words, the administrator can exceed the maximum amount allowed for a basic necessity, provided the administrator does not exceed the client's total eligibility.

For example, Joshua Holbrook has exhausted his income on basic needs, but he has no money left over to pay the light bill. Joshua applies for assistance, and the administrator determines that Joshua is eligible for $100 worth of assistance over the next 30 days. The administrator could elect to issue from Joshua's $100 overall eligibility only $60 for the light bill because $60 represents the ordinance maximum for that basic need, and the applicant is in no emergency situation which could dictate exceeding that amount. If the administrator took that course of action, Joshua would remain eligible for the remaining $40 of his deficit for the other basic necessities, provided that within the next 30 days there was an actual need for them. On the other hand, the administrator could elect to issue the entire amount of Joshua's eligibility to the electric company. In the absence of an emergency need for utility assistance, the administrator could not be forced to consolidate Joshua's unmet need in this manner, but in some cases an administrator may feel such a decision would make more sense.

MMA's model GA ordinance contains some standards governing the practice of consolidating an applicant's unmet need/deficit.

The following is a discussion of the various basic necessities.

Food

As discussed above, the ordinance maximums for food are now governed by DHHS regulation that essentially requires municipalities to adopt the *U.S.D.A. Thrifty Food Plan.* When budgeting a person's need for food, the administrator must automatically budget the maximum amount allowed in the ordinance for food. This is recommended for three specific reasons. First, everyone must have food to survive. Second, most GA recipients receive food stamps but this benefit *cannot* be *included* as *income.* By including the full maximum allowed for food, the municipality is protected from being accused of including the food supplement benefit as income. Many administrators object to being required to disregard the food supplement benefit, but this is a federal law. The purpose of the federal Food Stamps Act is to provide eligible households with an opportunity to obtain a more nutritionally adequate diet. *GA and other welfare benefits cannot be reduced due to the household's receipt of the food supplement benefit.* 7 U.S.C. § 2017(b). Finally, DHHS regulation now requires that administrators budget all applicants at full food allowance levels *(DHHS General Assistance Policy Manual, Section 1V)*.

Municipalities are permitted to adopt a list of approved food items which people may purchase with their GA vouchers and to restrict the purchase of certain items. The recipient should be given a copy of approved or unacceptable items. In order for this to be effective, the municipality needs the cooperation of the supermarket. Also, municipal food and personal care vouchers, at the present time, are *not* exempt from state sales tax.

Housing

When budgeting for housing, the administrator should use the actual expense for rent or mortgage up to the maximum amount allowed. It is the applicants' responsibility to locate and obtain housing that is *within their ability to pay*.

However, some people can't afford any housing due to the lack or insufficiency of income. In these cases the administrator should inform applicants about the maximum amount allowed for housing and direct them to attempt to find housing within that amount. Notwithstanding the regulatory requirement that the housing minimum reflect the HUD standards, the maximum amounts must also realistically reflect the expenses in the area and if they do not they should be amended.

Municipalities generally provide *current* rental payments rather than grant assistance for "back bills." The administrator should tell this to applicants the first time they apply, and also include it in the written decision, so that the applicants are clearly aware of this practice.

Furthermore, GA rental assistance should be provided so as to secure *prospective* housing. In other words, rent vouchers should not be provided to landlords who are in the process of evicting a client for back rent, for example. If a month's worth of rental assistance is provided to a client, the client should receive a month's worth of housing.

If a landlord is in the process of evicting a tenant and the tenant is in fact eligible for housing assistance, prior to issuing the rent voucher to the evicting landlord, it would be in both the client's and municipality's best interest to ensure that the rental payment will stop (or at least delay for 30 days) the eviction—guaranteeing that the basic necessity of housing will be provided to the client. In the event the rental payment will not prevent the eviction, the municipality should direct the client to seek an alternative dwelling, again within their ability to pay. As a side note, court fees involved in preventing an eviction are allowable expenses under the GA program.

However, municipalities must keep in mind that locating an alternative dwelling may also result in a need for a security deposit. Although the law states that as a general rule a security

deposit will *not be considered a basic necessity* and thus municipalities are not generally responsible for paying them, should the *security deposit become required for* ***"emergency purposes,"*** the municipality may become responsible for paying it. The term "emergency purposes" is then defined as "any situation in which no other permanent lodging is available unless a security deposit is paid." Thus, this very important factor must be considered by the GA Administrator prior to directing a client to relocate.

Security Deposits

As a general rule, security deposits will not be considered a basic necessity *unless a security deposit is required for* ***"emergency purposes."*** Therefore, the determination as to whether a security deposit must be paid involves an analysis of whether there is any permanent lodging (i.e., ***not*** hotels, motels or rooming houses) which is available (i.e., vacant and ready for occupancy) and for which no security deposit is being required. If it can be established that virtually all permanent and available housing in the area requires a security deposit of some amount, then the security deposit ***is*** *a basic necessity* and *must* be included in the applicant's budget.

The burden of establishing whether the "emergency purposes" test has been met would appear to initially fall on the applicant. If the applicant can reasonably satisfy the administrator that all landlords in the area are requiring a security deposit, the burden would then fall on the administrator to prove otherwise by directing the applicant to a landlord who was not requiring a security deposit. *For this reason, administrators would be well advised to keep a running list of area landlords who will readily waive a security deposit.*

Under any circumstance, when the municipality does pay a security deposit, the administrator should make it clear to the landlord (in writing) that the security deposit is to be returned to the municipality when the apartment is vacated. The administrator may even want to inspect the property, creating a written inventory of pre-existing defects which is then signed by the landlord, prior to occupancy in order to rebut any attempt by the landlord to retain the security deposit after vacancy for reasons of damage allegedly caused by the tenant.

Mortgages

In 1982 the Maine Supreme Court ruled in *Beaulieu v. Lewiston* 440 A.2d 334 (1982) that municipalities may be required to pay shelter costs for eligible applicants regardless of whether that shelter payment is in the form of rent or mortgage. The *Beaulieu* decision did not go so far as to say the payment of a mortgage payment was obligatory. Instead, the Court established a set of eight criteria which should be evaluated by the administrator in order to determine if the payment of the mortgage is actually necessary.

Those criteria are now part of MMA's model GA ordinance, and they are discussed in some detail below. In response to the *Beaulieu* decision, MMA sought an amendment to the law and in 1983 the Legislature authorized municipalities to place a lien on a GA recipient's real estate if the municipality had paid that recipient's mortgage with GA funds (§ 4320). In 1991, the Legislature further amended § 4320 to allow municipalities to place the same type of lien on property when GA is used to pay for a capital improvement to the property (e.g., furnace/chimney repair, water/septic system repair).

Liens can be imposed on real estate **only** if the municipality has granted assistance for a mortgage payment or capital improvement. No lien can be imposed for granting assistance for any other basic necessities, such as food, rent, utilities, fuel, etc. Although there are some restrictions on the lien process, it at least serves the purpose of allowing the municipality to recover a portion of the equity in the property it has helped a recipient accumulate by either paying his/her mortgage with GA funds or paying for a capital improvement to his/her property.

Liens

After the GA administrator makes a mortgage or capital improvement payment, the municipal officers or their designee (e.g., the GA administrator, treasurer, administrative assistant—any municipal official specifically designated by the municipal officers for this purpose) can decide to place a lien on the real estate. Unlike tax liens, however, the lien has no specific term, and it cannot be claimed or enforced except under very restricted conditions.

The lien stays in effect against the real estate until it is enforced, but it can be enforced ***only*** *when the recipient dies or when the property is transferred by sale or gift.* It ***cannot*** be enforced if the recipient is receiving any form of public assistance (TANF, food supplement benefit, GA, etc.) or if, by redeeming the lien, the recipient would again become eligible for assistance. These restrictions were imposed on the GA lien process because the purpose of the lien was not to force GA recipients out of their homes but to enable the municipality to recover the funds it contributed which enhanced the equity in the recipient's property, while allowing the recipient to continue to live in the house.

When to Pay

In the *Beaulieu* case the Supreme Court said that Maine law required municipalities to pay shelter costs whether the payment was for rent or mortgage. In explaining its decision, however, the court asserted that municipalities were not required to grant GA for mortgage payments in every situation, and it outlined eight factors that must be taken into consideration when determining payment.

In determining whether an applicant is eligible to receive GA for a mortgage payment, as with any other type of request, the administrator must make an "individual factual determination" of whether the applicant has an *immediate need* for such assistance. In reaching this decision the administrator must consider the extent and liquidity of the applicant's proprietary interest in the house. The court said that the factors to be considered in making this determination include:

1. the *marketability* of the shelter's equity;

2. the amount of *equity*;

3. the availability *of the equity* interest in the shelter to provide the applicant an opportunity to secure a short-term loan in order to meet immediate needs;

4. the extent to which *liquidation* may aid the applicant's financial rehabilitation;

5. *comparison* between the amount of *mortgage obligations and anticipated rental* charges the applicant would be responsible for if he or she were to be dislocated to rental housing;

6. the *imminence* of the applicant's *dislocation* from owned housing because of his or her inability to meet the mortgage payment;

7. the *likelihood* that the provision of GA for housing assistance will *prevent such dislocation*; and

8. the applicant's age, health and social situation.

All of these factors must be taken into consideration when determining whether to make a mortgage payment for an applicant. Some municipal officials express outrage that public funds are making it possible for a recipient to live in a home that may be more valuable than those homes owned by the people who pay the taxes that make GA possible.

Administrators must not let their personal feelings influence their decision. Often the most compelling reason to make a mortgage payment is that the mortgage may be the least expensive way for a municipality to fulfill its obligation. In addition, the municipality has the opportunity to place a lien against the real estate to recover its costs. It is important to evaluate a request for mortgage payment rationally and determine the most equitable way to handle the request.

Requests for mortgage payments, as illustrated by the court, **do not** have to be granted in all cases; but mortgages should always be considered in the applicant's budget to determine eligibility.

The MMA model ordinance suggests that mortgages not be paid unless a mortgage foreclosure notice has been issued or the failure to make a mortgage payment will reasonably result in the issuance of a foreclosure notice. At that point there is more of a likelihood that the applicant is in immediate need.

Once a person receives a foreclosure notice, the administrator should tell the applicant that he or she should attempt to renegotiate the mortgage or otherwise work out a more favorable arrangement with the creditor. If the administrator is convinced that the applicant is eligible for housing assistance in the form of a mortgage payment and no alternatives exist, the administrator should grant the request.

NOTE: *Municipalities may direct GA applicants to obtain other housing (e.g., a rental unit) should the client be eligible for an amount of GA that will not stop or at least forestall the foreclosure process (see "Emergencies" near the end of Chapter 2).*

Process

As could be expected, there are strict notice requirements the municipality must follow when placing a GA lien on a recipient's property. When a person requests GA for a mortgage payment or capital improvement, the administrator should inform the applicant that if the request is granted the municipality will place a lien on the property to secure the municipality's right to recover both the amount of that payment plus interest.

Notices/Lien Forms—Three Types

Once the administrator grants the request for the mortgage or capital improvement payment, the municipality has *30 days* to file a notice of the lien with the county Registry of Deeds. If the *municipal officers* have not designated the GA administrator or other person to file lien notices, they must decide if it is appropriate to place a lien on the property. The notice must be filed within *30 days* of granting the mortgage or capital improvement payment. The steps to follow in order to file a GA lien are as follows:

First, at least ten days prior to filing the lien notice in the Registry, separate notice must be sent to the recipient, the owner of the real estate if other than the recipient, and any record holder of the mortgage. This notice, sent by certified mail, return receipt requested, must

inform the recipient that the lien is going to be filed at the Registry. This notice must also state the restrictions on the lien (i.e., the lien cannot be enforced except upon the recipient's death or upon the transfer of the property, and it can't be enforced while the recipient is receiving any form of public assistance or if the recipient would in all likelihood again become eligible for GA if the lien were enforced). Finally, this notice must state the name, title, address, and telephone number of the person who granted the assistance.

The second lien form is the actual form filed with the Registry of Deeds which establishes the lien for that first payment *and for all subsequent mortgage or capital improvement payments made on behalf of the recipient* each time an additional mortgage or capital improvement payment is made.

A third notice must be given to the recipient each time an additional mortgage payment is made. This notice must repeat the information on the original notice, relative to the limitations and who to contact to answer questions, and it must inform the recipient of the previous amount secured by the lien and the new total, with the addition of the most current grant of assistance plus interest. In summary, there are three types of notices:

1. **Notice to recipient, owner of the real estate, and any record holder of the mortgage.** This notice must be sent at least ***ten days before filing the lien*** at the Registry of Deeds. This notice must contain the restrictions on the lien and the name, title, address, and phone number of the person who granted the assistance. This notice must be sent by certified mail, return receipt requested, when the lien is first about to be filed.

2. **Filing the lien with the Registry of Deeds.** This must be filed within 30 days of actually making the mortgage or capital improvement payment. This notice needs to be filed only once since this lien secures all subsequent payments.

3. **Notice each time an additional mortgage or capital improvement is made.** This notice is *similar* to the first notice above in that it contains essentially the same information. As a matter of law, this subsequent notice needs to be given to the recipient only, although MMA recommends issuing this subsequent notice to all the parties to whom the first "10-day" notice was issued, namely, the recipient, the property owner if other than the recipient, and the mortgagee. This subsequent notice must state the total amount secured by the lien with the addition of the most recent mortgage payment and interest. This notice must also be sent by certified mail, return receipt requested.

Sample notice forms for mortgage and capital improvement liens are found in Appendix 8.

Property Taxes

Administrators often ask if property taxes should be considered a "basic necessity" for the purposes of determining an applicant's eligibility for GA. The answer is not entirely straightforward.

Generally, an applicant's annual property tax, *prorated to 30 days*, may be included in the budget as part of the applicant's overall 30-day shelter cost. This would only be done, however, if the combination of the applicant's direct shelter expense (i.e., the mortgage payment) and the 30-day property tax, when combined, did not exceed the ordinance maximum for housing.

For example, if Emma Obrien's property taxes for the year were $800, her 30-day prorated expense would be $67 ($800/12). If the combination of Emma's mortgage obligation and her monthly property tax obligation was less than the ordinance maximum for housing, that combination total could be included in Emma's budget when determining her unmet need. The administrator would not, however, actually pay Emma's monthly property tax from her unmet need. The purpose of budgeting in the property tax would be to recognize and, in effect, subsidize Emma's monthly property tax obligation. If, on the other hand, Emma's mortgage payment already exceeded the ordinance maximum for the direct housing obligation, Emma's 30-day property tax obligation would not be included.

An exception to this general process would occur when a household is facing a property tax emergency. The procedure to follow is described in MMA's model GA ordinance. A property tax emergency, according to MMA's model ordinance, would occur when the applicant is *facing a property tax foreclosure within 60 days, and the tax lien foreclosure would reasonably result in the applicant's eviction from the property as a matter of municipal policy or practice.* It is only when these standards are met that an administrator could actually pay a person's property tax with GA funds.

DHHS regulation also places a limit on the municipal authority to pay an applicant's property taxes with GA funds. That state regulation reads:

> 36 M.R.S. § 841 et seq. establishes a poverty tax abatement process. This process is an available/potential resource. The client has a legal entitlement to this process. Municipalities should not use the General Assistance Program to assist with delinquent property taxes unless foreclosure and subsequent eviction is imminent and it is the most cost effective avenue. *(DHHS General Assistance Policy Manual, Section IV).*

In accordance with this regulation, MMA's model GA ordinance also directs the administrator to inform all applicants about the poverty abatement process when there is an application made for emergency GA for their property taxes. If an applicant, when informed about the poverty abatement process, chooses to apply for an abatement rather than for GA for property tax relief, that is the applicant's choice. *No one can be forced to apply for one form of local property tax relief instead of the other.*

If the applicant, after being informed of the poverty abatement process, chooses to apply for GA relief, the administrator would proceed to evaluate the property tax emergency just as any other request for emergency assistance would be evaluated. If the applicant was eligible for emergency GA for his or her property taxes in order to protect the applicant's continued ownership and use of residential property, the necessary amount of GA could be issued to the town for that purpose.

See Appendix 9 for MMA Legal Services' Information Packet on "Poverty Abatements."

Heating Fuel

Requests for fuel are frequent and often of an emergency nature during the winter. Although most municipal ordinances specify the maximum allotment for fuel consumption per month based upon the time of year, this is one basic necessity where maximum levels are often exceeded. This is due to a number of factors including poorly insulated housing, temperature fluctuations, fluctuations in the price of heating fuel, etc.

Despite an administrator's frustration over what may very well be an excessive use of fuel, by and large the administrator has few choices in the middle of the winter when a family runs out of fuel and has no cash available to purchase more. Certainly the administrator should advise recipients about conservation measures and should refer them to the proper agency to apply for weatherization and fuel assistance *(see Appendix 11)*. In addition, the administrator can review the degree to which the applicant could have financially averted the heating fuel emergency and limit the issuance of emergency GA for heating fuel according to the pertinent standards in the municipal ordinance *(see "Limitations on Emergency Assistance," near the end of Chapter 2).*

However, the plain fact is that in most cases the administrator will feel obligated to fulfill the applicant's request for actual fuel needed because to go without fuel in the winter could be life threatening. Administrators should make it clear to recipients, however, that they are responsible for keeping track of their fuel supply and they should monitor it so they won't have to apply for GA when they are totally out of fuel. This benefits both the recipient, who

won't have to go through a cold night, and the administrator, who won't have to get a late night weekend call and won't have to pay a special delivery service fee to the fuel dealer. Some municipalities solicit bids from area fuel companies and award the contract to the dealer who offers the best price and agrees to make deliveries on call and with no service fee.

Municipalities are sometimes caught in the middle between a tenant who pays for fuel as part of the rent and a landlord who neglects or refuses to supply adequate fuel. There is a state law addressing this situation (14 M.R.S. § 6021). The statute, known as the "Implied Warranty and Covenant of Habitability Law," requires all landlords to keep rental dwelling units fit for human habitation (i.e., safe and decent; 14 M.R.S. § 6021). If there is a condition which makes the unit unfit, the tenant can file a court complaint against the landlord and the court can order the landlord to correct any dangerous condition. The law specifically states that landlords who agree to provide heat as part of the lease or rental agreement are violating the law if:

- the landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;

- the dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of three feet from the exterior wall, five feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; or

- the heating facilities are not operated so as to protect the building equipment and system from freezing. 14 M.R.S. § 6021(6).

If the landlord does not comply with these requirements by allowing a building's heating system to run out of fuel, the tenants can, after giving the landlord notice, purchase heating fuel and deduct the cost of the fuel from the amount of rent they owe. The law goes on to state: "for tenants on General Assistance, municipalities have the same rights of tenants." 14 M.R.S. § 6026(9). This means that if a tenant applies for GA to receive fuel because the landlord refuses to *provide fuel after being notified by the tenant that fuel is needed and fuel is part of the rental payment*, the municipality can order fuel and deduct the amount of fuel from the tenant's next request for rent.

In 1989, the Legislature expanded a tenant's right to pay for certain services or repairs directly and deduct those payments from his/her rent. 14 M.R.S. § 6024-A allows a tenant to pay an outstanding utility service to a rented dwelling unit and deduct that payment from his/her rent. GA administrators should be aware of this provision whenever a tenant in a utilities-included rental is presented with a utility bill or threatened with disconnection.

For more information regarding "The Rights of Tenants in Maine" refer to Appendix 14, A Pine Tree Legal Assistance Handbook on the issue of tenant rights.

Example: Grace and Armand LeMont and their four children live in an apartment where they pay $350 a month, heat included. The landlord is responsible for supplying fuel. The LeMonts are current in their rent because of the GA they receive to supplement their income, but the last two weeks of the month they usually run out of oil. This happened last winter, and it's starting again this year. Grace spoke to an advocate who advised her to complain to their landlord in writing. Grace did this but received no response from the landlord. Sunday, they totally ran out of fuel; Armand called the landlord, who promptly hung up. Grace applied for and received GA for the fuel. In the written decision, which was given to both the LeMonts and the landlord, the administrator explained that the fuel was supplied pursuant to Title 14 M.R.S. § 6026(9) and that the rental payment for the following month would be reduced by the cost of the fuel ($120).

Utilities

In addition to needing utilities for heat, recipients also need electricity or gas for lights, cooking and refrigeration. The administrator should budget for the actual cost up to the maximum level established in the ordinance. It is important to know if the ordinance includes electricity for light, heating, hot water, and cooking in the same or in separate categories.

One of the perennial issues regarding GA for electric utility needs concerns the coordination between the GA program and the Winter Disconnection Rule, as the "Winter Rule" is administered by the Public Utilities Commission. There is a discussion of the Winter Rule in Appendix 11, but in summary, there are two issues associated with Winter Rule/GA coordination; 1) how should the administrator deal with payment arrangements established between the customer and the utility company pursuant to the Winter Rule; and 2) how the administrator should deal with large back bills which sometimes accrue as an inadvertent result of the Winter Rule.

First, as a matter of GA law, the administrator does not have to take into special consideration an applicant's payment arrangement with the utility company. When determining such an applicant's eligibility, the administrator would typically budget for either the applicant's actual 30-day utility cost or the ordinance maximum for utilities, whichever is less *(see "The Unmet Need Test," in Chapter 2).*

The MMA model GA ordinance, however, *allows* (but does not require) an administrator to budget an applicant's payment arrangement under certain circumstances. The reason this

authority to budget for a payment arrangement was created in the MMA model ordinance is because in some circumstances customers enter into payment arrangements which provide for very small payments during the winter season which balloon into proportionally larger payments during the summer. If the administrator only budgeted for such an applicant's actual 30-day cost up to the ordinance maximum, those applicants with these balloon-type arrangements would not be eligible *during the course of a year* for the same amount of GA for utility purposes as an applicant who had no special payment arrangements with the utility. For further information about the specific conditions governing this authority to budget for special payment arrangements, consult MMA's model GA ordinance.

Because the Winter Rule can make it more difficult for utility companies to effectively collect unpaid bills during the winter season, another side-effect of the Winter Rule is that some applicants build up large unpaid utility bills which can lead to utility disconnection when the Winter Rule is lifted in the early Spring, or before the Winter Rule goes into effect in the late Fall. In the past, municipal administrators have been frustrated by the fact that some applicants let their utility bills go unpaid all winter and in the spring the municipality is expected to pay the entire bill. This frustration should be somewhat alleviated by the municipal authority to limit emergency assistance which is now found at § 4308(2)(B) *(see "Limitations on Emergency Assistance," near the end of Chapter 2)* and which allows administrators to request from an applicant sufficient documentation to prove that the applicant could not have financially averted the utility disconnection.

Personal & Household Supplies

This category includes items that are needed to maintain the safety and decency of the household such as cleaning and laundry supplies, paper products, toothpaste, diapers, etc. These are usually supplied in accordance with the maximum established in the ordinance or as the administrator believes reasonably necessary.

Clothing

Clothing must be provided as needed. Except in emergencies (fire, flood, etc.) and when there is an immediate need (such as boots or long underwear in the winter), clothing may be a postponeable expense but not indefinitely. Before granting clothing assistance, the administrator should be satisfied that the applicants have attempted in good faith to meet their needs by shopping at discount stores or clothing thrift shops in the area. Applicants can be referred to clothing charities in the area for their needs *providing they are willing to make use of charitable services (see "Available Charities," in Chapter 3)*.

If the applicants are unwilling to make use of available clothing charities themselves, the administrator can either obtain the necessary and suitable clothing from a vendor, charitable or otherwise, and make it available to the applicant, or issue a voucher to any clothing vendor in an amount sufficient to purchase the necessary clothing items. Some administrators take it upon themselves to establish clothing drop-off centers or clothing drives in order to collect clothing which is made available to all applicants as necessary.

Telephone

State law requires municipalities to consider as a necessity basic telephone charges when a telephone is necessary for medical reasons. Prior to granting this assistance, the administrator should require that the applicant present a letter from a physician stating that it is essential that the applicant have telephone service, except that such verification would not be necessary if the applicant's medical need for a telephone was obvious. The administrator should make it clear to the applicant that the municipality will only pay for costs associated with the basic service and not for unnecessary long distance charges.

Non-Prescription Drugs

In 1989, the Legislature added "non-prescription drugs" to the list of "basic necessities" in GA law. Most, if not all municipalities provided in their ordinance for such a category of assistance. This category would include aspirin, cough syrup and any other over-the-counter medicine, and a maximum amount of assistance available for these items could be established by ordinance.

Medical Services

Certain medical care is a basic necessity that municipalities may be required to pay for from time to time. Municipalities, however, are not required to pay for medical expenses under all circumstances. Municipalities are required to grant reasonable requests for medical supplies such as aspirin, bandages, etc., essential or medically necessary medications prescribed by a physician, and *non-elective* medical care. They may also have to pay doctor or hospital expenses under the following conditions.

Prior Notice

If people need to go to a doctor or hospital and they cannot afford it and want the municipality to pay for it, they must first give the administrator prior notice. Prior notice is necessary so the administrator can verify that the medical services are necessary and can approve the expense. Prior notice also gives the administrator the opportunity to refer the applicant to a low-cost health care provider if there is one in the area.

The administrator should require the applicant to present a letter from the physician stating that the service is medically necessary. If the applicant needs to go to a doctor and doesn't have a letter, the administrator could consult with the applicant and then call the doctor's office to confirm that the applicant has an appointment and that the visit is necessary. *If a person does not give the administrator prior notice, the municipality is* ***not liable*** *for the expense unless it is an emergency*.

Hospital Care

In GA law, the pertinent section dealing with a municipality's responsibility to pay for hospital care is found in 22 M.R.S. § 4313(1). This section of law describes two responsibilities of a hospital with regard to the care the hospital must provide to indigent patients.

- **Emergencies.** When people need emergency medical attention, obviously they cannot give the GA administrator notice prior to admission to a hospital. The hospital, however, is required by state law to notify the municipality of the admission if a patient is unable to pay the medical bill (or if the patient will not be covered by "Free Hospital Care") and the hospital wants the municipality to pay. 22 M.R.S. § 4313.

The hospital must notify the administrator *within five business days* of the patient's admittance to the hospital. If the hospital fails to give the municipality proper notification within the five business days, the municipality has no legal obligation to pay the bill.

- **Charity Care.** The second provision of §§ 4313 reads: "In no event may hospital services to a person who meets the financial eligibility guidelines, adopted pursuant to section 1716, be billed to the patient or municipality." The section of Title 22 being referenced here, §§ 1716, establishes a regulatory authority in the Department of Health and Human Services to adopt income guidelines to be implemented by hospitals for the provision of health care services to patients determined unable to pay for services.

These charity care requirements act in conformity with the provisions of the Hill Burton Act (42 USC § 291 et seq.) implemented by regulation at CFR 42 § 124.506 and more generally the Public Health Services Act. (42 USC § 201 et seq.). The state regulations of "Hospital Free Care" guidelines are found in Chapter 150 of the Department of Health and Human Services – General Rules (10-144).

The current rule revises the Department of Health and Human Services guidelines for the free care policies of hospitals, including minimum income guidelines (based on the Federal

Poverty Guidelines) to be used in determining whether individuals are unable to pay for hospital services. The patient's annual income is calculated as either the patient's income over the last 12 months or three times the patient's income over the last four months. The rule now also sets forth procedures for patients to request a fair hearing if denied free care.

Income eligibility for General Assistance is structured around 100% of HUD Fair Market Rental values, which yield a GA "standard of need" that runs from 45% to 85% of the federal poverty level. Therefore, in nearly every case, the GA applicant who would be eligible for GA is also eligible for "Hospital Free Care."

In short, the Hospital Free Care regulations and the wording of 22 M.R.S. § 4313 ***generally*** *remove a municipality's obligation to pay for an applicant's hospital care. Note however, that individuals are not usually provided with a filled prescription on their release from the hospital, which means a municipality may be asked to assist with medication costs.*

- this is not to say, however, that a GA application for hospital care assistance should be automatically denied on the basis of the Hospital Free Care program. Whenever an applicant does apply for hospital care assistance, the administrator should:

- obtain verification that the applicant has applied for and been denied charity care from the hospital;

- verify that the hospital care is medically necessary and non-elective;

- determine that the applicant does not have sufficient income to work out a payment arrangement with the hospital for the hospital bill;

- negotiate a discount rate with the hospital, based on the Medicaid rate guidelines, for any amount of the bill to which the municipality might be exposed; and provide the necessary financial assistance.

At this point it should be noted that municipalities have the option of paying the hospital bills in their entirety or spreading the payments out over a reasonable length of time. This is strictly a policy decision of the municipality. Some hospitals have an early payment incentive plan which administrators should be aware of.

When reaching its decision the municipality should take into consideration both the financial and physical condition of the applicant and whether his/her job and income prospects are good, thereby eventually enabling the applicant to assume financial responsibility for all or

part of the bill. In the alternative, the administrator should determine whether the applicant has no employment prospects or earning capacity. *If the municipality decides to pay the bill in installments, the applicant* ***must apply regularly and qualify*** *for assistance each month.*

Dental & Eye Care

People may apply for GA to enable them to go to the dentist or eye doctor. As with other medical care, the applicant must give prior notice unless it is an emergency.

Requests for assistance with dental and eye care are generally granted if the service is essential and there are no other resources available to provide these services *(see Appendix 11).* Municipalities may receive requests for extensive dental work, dentures, or glasses. Before granting these requests the administrator should be satisfied that the service is "medically necessary." The administrator can request a written statement from the dentist or eye doctor, or can seek a second opinion—provided that the municipality pays for the second opinion.

In some areas there are health clinics that offer services at reduced rates, or charitable organizations that subsidize these services. Both of these resources should be explored prior to granting a request for these medical services. If none of these resources are available and the doctor has verified that the services are essential, the municipality must grant the necessary assistance.

Burials & Cremations

Municipalities *are responsible for paying the direct burial or cremation expenses,* up to the ordinance maximums, of anyone who dies leaving no money or assets to pay the burial expenses and who has no liable relatives who are financially able to pay the burial or cremation costs. 22 M.R.S. § 4313. *Relatives who are liable for the burial/cremation costs are parents, grandparents, children and grandchildren.* Note that children and grandchildren are considered liable relatives with respect to burial/cremation expenses **only**.

There are a number of issues to consider when analyzing the municipal obligation to assist with the payment for a burial or cremation.

- **Burial & Residency.** The question often arises as to which municipality is responsible when assistance is being requested to bury or cremate a person from Town A but the deceased person's liable relatives live in Town B, Town C and Town D. The administrator should remember that the *purpose of burial provision of GA law is to*

*provide the funeral director with necessary financial assistance to bury or cremate an indigent person when there is **no other** resource available for that purpose.*

To put it another way, the "applicant"—so to speak—for burial assistance is the deceased person and so it is the **deceased's GA residence** at the time of death that determines which municipality is responsible for burial assistance, **not** the various residences of the liable family members. If burial residency was determined by any other criteria, there would be nothing but confusion as to the issue of responsibility when a person from one town needed to be buried and the liable relatives were scattered across the state.

- **Burial & Cremation—Funeral Director's Responsibilities.** State law requires the *funeral director to* notify *the GA administrator **prior to burial*** or cremation or by the end of three business days following the funeral director's receipt of the body, whichever is earlier. Municipalities may choose to institute a written notification policy—one which would require funeral directors to provide such notice in writing. If a written notice is required, municipalities can ask for the notification to be sent via fax in order to expedite matters.

*Therefore, when a funeral director is requesting GA to pay for a burial or cremation and the GA administrator does not receive prior notice and thus has no opportunity to approve the expenses, the municipality has **no legal obligation** to pay the bill.*

The GA administrator should also expect the funeral director to make an effort to identify the availability of resources to pay for the burial or cremation; including: a description of the deceased's estate to the extent it is known; the names and addresses of the legally liable relatives (grandparents, parents, children and grandchildren of the deceased who live or own property in Maine); the potential eligibility for burial or cremation benefits such as veterans' or Social Security burial benefits; and burial contributions offered from any other sources, such as a local church group or friends of the deceased.

The GA administrator should not expect the funeral director to have all this information at the time of initial contact. Since the *funeral director must make an initial request to the GA administrator within **three business days** after receipt of the body,* the funeral director has an interest in contacting the municipality whenever he or she *suspects* that there will not be enough money to completely cover burial/cremation costs. From that point on, the GA administrator and the funeral director should work together to collect and share the necessary information to calculate eligibility.

Burial & Cremation—Administrator's Responsibility

When first contacted by the funeral director, the administrator should inform the funeral director of the maximum amount the municipality can authorize for the burial or cremation expense. This puts the funeral director on notice that he or she should not expect to be reimbursed for any amount in excess of the maximum amount allowed in the municipal ordinance.

The administrator should explain that if the relatives, third parties or other programs (e.g., veterans' or Social Security burial benefits) can pay a portion of the expenses, the municipality will reduce its obligation and pay the balance up to the amount allowed in the ordinance.

For instance, if the municipal ordinance allows $1,000 as the maximum amount it will pay, and the relatives pay $500, the municipality will pay up to the $500 balance even if the funeral director's total bill is $1,800. In other words, if the family or others pay any part of the bill, the *municipality will **only** pay the difference between what the family pays and the maximum amount allowed in the ordinance for burial/cremation expenses.*

In addition, the administrator should explain that after the GA application for a burial is received, the GA administrator has ***eight days*** to reach a decision. This gives the administrator an opportunity to verify the information and determine if there are any other assets, resources or relatives who could contribute toward the burial.

NOTE: The MMA's Legal Services Department cautions GA administrators not to sign documents containing "assumption of risk" clauses for cremations. It was brought to the attention of Legal Services, that certain "orders for cremation" contained language where by the municipality was to assume the risk of damage to the crematorium in the event the deceased had a pacemaker or prosthetic devise. In such cases, *the funeral director should bear the burden of making such a determination prior to cremation—it should not be the municipality's responsibility to accept the risk of damage.* In the event a cremation document contains such language, the GA administrator should negotiate that section out of the document **prior to signing** any agreement.

Burial & Cremation—Calculation of Eligibility

The municipal obligation to financially assist with the burial or cremation of an indigent person is the difference between the ordinance maximum for the burial or cremation and the financial resources that exist for that purpose. Those financial resources are:

- the estate of the deceased;

- the financial capacity of legally liable relatives (grandparents, parents, children, grandchildren who live or own property in Maine);

- burial benefits such as those sometimes available to veterans and Social Security recipients with surviving spouses or immediate relatives;

- any actual financial contribution from virtually any other source, such as friends, community collections, church group donations, etc.

With regard to the deceased person's estate, Maine's Probate Code provides sufficient means for funeral directors to be paid for their services when there is an estate. 18-A M.R.S. § 3-805.

With regard to the financial capacity of legally liable relatives, it should be emphasized that the test to be applied is one of *capacity* to contribute financially, not the *willingness* to do so. If the administrator is able to identify liable family members who live or own property in Maine and who have sufficient income to pay for the burial or cremation in lump sum payment or by any reasonable installment arrangement, the request for burial or cremation assistance can be denied, even if those liable family members are not willing to contribute. To determine a relative's financial capacity to contribute, the relative should be required to fill out a GA application—not for the purpose of applying themselves for GA, but for the sole purpose of calculating financial capacity.

It is important to remember that municipalities historically have been responsible for providing a decent burial for people who left no money and had no relatives to pay for their burial. However, GA is not intended to be a welfare program for liable relatives who could pay for burial expenses but do not want to, nor is it intended to be a collection agency for funeral directors who find it easier to bill the municipality.

Finally, a note about the type of burial arrangement is in order. Certainly the burial or cremation preparations should be carried out with dignity and respect. The wishes of the family should be fulfilled to the extent possible *within the confines of the* ***maximum assistance allowed*** *in the ordinance.*

With regard to the issue of family wishes, at the reasonable request of the Maine Funeral Directors' Association, the MMA model GA ordinance provides that the wishes of the family will be respected as to whether the deceased is buried or cremated. It is *only when the family*

members concur that a cremation is appropriate or when there are no known family members that the administrator may elect to issue a benefit for cremation services that are more cost effective than burial services.

Burials are a very sensitive subject. Relatives applying for GA may be grief stricken and traumatized. They may want a funeral that entails much more than they or the municipality can pay. It is incumbent upon the GA administrator to be as sensitive as possible to the deceased's relatives, while also fulfilling the law.

CHAPTER 8 – Recovery of Expenses

Unlike many other public assistance programs, the GA issued on a recipient's behalf is treated more like a loan to the recipient than a no-strings-attached grant. There are five mechanisms designed into GA law that provide a process of recovery whereby municipalities can seek to recoup from a recipient part or all of the GA issued. Those five mechanisms are:

1. a general recovery process (i.e., civil action in small claims court) (§ 4318);

2. a process to recover assistance from a recipient's legally liable relatives (§ 4319);

3. an authority to place a lien on real property when GA has been used to make a mortgage payment or capital improvement (§ 4320);

4. an automatic lien on any Workers' Compensation lump sum payment issued to a recipient (§ 4318); and

5. a lien on any Supplemental Security Income (SSI) lump sum payment issued to a recipient (§ 4318).

Each of these recovery processes are briefly described as follows:

The General Recovery Process

Section 4318, in its first paragraph, allows a municipality to recover the amount of assistance it has granted to a recipient—by civil action if necessary—if and when the recipient later becomes financially able to repay the municipality. At the time of a person's first application for assistance and at the time of every grant of assistance thereafter, the GA administrator should make the applicant aware of this provision of the law. It is particularly important to remind applicants of their repayment responsibilities when the administrator becomes aware that a recipient may soon be returning to work or receiving a large retroactive lump sum payment, such as a settlement in an accident claim.

When it becomes clear that a recipient's ability to repay the municipality is a distinct possibility, the administrator should first seek voluntary reimbursement from the recipient. If the recipient expresses a willingness to repay the municipality voluntarily, a simple agreement to that effect can be drawn up, dated and signed by recipient, administrator and witness. This type of agreement can be written in straightforward language, with flexible installment payment schedules.

Municipalities are cautioned that such agreements should **only** be entered into **after** granting GA and in **no event prior to or as a condition** to receiving GA. (See Appendix 13 for sample "Notice of Lien" in anticipation of a disposition of accident/injury claim.)

If the recipient does not wish to sign such an agreement after receiving GA, and at the time of receiving a lump sum payment or becoming gainfully employed the recipient does not voluntarily repay the municipality, the town can sue the recipient for recovery. If the amount to be recovered does not exceed $6,000 (the current maximum amount), the municipality can take recipients to Small Claims Court (for a filing fee of approximately $50) where it is not necessary to be represented by an attorney. Because the maximum recovery amount allowed and filing fees for small claims court change from time to time, checking with the court to see what the current amounts are is recommended. The Judicial Branch publishes a very helpful publication called, *"A Guide to Small Claims Proceedings in the Maine District Court"* which is available by contacting:

Administrative Office of the Courts
62 Elm St. (2nd Fl.), PO Box 4820
Portland, Maine 04112-4820
Tel. # 822-0792

There are two factors an administrator should bear in mind when seeking recovery. First, the recipient must be ***financially able*** to repay the municipality, which means—in addition to other reasonable criteria—that the recipient would not become destitute and eligible for GA as a result of the repayment. The other factor to consider is that 1985 legislation added a paragraph to § 4318 to expressly prohibit a municipality from recovering any assistance granted to a workfare recipient *as a result of a workfare injury.*

Relatives

As § 4318 permits a municipality to seek recovery from a recipient, § 4319 permits a municipality to seek recovery from—and take to court, if necessary—a recipient's *legally liable relatives.*

As has been noted in an earlier section of this manual, § 4319 of GA law provides that parents are financially responsible for the support of their children who apply independently for GA and are *under the age of **25.** Spouses,* by that same section of GA law, *are financially responsible for each other*. Under this statute, municipalities may seek recovery from the financially liable individuals provided the responsible parties either live in Maine or own property in this state and have a financial capacity to repay the municipality.

As a first step in this recovery process, the administrator should attempt to have the liable relatives voluntarily assume responsibility for providing the basic needs for their children or spouse *(see "Enforcement of Parental Liability," in Chapter 4).* If the parents or spouse are unwilling to provide direct support, but there is undoubtedly a financial capacity to do so, the municipality should send a bill to the parents or spouse for the amount of GA granted the applicant. If that bill is ignored, the municipality could seek recovery from the relatives in court.

Section 4319 limits a municipality's ability to recover from liable relatives only the amount of GA granted to the minor or young adult, or spouse, during the *preceding **12** months,* so if the administrator thinks an aggressive collection action is appropriate, the process should be initiated in a timely manner. Again, before a municipality can pursue any of these steps it must be sure that the relatives are financially able to provide the support or reimbursement. Seeking recovery in court from impoverished and therefore judgment-proof people is a waste of time and money.

In a final note on this issue, GA administrators should exercise good and careful judgment when considering a collection action against a spouse. It is all too often the case that a marriage separation that leaves one spouse impoverished and the other with some financial security is also a separation loaded with personal acrimony that can, in turn, lead to violence and abuse. If there is some indication that a spouse on the receiving end of a collection action might respond in an abusive way toward the target of his hostility, the administrator would be well advised to consider backing away from the collection action. If there are children involved, the administrator may elect, instead, to advise the individual receiving GA to contact the Department of Health and Human Services' Support Enforcement Unit in an effort to secure any child support obligations from the noncontributing spouse.

Mortgage Payment & Capital Improvement Liens

The third mechanism built into the law by which municipalities can recover some specific GA expenditures is described in § 4320. Under this section of law, the municipality can file a lien in the registry of deeds whenever GA is issued on behalf of a recipient towards a mortgage payment or a capital improvement for the housing in which the recipient is residing. This lien filing process is described in detail under "*Housing,"* in Chapter 7.

It should be noted that a GA lien is unlike a municipal tax lien because a GA lien is not a foreclosing lien. The GA lien enjoys no special priority over any other lien that may have previously been filed against the property. Because the GA lien is necessarily lower in priority

than a mortgage lien, the municipality will very likely lose its GA lien if the property is foreclosed on by a mortgage holder and conveyed at a mortgage auction.

Other than this circumstance of mortgage foreclosure, the GA lien can be effectively enforced at the time the property is sold. If a subsequent sale of the property involves bank financing, the bank's title search will quickly identify the lien and either the buyer or seller or both will be obliged to discharge it. If the property is subsequently conveyed without bank financing, conveyed by a quit claim or "release" deed, or transferred as a gift or part of an estate, it is possible that no one will voluntarily come forward to discharge the lien. In that case, the municipality should notify the property owner that the town will be enforcing its lien pursuant to § 4320. If necessary, the town may have to take the new property owner to court to enforce its lien.

Workers' Compensation Lump Sum Liens

In December 1991, §§ 4318 was amended to give municipalities a statutory lien on Workers' Compensation lump sum benefits for the amount of GA issued by the municipality to the person subsequently receiving the Workers' Compensation lump sum payment. *The language of § 4318 creates the lien automatically:* that is, there are no particular notice or paperwork requirements necessary to perfect the lien.

On the other hand, if the GA recipient's employer or the employer's insurance company does not know about the municipal lien, they will not be sufficiently aware to segregate out the municipal share of any lump sum payment issued to a Workers' Compensation beneficiary. Therefore, it is for the *purpose of actually collecting on the lien,* rather than establishing or perfecting the lien, that the following paperwork requirements are recommended.

- **Definition of "lump sum payment."** For obvious reasons the new language in § 4318 establishes a lien against Workers' Compensation *lump sum benefits, **not** the regular*, *weekly Workers' Compensation benefits* that a recipient might be receiving. To enforce a lien against weekly benefits would merely create a proportionately greater need for weekly GA.

That being said, there remains some confusion over the issue of exactly what is a Workers' Compensation "lump sum payment." The reason for this confusion is that General Assistance law, in 22 M.R.S. § 4301(8-A) has one definition of "lump sum payment," and Workers' Compensation law, in 39-A M.R.S. § 352, defines and deals with its own version of "lump sum payments."

The Title 39-A definition would seem to limit the consideration of lump sum payments to lump sum *settlements*; that is, the *commutation of all future weekly* benefits to a lump sum. This commutation is potentially available to any ongoing recipient of Workers' Compensation benefits. The definition of "lump sum payment" in GA law is more generalized, and expressly includes *"retroactive or settlement portions of workers' compensation payments…"*

A retroactive payment would include a larger-than-weekly Workers' Compensation payment a recipient might receive if there was some delay in processing his or her claim, whether in contested or uncontested cases. In short, it would appear that the way § 4318 is now worded, in light of the § 4301(8-A) definition of "lump sum payment," *the municipal lien is to be applied and may be enforced against either Workers' Compensation lump sum settlements* ***or*** *retroactive Workers' Compensation lump sum payments of any other kind.*

- **Paperwork requirements—the UCC-1 Form.** The Workers' Compensation liens should be filed with the Office of the Secretary of State, Uniform Commercial Code division, on a UCC-1 form *(see Appendix 17 for sample "UCC-1 form").*

- **How to fill in the form.** The form instructions ask that the form be typed.

    1. In Boxes #1 & 2—labeled "Debtor," the administrator should enter the name of the General Assistance recipient, using Box 2 if there is an additional recipient.

    2. In Box #3—labeled "Secured Party," the administrator should enter the name of the municipality, the name of the General Assistance administrator, and the municipality's mailing address.

    3. In Box #4—labeled "Collateral," indicate the collateral covered by the statement. Since there is no way to know the precise amount of General Assistance that will be recoverable at the time the Workers' Compensation lump sum payment is issued, the administrator should enter into this box the following:

        "Any and all lump sum payment of Workers' Compensation benefits, up to the value of general assistance granted from secured party to debtor from January 1, 1992 forward, including future advances of general assistance to debtor."

    4. The administrator should leave blank the Box labeled "Alternative Designation" This would only apply should the town ever wish to sell these liens.

5. The administrator should also leave blank the small check-boxes regarding covered collateral.

6. The line labeled "Optional Filer Reference Data" should be left blank.

Where should this form be filed?

The form must be filed with the:

Secretary of State's Office
Uniform Commercial Code Division
State House Station #101, Augusta, Maine 04333
Tel. # (207) 624-7736

There is a ***$15*** *filing fee, unless you have attachments creating more than 2 pages, then the filing fee is $30. The lien is established for a period of* ***five years***. For continuing the lien, a Continuation of Lien form must be filed six months before the five-year period elapses. This means that a "tickler file" should be established for all filed liens so that somewhere around four and one-half years after any lien is filed, the appropriate official will know to file the continuation form.

Finally, after the UCC-1 form is completely filled out, a few photocopies should be made so that one photocopy can be sent to the "obligor" (the applicable compensation insurance company), and one to the recipient's Compensation attorney. It is particularly important to put the employer's insurance company and the injured employee's Compensation attorney, if any, on the notice with regard to the municipal lien. For that reason, it is advisable to send them a photocopy of this UCC-1 form *by certified mail, return receipt requested.*

- **When should the UCC-1 form be filed?** At $15 a filing, the administrator will not want to file these liens against all clients on the off chance that a few of them, someday, may receive a lump sum Workers' Compensation benefit. The administrator will probably want to file these liens only when the recipient (a) is receiving Workers' Compensation already or (b) has applied for Workers' Compensation after sustaining a work-related injury.

The way the law is worded, however, it would appear that the municipality can recover any and all GA issued to a recipient after the effective date of the new law (December 23, 1991), even though some of that GA may have been issued before the recipient sustained a work-related injury. In this respect the Workers' Compensation lien should be distinguished from

the lien on retroactive Supplemental Security Income (SSI) benefits (discussed below). The SSI lien is expressly intended to capture only the interim GA issued to a person during the time between that person's first SSI application and any subsequent retroactive benefit.

What this lien does not and cannot capture is GA issued prior to the effective date of this enabling legislation. Therefore, no GA issued prior to December 23, 1991 can be recovered by this lien. In an effort to reduce confusion, MMA's suggested language on the UCC-1 form starts the window of recovery on January 1, 1992.

- **Monitoring the lien.** After the UCC-1 form has been filed, the administrator's only task will be to keep track of how much GA is issued to the recipient. The way this process is supposed to work, when the employer or the employer's insurance company is getting ready to cut a lump sum check to the recipient, the administrator should be contacted and asked for the precise amount captured by the municipal lien. For this reason, again, a special "tickler file" should be kept on all cases covered by these liens.

Offsetting "Workfare" Performed

In April of 1998, the Maine Supreme Court rendered a decision in *Coker v. City of Lewiston*, 1998 Me. 93, which reversed previous statutory interpretation, DHHS policy and municipal practice with respect to lump sum Workers' Compensation awards and municipal GA liens relative to workfare performed. Whereas workfare was formerly deemed ***solely*** *a condition of eligibility for* ***prospective general assistance***, the *Coker* decision characterized workfare as ***discharging*** the recipient's municipal reimbursement obligation to the extent of the value of workfare performed *(calculated at a rate of at least* ***minimum wage****).* Later that year, *Thompson, et al., v. Commissioner, Department of Health and Human Services and City of Lewiston* (CV-94-509, Me. Super. Ct., Ken., August 28, 1998), another case on point, was decided, albeit at the Superior Court level, which applied the *Coker* analysis to the SSI Interim Assistance Program. As a result, DHHS policy was amended to provide that ***all workfare performed must be "backed out" or subtracted from the recipient's municipal obligation.***

Liens on SSI Lump Sum Retroactive Payments

Supplemental Security Income (SSI) is a federal entitlement cash benefit that is issued monthly to people who are unable to be employed for extended periods of time for reason of physical or mental disability. For more information about the SSI program, see Appendix 11.

It is not unusual for a person applying for Supplemental Security Income (SSI) to be denied benefits initially, only to be granted benefits after a lengthy appeal process. When this occurs, the SSI recipient is issued a retroactive benefit covering a period of time going back to the

point in time on or after the date of initial SSI application when the applicant is determined to be disabled. Those retroactive benefits can be for many thousands of dollars.

Federal law, in a general way, prohibits the *recovery by legal process* of any benefits received by a Social Security recipient unless that recovery or repayment is voluntarily allowed by the recipient. 42 USC §§ 407. Another more specific section of federal law, however, allows state governments to establish systems whereby the state government and political subdivisions of the state can be reimbursed for interim public assistance payments the state or municipalities must make while individuals are waiting for the SSI applications to be processed. 42 USC § 1383(g). In two steps, the Maine Legislature authorized DHHS to establish just such a system of interim assistance reimbursement.

The municipality and the state will be **reimbursed automatically** for the GA issued to a person while that recipient is waiting for an SSI eligibility determination and subsequently receives a retroactive lump sum SSI payment. To obtain this reimbursement, the municipality must first get the GA applicant to sign the reimbursement agreement. Because federal law gives sole authority to establish this reimbursement system with the state, a municipality may not establish a mandatory reimbursement agreement by its own authority, and even an agreement form to be signed by the GA recipient must be the form provided to the municipality by DHHS. *Any applicant who does not wish to sign the agreement will* ***not be eligible for GA***.

The Interim Assistance Agreement forms to be used in this process are only available from the Department of Health and Human Services. In addition to the actual agreement forms, DHHS will provide any municipality requesting the forms with a "Vendor Identification Form" and an instructional memo describing how the two forms are to be filled out and maintained.

The "Vendor Identification Form" provides the Department with the necessary information to cut the remainder check to the SSI recipient and mail the remainder check out after the value of the GA is removed from the initial SSI retroactive check. To obtain copies of these forms and the instructional memo, either write to the Department of Health and Human Services, General Assistance Unit, State House Station #11, 19 Union Street, Augusta, Maine 04333 or call the Department's toll-free number *(1-800-442-6003)*. *(Also, see Appendix 18.)*

After the recipient has signed the agreement form, the administrator should retain one copy, provide a copy to the recipient, and send a copy to the Department along with the Vendor Identification Form. After that point in time, any retroactive SSI payment will go directly

from the Social Security Administration to DHHS, where the municipal/state share will be diverted, with the remainder of the retroactive lump sum payment being passed through to the SSI recipient.

DHHS will have a limited period of time (ten days) to pass through the SSI retroactive benefit to the recipient after subtracting the municipal/state share. Therefore, as is the case with Workers' Compensation lien case records, the administrator should keep a tickler file on all clients who have signed the SSI reimbursement agreement so that the municipality can quickly tally the total GA captured by the SSI lien when DHHS needs that information. The Department now has model forms for the purpose of keeping track of GA benefits issued to pending SSI recipients.

CHAPTER 9 – Written Decision

Once the administrator has received and verified all the necessary information and has determined whether the applicant is eligible, the next step is to give a written notice of decision to the applicant. *The administrator **must give a written decision** to applicants each time they apply, whether or not assistance is granted or denied, within **24 hours** of receiving a completed application.*

It is absolutely essential that the administrator give the applicant a written decision within 24 hours of receiving each application, after deciding to reduce, suspend, terminate or make any change in an applicant's grant of assistance. Furthermore, if a person is denied assistance, the decision must state the specific reasons for the denial. Simply stating, "The applicant is denied because he is ineligible" is not sufficient notice.

Even when a person is granted assistance and receives a voucher for food or rent and is fully informed of the nature of the grant, the administrator must give *written* notice stating the specific reasons for the decision, and noting the type and amount of aid granted.

The purpose of the decision is to inform the applicants what assistance they were or were not granted and to inform them that they have the right to question that decision by appealing it to the Fair Hearing Authority. In addition to giving a written decision within 24 hours, assistance—if granted—must also be furnished within the same 24-hour period. *In emergencies, assistance must be provided **as soon as possible** within this period.*

Contents

There are six important elements in the notice of decision:

1. the reasons for the decision;

2. the amount of assistance granted or denied;

3. the specific period of eligibility (e.g., from Jan. 6, 2014 to Jan. 20, 2014);

4. the conditions, if any, that are being placed on the grant of assistance that may affect future eligibility;

5. the right to complain to the Department of Health and Human Services if the applicant believes the municipality has violated state law; and

6. the right to question or appeal the decision to a Fair Hearing Authority.

Reasons

The written decision must state whether the request for assistance has been granted or denied and give the reasons for the decision. The reason must be specific. For example, stating, "The applicant is granted assistance in accordance with section 6.9 of the ordinance," does not fulfill the spirit of the intent of giving a written notice. The purpose of the decision is to provide the applicant with sufficient information about what action was taken on the request for assistance and why.

The decision should explain the Town's action completely, such as:

> "The applicant is found eligible to receive assistance because the household income is less than the allowed expenses and therefore the household is in need, in accordance with section 5.1 of the municipal ordinance, and the applicant has completed the work requirement, pursuant to section 5.5 of the ordinance."

or,

> "The applicant is denied due to sufficient household income to meet his need for basic necessities pursuant to sections 4.5 and 6.7 of the municipal ordinance and state law. 22 M.R.S. § 4309."

- **Amount of assistance.** The decision should state the amount of GA that was requested and state what assistance was actually granted or denied. For instance, an applicant might request $350 for rent. If the applicant was granted $300 because that is the maximum amount allowed, the decision should reflect why the total request was not granted.

- **Period of eligibility.** It is very important that every decision clearly indicates the period of eligibility for which the GA grant is being made. The period of eligibility, by law, can be for no longer than 30 days, but it may be for any period shorter than 30 days.

One reason for clearly indicating the period of eligibility is to make sure the applicant is aware of the duration of the grant and, therefore, when he or she should reapply. Another reason for noting the period of eligibility is to keep track of the amount of assistance granted during a specific period of time so that the point at which "emergency" assistance (i.e., assistance granted over and above the household's deficit) must be granted can be easily established.

- **Conditions of future eligibility.** The purpose behind the two-step GA application process which generally provides a "need only" test of eligibility for first time applicants, and

allows the imposition of other eligibility conditions (such as the work requirement) for future applications, is to give people the "benefit of doubt" the *first* time they apply but to expect them to know the eligibility requirements for subsequent applications.

The only way this process will work is if recipients *know* what those eligibility requirements are. Therefore it is essential that the decision inform recipients what they will have to do to receive assistance upon subsequent applications. MMA provides a brochure that explains applicants' rights and responsibilities.

Able-bodied, non-working recipients must be told that they must:

- register for work with the Maine Job Service;
- look for work;
- accept a job offer;
- not quit work, if and when employed, and not be discharged from employment for misconduct.

In addition, the decision should inform recipients that they *must apply for any resource that would assist them,* and specify what those resources are (food supplement benefit, TANF, fuel assistance, unemployment compensation, etc.). They should be instructed to seek assistance from legally liable relatives (parents, spouses) and should be informed that those liable relatives may be billed for any assistance granted to the applicants.

If recipients have any assets the administrator expects them to sell or use as collateral, this also must be included in the decision, along with the reasonable time frame in which to liquidate the asset or apply for a loan against significant collateral.

All applicants should be informed of the lump sum proration process and what their specific responsibilities will be if they receive a lump sum payment. *(see "Lump Sum Income," in Chapter 2).*

The applicants should be told that any income they receive must be used for basic necessities and if it is not it may result in the household being ineligible or receiving a reduced amount of assistance. Further, the recipient should be reminded about the penalties for committing fraud in Chapter 3.

In short, *the decision should state **any and all** conditions the administrator expects the recipient to fulfill.* If the recipient *doesn't know* that she could apply for fuel assistance or that she was expected to sell her wood lot, she won't do it and can't be disqualified for not complying with directions to use available resources.

Finally, the written decision should also include any use-of-income guidelines the administrator thinks appropriate to impose in accordance with the use-of-income policy adopted by the town (see "Use-of-Income Guidelines," in Chapter 2).

These guidelines may consist of a preprinted notice that explains how recipients are expected to spend their income, or the use-of-income requirements may be specifically stated on the decision issued to the recipient, or both. For example, the notice issued to all applicants may generally explain that the municipality considers any rent or mortgage obligation to be the recipient's responsibility. In addition, on a particular recipient's decision form the administrator might write, "You are also expected to apply $250 of the TANF check you will be receiving next week toward your rent, and the next time you apply you must bring a rent receipt showing that this was done."

Administrators should remember that any generally applicable use-of-income policy adopted by the municipality *must be issued to **all** applicants.*

- **Right to complain to DHHS.** The decision must give notice that people have the right to complain about the decision to the Department of Health and Human Services if they believe the municipality has violated state law. DHHS has a toll-free telephone number for this purpose and that number must be on the decision (1-800-442-6003). A law enacted in 1990 also requires that this telephone number be posted.

- **Right to appeal.** The decision must inform people that they have the right to challenge the decision at a fair hearing and inform them of the process for obtaining a fair hearing *(see "Fair Hearings," Chapter 10).*

It is important that all this information be included in the written decision. It is also important that the administrator take the time to explain to the applicant the eligibility requirements and the right to appeal the decision.

Summary

Applicants must be given a *written decision **each** time they apply*. The decision must be given *within **24 hours** of receiving an application*. It must be given whether assistance is granted or denied and it must state the reasons for the decision. *If assistance is granted it must be furnished within the **24 hour** period*. The decision *must inform the applicants that if dissatisfied they may appeal* the decision to a Fair Hearing Authority, and if they believe that the administrator violated state law they can *complain to the Department of Health and Human Services*. The decision must also explain ***what conditions** must be met to receive assistance in the future.*

CHAPTER 10 – Fair Hearings

People who disagree with the GA administrator's decision, act, failure to act, or delay, concerning their request for general assistance have the right to appeal the action to a Fair Hearing Authority (FHA). In order to utilize that right, however, applicants must act in a timely manner.

They must request a fair hearing in writing within **five working days** of receiving a written notice of denial, reduction, or termination of assistance, or within **ten working days** of any other act or failure to act by the administrator. If the time period elapses and the applicant hasn't requested a fair hearing, he/she loses the chance to appeal that decision. The person's only recourse is to reapply for assistance.

For instance, Judy Cutler applied for GA. She was denied in writing because she had not fulfilled her workfare assignment and was therefore disqualified. She requested a hearing two weeks after receiving the decision. Her right to request a hearing lapsed because she had received a written notice and the five working days she had to request an appeal had passed. The administrator told her he could not schedule a hearing but he could take another application from her.

Keep in mind that the administrator **cannot** terminate or reduce an applicant's grant of assistance once the grant has been made prior to the applicant being allowed to appeal the decision.

For example, Eldon Cote was granted assistance. Two weeks later the administrator found out that Eldon had been working but had not reported it. The administrator notified Eldon that he had been granted more GA than he was entitled to receive, that he must repay $100 for the assistance he received and that he would be ineligible to receive GA for 120 days (as of the date the fraud was discovered) because of the fraud. The notice also informed Eldon that he had the right to appeal the decision. Eldon did not appeal instead he made arrangements to repay the assistance he had not been eligible to receive.

The administrator should provide a form for people to request a fair hearing. The form should state the person's name and address, why he or she wants a fair hearing, and what assistance the applicant believes himself or herself to be entitled to. The administrator should never try to dissuade an applicant from requesting a fair hearing. Certainly the administrator can discuss any questions the person has, but if the applicant insists on having a hearing, the administrator must schedule one.

When to Hold a Hearing

The administrator must schedule a fair hearing and it must be held within *five working days* of when the administrator receives a written request from a dissatisfied applicant. In scheduling the hearing, the administrator should attempt to hold it at a time that is mutually convenient for the Fair Hearing Authority and the applicant. If the applicant wants an extension of time because there hasn't been time to prepare the case or due to other good cause, he or she can ask the administrator to exceed the five working days. If the administrator does schedule the hearing after the statutory time period, the administrator should have the applicant make a written request explaining why he/she needs the extension. After people (claimants) request a hearing they must be given written notice of when and where the hearing will take place. Claimants should be informed that they have the right to present witnesses and evidence on their behalf, question witnesses against them, and be represented by legal counsel or other representatives.

Unlike most municipal proceedings, the fair hearing is closed to the public; it can only be open to the public at the claimant's request. Therefore anyone who does not have any official role in the hearing is not allowed to attend. The Fair Hearing Authority, the claimant, his/her legal representative and witnesses, the GA administrator and the Town's attorney and witnesses, and a person to record the hearing are the only people who should be present. The claimant can bring family members or friends for support. Selectpersons, councilors or other municipal employees who are not overseers or who did not have any role in the decision or who are not Fair Hearing Authority members are not allowed to attend unless they are witnesses.

Fair Hearing Authority

The Fair Hearing Authority can be one or more municipal officers; the board of appeals, if specifically delegated the responsibility; or one or more persons appointed by the municipal officers to act as the Fair Hearing Authority. In no case may the Fair Hearing Authority include any person who was responsible in any way for the decision, act, failure to act, or delay in action relating to the claimant.

Conduct of the Fair Hearing—Decision

The hearing is informal in that it is not necessary to adhere strictly to the rules of evidence required by a court of law. However, the FHA should keep uppermost in its thoughts that the purpose of the hearing is to hear both sides in the case, evaluate all the facts objectively, and reach a decision based solely on the information presented at the hearing, pursuant to the requirements of state law and municipal ordinance.

The FHA must give the claimant a written decision within *five working days* after the hearing. The FHA must state specific reasons for its decision and specify what section(s) of state or

municipal law it used in making its decision. If the claimant is aggrieved by the Fair Hearing Authority's decision, he or she has the right to appeal the decision to the Superior Court within 30 days. The right to appeal the decision must be explained to the claimant in the written decision. From the Superior Court decision, there is an appeal route to the Maine Supreme Court.

Record

The municipality must make a taped record of the fair hearing. Claimants are responsible for the costs of providing a transcript if they decide to appeal the Fair Hearing Authority's decision to Superior Court.

The Department of Health and Human Services

Role

In 1983 when the Legislature enacted a major revision of the GA law it also increased the role of the Department of Health and Human Services (DHHS) in the administration of GA. It expanded the state's involvement from merely *monitoring* all GA programs to *supervising* GA. The Legislature also gave DHHS the authority to grant assistance directly to applicants in emergencies if the applicants were denied assistance due to a municipality's "failure to comply" with GA law. 22 M.R.S. § 4323.

Prior to 1983 the law stated:

> "The department shall offer assistance to municipalities in complying with this chapter. The department may review the administration of the general assistance program of any municipality whether or not reimbursement is given. This review shall include a discussion with and, if necessary, recommendations to the administrator of the general assistance program as to the requirements of this chapter."

In practice, the DHHS reviewed the GA programs in only those municipalities which received state reimbursement. Since less than 25% of the state's nearly 500 municipalities received any state reimbursement, the DHHS did not have a very visible role in GA. And although the state Attorney General was empowered to prosecute any municipality that administered its GA program contrary to state law, this power was rarely invoked. The DHHS role has changed now that all municipalities are eligible to receive at least 50% state reimbursement for GA expenditures *(see "Reimbursement," in Chapter 10). (Refer to Appendix 18 for information on the DHHS "Review Process for General Assistance" in addition to relevant DHHS forms).*

Review

The state's laissez-faire attitude changed drastically in 1983 when the Legislature mandated that the DHHS be responsible for the proper administration of GA and assist municipalities in complying with the state law (§ 4323). In 1993, the DHHS role was slightly relaxed with a removal of a DHHS obligation to review all municipal ordinances for legal compliance. At the present time, GA law instructs DHHS to review each municipality's GA program (known as an "audit"). This requires DHHS to visit each municipality regularly, as well as in response to requests or complaints, and to inspect the GA records to determine if the program is administered according to the law. The DHHS representative must discuss the results of the review with the administrator and report his or her findings in writing to the municipality. The written notice must inform the municipality if the program is in compliance or, if it is not, how to comply. The administrator or his or her designee must be available during the department's review and cooperate in providing necessary information. It is important that someone (preferably the administrator) be there in order to answer any questions which may arise during the course of the DHHS audit.

Violations

If, after conducting a review, DHHS determines that a municipality's GA program is being administered improperly, it must notify the municipality. The written notice will alert the municipality of the violations and how to correct them. The municipality has *30 days* to correct the violations and file a plan with DHHS describing what steps it will take to comply with the law. The DHHS will notify the municipality if the plan of correction is acceptable and that it will review the municipality's program again within 60 days of accepting the plan.

Penalty

If a municipality doesn't file an acceptable plan or if it continues to operate its GA program in violation of state law, the state can stop reimbursing the municipality for its GA expenses until it does comply. Further, the municipality can be fined by a court of law *not less than $500 a month* for each month it continues to administer its GA program improperly. 22 M.R.S. § 4323(2).

Complaints & Direct Assistance

In addition to the annual or regular program reviews by DHHS, the Department also fields any complaints from GA applicants who feel the municipality did not respond to the applicant's request for GA in accordance with state law. For that purpose, DHHS has a toll-free complaint "hot line" (1-800-442-6003). This "hot line" telephone number has to be posted on the notice of the municipality's General Assistance Program *and* included as a part of all written decisions applicants are given. Typically, the DHHS personnel on the "hot line" will take the complaint over the phone and attempt to discern whether the municipal

administrator responded to the application correctly. This sometimes requires calls back and forth between the DHHS and the town, DHHS and the applicant, DHHS and the town, and so forth, as the Department attempts to get all sides to the story. Almost all complaints are resolved in this manner, but the Department has the authority to intervene when it appears to DHHS that the applicant did not receive a proper decision from the town and the applicant is in immediate need.

The law governing the state's right to intervene in a GA decision is found in § 4323(3). There it is found that under certain circumstances the state does not have to withhold reimbursement, conduct an in-depth review or impose a fine in order to rectify a problem. In some cases DHHS can act immediately and grant assistance to applicants. The DHHS is empowered to grant assistance directly to applicants who need assistance immediately (i.e., emergency GA) *if the applicant has not received assistance as a result of the municipality's failure to comply with the requirements of the state's GA law.*

If DHHS grants assistance directly, the municipality will be billed not only for the assistance but also for the state's administrative costs connected with that grant of assistance. No municipality, however, may be held responsible for reimbursing the DHHS if the Department failed to intervene within 24 hours of receiving the request to intervene or if the DHHS failed to make a good faith effort to notify the municipality of the DHHS action prior to the intervention.

If the DHHS does intervene in a timely manner and with prior notice and the municipality is billed and fails to pay the bill within 30 days, DHHS is authorized to recover its money by simply withholding that amount from a future reimbursement due the municipality. If that wasn't practical for some reason, DHHS could forward the bill to the State Treasurer for payment. The Treasurer would then reduce the town's State Municipal Revenue Sharing, education subsidy, or other funds owed to the municipality.

The law governing DHHS intervention requires the department to make a "good faith" effort to contact the GA administrator to verify complaints it receives prior to granting assistance directly. If DHHS cannot reach the administrator or if DHHS cannot resolve the complaint with the municipality and if it is satisfied that an emergency exists, DHHS will grant assistance directly to the applicant. In effect, this section of the state law provides for a limited state "take-over" of the GA program.

Maximum Levels of Assistance

There is one other specific type of complaint that the Department is authorized to investigate, and that is the specific maximum levels of assistance for the various basic needs as developed by municipalities as part of their ordinance. Although the DHHS obligation to review all

municipal ordinances for legal compliance was removed as of July 1, 1993, a DHHS authority to review, upon complaint, the specific maximum levels of assistance was retained.

Written Notice

Whenever complaints are made against a municipality, the DHHS must give written notice to the person making the complaint and the municipality explaining why it did or did not intervene in the case.

Appeals

If a person making a complaint or a municipality disagrees with the DHHS decision regarding a request to intervene, either party can appeal the decision to a state hearing officer. If a municipality wishes to request a hearing it must request the hearing in writing within 30 days of being notified that the DHHS has granted direct assistance. An impartial person must hold this hearing. If the municipality disagrees with the hearing officer's decision, it can appeal the decision to the Superior Court pursuant to Rule 80C of the Maine Rules of Civil Procedure. 22 M.R.S. § 4323(4).

Just because DHHS threatens to intervene or actually intervenes, that doesn't mean that the DHHS is correct and is exercising its authority properly. The state, just as municipalities, can make mistakes. If a municipality is contacted by the DHHS and is told to grant assistance or be billed for it, the municipality should reevaluate the case. If it is an emergency (*a life threatening situation or a situation beyond the control of the individual which if not alleviated immediately could reasonably be expected to pose a threat to the health or safety of the individual)*, the municipality would be responsible for providing assistance if the applicant were eligible.

However, usually DHHS only hears one side of the story—either from the dissatisfied applicant or the applicant's legal representative. The GA administrator often has a better idea of the true situation than DHHS(if for no other reason than because he or she is on the scene and knows if there really is an emergency and there are no alternatives). If the DHHS grants assistance directly to a person despite the municipality's objections, the municipality should contact MMA or the municipal attorney to discuss the merits of the case and decide whether it would be worthwhile to appeal the decision.

DHHS Rules

The DHHS has promulgated rules which outline its procedures for fulfilling its responsibilities. These rules are known as the *Maine General Assistance Policy Manual,* and may be obtained from the DHHS, General Assistance Unit, State House Station #11, Augusta,

Maine 04333. *(Once obtained, municipalities should place the rules after tab 15 of this manual.)*

Reimbursement

The details of the system of state reimbursement for a portion of the GA benefits that are issued are described more fully below, but it should be noted at the outset that the GA reimbursement formula underwent a dramatic change in 1993. For ten years the reimbursement formula was based on a municipal "obligation" level that was a fixed .0003 times the municipality's 1981 state valuation. As of July 1, 1993, the municipal "obligation" was modified to become .0003 times the municipality's most recent state valuation. The concept of the municipal "obligation" and the manner in which the municipal "obligation" affects a particular municipality's reimbursement is described in more detail below, but the general impact of this change in the law is to significantly increase many municipalities' financial exposure to the GA program by reducing the amount of state reimbursement that was formerly provided some of the towns and cities in Maine that are experiencing the greatest demand for GA.

GA law requires the state to reimburse municipalities for a portion of their GA expenses. The amount of reimbursement is based on two formulas found in § 4311, as those formulas are applied to the municipality's "net general assistance cost." The "net" GA cost is defined in § 4301(11) as the direct costs of assistance not including associated administrative costs. There is room for confusion on this issue because one of the reimbursement formulas is called "reimbursement for administrative expenses." Despite that title, the state does not reimburse municipalities for administrative costs.

The first reimbursement formula applies to every municipality whose net GA costs in a given fiscal year (from July 1 through June 30) exceed .0003 of the municipality's most recent state valuation. That figure—.0003 of the municipality's most recent state valuation—is called the municipality's "obligation." When the "obligation" is exceeded, the state reimburses 90% of the municipality's net expenses over that level. For instance, if .0003 of Lewiston's 2014 state valuation is $586,925, once Lewiston issues $586,925 in GA during the fiscal year ending June 30, 2014, it is eligible to be reimbursed 90% for any GA expenditures over that amount.

The second reimbursement formula became effective on July 1, 1989 and applies to every municipality *in addition* to the 90% formula. The second formula is either 50% of all net GA below the municipal obligation or 10% of the entire net GA cost. For any given (state) fiscal year, municipalities are free to choose which version of the second reimbursement formula they wish the DHHS to apply. For almost all municipalities, 50% of the under-obligation figure is greater than 10% of the net GA figure, and the 50% formula would be the most advantageous (second example below). For a few municipalities, however, 10% of their

entire GA expenditure is greater than 50% of their obligation, and those municipalities would choose the 10% formula (first example below). As discussed above, regardless of which "administrative" reimbursement formula is used, the 90% over-obligation formula still applies.

Example: For FY 2014, let us assume the town of Mars Hill will issue $60,000 in net GA. Mars Hill's 2014 state valuation is $37,000,000, so the town's obligation level is $11,100. Therefore, Mars Hill will be eligible for 90% of its spending over $11,100, or $44,010 [90% of ($60,000 - $11,110)]. In addition, Mars Hill could either receive 50% of its obligation, or $5,550 or 10% of its net GA spending of $60,000, or $6,000. In this case, the 10% option would be in Mars Hill's best interest. A short-cut method to determine if your municipality should opt for the 10%-of-net formula is to evaluate if your GA expenditure is at or above 5x (times) your obligation. If so, the 10%-of-net formula will provide more reimbursement than the 50%-of-obligation formula.

Example: Assume, for the purpose of this example, that the Town of Anson issues $65,000 in GA during FY 2014. The town's obligation level is .0003 times the most recent state valuation of $80,650,000, or $24,195. Anson will be eligible to receive, therefore, 90% of its "over-obligation" spending, or $40,805 [90% of ($65,000 - $24,195)]. In addition, Anson is eligible to receive either 50% of its obligation ($12,097.50) or 10% of the entire net expenditure ($6,500). It is to Anson's advantage, obviously, to choose the 50%-of-obligation reimbursement.

Example: Based on historical spending levels, the Town of Mt. Vernon will probably issue about $10,000 in GA during FY 2014. The town's obligation (.0003 times the most recent state valuation) is $27,300. Mt. Vernon, therefore, will not be eligible for any 90% reimbursement. Because Mt. Vernon's spending will not come close to exceeding its obligation, the most Mt. Vernon will get in the way of reimbursement is 50% of the net GA issued, or approximately $5,000.

There are a few other criteria that must be applied before a municipality is reimbursed by the state. First, the municipality must be administering its program in accordance with state law. Second, the state will not reimburse municipalities for assistance granted out of locally established charity trust funds unless there are no limits on the use of the trust proceeds by terms of the trust agreement itself, and the trust proceeds are issued in complete conformance with GA law and regulation. Finally, the municipality must file periodic reports and claims for reimbursement with DHHS. It is important to note that municipalities do not have to reach their "obligation" in order to submit for DHHS reimbursement.

Reports

All municipalities must file reports with DHHS that detail their GA expenditures. The reimbursement claim forms are provided by DHHS. Municipalities which have received "90%" reimbursement in the past or which anticipate that they will be spending over obligation must submit *monthly* reports. Municipalities that do not expect to be reimbursed at the "90%" level in the current fiscal year must submit either quarterly or semi-annual reports (§ 4311(2)(B)). Finally, if the municipality does not anticipate spending over its obligation, and is therefore submitting quarterly claims for reimbursement, but suddenly finds midway through the fiscal year that GA spending has surpassed the obligation threshold, the municipality must immediately begin filing monthly claims for reimbursement.

The state is not required to reimburse any municipality which does not submit the reports in a timely manner. If a report is not submitted within 90 days of the time period covered in the report, and there is no "good cause" for the late submission, the state is under no obligation to reimburse the municipality.

The current law creates an obligation level of .0003 times *the municipality's most recent state valuation;* administrators must remember to adjust the obligation accordingly on the first claim forms that are submitted each fiscal year. DHHS sends municipalities notices regarding their "obligations" in March of every year. For example, a municipality that is submitting monthly claim forms must remember to calculate the correct obligation on the claim form filed each August covering GA issued during the month of July, the first month of a new fiscal year. That new obligation level will be the obligation to use on every claim form during that fiscal year. The particular state valuation for all municipalities is certified to the assessor(s) of the municipality no later than February 1 of each year, and municipal GA administrators should track that number down in a timely manner so that the upcoming year's GA budget can be reasonably calculated and the determination can be made with regard to which reimbursement formula to choose.

Unincorporated Places

The DHHS appoints people to serve as GA administrators to handle the program in the unorganized territories. Often the state will contract with a nearby municipality to administer GA in the unorganized territory. When this occurs the state reimburses the municipality for 100% of its expenses related to providing assistance in the unorganized territories. However, if a municipality has not been designated to accept applications for residents of an unorganized territory and a resident of the territory applies for GA at the local town office, the GA administrator should contact DHHS to find out where the applicant should apply.

CHAPTER 11 – Questions & Answers

The following are some commonly asked questions about General Assistance, with answers supplied.

Application

Q. A couple with a three-year-old child applied for assistance in Monmouth. They are significantly over income, but they are out of food and they won't be paid for two days. This is their first application. Must Monmouth help?

A. Probably yes. Even though they are over income they have an immediate need (i.e., emergency) and no way to fulfill that need. Monmouth must assist them with enough GA for food until they are paid (two days). If this were a repeat application, the Monmouth administrator could apply any standards limiting emergency assistance that are established in the local ordinance, but for a first-time application, it would be more reasonable to grant the emergency GA and warn the applicants that they must document all future expenditures in order to preserve their eligibility for future assistance.

Q. A couple with a seven-year-old child applied for GA in Sabattus on Tuesday. Their income is $1,500 a month. They are requesting assistance with their $250 light bill since their electricity is going to be shut off on Monday, but they will receive a $375 paycheck on Friday. This is an initial application. Must Sabattus pay?

A. No. The family is clearly over income and in no immediate need, since they will receive a paycheck on Friday that will be more than enough to pay the light bill and avert the disconnection of service.

Q. If an applicant applies for assistance and is eligible for several types of assistance but only requests food, is the administrator required to inform him that he could apply for other things? Does the law require the municipality to grant automatically the "gap" between income and allowed expenses?

A. There are at least two GA program requirements which serve as notice to applicants about what they are eligible to receive. First, the municipal ordinance must be readily available to all applicants. Second, the application process necessarily involves a comprehensive review of the applicant's basic-need budget—a review with the applicant that results in the determination of the applicant's unmet need. These two requirements act to provide applicants with the knowledge of their potential eligibility, and there is no express legal

obligation that an administrator apprise all applicants of their maximum eligibility. In other words, you have to help eligible applicants with requested assistance. If they do not request everything they are eligible for on a particular application you may certainly inform them of the full extent of their eligibility. But if you do not, be aware that they may reapply during the period of eligibility to receive the remaining assistance they are eligible for.

Q. There are several families in town who receive assistance every single month. In fact, they've received assistance every month for the past three years! I thought General Assistance was a temporary program for emergencies only. How much longer do we have to assist these families?

A. There is a conflict in the definition of GA. On the one hand it says that GA is a service "administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families." It further defines the program as one that provides a "specific amount and type of aid" for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical welfare program" (§ 4301). This seems to say that people can receive assistance only for a limited time. However, the next sentence makes the previous one somewhat meaningless since it states: "This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that person has need and is found to be otherwise eligible to receive general assistance." So while GA is intended, in theory, to be a limited program, in practice and in law, it must be granted for as long as the applicant is eligible.

Q. Who is the proper person to apply for GA? Our ordinance requires that the "head of the household" applies. Sometimes there's a man in the household but he always sends his wife in. Do we have to take an application from her?

A. Anyone may apply for GA. The administrator should only be concerned that the person applying can provide all the necessary information that you need to determine whether the household is eligible. Depending on the household composition, only one adult could be required to apply. But if there are two adults, and either or both are required to do workfare or fulfill other eligibility conditions, it is reasonable to expect them both to apply at the same time.

Confidentiality

Q. An attorney for one of our recipients requested a copy of her GA file. Should I give it to the attorney?

A. You should release an applicant's or recipient's records only if you have a "consent form" signed by the applicant or recipient giving permission to the administrator to release the record. The law (§ 4306) only requires that the applicant give "express" permission prior to the release of confidential information to the general public. A Superior Court case has upheld a municipality's interpretation of "express" permission as written permission. *Janek v. Ives, Aroostook County Superior Court*, #CV-89-116 (1997). Even with the *Janek* decision, in the case where an attorney is requesting the record on behalf of a client, particularly when the claim is being made that an emergency exists, you could release the information to the attorney on the client's oral consent. In any other situation, a written release should be required.

Q. One day while some applicants were waiting to apply for GA, I overheard one of them tell another that he had committed a recent robbery at a nearby store. I know that information pertaining to GA applicants is supposed to be confidential, but I think I have an obligation to report this to the police and wonder if I may.

A. Yes. The GA confidentiality provisions require that information relating to GA applicants not be disclosed to the general public. In this case you would not be disclosing the kind of information specifically protected by the law (i.e., contents of the application, etc.). The police would not be considered the "public" in this instance. In order to completely ensure your protection against any claim involving a breach of confidentiality, it would be advisable to make sure that you are covered by the town's public officials liability insurance. In addition, whenever you go to the police with information about a client you should inform the police officer of your confidentiality responsibilities and you should ask that the police not use you as a witness unless all else fails. If you are called upon to testify in court, raise the confidentiality issue in court and let the judge decide.

Q. We are contemplating taking a former GA recipient to Small Claims Court to recover our expenses. He just received $25,000 from the Lottery. Will that be a violation of his confidentiality?

A. You should write a letter to the recipient reminding him of his obligation to repay the municipality and ask him to voluntarily repay his obligation. Inform him that if he doesn't

contact you within a specific amount of time, the municipality will be forced to bring him to Small Claims Court. If it is necessary to bring the recipient to court to recover the debt, it is a good idea to inform the court of the confidentiality provision. It is recommended that the complainant inform the court, on the "statement of claim" form which will have to be filed, that the information contained in GA records is confidential by law pursuant to 22 M.R.S. § 4306. Let the court decide what information is to be released for the record and also how to administer the proceeding in order to effectuate confidentiality.

Q. Our town has several charitable organizations that give "care baskets" of food and clothing during the year. Can we release the names of our GA recipients to these groups so they can receive these baskets?

A. No. The identity of GA recipients is totally confidential to the general public. You could ask your recipients if they would like to receive a basket and, if so, get their permission to release their names to the charitable agencies.

Fair Hearings

Q. I know that fair hearings are "de novo" but I'm confused. Is the Fair Hearing Authority supposed to decide if the claimants were eligible at the time they applied or at the time of the fair hearing?

A. The job of the Fair Hearing Authority is to determine, based on all the evidence presented at the fair hearing, whether the claimants were eligible to receive assistance at the time they applied, and whether the administrator's decision was correct. Often a person's circumstances change between the day they apply and the time of the hearing. If this is the case, the Fair Hearing Authority could determine people were ineligible when they applied but suggest that they reapply for GA to have their eligibility re-determined in light of the changes in their circumstances that occurred after the date of the decision at appeal.

Q. An applicant requested a fair hearing. We scheduled it, he said he would be there, but he didn't show up. This was our first fair hearing and we didn't know what to do. What should we have done?

A. Under Maine law fair hearings are de novo which means that the hearing officer(s) determines the person's eligibility anew and not just on the basis of the administrator's reasons contained in the decision. Because the fair hearing must consider the claimant's

eligibility from a fresh perspective, the officer(s) has the right to question the claimant. If the claimant doesn't attend the hearing, the officer(s) is not able to ask questions.

In the situation you described, the Fair Hearing Authority should have convened the hearing, noted for the record whom were present, that the claimant didn't attend, and that there being no evidence or information to the contrary, the administrator's decision would stand and be unchanged. A letter to that effect should then be sent to the claimant *(see "Claimant's Failure to Appear" in the "Fair Hearing Authority's Reference Manual," Chapter 12).*

Fraud

Q. A man applied for GA in Belmont. He supplied a written statement from the landlord verifying that the applicant lived at that address. The administrator is sure that it is a forgery. Can she disqualify him for making a false representation?

A. This alone would not be a sufficient basis to disqualify an applicant. First of all, the administrator is not a handwriting expert so she should attempt to contact the landlord. Secondly, people can be disqualified for fraud only if the false statement relates to a *material fact*; that is, a fact which has a direct bearing on the applicant's eligibility. Whether an applicant's landlord is Mr. Smith or Mrs. Jones isn't necessarily material, provided there is a bona fide landlord. What is important is the location of the apartment (in order to determine the municipality of responsibility and the housing vendor), the amount of rent, and whether there are any other people in the household. The administrator needs more information before she can determine eligibility or be sure that this is a case of fraud.

Q. Two weeks ago I disqualified an applicant for 120 days for committing fraud. Now his wife and two-year-old child are applying for GA. The man now has a job but won't be paid for one week and they have no available cash. Am I supposed to help?

A. You are required to help the wife and child since they did not commit fraud and therefore were not disqualified. However, you are not required to help the husband whom you disqualified for 120 days. You should grant a one week food voucher for two people (the mother and child only) to cover their expenses until the paycheck arrives.

Housing

Q. A family of four was evicted. The sheriff came and padlocked their apartment. Now they are in the town office telling us that we must find them housing! Must we?

A. Generally speaking, the applicants are responsible for *finding* suitable housing; the municipality is responsible for *paying* for the housing to the extent the applicants are eligible. As is the case with almost everything in GA, however, it depends on the situation. If the applicants have no housing and it is an emergency because there are no alternatives, the municipality may have to place people in a motel temporarily. Rather than locate people in a motel, it might be wise for the municipality to help people find permanent housing.

Q. Two of the selectpersons refuse to grant assistance to couples who live together without being married because they say the town should not be supporting an immoral situation. I don't necessarily agree with the situation but don't think we can legally make these sort of judgments. Who's right?

A. If **applicants** are eligible for assistance based on *objective criteria* (income, expenses, assets, work requirements, etc.) then they must be granted assistance regardless of whether the administrators agree with the applicants' lifestyle.

Liability of Relatives

Q. Claudine and Martin are sister and brother. Martin lived in Claudine's house until she kicked him out after they had a fight. Now Martin is applying for GA. Must the town help? Can we require Claudine to help?

A. The town must grant Martin GA if he has insufficient income. The town cannot require Claudine to help or to reimburse the town, because as Martin's sister, she is not legally liable for his support. Certainly it makes sense to encourage relatives to help each other, but sisters and brothers are not required by law to help each other so municipalities cannot deny applicants if a brother or sister refuses to help.

Q. Our town has been helping a mother and her 13-year-old daughter for the past four months. The mother is separated from her husband who lives in the next town. He refuses to give them any support. We have sent him bills for the assistance we have given his wife and child, but to date he has ignored our bills. Can we require him to do workfare?

A. No. The only people who can be assigned workfare are those who are able to work and who have actually received the assistance. Although the man is deriving some indirect benefit by the town giving GA to his wife and daughter, he is not actually receiving GA. The most you could do would be to sue him in Small Claims Court. Be aware that there is a 12-month limitation on your ability to recover GA funds from liable relatives in Small

Claims Court. You might also contact the Support Enforcement Unit of the DHHS to see if they can assist in securing support payments from the husband.

Q. An 18-year-old woman and her baby receiving TANF rent an apartment in the building her parents own. She has applied for GA to pay the rent. Aren't the parents responsible?

A. Yes. Since she is not in any danger of eviction and has no immediate shelter need, you should deny her rental assistance and inform the daughter that under state law her parents are considered both legally liable and potential resources for her and her child's support. Be aware that the parents may be resentful and tell her to move out to a different apartment. You should make it clear that even if this happens, the parents continue to be legally liable for their daughter's support, at least until the daughter is 25 years of age.

Furthermore, § 4319 of Title 22 provides that a municipality may elect not to make rental payments to an applicant's immediate relatives, *regardless of the age of the applicant,* unless two conditions are met: First, the rental relationship must have existed for at least three months and the rental income to the parents must be necessary to provide the parents with their basic necessities.

Therefore, even if your client was not a minor and her parents had no legal liability to provide her with financial support, there would be no obligation to pay rent to the applicant's parents unless they were themselves in need of GA, and the rental relationship had been established for at least three months. Keep in mind that regardless of the applicant's age you would have to assist her with the basic necessities other than shelter if the parents refused to provide support and she was otherwise eligible. The parents' legal obligation to provide support cannot be construed as the minor having "no unmet need" when the parents, in fact, are unwilling or unable to provide the necessary support directly.

Maximum Levels

Q. We have a family of four in our town who has applied each week for the past month. Both parents work but they never have enough money to pay for all their basic necessities. Their income exceeds the maximum levels that we allow in our ordinance so we have denied them. Pine Tree Legal called today and said that we have to give them assistance in excess of what our ordinance allow. Is this true?

A. Generally speaking this is not true. The maximum levels in your ordinance should be followed closely. The only exception to this would be if the applicants had an emergency that necessitated that the ordinance be exceeded. For instance, if they received an eviction

notice, or if they used their income to repair the furnace and consequently didn't have enough money for food. Keep in mind that the maximum levels established in your ordinance for the specific basic necessities must be reasonable and reflect the cost of living in your community. If most of your applicants' rent payments, for instance, are always more than what the ordinance allows you should adjust your maximum levels. In this case, you should inform the applicants that if they wish to preserve their future eligibility for GA, they must carefully document all expenditures of household income. Any income not spent on basic necessities will not be replaced with GA funds.

Q. We've been receiving a lot of requests for overdue electric bills and rent bills. These applicants could have applied for GA at the time they were having trouble paying their bills, but they have waited until the last minute. Does the law require that we bail them out now?

A. Not necessarily. The first step in the process is to evaluate the eligibility of the household for non-emergency GA; that is, does the household have a deficit (i.e., a gap between the household income and the overall maximum level of assistance for that household allowed by law)? If so, try to determine if all the household's needs for the next 30 days—including any utility disconnection or eviction problem—can be met by disbursing GA up to the amount of the household's deficit. The household would be eligible for its deficit even if it were not facing an emergency situation, so if the household's regular basic needs and the emergency needs can both be addressed within the deficit, so much the better.

If the overdue light bill or rent bill has created an emergency situation which cannot be alleviated within the applicant's deficit, the next step is to determine if the applicant could have averted or avoided the emergency situation with his or her own finances and resources. If the applicant could have wholly or partially avoided the emergency, financially, but some of the applicant's income was spent on unnecessary goods or services, the municipality has no legal obligation to replace that misspent income. Consult the standards in your ordinance governing *limitations on emergency assistance.* Those standards are designed to implement a policy that was woven into GA law in 1991. In simple terms, that policy is that no one is automatically eligible for either "regular" GA or emergency GA to replace income that could have been used for basic necessities.

Residency

Q. A man who used to live in Sidney moved into Belgrade. After he had been in Belgrade one week, he applied for food at the Belgrade town office. The administrator told him to

apply to Sidney for help because he had been in Belgrade less than one month. Was the Belgrade Administrator correct?

A. No. The man moved to Belgrade *voluntarily* without any assistance from Sidney, therefore Sidney was not responsible for him. If Sidney had given the man GA to help him relocate to Belgrade, then Sidney would have been financially responsible for his GA until he had lived in Belgrade for 30 days.

Q. A woman is living in a shelter for victims of domestic violence which is located in Saco. Prior to entering the facility four months ago, she lived in Biddeford. She has found an apartment in Old Orchard Beach and needs the first month's rent. Who is responsible?

A. Biddeford, because she is in a shelter, has been there less than six months, and Biddeford is where she lived immediately prior to entering the facility.

Q. Our town received a bill from Oxford because a family from our town moved to Oxford. The Oxford administrator gave the family a food voucher but now Oxford wants us to reimburse them. Do we have an obligation?

A. Your question turns on whether or not your town granted GA to this household within the last 30 days in order for the family to move to Oxford. If the family now applying to Oxford did not receive assistance from you to move to Oxford within the last 30 days, you have no obligation to reimburse Oxford for the GA it is now issuing to the family. If you did use GA to help the family move to Oxford, you would be responsible for any GA issued to that family, such as this food order, within the first 30 days of relocation. In an effort to avoid confusion, it is a good practice for a municipality which helps a family move to another municipality to notify the "receiving" municipality.

In another situation, let's say that the family was applying in Town A, but was clearly not Town A's responsibility because the family's home was in Town B and they intended to remain in Town B. They were simply unaware of where to apply and a friend of theirs had suggested they apply in Town A. In this case, *where there is no dispute regarding residency*, Town A should contact Town B to determine how to proceed.

As a result of that communication, the applicants could either be informed about when and where to apply to Town B, or Town B could give permission to Town A to grant the family necessary assistance this one time and send a bill to Town B for reimbursement. State law requires municipalities which assist people for whom they are not responsible to give prior

notice to the municipality from whom they expect reimbursement (§ 4313). It is good practice for a town that helps a family move to another town to notify the "receiving" municipality. It is important for municipalities to cooperate with one another in administering GA.

Work Requirement

Q. A woman had been receiving GA regularly for about one year. She had been assigned to do workfare and she performed well. It has been three months since she last received GA. She still "owes" 24-hours worth of workfare. Must she complete this before we can give her more assistance?

A. No. It is not uncommon for a recipient to receive more GA than can be worked-off during their period of eligibility. Sometimes the reason for this is that the GA grant is so large there are simply not enough hours in the period of eligibility for the entire grant to be worked off. It is also sometimes the case that the municipality is unable to assign enough work to cover the entire GA grant because of the time of the year or the lack of supervision. It is the responsibility of the municipality to create the work assignment during the period of eligibility for which the applicant received the GA. Generally, the municipality cannot fail to assign the workfare in a timely manner and instead "bank" the workfare hours for some time in the distant future. The exception to this general rule is when it is the recipient, not the municipality, who fails to perform the workfare assigned without just cause. In this circumstance, the number of hours that were assigned and not worked by the recipient should be identified and the recipient should be disqualified until the total number of assigned workfare hours are made up.

Q. Our town has a GA recipient who applies for assistance and agrees to do workfare. We give him a month's rent and then he never shows up for work so we disqualify him for 120 days. But, like clockwork, he's back in on the 121st day to reapply. This has happened a couple of times now. He currently owes us about 250 hours in workfare. Can we disqualify him until he works his hours? What can we do?

A. Maine law permits municipalities to disqualify people for 120 days if they do not comply with the **workfare** requirement. This 120-day period of ineligibility, if applied to an applicant, should be viewed as the penalty for not performing the workfare assignment, and when the applicant reapplies for GA after the ineligibility period has expired, the administrator would be well advised to start off again with a clean workfare slate.

When you are dealing with GA recipients who have poor workfare records, it would be very reasonable to employ the "workfare first" option that was authorized by a change to GA law

in 1993. Under the "workfare first" policy, this recipient would now be granted assistance *on the condition of a successful completion of the workfare assignment.* If he decides not to do the workfare, the GA grant would be terminated before it was actually issued.

Another approach you might take with a recipient such as this, who has a poor workfare record, would be to change the duration of time for which you grant assistance. For instance, you can reduce the period of eligibility by granting help with food one day at a time. For every day he works, you'll grant him one day's worth of food. If you've been granting rental assistance monthly you might want to consider granting it on a weekly basis. In this way, there is an incentive for the recipient to perform workfare and if he fails to comply, the municipality will have saved some money.

Q. The workers at the major employer in our town just went on strike. Do we have to grant assistance to strikers?

A. The first time striking workers apply for assistance their eligibility must be determined the same as any other first time applicant. If they are in need, and are eligible, they must be assisted. Thereafter, strikers must fulfill the same eligibility conditions as other recipients. They must comply with the work requirements and they must use all available resources to reduce their need for GA. The fact that the striker has a job to return to, but chooses not to due to the strike, should be interpreted, as the striker's failure to utilize an available resource. The striker should be given a written notice providing him or her with 7 days to secure the resource (i.e., return to work) or, commence a work search for new full-time employment.

If the striker decides not to cross the picket line (i.e., does not utilize the available resource) he or she should be found ineligible until the time the resource is utilized. If on the other hand the striker fulfills the work search requirement, they should be deemed eligible provided the other eligibility criteria are met.

If strikers say they cannot fulfill the work requirements (i.e., look for work, perform workfare) because they have to be on the picket line, the administrator should explain that they will have to either arrange their picket line schedule around their work search and/or workfare assignments or be found ineligible. If a striker refuses to comply with any work requirement, the striker should be found ineligible to receive GA.

If strikers have assets that can be converted into cash (extra cars, recreational vehicles, insurance policies, retirement funds etc.), they are required to make a good faith attempt to

liquidate or sell the assets at fair market value. Failure to do so will result in their ineligibility. As an aside, most strikers will have "pension plans" of one kind or another, which they should be made to access since retirement accounts are "available resources." As a result, they will most likely be found over income upon their second application.

Remember, if a striker is found ineligible for failure to comply with the program rules or requirements, his or her family may still be eligible.

NOTE: *The Department of Health and Human Services (DHHS) <u>does not</u> share this opinion. DHHS advises that municipalities treat strikers as applicants who are ineligible for 120 days due to a "job quit." However, MMA takes the position that striking is not analogous to job quit and as a result a denial of GA on such grounds could be challenged. A more defensible position is one of treating a striker as an applicant who must take advantage of an available resource (just as any other applicant would be made to do). Regrettably, since there is a split in opinion, municipalities must choose a position and apply it consistently to all strikers in their municipality.*

Q. Craig has been receiving GA for months. He is in his mid-twenties and able-bodied. Although he always agrees to do workfare, he never shows up when assigned and is disqualified for 120 days. He knows he can re-qualify for assistance if he "otherwise complies" with the law so very often he'll come in the office late Friday afternoon saying he is willing to do his workfare assignment. Our public works crews are usually done for the day and therefore we don't have any work for him to do. He and his attorney say that's our problem and that if he's willing to work we have to grant him assistance. Do we have to drop everything and cater to his demands?

A. Certainly this behavior is neither reasonable nor responsible, and the law governing an applicant's right to regain eligibility after failing (without just cause) to adequately perform a workfare assignment was amended in 1991 to address this issue.

The law (§ 4316-A(4)) requires a municipality to limit the number of opportunities a person must be given to regain eligibility after a workfare disqualification. As a matter of law, a workfare participant who has been disqualified for a workfare failure is entitled to only one opportunity to regain eligibility. The way to take advantage of the law is to be very clear with your paperwork.

As soon as a workfare participant fails to perform an assignment and there is no "just cause" reason for that failure, a written notice should be immediately issued to the participant

disqualifying him or her for 120 days. Upon receiving such a notice, the workfare participant could either appeal the decision or attempt to regain eligibility. If the workfare participant wanted to regain eligibility, he or she would have to contact the administrator and request a workfare assignment. If such a request is made, the administrator must grant the participant *one single new workfare assignment* if the administrator wishes to enforce the ineligibility period.

Generally, it is only if (and when) the participant adequately performs the new assignment that his or her eligibility for any GA will be reinstated. *(An exception to this would be if the town did not have any work assignments immediately available. If an applicant had to wait a week for an opportunity to regain eligibility and was out of food in the meantime, the administrator should grant an emergency food order, as a matter of good faith, to cover that period of time.)* If the participant does not adequately perform the workfare re-assignment and there is no just cause for that failure, the original 120-day ineligibility period could be enforced by the administrator for its original duration.

Miscellaneous

Q. We have a landlord in our town who rents primarily to GA recipients. He has not paid taxes on several of his apartment buildings. When the town grants rental payments for his tenants, can the town keep the money and put it toward the unpaid taxes the landlord owes?

A. No. The tenants are eligible to receive the GA for their rent and should not be used as pawns to help the town receive payment of delinquent taxes. Some municipalities refer to a section of taxation law found in 36 M.R.S. § 905 for authority to implement the "set off" procedure which you are describing. That law allows the municipal treasurer to "withhold payment of any money then due and payable (by the municipality) to any taxpayer whose taxes are due and wholly or partially unpaid... The sum withheld shall be paid to the tax collector..." It is the opinion of the attorneys in MMA's Legal Services Department that GA rental payments may not be set off because the municipality is merely paying the rent on behalf of the tenant, and the legal obligation to pay that rent continues to rest solely with the tenant. To "set off" GA rental payments against unpaid taxes could negatively affect the tenant.

Q. We routinely refer all new applicants to the police for investigation to see if they have a criminal record and to make sure that they are telling the truth. Is this proper?

A. No. The police have no role in the regular administration of general assistance. If the administrator has a good reason to suspect fraud regarding an application, the police may be brought in to help investigate, but the police should not be used in the routine administration of GA.

Q. We have over drafted our GA budget and it will be four months before our next regular town meeting. Do we have to have a special town meeting to appropriate the money necessary to cover our GA account?

A. It is not necessary to schedule a special town meeting just for the purpose of covering a GA overdraft. The appropriation to cover a GA overdraft, however, should be considered at the next available town meeting opportunity. GA overdrafts are different from overdrafts of other accounts because the municipality is not at liberty to control the GA budget. With regard to nearly every other financial account, when the municipal officers authorize overdrafts, they could be held personally responsible for that municipal debt if the legislative body does not subsequently ratify the overdraft by appropriating the funds necessary to cover it. This is not the case with GA overdrafts.

The municipal official could not be held personally responsible for a GA overdraft because the program is mandated by state law and regulation and the municipal officers have no authority to control GA expenditure. When a town meeting municipality overdrafts its GA budget, the municipal officers should make sure that the necessary appropriation is placed on the warrant for the next available town meeting, but it is not necessary to schedule a special town meeting only for that purpose.

Q. We recently received a food voucher that was being redeemed by a local grocery store. Along with our voucher was a copy of the receipt. When our treasurer was preparing the check for the grocery store, she subtracted from the total purchase price the amount of sales tax included. The grocery store said we shouldn't subtract the sales tax and referred us to the state Department of Taxation. We have always understood municipalities to be exempt from the sales tax. Who is right?

A. Municipalities are exempt from paying sales tax. In this case, however, and as odd as it might sound, the municipality is not really purchasing the food. The municipality is providing a form of public assistance to an eligible recipient, and it is the recipient who is making the food purchase. Tax-exempt status, generally, is not derivative; that is, it cannot be transferred to third parties who are not themselves tax-exempt. Therefore, your

treasurer should be honoring the food voucher up to its face value regardless of the sales tax applied.

One way to avoid paying the sales tax for taxable food items would be to implement a policy that would allow the purchase of only non-taxable food items with municipal food vouchers. The principal advantages of such a policy would be to increase the buying power of the food voucher and also ensure in a convenient way that "snack" foods, which are presently taxed under Maine law, would not be purchased with GA vouchers. The disadvantage of such a policy is that what are and what are not taxable food items will not always be clear to the recipient when he or she is in the grocery store and, as a result, confusion and embarrassment may reign at the checkout counter. For that reason, if a town does intend to implement a policy allowing only non-taxable food items, all recipients should be given a list of taxable and non-taxable food items. Area supermarkets, probably, can provide such a list.

Q: We recently received the model MMA General Assistance ordinance and have several questions about what to do with it. Can you tell us how to adopt the ordinance and whether there are any other things we should be aware of?

A: Maine law is not very specific about the procedure for adopting a General Assistance (GA) ordinance. Title 22 M.R.S. § 4305(1) merely requires that municipalities administer a GA program "in accordance with an ordinance enacted after notice and hearing by the municipal officers." Assuming that your municipality doesn't have a local charter provision providing a different process for adopting an ordinance, the procedure we suggest is one that is very similar to that used for adopting a traffic ordinance. 30-A M.R.S. § 3009. We suggest the following format:

1. The municipal officers must post notice at least seven days prior to the time of the meeting at which the GA ordinance is to be considered for adoption and that notice must be posted in the same place as the town meeting warrant *(See Appendix 1 for sample "Notice.")* If your town customarily posts in two or more places, the same number of postings would apply to these notices. Although not required, a newspaper ad or announcement may be appropriate.

2. Notice must give the date, the time, and the place of the municipal officers' meeting and public hearing.

3. The notice must either have the proposed ordinance and/or amendments attached or inform people where they may review the ordinance.

At the time of the meeting the municipal officers should place the ordinance before the meeting for general discussion, and by way of a statement, explain the need for the ordinance. After that, the public hearing should be opened in order to give people the right to ask questions and engage in general discussion concerning the ordinance itself. After people have had an opportunity to express their views, the municipal officers should close the public hearing and proceed with the consideration of the ordinance.

The enactment is not difficult. It may be accomplished by a motion made by one of the municipal officers, seconded by another, and voted upon by majority vote. Because there must be a record of the action, it is suggested that the town clerk be present, record the motion, record the second, and poll and record the individual votes of the municipal officers. The minutes of the town clerk plus a certified copy of the ordinance enacted should be recorded in the town's records in the same manner as an action by a town meeting.

Once the ordinance is adopted, a signed copy (or notice thereof) must be filed with the Department of Health and Human Services, Bureau of Family Independence, State House Station #11, Augusta, 04333. Municipalities are also required to file any amendments to the GA ordinance and any GA forms they use (applications, budget sheets, decisions, etc.) each time there are changes. ***Don't forget to adopt by October 1st (of each year) the new Appendixes A-C*** containing the yearly GA maximums, which MMA sends to all municipalities. DHHS must also receive confirmation that the municipality has adopted the appropriate maximums each year.

Finally, it is a good idea to appoint a Fair Hearing Authority (FHA) at the time you adopt a GA ordinance and clarify your ordinance regarding the composition of the FHA. Municipalities are required to appoint a FHA to hear appeals from dissatisfied applicants, and your ordinance should be amended to clarify whether the municipal officers, a board of citizens, or an individual will serve as FHA.

Q: I have a client who repeatedly refuses to provide her Social Security number and those of her family members. I would like to use the numbers for verification of both income and public benefits. Can I require her to provide the numbers?

A: Yes. It is the opinion of MMA legal staff that under the General Assistance statutes (22 M.R.S. §§ 4301 et seq.) and the body of law known as municipal "Home Rule" authority found at 30-A M.R.S. §§ 3001, municipal GA ordinances can require that GA applicants provide their Social Security numbers for purposes of GA administration. Home Rule authority provides municipalities the right to enact ordinances (municipal in

nature) that do not frustrate or run counter to a state law and/or which the state has not prohibited the municipality from passing.

Section 4305 of our general assistance statutes requires the following:

1. Program required; ordinance. A general assistance program shall be operated by each municipality and shall be **administered in accordance with an ordinance enacted**, after notice and hearing, by the municipal officers of each municipality. (Emphasis added)

and

2. Standards of eligibility. Municipalities **may establish standards of eligibility**, in addition to need, as provided in this chapter. Each ordinance shall establish standards which shall:

    A. Govern the determination of eligibility of persons applying for relief and the amount of assistance to be provided to eligible persons; (Emphasis added)

By virtue of § 4305, it is difficult to argue that a municipality's authority, vis-à-vis its GA ordinance, is not sufficiently "broad" to require that GA applicants provide their Social Security numbers. Furthermore Section 4.3 of the MMA model GA ordinance (re: Contents of the Application) clearly requires that:

At a minimum, the application will contain the following information:

1. applicant's name, address, date of birth, **Social Security number**, and phone number;

2. names, date(s) of birth, and Social **Security number(s)** of other household members for whom the applicant is seeking assistance;

3. total number of individuals in the building or apartment where the applicant is residing;

4. employment and employability information;

5. all household income, resources, assets, and property;

6. household expenses;

7. types of assistance being requested;

8. penalty for false representation;

9. applicant's permission to verify information;

10. signature of applicant and date.

As a result of a municipality's Home Rule authority in this area and, the very clear requirements (eligibility criteria) established by our MMA model GA ordinance (which not only do not frustrate the purpose of the GA law but are clearly "in sync" with § 4305), it is our opinion that municipalities having adopted the MMA model may require GA applicants to provide their Social Security numbers.

However, in the event the applicant is a "first time" applicant who has lost his or her number for example, or the applicant provides other evidence evincing "just cause" for the failure to provide the number, the municipality should provide the applicant the opportunity to obtain the Social Security number. The municipality in such a case should provide the applicant a seven-day written notice of the requirement (i.e., on the notice of eligibility or ineligibility) and instruct the applicant that he or she will be required to provide the number (or proof of a "good faith" effort to secure the number) next time they apply for GA. Furthermore, if the applicant has an immediate "emergency" need and they are otherwise eligible, the applicant should be provided sufficient GA to take care of any immediate need. If on the other hand a repeat applicant, who has been properly instructed to provide the number upon his or her next application, refuses without a legitimate reason to provide the number, he or she should be found ineligible for failure to provide the GA administrator with information necessary to verify eligibility. 22 M.R.S. § 4309 (1-B).

NOTE: *The Department of Health and Human Services (DHHS) does not share this opinion. DHHS advises that municipalities may not deny benefits to individuals who refuse to provide Social Security numbers. As a result of DHHS's opinion, until the time this issue is resolved municipalities do encounter a modicum of risk should they deny an applicant GA based on the applicant's failure to provide his or her Social Security number. However, MMA takes the position that such a denial of GA (based on the above analysis) is a defensible position and that municipalities take only a calculated risk that they will be appealed for such a determination.*

CHAPTER 12 – Fair Hearing Authority Reference Manual

Please Note: *The contents of this manual are intended to provide general guidance and should not be relied upon by the reader as the sole source of information. The reader should seek further counsel and information in dealing with a specific problem by contacting the Maine Municipal Association or a private attorney.*

When an applicant for General Assistance is dissatisfied with a decision regarding his or her request for assistance, the applicant may request a Fair Hearing. This reference manual is intended to help the Fair Hearing Authority (FHA) conduct a hearing more effectively and reach a fair decision. It is important for the FHA to understand its duties and the hearing procedures.

The basic role of the Fair Hearing Authority is to determine, based on all the evidence presented at the fair hearing, whether the claimant(s) were eligible to receive assistance ***at the time they applied for GA***, and whether the administrator's decision was correct.

GA ordinances vary from municipality to municipality and the Fair Hearing Authority should be familiar with the individual municipality's GA ordinance before the Fair Hearing. FHAs with questions regarding statutory interpretation relative to the general assistance law, DHHS policy and other such matters may seek clarification from DHHS ***prior*** *to the commencement of a fair hearing,* but may not consult with DHHS regarding the merits of the case.

Right to a Fair Hearing

As a matter of law, any GA applicant who is dissatisfied with the decision of the GA administrator on his or her application has the right to appeal that decision to the Fair Hearing Authority, hereinafter referred to as "the Authority." 22 M.R.S. § 4321.

At the time the administrator gives a decision on an applicant's request for the GA, the administrator must notify the applicant in writing that if dissatisfied, the applicant has the right to appeal the decision within five working days. 22 M.R.S. § 4322.

The reasons why a person may want a Fair Hearing include:

1. failure of the administrator to render a written decision within 24 hours;

2. the administrator's refusal to accept an application or reapplication;

3. dissatisfaction with the administrator's decision.

The law further requires that if the municipality decides to reduce or terminate the assistance during the period of eligibility, the recipient has a right to be notified of such impending action and has a right to a hearing before the assistance is reduced or terminated. 22 M.R.S. § 4321.

Process for Filing a Request for a Fair Hearing

Any applicant who is aggrieved by the action or non-action of the GA administrator may request a Fair Hearing. The applicant must request a hearing within **five working days** of receiving a written notice of denial, reduction or termination, or within **ten working days** after any other act or failure to act on an application. Once an applicant has made a clear expression that he or she desires a fair hearing, the administrator should have the applicant complete a written request for a hearing (see Appendix 17 for a sample form).

Upon receiving the written request, the administrator must take all the steps necessary to schedule a fair hearing. The hearing must be held within five working days of receiving the request. *Requests for fair hearings that are not received within the statutory period will not be considered timely filed and the applicant will have* ***forfeited*** *the right to a fair hearing.* The administrator should tell the applicant why he or she can't have a fair hearing this time, and let the applicant know he or she may file a new application for assistance.

Scheduling a Fair Hearing—Notice

Once a GA administrator has received a written request for a fair hearing, the administrator must schedule one. *The hearing must take place within* ***five working days*** *of receiving the request.* The administrator must notify the FHA that a request has been filed, and arrange for a hearing to be held at a time that is mutually convenient for the FHA and the claimant.

The hearing should be held as soon as possible, keeping in mind that it must be held within five working days, and each side should be given ample opportunity to prepare its case. Forty-eight hours advance notice is reasonable, if possible. As soon as the hearing is scheduled, *the administrator* ***must*** *notify the claimant in* ***writing*** *of the date, time and place of the hearing.*

Giving notice involves more than merely stating the time, date and place of the hearing. The notice should inform the claimant of the subject matter of the hearing. The administrator should also explain the hearing procedure to the claimant; that the claimant will have a chance to tell his/her side of the story; that the claimant may bring and question witnesses; that the claimant and any witnesses for the claimant will be questioned; that both written and oral

evidence may be introduced at the hearing; and that the claimant may be represented by legal counsel at his/her expense. Further, no information may be given or told to the FHA that is not also available to the claimant. *The administrator can give the FHA the case record prior to the hearing, but cannot discuss the merits of the appeal with the FHA either before or after the hearing until the FHA has issued its decision.*

Claimant's Failure to Appear

On occasion, the municipality will schedule a fair hearing, give written notice to all the parties, and then the claimant fails to come to the hearing. If the party who requests the hearing fails to appear, the FHA should convene the hearing, note for the record that the claimant failed to show up, and close the hearing. The FHA should send *a written* notice to the claimant that it did not alter the administrator's decision because no evidence was introduced indicating it should be overturned. The notice shall indicate that the claimant has five *working days (per MMA's sample GA ordinance) from receipt of the notice* to submit to the Administrator information demonstrating "just cause" for failure to appear. The following are examples of circumstances which may constitute just cause:

- A death or serious illness in the family;
- A personal illness which reasonably prevents the party from attending the hearing;
- An emergency or unforeseen event which reasonably prevents the party from attending the hearing;
- An obligation or responsibility which a reasonable person in the conduct of his or her affairs could reasonably conclude takes precedence over the attendance at the hearing;
- Lack of receipt of adequate or timely notice;
- Excusable neglect, excusable inadvertence, or excusable mistake.

If a claimant establishes just cause within five working days, the request for the hearing will be reinstated and a hearing rescheduled.

If the claimant does not appear for the hearing but his/her attorney does, the FHA should proceed with the hearing. Should the attorney introduce information demonstrating "just cause" for his/her client's failure to appear then the hearing should be recessed until another day.

In the event a claimant who is represented by legal counsel fails to appear at a fair hearing, legal counsel should not be allowed to testify in place of the claimant on matters of "fact" but may cross examine witnesses and make "legal" arguments on behalf of the claimant.

Withdrawing a Request for a Fair Hearing

Once a GA administrator receives a request for a fair hearing, the administrator must act upon it. If a claimant who has filed a request for a hearing decides that he/she doesn't want to go ahead with it, the claimant may stop the hearing only by presenting a *written notification* to the administrator that he or she wants to withdraw the request for a hearing. If an administrator receives such a notification, it should be entered in the claimant's case file, noted in the narrative record, and no further action need be taken.

The Fair Hearing Authority

Every municipality must appoint a Fair Hearing Authority to hear appeals of decisions made by the GA administrator. According to the law (22 M.R.S. § 4322), the Fair Hearing Authority may take one of three forms. It may be:

1. *one or more municipal officers*, provided those municipal officers had absolutely no involvement with the GA decision or appeal;

2. the *Board of Appeals* (created in accordance with 30-A M.R.S. § 2691), if authorized by the municipal officers; or

3. *one or more persons* appointed by the municipal officers to act as the FHA.

As an aside, although municipalities may choose any of the above forms of FHA, there exist practical considerations, which favor the last alternative, "one or more persons" form of FHA. Municipalities seeking the least administratively burdensome form, one which may promote a greater sense of "fairness" for the GA client and one which minimizes the risks involved in breach of confidentiality, should consider the third alternative.

Regardless of the form of FHA a municipality chooses, the essential quality of the FHA is **fairness**. Under **no** circumstances may any person who played any part in the grant or denial of GA to the claimant serve as the Fair Hearing Authority.

If, for instance, the first selectman serves as the general assistance administrator, that selectman *may not* serve as a member of the FHA. If the administrator discusses a case with someone, that person may not serve on the FHA if that case is appealed.

There are several qualities the members of the FHA must have, but above all the FHA must be impartial. The FHA must be well acquainted with the state law and the ordinance. The FHA must be capable of evaluating all evidence that comes before it in a fair and impartial manner.

Duties of the Fair Hearing Authority

Before holding a fair hearing, it is important for the FHA to know and understand its responsibilities. The FHA must not "rubber stamp" the administrator's decision. The FHA must determine the claimant's eligibility independently of the administrator's decision. *Carson v. Town of Oakland*, 442 A.2d 170 (Me. 1982). A Fair Hearing is an administrative proceeding known as a *de novo* hearing which is Latin for anew or afresh. This means that the FHA must determine the claimant's eligibility as if no decision had been made by the administrator. The FHA must consider if the claimant was eligible for assistance *at the time he or she applied, based* ***solely*** *on the information and evidence presented at the Fair Hearing.*

It should be emphasized that the Fair Hearing Authority is an administrative review body that functions without the technical rules of evidence, but it is still subject to the requirements of *due process.* Although the hearing may be conducted less formally than a court hearing, the FHA is responsible for protecting the claimant's individual rights and liberties under the law.

The hearing must be held in private unless the claimant has given express, written consent to hold the hearing in public. 22 M.R.S. § 4322. The only persons authorized to attend the hearing are the FHA, the claimant, the GA administrator, legal representatives, witnesses, and a clerk or stenographer to transcribe the hearing proceedings.

In addition to its duty to be impartial and fair, the FHA also has some procedural duties of which it must be aware. The FHA has the duty to:

1. open the hearing, explain the purpose of the hearing and the rules of conduct;

2. direct the course of the hearing, making sure it is conducted in an orderly fashion, keeping the testimony to the case at hand, and allowing all sides to present their facts and witnesses;

3. administer oaths to people who testify;

4. hear all testimony and accept evidence which is germane and will help to render a decision;

5. close the hearing after all parties have been satisfied that all evidence has been presented;

6. make a fair decision that is written and given to the applicant within 5 working days after the hearing. 22 M.R.S. § 4322.

In order to help the FHA prepare for the hearing it may need certain information prior to the hearing. The FHA should be told what the issues to be decided are. The Administrator and the claimant may give the FHA useful information prior to the hearing, provided that the other party is notified and the information is made available to the other party. For instance, the Administrator may give the FHA a copy of the claimant's application, budget sheet decision and request for a hearing. The claimant might give the FHA a doctor's statement verifying a disability, or copies of bills.

State law requires municipalities to make a taped record of the Fair Hearing. 22 M.R.S. § 4322. Recording the hearing is important to help the FHA make its decision, but also to help substantiate the municipality's case if the claimant appeals the FHA's decision to the Superior Court, or eventually, the Supreme Court. Claimants must provide (i.e., pay for) a transcript of the taped record if they decide to appeal the decision to the Superior Court.

Fair Hearing Decision

The Fair Hearing Authority's decision must be made within ***five working days***. 22 M.R.S.A § 4322. The FHA must take into account the law, the local ordinance, and all the information presented at the hearing, while reaching its decision. The decision must be made in accordance with the ordinance in effect at the time the administrator made the decision. The ordinance *may not* be changed in the course of the FHA's deliberations.

The written decision must state explicitly the reasons for the FHA's action. It should state the reason for the hearing, the issues at appeal, the relevant facts discussed, and the decision and the reason for it, citing the pertinent provisions of the law and the ordinance. The decision must also include a section informing the claimant that he or she has the right to appeal the decision to the Superior Court within 30 days of receiving the decision. 22 M.R.S. § 4322. The decision of the Fair Hearing Authority is binding upon the administrator.

Copies of the decision must be given to the claimant and the GA administrator and kept in the claimant's file.

Please Note: *For further guidance on GA Fair Hearings (e.g., Fair Hearings Checklist, FHA Sample Script, etc.), refer to the following packet.*

General Assistance Fair Hearings

Contents:

GA Fair Hearings "A Checklist"

Applicant requests General Assistance (i.e., fills out appropriate application, etc.)

1st
The Written Decision

❒ GA administrator provides applicant with the written decision (notice of eligibility/ ineligibility) either:

- by hand;
- by certified mail, return receipt requested (legally sufficient and provides proof of receipt by applicant—if applicant accepts the certified packet); or
- by regular mail (legally sufficient, but difficult to prove actual receipt by applicant)

Note: In difficult cases the GA administrator may decide to mail the applicant/recipient the decision both by regular mail and certified mail, return receipt requested. The GA decision or notification should contain the local hearing procedure for requesting the hearing (see Exhibits 2 & 3 for sample "Notices of Eligibility/Ineligibility").

2nd
The Request for Appeal

❒ Applicant provides town with a written request for an appeal within 5 days of receipt of the written notification of eligibility/ineligibility *(see Exhibit 4 for a sample "Request for a Fair Hearing").*

Note: It is difficult, if not impossible, to assert the timeliness rule if the town does not have proof of receipt of the decision by the applicant. Moreover, the 5-day window provided to the applicant turns into 10-days for "any other act or failure to act" by the GA administrator. For example, this extension would typically apply when the town issues no decision after a GA application has been submitted.

❒ If "yes" to all of the above, proceed with Fair Hearing request.

❒ If "no" to the above, does applicant have "just cause" for the delay in requesting the appeal (i.e., given a set of factual circumstances it would be unreasonable to expect the applicant to possess the ability/wherewithal to appeal in a timely manner).

Note: Should "just cause" exist, the town may choose to waive the timeliness issue. However, it is ultimately up to the FHA to decide on the matter or reject the appeal on the grounds of timeliness.

3rd
5-Day Time Frame

- ❒ "Just cause" is not found to exist, and the applicant has missed the 5-day time frame. The applicant reapplies for general assistance. Is there new information giving the applicant reason to reapply?

- ❒ If yes, proceed with the reapplication.

- ❒ If not (applicant's situation has not changed), nor is there a need for emergency assistance, then allow the appeal to proceed. During fair hearing assert the time bar issue and the FHA should find the applicant was not timely.

Note: If applicant reapplies due to a change in financial situation (i.e., loss of income, household size changed, expenses changed or, emergency developed, etc.), then reapplication process should take place. Remember that reapplication comes with a new right to a fair hearing!

4th
Proceeding with the Hearing

- ❒ It is determined that the fair hearing process should proceed. Has the GA administrator:

- ❒ Reviewed the pertinent statutes/DHHS policy/ordinance (or, called DHHS/MMA) in order to review decision;

- ❒ Spoken to the applicant to ascertain that applicant understands the reason for the decision;

- ❒ Informed the applicant that he/she will be receiving a "Notice of Fair Hearing" with the date, time, and place of hearing, within a day or two.

5th
Contacting the FHA

- ❒ Contact FHA and set up a date, place and time for the hearing. If appropriate, inform FHA that you are sending pertinent parts of case record, etc.

Note: Absolutely do not discuss the case with the FHA. This sort of communication is considered an ex parte communication and is strictly prohibited!

6th
Notification of Fair Hearing

❒ Send complainant notification of hearing that includes date, place and time of hearing. In addition, notice should also state complainant's rights (e.g., right to bring witnesses, cross examine witnesses and be represented by an attorney at their own expense) *(see Exhibit 5 for a sample "Notice of Fair Hearing").*

7th
Submitting Case Record

❒ Send FHA and applicant (now a complainant) pertinent parts of the case file (as necessary and/or appropriate).

Note: Whatever information FHA receives (whether during or, prior to the hearing) the complainant must also receive!

8th
Prepare For Hearing

❒ Prepare for hearing i.e., write memorandum/brief *(see Exhibit 9 for sample "Memorandum").*

9th
Holding Hearing

❒ FHA holds hearing. *(See Exhibit 7 of this packet for a sample script to follow.)*

10th
Decision in 5-Days

❒ Remind FHA to issue a written decision within 5 working days of the hearing *(see* Exhibit 5 for a sample "Notice of Fair Hearing Decision").

Note: Again, ***absolutely do not discuss the case with*** *the FHA. This sort of communication is considered an ex parte communication and is strictly prohibited!*

11th
Follow FHA's Decision

❒ Upon receipt of FHA's decision, follow the FHA's directions exactly regardless of the decision.

12th
Appeal of FHA's Decision

❒ Does either party want to appeal the FHA decision? Either party can appeal the decision within 30 days of the receipt of the fair hearing decision, in Superior Court, pursuant to Maine Rules of Civil Procedure, Rule 80-B.

Note: This is a costly option and the party considering appeal will require an attorney. Municipal officers may need to approve this expenditure of funds for legal *representation*. Bottom line-make, certain the issue is worth appealing.

Notice of General Assistance Eligibility

Please Read Both Sides Carefully

Notice of General Assistance Eligibility

Date: _____

Dear _____ :

You have been found eligible to receive General Assistance from _____ (date) to _____ (date), for the following reason(s):

☐ You are in need (your income is less than the maximum levels in the ordinance). (22 M.R.S.A. §§ 4301(7), 4301(8A), 4301(10), 4305, 4308)

☐ You are eligible for emergency assistance (22 M.R.S.A. §§ 4308(2), 4315-A)

You will receive the following assistance:

Type	Amount
	$
	$
	$
	Total: $ 0.00

In order to be eligible for any assistance in the future:

1. You must do the following items that are checked:

- **Benefits:** Apply for the following within 7 days:
  - ☐ TANF
  - ☐ WIC
  - ☐ Food Stamps
  - ☐ Fuel Assistance (HEAP/ECIP)
  - ☐ Family Crisis (EA)
  - ☐ Unemployment Comp.
  - ☐ Workers' Comp.
  - ☐ SSI/SSDI
  - ☐ Subsidized Housing
  - ☐ Veterans Benefits
  - ☐ Other: _____
- **Assets:** You must make a good-faith effort to liquidate the following assets:
  - ☐ Bank Account
  - ☐ Stocks/Bonds
  - ☐ Life Insurance
  - ☐ Retirement Account *(IRA)*
  - ☐ Real Estate *(other than home)*
  - ☐ Vehicle
  - ☐ Recreational Vehicle
  - ☐ Boat
  - ☐ Other: _____
- **Work/Education:**
  - ☐ Diligently seek work at _____ places a week
  - ☐ Visit the CareerCenter Office for job counseling and placement
  - ☐ Apply for vocational rehabilitation training
  - ☐ Apply for ASPIRE
  - ☐ Register for and attend classes at _____
  - ☐ Seek budget counseling at _____
  - ☐ Sign up for and complete workfare
  - ☐ Provide a doctor's statement describing any limitations in your ability to work and period of time you will be limited.
  - ☐ Other: _____

2. By the next time you apply you must: 1) read the back of this decision regarding use-of-income requirements and limitations on emergency assistance; 2) _____

MMA Form #3A Revised 10/99

3. If you want to receive General Assistance in the future:

- You must make a good-faith effort to make all reasonable efforts to reduce your need for General Assistance, including using available and potential resources such as other government benefit programs, assistance from legally liable relatives, employment opportunities, etc.
- If you are able to work, but are unemployed you must make a good-faith attempt to find a job, accept a job offer, and participate in any training or rehabilitation program that would help you become employed.
- You must not quit your job unless you can document a good reason for doing so, nor must you be fired for misconduct.
- If you are assigned workfare, you must complete your work assignment satisfactorily.
- You must report your household income and expenses completely and accurately and report any changes in the household or income to the administrator.
- Should you receive a lump sum payment between the date of this decision and any future application for General Assistance, you must report to the Administrator the receipt and the amount of that lump sum payment. Under certain circumstances the municipality has the right to consider (i.e., prorate) lump sum income available to your household for as long as 12 months after an application for General Assistance. Lump sum income that is spent toward basic necessities will not be prorated, therefore you should keep receipts of your expenditure of lump sum income in order to preserve your eligibility for General Assistance during the 12-month period after receiving a lump sum payment.
- You must not commit fraud or violate rules of other programs which would cause you to lose other public benefits such as TANF or Unemployment Compensation.
- You must show that your income has been used for basic necessities such as: rent/mortgage, fuel, utilities, non-elective medical services, non-prescription drugs, telephone when medically necessary, necessary work-related expenses, clothing, personal supplies and food. Income received within a 30-day period and spent on non-necessities shall be considered available to the household resulting in a reduction or denial of future benefits. Examples of spending for non-necessities include expenditures for tobacco or alcohol, gifts, trips or vacations, court fines, repayments of unsecured loans, credit card debt, etc.
- The municipality reserves the right to apply specific use-of-income requirements to any applicant who fails to use his or her income for basic necessities or fails to reasonably document his or her use of income. These requirements will take the form of written directives to spend all or a portion of prospective income toward priority basic necessities such as housing (rent/mortgage), energy (heating fuel/electricity), or other specified basic necessities. Failure to abide by these requirements may result in an ineligibility for General Assistance to replace the misspent income, unless you are able to show with verifiable documentation that all income was spent on basic necessities up to the maximum amounts allowed by ordinance.
- For you to be eligible for emergency General Assistance in the future (for example, to avert an eviction or disconnection of electric service), you will have to be able to demonstrate that you could not have prevented the emergency situation from occurring with the income and resources available to you. Please refer to the municipal General Assistance ordinance to review the guidelines the administrator may follow to limit the amount of emergency General Assistance you will be eligible for if you could have financially prevented or partially prevented the emergency from occurring.

Important:

Failure to fulfill one or more of these requirements may result in your being ineligible to receive assistance the next time you apply, or even disqualification from the program for 120 days.

Assistance that you receive must be repaid to the municipality if you are ever financially able to repay it. Parents who are financially able are required by law to help their children under the age of 25, as spouses are legally required to financially support each other. The municipality has the right to require these relatives to repay any assistance that is granted.

If you are dissatisfied with this decision, please feel free to discuss it with me. You have the right to have a fair hearing. A person who was not involved with this decision will decide whether you are eligible for assistance. If you would like a fair hearing, you must request a hearing **in writing within 5 working days** of when you receive this notice. You have the right to be represented by an attorney, at your expense, and to present witnesses and written evidence on your behalf. Forms to request a hearing are available from my office.

You also have the right to contact the State Department of Human Services in Augusta (1-800-442-6003) if you think this decision violates state law.

If you have any questions, do not hesitate to contact me.

Sincerely,

_____

General Assistance Administrator

MMA Form #3A Revised 10/99

Notice of General Assistance Ineligibility

Please Read Carefully

Notice of General Assistance Ineligibility

Date: _____

Dear _____ :

You have been found ineligible to receive General Assistance for the following reason(s):

- ☐ You are not in need (your income exceeds the maximum levels or you have sufficient available resources. (22 M.R.S.A. §§ 4301(10), 4305, 4315-A)
- ☐ You are over income and there is no emergency. (22 M.R.S.A. § 4308)
- ☐ You refused to search for employment as required. (22 M.R.S.A. § 4316-A)
- ☐ You refused to register for work. (22 M.R.S.A. § 4316-A)
- ☐ You refused to accept a suitable job offer. (22 M.R.S.A. § 4316-A)
- ☐ You refused to participate in a training or education program as directed. (22 M.R.S.A. § 4316-A)
- ☐ You failed to perform or complete workfare. (22 M.R.S.A. § 4316-A)
- ☐ You quit work without just cause or were fired for misconduct. (22 M.R.S.A. § 4316-A)
- ☐ You refused to utilize a potential resource after being instructed to in writing. (22 M.R.S.A. § 4317)
- ☐ You willfully made a false representation about your eligibility. (22 M.R.S.A. § 4315)
- ☐ You did not report changes in your income or other circumstances affecting your eligibility. (22 M.R.S.A. § 4309)
- ☐ You did not provide or permit me to gather the necessary verification and documentation as requested. (22 M.R.S.A. § 4309)
- ☐ Other: _____

Explanation:

Disqualification Period: You are ineligible to receive General Assistance:

- ☐ for 120 days
- ☐ for 120 days—unless you regain your eligibility by complying with the work requirement(s)
- ☐ until you attempt to make use of the following potential resources: _____
- ☐ for 120 days from separation from employment, or until (date) _____
- ☐ Other: _____

Important: If you disagree with this decision, please feel free to discuss it with me. You have the right to request a Fair Hearing. A person who was not involved in this decision will decide whether you are eligible for assistance. If you would like a Fair Hearing, you must request a hearing in writing within 5 working days of when you receive this notice or by _____ (date). You have the right to be represented by an attorney, at your expense, and to present witnesses and written evidence on your behalf. Forms to request a hearing are available from my office.

You also have the right to contact the State Department of Human Services in Augusta (1-800-442-6003) if you think this decision violates state law.

If you have any questions, do not hesitate to contact me. Please read the other side of this decision.

Sincerely,

_____

General Assistance Administrator

MMA Form #3B (1992) Revised 10/99

(continued on the back)

If you want to receive General Assistance in the future:

- You must make a good-faith effort to make all reasonable efforts to reduce your need for General Assistance, including using available and potential resources such as other government benefit programs, assistance from legally liable relatives, employment opportunities, etc.
- If you are able to work, but are unemployed you must make a good-faith attempt to find a job, accept a job offer, and participate in any training or rehabilitation program that would help you become employed.
- You must not quit your job unless you can document a good reason for doing so, nor must you be fired for misconduct.
- If you are assigned workfare, you must complete your work assignment satisfactorily.
- You must report your household income and expenses completely and accurately and report any changes in the household or income to the administrator.
- Should you receive a lump sum payment between the date of this decision and any future application for General Assistance, you must report to the Administrator the receipt and the amount of that lump sum payment. Under certain circumstances the municipality has the right to consider (i.e., prorate) lump sum income available to your household for as long as 12 months after an application for General Assistance. Lump sum income that is spent toward basic necessities will not be prorated, therefore you should keep receipts of your expenditure of lump sum income in order to preserve your eligibility for General Assistance during the 12-month period after receiving a lump sum payment.
- You must not commit fraud or violate rules of other programs which would cause you to lose other public benefits such as TANF or Unemployment Compensation.
- You must show that your income has been used for basic necessities such as: rent/mortgage, fuel, utilities, non-elective medical services, non-prescription drugs, telephone when medically necessary, necessary work-related expenses, clothing, personal supplies and food. Income received within a 30-day period and spent on non-necessities shall be considered available to the household resulting in a reduction or denial of future benefits. Examples of spending for non-necessities include expenditures for tobacco or alcohol, gifts, trips or vacations, court fines, repayments of unsecured loans, credit card debt, etc.
- The municipality reserves the right to apply specific use-of-income requirements to any applicant who fails to use his or her income for basic necessities or fails to reasonably document his or her use of income. These requirements will take the form of written directives to spend all or a portion of prospective income toward priority basic necessities such as housing (rent/mortgage), energy (heating fuel/electricity), or other specified basic necessities. Failure to abide by these requirements may result in an ineligibility for General Assistance to replace the misspent income, unless you are able to show with verifiable documentation that all income was spent on basic necessities up to the maximum amounts allowed by ordinance.
- For you to be eligible for emergency General Assistance in the future (for example, to avert an eviction or disconnection of electric service), you will have to be able to demonstrate that you could not have prevented the emergency situation from occurring with the income and resources available to you. Please refer to the municipal General Assistance ordinance to review the guidelines the administrator may follow to limit the amount of emergency General Assistance you will be eligible for if you could have financially prevented or partially prevented the emergency from occurring.

Important:

Failure to fulfill one or more of these requirements may result in your being ineligible to receive assistance the next time you apply, or even disqualification from the program for 120 days.

Assistance that you receive must be repaid to the municipality if you are ever financially able to repay it. Parents who are financially able are required by law to help their children under the age of 25, as spouses are legally required to financially support each other. The municipality has the right to require these relatives to repay any assistance that is granted.

If you are dissatisfied with this decision, please feel free to discuss it with me. You have the right to have a fair hearing. A person who was not involved with this decision will decide whether you are eligible for assistance. If you would like a fair hearing, you must request a hearing **in writing within 5 working days** of when you receive this notice. You have the right to be represented by an attorney, at your expense, and to present witnesses and written evidence on your behalf. Forms to request a hearing are available from my office.

You also have the right to contact the State Department of Human Services in Augusta (1-800-442-6003) if you think this decision violates state law.

MMA Form #3B (1992)
Revised 10/99

Request for a Fair Hearing

REQUEST FOR A FAIR HEARING

Date: _____ 20 _____

Municipality: _____

To the General Assistance Administrator:

I would like a Fair Hearing to review the decision on my request for General Assistance. The reason(s) I want a hearing is/are: _____

_____

_____

I believe that I am entitled to the following assistance: _____

_____

_____

I understand that the hearing will be before one or more people who did not have any involvement in the decision on my request for assistance. I also understand that I have the right to be represented by an attorney (at my expense), to present witnesses and evidence on my behalf and to confront and cross-examine witnesses presented against me.

_____

Client's Signature

_____

Client's Name (Please Print)

MMA Form #4-A (1/00)

Notice of a Fair Hearing

NOTICE OF FAIR HEARING

_____ 20 _____

Dear _____:

The Fair Hearing which you requested will be held

Date: _____ Time: _____ Place: _____

If you are unable to attend at this time please notify me immediately.

The hearing will be before an impartial higher authority who was not involved in making the decision on your request for assistance. The decision of the authority will be based on the evidence presented at the hearing. You have the right to:

- confront and cross-examine witnesses;
- present witnesses and written evidence on your behalf;
- be represented by an attorney (at your own expense) or other person.

You will be advised of the hearing authority's decision in writing within 5 working days of the hearing. If you have any questions about this notice or the hearing, please contact me.

Sincerely,

_____
Administrator

_____
Municipality

MMA Form #4-A (1/00)

Notice of a Fair Hearing Decision

NOTICE OF FAIR HEARING DECISION

Date: _____ 20 ____

Dear _____:

A Fair Hearing was held on _____ regarding your request for General Assistance.

1. ISSUE: _____

2. FINDINGS OF FACTS MADE AT HEARING:

3. DECISION BY FAIR HEARING AUTHORITY: It is the decision of the Fair Hearing Authority that you are _____ to receive General Assistance.

4. REASON(S) FOR DECISION: _____

5. STATE AND LOCAL LAW SUPPORTING DECISION: _____

By: _____
(Signature of Official reporting decision)

Fair Hearing Authority

_____
Municipality

6. RIGHT OF JUDICIAL REVIEW: If you are dissatisfied with this decision you have a further legal right to judicial review under the Maine Rules of Civil Procedure, Rule 80B. To take advantage of this right you must file a petition for review with the Superior Court within 30 days of the receipt of the Fair Hearing decision (22 M.R.S.A. § 4322).

FHA-5-1

MMA Form #6 (1/00)

GA Fair Hearing Proceeding "A Script"

The participants in the following generic script for appeal process are:

Fair Hearing Authority (FHA)
Claimant
Claimant's representative
Claimant's witness
Town
Town's witness

NOTE: Italicized/highlighted language is not part of the dialogue - it is instructional information.

Pre-Hearing Preliminaries

FHA: (*To all gathered*) Good (*evening/afternoon*). We are gathered here for the purpose of holding a hearing with regard to a Claimant's request to appeal the General Assistance decision of the town made on _____ (*date*).

My name is _____ and I am the Fair Hearing Authority, and am duly authorized to conduct this type of proceeding. The proceeding is going to be taped and that tape will become part of the record of this proceeding. Before I start the tape, does anyone have any preliminary questions? There being none, I am calling this proceeding to order.

The FHA starts the tape.

FHA: Before we go any further, I want to make sure that everyone here is supposed to be here.

Identification of Parties

FHA: First of all, the following proceeding is not a public proceeding under Maine's Right to Know Law, and so only the direct participants will be allowed to remain in the room when the hearing begins.

The "FHA" then goes around the room and identifies all persons present and determines who are direct participants to the proceeding and who are members of the general public. Since it is not a public proceeding persons who are not direct participants should be asked to leave.

FHA: It is _____ *(a.m./p.m.)* on _____ (*date)* and this is an appeal hearing to consider the request of _____ (*Claimant)* to appeal from a General Assistance decision made by _____ (*Town)* on _____ (*date*).

Present and participating in this proceeding are—(*identifying each participant by name and function*) FHA, claimant, claimant's representative, claimant's witness, town, and town's witness, etc.

FHA's Rules of Procedure

FHA: The purpose of this proceeding is to gather all the information that is available to reach a fair and impartial decision regarding the Claimant's request. Because this proceeding is not governed by the Maine Rules of Civil or Criminal Procedure, this hearing will not be conducted in as formal a manner as would be the case in court, but there are some rules that must be obeyed.

To begin with, this proceeding is being taped, and I would therefore ask all witnesses who may be asked questions, to answer the questions clearly, because the tape cannot pick up gestures or late comments.

Decorum, Objections & Hearsay Rule

FHA: Participants will not be allowed to interrupt or talk over a person who is making a presentation. The only exception to this is if you have an objection to make to the testimony. If you have an objection, simply indicate to me that you have an objection and I will stop the testimony and we can talk about the objection.

* *Optional language—contingent on audience—(Profanity, vulgarity or otherwise inappropriate language will not be tolerated.)*

For your information, the rule I follow on hearsay evidence is the rule in the Administrative Procedures Act, in that I will accept all evidence upon which ***reasonable persons are accustomed to rely in the conduct of serious affairs—***this is the standard**.** I will therefore generally accept testimony, even hearsay testimony, unless it is clearly inappropriate or otherwise not material to this proceeding, but in my deliberations I will consider hearsay testimony as the relatively unsubstantiated evidence that it is, and weigh it accordingly.

Rights of Parties

FHA: Both parties to this proceeding have the right to legal representation at their cost. In addition, both parties to this proceeding have the right to:

- present oral, written testimony and documentary evidence
- offer rebuttal
- examine all evidence presented at the hearing
- present witnesses in their behalf and,
- cross-examine witnesses provided by the other side

Do all parties to this proceeding understand these rights, and acknowledging these rights are you now prepared to proceed?

Claimant and Town: We do and we are.

De Novo Hearing: Explanation

FHA: Good. The next point I'd like to make is that this is a "de novo" proceeding, which means that I will not be influenced by the decision made by the town which is now being appealed. Instead, I will be determining the merits of the applicant's eligibility as though the initial application was being presented to me for the first time, and the information that I am going to use to make my decision will be limited to the spoken and written information that is provided to me throughout this proceeding. Is that understood by both parties?

Claimant and Town: It is.

Challenge to the FHA

FHA: Fine. On another matter and before we begin, I would like to ask both parties whether there is any objection to me *(or, if appropriate—any member of this Authority)* acting as the hearing officer in this matter.

Claimant and Town: No objection.

(*Note: If there is an objection on the grounds of either conflict or bias, the "FHA" or Board should consider the objection for the record and on* its *merits and decide whether recusal is warranted. If recusal is warranted, the "FHA" should agree to step down and, if necessary, the hearing should be continued until a new "FHA" can be-designated. If the "FHA" feels recusal is not necessary, he or she should note the party's objection for the record and continue with the hearing.)*

Swearing in Witnesses

FHA: O.K. Finally, before we begin, I'd like to swear in any witnesses that are present and prepared to testify. Could all witnesses please stand, face me, and raise their right hands? Do you swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth and nothing but the truth?

Witnesses: I do.

Presentation of Evidence

(Note: As a general rule, the party to a proceeding who is trying to get something done—the 'moving' party—has the burden of providing the elements of his or her case, so the moving party starts first. In appeal procedure, therefore, the Claimant gets the first opportunity to present his or her position. As will be noted with regard *to non-appeal quasi-judicial process, where there is typically just the town seeking to do something and a party who will be affected by that action, the opening presentation can shift to the town.)*

FHA: Claimant's Representative. Do you or your client wish to make an opening statement explaining your case?

Claimant's Representative: We do. *(Claimant's representative makes an opening statement explaining the events that lead up to the request for appeal, the issues at appeal, and the Claimant's general arguments supporting an overturning or modification of the underlying decision. The Claimant's Representative enters a number of documents into the record, including the decision itself and the pertinent sections of the local ordinance.)*

FHA: Thank you. I am going to mark the material just given to me as Claimant's exhibits #1 and #2. Town, *would* you like to review this material?

(Note: Each document should be given a different letter or number, the documents should not be lumped together. The "FHA" should orally identify each one as it is marked; e.g., #1 is the Town's decision dated October 4, 2000, #2 is the local ordinance dated September 28, 2000 etc.)

Town: The town is familiar with those *documents*.

FHA: All right. Town, would you now like to make an opening statement?

Town: Yes, the town would. *(The town administrator makes an opening statement that reiterates the pertinent facts of the case, with emphasis on those facts that were not mentioned in the Claimant's opening and those facts that appear to be in dispute. The town also identifies the issues that are at appeal and enters into the record, with a complete photocopied set for the Claimant, some additional documentation, including a mini-brief that the town prepared for the hearing.*

FHA: I am going to mark this material town's exhibits #'s 1-5. Claimant's representative, have you had a chance to review this material.

Claimant's Representative: No, we have not. *(Claimant's representative reviews the material.*) I would like to be provided the opportunity to reply to the written brief supplied by the town in writing.

FHA: I will note that request and further note that you had every opportunity as did the town to prepare a written memorandum. I will rule on the expanded procedural time frame for the submission of additional written argument before the close of this proceeding. Now, Claimant's Representative, do you wish to call any witnesses?

Claimant's Representative: Yes we do. I call _____ *(Claimant's Witness). (The Claimant's Witness is recognized and reminded of the oath just taken.)* Please state your full name, address, and occupation. *(Claimant's Witness provides that information and Claimant's Representative then proceeds to question the witness until there are no more questions.)*

FHA: Thank you. Now Town, do you have any questions for this witness?

Town: Yes I do. *(Town proceeds to ask questions of the witness. At various times, the FHA has some questions for the witness which are asked and answered.)*

FHA: If there are no more questions for this witness and if the Claimant's representative has no more witnesses to call, I will ask the Town if it wishes to call any witnesses.

Town: Yes we do. *(Town calls its witness, asks the witness for his or her name, address, and occupation, and then follows the above procedure that was applied to the Claimant's Witness.)*

FHA: If there are no more witnesses, I will now ask the Claimant's representative if there are any further arguments that she wishes to make, and if she would like to provide a closing statement.
Claimant's Representative: Thank you. I would like to summarize my client's case. *(Claimant's Representative proceeds to reiterate the Claimant's case and point out the various flaws in the town's case.)*

FHA: Thank you. Town, would you like to make any additional arguments or provide a closing statement?

Town: Yes, I would. *(Town proceeds to summarize the case and refers to the brief it originally supplied. Town points out what it sees as the weakness of the Claimant's case, and further points out that the town's brief includes a proposed "order" in the form of the written decision the town would like to see the FHA issue.)*

FHA: Thank you. I will now ask if anyone has anything else to add to this hearing. If not, I am prepared to close the hearing but I will allow three additional days for either party to submit any written material pertinent to the issues of law that have been raised at this hearing. I will not accept or consider additional or new facts or evidence, however. In order to consider that material related to issues of law, this office must receive it no later than _____ *(a.m./p.m)* on _____.
(date).*

* *(Note: If a party does introduce new material, the FHA should allow the opposing side a reasonable amount of time in which to review the material and rebut/counter it provided no new facts/evidence are introduced. The 5-day time frame in which the FHA must render a decision must nonetheless be taken into account.)*

Claimant's Representative and Town: It is.

FHA: O.K. There being nothing else, I am now going to close this hearing. On the basis of the evidence presented during this proceeding I will be determining the Claimant's eligibility for the relief the Claimant is seeking. Where facts are in dispute, I will establish findings of fact based on the preponderance of all the evidence. My written decision will be issued by regular mail to both parties no later than _____ *(date).*

I want to thank both parties and all witnesses for their excellent presentations. This hearing is closed. *(FHA turns off the tape and refrains from any substantive discussion of the case with anyone while packing up and leaving the hearing room.)*

Basic Guide to the Memorandum of Support

The Facts:

- Bullet the facts 1, 2, 3, etc.
- State material facts only—do not cloud the arguments with unnecessary or irrelevant facts.
- Do not include contestable information as facts.
- State pertinent provisions of law, ordinance or DHHS policy as facts.
- Attach copies of pertinent provisions of law, ordinance or DHHS policy manual to the memorandum as numbered exhibits, or incorporate statute into body of the memorandum.
- The facts stated should lead the reader to the issue on appeal.

The Issues:

- Issues should be bulleted 1, 2, 3, etc.
- Issues should be phrased as questions.
- There should typically be only a few issues (1, 2, or 3 issues is normal).
- The issues should typically begin "As a matter of law or municipal ordinance…."
- The issues should be posed so that the answers can be stated as either "yes" or "no."

The Arguments:

- Each argument should completely address each issue.
- The arguments should merely build on the foundations already established in the "facts" and "issues" sections—succinctly matching pertinent law/regulation with facts of the case.
- This section could expand on the underlying public policy/legislative intent which could reasonably be asserted as a governing issue.

Conclusion:

Conclude with the written decision you would like to see—ask the FHA to rule in the town's favor.

Exhibit 8

Memorandum of Support for General Assistance Decision

Case Name: _____

Date of GA Decision: _____

Date of Fair Hearing: _____

Facts

1. Beginning on _____, 20 ____ and subsequently on _____ 20 ___ , and _____ 20 ____, _____ (Applicant) applied to the Town of _____(Town) for General Assistance to pay for his room rent at _____Street, as well as food and personal care items.

2. The Applicant will be 21 years old on _____.

3. 22 M.R.S. § 4319 provides that parents are responsible for the care of their children under the age of 25 in proportion to their respective ability.

4. The applicant's parents, Mr. and Mrs. _____ enjoy a clear, substantial and demonstrable ability to financially support their son; specifically: (list some facts associated with the parents'

5. 22 M.R.S. §§ 4318 and 4319(3) provide a municipality with clear authority to recover all assistance granted to a recipient from persons legally responsible for that support. As a matter of standard municipal practice, parents of minor applicants are informed of their potential indebtedness to the municipality for assistance granted their minor dependents. When those parents express a willingness to provide for their minor dependents' needs directly, those minor applicants are denied assistance as the applicant has access to an available resource which can meet all the applicant's needs *(see the statutory definition of "need", 22 M.R.S. § 4301(10)).*

6. The Applicant's parents have never indicated to the Town an unwillingness to financially support their son. The parents' only claim is that they have no legal obligation to financially support their son because he was "old enough to take care of himself." There is nothing in GA law that absolves parents from their financial obligation to support a child under the age of 25 because they are perceived as old enough to care from themselves by the parents.

7. The Applicant and his parent have provided inconsistent information to the Town with regard to the parents' past and present willingness to provide financial support for their child. On 11/11/12, the Applicant indicated a parental unwillingness. On that same date, the Applicant's mother indicated the

parents provided financial support to their son. On 2/12/2013, the applicant indicated his mother provided direct financial support whenever he needed it.

8. On 2/12/2013, the Applicant was formally required to apply in good faith to the County Community Action Agency (CAP) for the various types of assistance offered by that agency. This requirement was placed on the Applicant pursuant to 22 M.R.S. § 4317.

9. Because the applicant did not contact the CAP, he never fulfilled his "potential resource" requirement, and is therefore also subject to a disqualification on this point of law pursuant to the controlling statute (22 M.R.S. § 4317).

10. Because of the Town's consistent refusal to grant General Assistance to the Applicant due to the apparent availability of a more immediate resource, namely the financial resources of a legally liable parent (in addition to other potential CAP resources), the Applicant appealed the municipal decision on 2/16/2013 and as a result this fair hearing is being held on this date at the mutual agreement of Town and Applicant.

Issues

1. Is a municipality under an obligation to provide General Assistance to an applicant who is a minor *(under the age of 25 for purposes of GA law)* whose parents are willing and able to provide the applicant with his or her needs directly?

2. Is it unreasonable for a municipality to presume a parental willingness to directly support a dependent minor when the legally liable parents provide such support as a matter of standard practice and when the Applicant tells the municipality that his parents provide financial assistance when necessary?

3. Did the Town unreasonably or illegally refuse to grant assistance to the Applicant given the demonstrated parental willingness and legal parental obligation to support?

4. Does the Town have a clear and legitimate right to recover all General Assistance granted to their son--as long as he is under the age of 25 and his parents have an ability to pay--pursuant to Maine General Assistance law?

The answer to questions 1-3 is no. The answer to question 4 is yes.

Arguments

1. First Question: 22 M.R.S. § 4319 provides in part "a parent of a child under 25 years of age … shall support their children … in proportion to their respective ability. The answer to the first question above is incontestably "no--the municipality is under no such obligation given the parents positive financial status.

2. Second and Third Question: The facts of the case suggest that the parents do supply their son with supplementary financial support whenever necessary, as evidenced by past practice and the Applicant's

own statements to that effect. A review of the facts of the case show that the Applicant's parents do not accept their financial obligation to support their son until he reaches the age of 25 as required by GA law. Therefore, the Town's decision under appeal should be sustained as both legal and reasonable.

3. Fourth Question: Pursuant to 22 M.R.S. § 4318:

   "A municipality…which has incurred general assistance program costs for the support of any eligible person, may recover the full amount expended for that support either from the person relieved or from any person liable for the recipient's support, their executors or administrators, in a civil action. In no case may a municipality or the State be authorized to recover through a civil action, the full or part of, the amount expended for the support of a previously eligible person, if, as a result of the repayment of that amount, this person would, in all probability, again become eligible for general assistance."

The statute's meaning is clear--- the Town does have a clear and legitimate right to recover all General Assistance granted (especially given these parents' financial ability to provide for their son). Therefore, the Town respectfully requests this fair hearing authority to rule with regard to the rights of the municipality to seek recover from the applicant's parents.

In addition, for the foregoing reasons, the Town respectfully requests the Fair Hearing Authority to uphold the Town's original decision in this matter or, in the alternative, rule in accordance with argument #4, immediately above.

CHAPTER 13 – Municipal General Assistance Law (22 M.R.S. §§ 4301-4326)

22 M.R.S. §§ 4301-4326
TITLE 22. HEALTH AND WELFARE
SUBTITLE 3. INCOME SUPPLEMENTATION
PART 5. MUNICIPAL SUPPORT OF THE POOR
CHAPTER 1161. MUNICIPAL GENERAL ASSISTANCE

Current through the 2013 1st Regular Session and 1st Special Session of the 126th Legislature

§ 4301. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Basic necessities. "Basic necessities" means food, clothing, shelter, fuel, electricity, nonelective medical services as recommended by a physician, nonprescription drugs, telephone where it is necessary for medical reasons and any other commodity or service determined essential by the overseer in accordance with the municipality's ordinance and this chapter. "Basic necessities" do not include security deposits for rental property, except for emergency purposes. For the purposes of this subsection, "emergency purposes" means any situation in which no other permanent lodging is available unless a security deposit is paid.

1-A. Direct costs. "Direct costs" means the total value of general assistance benefits paid out by a municipality that is in compliance with this chapter and the municipality's general assistance ordinance.

2. Dwelling unit. "Dwelling unit" means a building or part thereof used for separate living quarters for one or more persons living as a single housekeeping unit.

3. Eligible person. "Eligible person" means a person who is qualified to receive general assistance from a municipality according to standards of eligibility determined by the municipal officers whether or not that person has applied for general assistance. "Eligible person" does not include a person who is a fugitive from justice as defined in Title 15, section 201, subsection 4.

4. Emergency. "Emergency" means any life threatening situation or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person.

5. General assistance program. "General assistance program" means a service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families. A general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that the person has need and is found to be otherwise eligible to receive general assistance.

6. Household. "Household means an individual or a group of individuals who share a dwelling unit. When an applicant shares a dwelling unit with one or more individuals, even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household according to the maximum levels of assistance established in the municipal ordinance. The pro rata share is calculated by dividing the maximum level of assistance available to the entire household by the total number of household members. The income of household members not legally liable for supporting the household is considered available to the applicant only when there is a pooling of income.

7. Income. "Income" means any form of income in cash or in kind received by the household, including net remuneration for services performed, cash received on either secured or unsecured credit, any payments received as an annuity, retirement or disability benefits, veterans' pensions, workers' compensation, unemployment benefits, benefits under any state or federal categorical assistance program, supplemental security income, social security and any other payments from governmental sources, unless specifically prohibited by any law or regulation, court ordered support payments, income from pension or trust funds, household income from any other source, including relatives or unrelated household members and any benefit received pursuant to Title 36, chapter 907 and Title 36, section 5219-II, unless used for basic necessities as defined in section 4301, subsection 1.

The following items are not available within the meaning of this subsection and subsection 10:

A. Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law;

B. Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and child care expenses; or

C. Earned income of children below the age of 18 years who are full- time students and who are not working full time.

In determining need, the period of time used as a basis for the calculation is the 30-day period commencing on the date of the application. This prospective calculation does not disqualify an applicant who has exhausted income to purchase basic necessities if that income does not exceed the income standards established by the municipality. Notwithstanding this prospective calculation, if any applicant or recipient receives a lump sum payment prior or subsequent to applying for assistance, that payment must be prorated over future months. The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; repayments of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is added to the remainder of the lump sum. The period of proration is then determined by dividing the remainder of the lump sum payment by the verified actual monthly amounts for all of the household's basic necessities. That dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less.

8. Just cause. "Just cause" means a valid, verifiable reason that hinders an individual in complying with one or more conditions of eligibility.

8-A. Lump sum payment. "Lump sum payment" means a one-time or typically nonrecurring sum of money issued to an applicant or recipient. Lump sum payment includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after payment of required deductions has been made from the gross lump sum payment. A lump sum payment does not include conversion of a nonliquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the converted resource or for other necessary expenses.

9. Municipality of responsibility. "Municipality of responsibility" means the municipality which is liable for the support of any eligible person at the time of application.

10. Need. "Need" means the condition whereby a person's income, money, property, credit, assets or other resources available to provide basic necessities for the individual and the individual's family are less than the maximum levels of assistance established by the municipality.

11. Net general assistance costs. "Net general assistance costs" means those direct costs incurred by a municipality in providing assistance to eligible persons according to standards established by the municipal officers and does not include the administrative expenses of the general assistance program.

12. Overseer. "Overseer" means an official designated by a municipality to administer a general assistance program. The municipal officers shall serve as a board of overseers if no other persons are appointed or elected.

12-A. Pooling of income. "Pooling of income" means the financial relationship among household members who are not legally liable for mutual support in which there occurs any comingling of funds or sharing of income or expenses. Municipalities may by ordinance establish as a rebuttable presumption that persons sharing the same dwelling unit are pooling their income. Applicants who are requesting that the determination of eligibility be calculated as though one or more household members are not pooling their income have the burden of rebutting the presumption of pooling income.

13. Real estate. "Real estate" means any land, buildings, homes, mobile homes and any other things affixed to that land.

§ 4302. Delegation of duties; oath; bond

Overseers may authorize some person whom they shall designate to perform such of the duties imposed upon them by this chapter as they may determine. The overseers may designate more than one person to perform those duties. Before entering upon the performance of those duties, the person or persons so designated shall be sworn and shall give bond to the town for the faithful performance of those duties, in such sum and with such sureties as the overseers order.

§ 4303. Prosecution and defense of towns

For all purposes provided for in this chapter, the overseers or any person appointed by them in writing may prosecute and defend a town.

§ 4304. General assistance offices

1. Local office. There must be in each municipality a general assistance office or designated place where any person may apply for general assistance at regular, reasonable times designated by the municipal officers. Notice must be posted of these times, the name of the overseer available to take applications in an emergency at all other times, the fact that the municipality must issue a written decision on all applications within 24 hours and the department's toll-free telephone number for reporting alleged violations in accordance with section 4321.

2. District office. In situations where in the judgment of a municipality the number of applicants does not justify the establishment of a local office or designated place, or where for other reasons a local office or designated place is not necessary, 2 or more municipalities, by a vote of their respective legislative bodies, may establish a district office for the administration of general assistance and make agreements as to the payment of expenses and any other matters relevant to the operation of the office.

Any district office established pursuant to this subsection shall be located so as to be accessible by a toll-free telephone call from any part of every municipality it is designated to serve.

Every district general assistance officer shall be available for the taking of applications at least 35 hours each week and shall make provision for designated personnel to be available to take applications in an emergency 24 hours a day.

3. Emergencies. In any case when an applicant is unable, due to illness, disability, lack of transportation, lack of child care or other good cause, to apply in person for assistance or unable to appoint a duly authorized representative, the overseer shall accept an application by telephone subject to verification by mail and a visit to the applicant's home with the consent of the applicant. Municipalities may arrange with emergency shelters for the homeless to presume eligible[1] for municipal assistance persons to whom the emergency shelter provides shelter services.

§ 4305. Municipal ordinance required

1. Program required; ordinance. A general assistance program shall be operated by each municipality and shall be administered in accordance with an ordinance enacted, after notice and hearing, by the municipal officers of each municipality.

2. Availability of ordinance. The ordinance and a copy of this chapter must be available in the town office and be easily accessible to any member of the public. Notice to that effect must be posted. A copy of this chapter must be distributed by the department to each municipality.

3. Standards of eligibility. Municipalities may establish standards of eligibility, in addition to need, as provided in this chapter. Each ordinance shall establish standards which shall:

A. Govern the determination of eligibility of persons applying for relief and the amount of assistance to be provided to eligible persons;

B. Provide that all individuals wishing to make application for relief shall have the opportunity to do so; and

C. Provide that relief shall be furnished or denied to all eligible applicants within 24 hours of the date of submission of an application.

3-A. Maximum levels of assistance. Municipalities may establish maximum levels of assistance by ordinance. The maximum levels of assistance must set reasonable and adequate standards sufficient to maintain health and decency. A maximum level of assistance established by municipal ordinance is subject to a review by the department, upon complaint, to ensure compliance with this chapter.

3-B. Temporary maximum levels. Notwithstanding subsection 3-A, municipalities shall establish an aggregate maximum level of assistance that is 110% of the applicable existing housing fair market rents as established by the United States Department of Housing and Urban Development pursuant to 24 Code of Federal Regulations, Section 888.115, applying the zero-bedroom level for one person, the one-bedroom level for 2 persons, the 2-bedroom level for 3 persons, the 3-bedroom level for 4 persons and the 4-bedroom level for 5 persons. For each additional person, the aggregate maximum level increases by $75. For the purposes of this subsection, municipalities with populations greater than 10,000 are deemed Standard Metropolitan Statistical Areas in those counties for which there are 2 fair market rent values and the aggregate maximum level of assistance for all Standard Metropolitan Statistical Areas is the average of the fair market rental values for the Standard Metropolitan Statistical Areas and areas that are not Standard Metropolitan Statistical Areas for each county in which there are 2 fair market rental values.

Beginning October 2005 and annually thereafter, the aggregate maximum level of assistance must be established at the greater of 110% of the fair market rents as determined in this subsection and the amount achieved by annually increasing the most recent aggregate maximum level of assistance by the percentage increase in the federal poverty level of the current year over the federal poverty level of the prior year.

For the purposes of this subsection, "federal poverty level" means that measure defined by the federal Department of Health and Human Services and updated annually in the Federal Register under authority of 42 United States Code, Section 9902(2).

3-C. Maximum level of assistance from July 1, 2012 to June 30, 2013. Notwithstanding subsection 3-A or 3-B, for the period from July 1, 2012 to June 30, 2013, the maximum level of assistance is 90% of the maximum level of assistance in effect on April 1, 2012.

3-D. Maximum level of assistance for fiscal years 2013-14 and 2014-15. Notwithstanding subsection 3-A or 3-B, the aggregate maximum level of assistance for fiscal years 2013-14 and 2014-15 must be set as follows:

A. The aggregate maximum level of assistance for fiscal year 2013-14 must be the amount that is the greater of:

(1) Ninety percent of 110% of the United States Department of Housing and Urban Development fair market rent for federal fiscal year 2013; and

(2) The amount achieved by increasing the maximum level of assistance for fiscal year 2012-13 by 90% of the increase in the federal poverty level from 2012 to 2013.

B. The aggregate maximum level of assistance for fiscal year 2014-15 must be the amount that is the greater of:

(1) Ninety percent of 110% of the United States Department of Housing and Urban Development fair market rent for federal fiscal year 2014; and

(2) The amount achieved by increasing the maximum level of assistance for fiscal year 2013-14 by 90% of the increase in the federal poverty level from 2013 to 2014.

For the purposes of this subsection, "federal poverty level" means that measure defined by the federal Department of Health and Human Services and updated annually in the Federal Register under authority of 42 United States Code, Section 9902(2). For the purposes of this subsection, fair market rent is calculated in the same manner as in subsection 3-B.

4. Ordinance filed. Each municipality shall present a copy of the ordinance establishing eligibility standards, maximum levels of assistance, administration and appeal procedures to the Department of Health and Human Services. The ordinance filed must include all forms and notices, including the application form, notice of decision and appeal rights. Any amendment or modification of the municipal ordinance must be submitted to the department.

5. Repealed. Laws 1993, c. 410, §§ AAA-5, eff. June 30, 1993.

6. Assistance by vouchers or contract. Except when determined impractical by the administrator for good cause shown, assistance is provided in the form of a voucher payable to vendor or vendors or through direct municipal contract with a provider of goods or services.

§ 4306. Records; confidentiality of information

The overseer shall keep complete and accurate records pertaining to general assistance, including the names of eligible persons assisted and the amounts paid for their assistance. Records, papers, files and communications relating to an applicant or recipient made or received by persons charged with responsibility of administering this chapter are confidential and no information relating to a person who is an applicant or recipient may be disclosed to the general public, unless expressly permitted by that person.

§ 4307. Municipality of responsibility; residence

1. General assistance required. Municipalities shall provide general assistance to all eligible persons at the expense of that municipality, except as provided in section 4311.

A municipality shall not move or transport a person into another municipality to avoid responsibility for general assistance support for that person. Any municipality which illegally moves or transports a person, or illegally denies assistance to a person which results in his relocation, in addition to the other penalties provided in this chapter, shall reimburse twice the amount of assistance to the municipality which provided the assistance to that person. That reimbursement shall be made in accordance with subsection 5.

2. Municipality of responsibility. Except as provided in subsection 4, a municipality is responsible for the general assistance support of the following individuals:

A. A resident of the municipality. For the purposes of this section, a "resident" means a person who is physically present in a municipality with the intention of remaining in that municipality to maintain or establish a home and who has no other residence; and

B. Eligible persons who apply to the municipality for assistance and who are not residents of that or any other municipality. If a person is not a resident of any municipality, the municipality where that person first applies shall be responsible for support until a new residence is established.

3. Durational residency requirement prohibited. No municipality may establish a durational residency requirement for general assistance.

4. Special circumstances. Overseers of a municipality may not move or transport an applicant or recipient into another municipality to relieve their municipality of responsibility for that applicant's or recipient's support. The municipality of responsibility for relocations and institutional settings is as follows.

A. When an applicant or recipient requests relocation to another municipality and the overseers of a municipality assist that person to relocate to another municipality, the municipality from which that person is moving continues to be responsible for the support of the recipient for 30 days after relocation. As used in this paragraph, "assist" includes:

(1) Granting financial assistance to relocate; and

(2) Making arrangements for a person to relocate.

B. If an applicant is in a group home, shelter, rehabilitation center, nursing home, hospital or other institution at the time of application and has either been in that institution for 6 months or less, or had a residence immediately prior to entering the institution which the applicant had maintained and to which the applicant intends to return, the municipality of responsibility is the municipality where the applicant was a resident immediately prior to entering the institution. For the purpose of this paragraph, a hotel, motel or similar place of temporary lodging is considered an institution when a municipality:

(1) Grants financial assistance for a person to move to or stay in temporary lodging;

(2) Makes arrangements for a person to stay in temporary lodging;

(3) Advises or encourages a person to stay in temporary lodging; or

(4) Illegally denies housing assistance and, as a result of that denial, the person stays in temporary lodging.

5. Disputes between municipalities. Nothing in this section may permit a municipality to deny assistance to an otherwise eligible applicant when there is any dispute regarding residency. In cases of dispute regarding which municipality is the municipality of responsibility, the municipality where the application has been filed shall provide support until responsibility has been determined by the department. The department shall make a written

determination within 30 working days of a complaint or notification of a dispute. The department's decision must include the sources of information relied upon, findings of fact and conclusions of law regarding which municipality is responsible and the reimbursement due, if any, from the responsible municipality to the municipality providing assistance. If after 30 days the reimbursement has not been paid, the municipality to which reimbursement is due shall notify the department, the department shall credit the municipality owed the reimbursement and either deduct that amount from the debtor municipality or refer the bill to the Treasurer of State for payment from any taxes, revenue, fines or fees due from the State to the municipality.

6. Appeals. Any municipality or person who is aggrieved by any decision or action made by the department pursuant to this section shall have the right to appeal pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.[1] A request for that appeal shall be in writing and shall be made within 30 days of the written department decision. The appeal shall be held within 30 days of receipt of that request and shall be conducted by one or more fair hearing officers. In no event may an appeal be held before a person or body responsible for the decision or action. Review of any decision under this subsection shall be pursuant to the Maine Rules of Civil Procedure, Rule 80C.

§ 4308. Applications

In order to receive assistance from any municipality, the applicant or a duly authorized representative must file a written application with the overseer, except as provided in section 4304, subsection 3.

1. Initial and subsequent applications. Except as provided in section 4316-A, subsection 1-A, a person who makes an application for assistance, who has not applied for assistance in that or any other municipality must have that person's eligibility determined solely on the basis of need. All applications for general assistance that are not initial applications are repeat applications. The eligibility of repeat applicants must be determined on the basis of need and all other conditions of eligibility established by this chapter and municipal ordinance.

1-A. Limit on housing assistance. Except as provided in subsections 1-B and 2, housing assistance provided pursuant to this chapter is limited to a maximum of 9 months during the period from July 1, 2012 to June 30, 2013.

1-B. Extension of housing assistance due to hardship. An applicant is eligible for housing assistance under this chapter beyond the limit established in subsection 1-A if the applicant has a severe and persistent mental or physical condition warranting such an extension or has an application for assistance pending with the federal Social Security Administration.

2. Emergencies. A person who does not have sufficient resources to provide one or more basic necessities in an emergency is eligible for emergency general assistance, even when that applicant has been found ineligible for nonemergency general assistance, except as provided in this subsection.

A. A person who is currently disqualified from general assistance for a violation of section 4315, 4316-A or 4317 is ineligible for emergency assistance under this subsection.

B. Municipalities may by standards adopted in municipal ordinances restrict the disbursement of emergency assistance to alleviate emergency situations to the extent that those situations could not have been averted by the applicant's use of income and resources for basic necessities. The person requesting assistance shall provide evidence of income and resources for the applicable time period.

A municipality may provide emergency assistance when the municipality determines that an emergency is imminent and that failure to provide assistance may result in undue hardship and unnecessary costs.

3. Initial applicant. Notwithstanding section 4301, subsection 7, the household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. Upon subsequent applications, that household's eligibility is subject to all the standards established by this chapter.

§ 4309. Eligibility

1. Eligibility of applicant; duration of eligibility. The overseer shall determine eligibility each time a person applies or reapplies for general assistance pursuant to this chapter and the ordinance adopted by the municipality in accordance with section 4305. The period of eligibility must not exceed one month. At the expiration of that period the person may reapply for assistance and the person's eligibility may be redetermined.

1-A. Determination of eligibility; applicant's responsibilities. Applicants for general assistance are responsible for providing to the overseer all information necessary to determine eligibility. If further information or documentation is necessary to demonstrate eligibility, the applicant must have the first opportunity to provide the specific information or documentation required by the overseer. When information required by the overseer is unavailable, the overseer must accept alternative available information, which is subject to verification.

1-B. Determination of eligibility; overseer's responsibilities. In order to determine an applicant's eligibility for general assistance, the overseer first must seek information and documentation from the applicant. Once the applicant has presented the necessary information, the overseer is responsible for determining eligibility. The overseer may seek verification necessary to determine eligibility. In order to determine eligibility, the overseer may contact sources other than the applicant for verification only with the specific knowledge and consent of the applicant, except that the overseer may examine public records without the applicant's knowledge and consent. Assistance may be denied or terminated if the applicant is unwilling to supply the overseer with necessary information, documentation, or permission to make collateral contacts, or if the overseer cannot determine that eligibility exists based on information supplied by the applicant or others.

2. Redetermination of eligibility. The overseer may redetermine a person's eligibility at any time during the period that person is receiving assistance if the overseer is notified of any change in the recipient's circumstances that may affect the amount of assistance to which the recipient is entitled or that may make the recipient ineligible, provided that once a determination of eligibility has been made for a specific time period, a reduction in assistance for that time period may not be made without prior written notice to the recipient with the reasons for the action and an opportunity for the recipient to receive a fair hearing upon the proposed change.

3. Eligibility of members of person's household. Failure of an otherwise eligible person to comply with this chapter shall not affect the general assistance eligibility of any member of the person's household who is not capable of working, including at least:

A. A dependent minor child;

B. An elderly, ill or disabled person; and

C. A person whose presence is required in order to provide care for any child under the age of 6 years or for any ill or disabled member of the household.

4. Eligibility of minors who are parents. An otherwise eligible person under the age of 18 who has never married and who has a dependent child or is pregnant is eligible only if that person and child reside in a dwelling maintained by a parent or other adult relative as that parent's or relative's own home or in a foster home, maternity home or other adult-supervised supportive living arrangement unless:

A. The person has no living parent or the whereabouts of both parents are unknown;

B. No parent will permit the person to live in the parent's home;

C. The department determines that the physical or emotional health or safety of the person or dependent child would be jeopardized if that person and dependent child lived with a parent;

D. The individual has lived apart from both parents for a period of at least one year before the birth of any dependent child; or

E. The department determines, in accordance with rules adopted pursuant to this section, which must be in accordance with federal regulations, that there is good cause to waive this requirement.

For the purposes of this subsection, "parent" includes legal guardian.

§ 4310. Emergency benefits prior to full verification

Whenever an eligible person becomes an applicant for general assistance states to the administrator that the applicant is in an emergency situation and requires immediate assistance to meet basic necessities, the overseer shall, pending verification, issue to the applicant either personally or by mail, as soon as possible but in no event later than 24 hours after application, sufficient benefits to provide the basic necessities needed immediately by the applicant, as long as the following conditions are met.

1. Probability of eligibility for assistance after full verification. As a result of the initial interview with the applicant, the overseer shall have determined that the applicant will probably be eligible for assistance after full verification is completed.

2. Documentation. Where possible, the applicant shall submit to the overseer at the time of the initial interview, adequate documentation to verify that there is a need for immediate assistance.

3. Information obtained. When adequate documentation is not available at the time of the initial application, the overseer may contact at least one other person for the purpose of obtaining information to confirm the applicant's statements about his need for immediate assistance.

4. Limitations. In no case:

A. May the authorization of benefits under this section exceed 30 days; and

B. May there be further authorization of benefits to the applicant until there has been full verification confirming the applicant's eligibility.

§ 4311. State reimbursement to municipalities; reports

1. Departmental reimbursement. When a municipality incurs net general assistance costs in any fiscal year in excess of .0003 of that municipality's most recent state valuation relative to the state fiscal year for which reimbursement is being issued, as determined by the State Tax Assessor in the statement filed as provided in Title 36, section 381, the Department of Health and Human Services shall reimburse the municipality for 90% of the amount in excess of these expenditures when the department finds that the municipality has been in compliance with all requirements of this chapter. If a municipality elects to determine need without consideration of funds distributed from any municipally-controlled trust fund that must otherwise be considered for purposes of this chapter, the department shall reimburse the municipality for 66 ⅔ % of the amount in excess of such expenditures when the department finds that the municipality has otherwise been in compliance with all requirements of this chapter.

1-A. Municipalities reimbursed. When a municipality pays for expenses approved pursuant to section 4313 for hospital inpatient or outpatient care at any hospital on behalf of any person

who is otherwise eligible and who would have been entitled to receive payments for hospital care if that care had been rendered prior to May 1, 1984, for services under the Catastrophic Illness Program, section 3185, the department shall reimburse the municipality for 100% of those payments.

1-B. Reimbursement for administrative expenses. The department shall reimburse each municipality for the costs of a portion of the direct costs of paying benefits through its general assistance program if the department finds that the municipality was in compliance with all requirements of this chapter during the fiscal year for which reimbursement is sought. The amount of reimbursement to each municipality must be an amount equal to:

A. Fifty percent of all general assistance granted by that municipality below the .0003% of all state valuation amount; or

B. Ten percent of all general assistance granted.

Each municipality shall elect to be reimbursed under paragraph A or B at the beginning of the fiscal year for which reimbursement is sought.

Notwithstanding any other provision of law, this subsection takes effect on July 1, 1989.

1-C. Indian tribe reimbursement. The department shall reimburse each Indian tribe for the costs of a portion of the direct costs of paying benefits through its general assistance program if the department finds that the Indian tribe was in compliance with all requirements of this chapter during the fiscal year for which those benefits are sought.

The amount of reimbursement must be calculated for each fiscal year by adding 10% of all general assistance granted up to the threshold amount to 100% of all general assistance granted above the threshold amount.

For the purposes of this subsection, “Indian tribe” has the same meaning as in section 411, subsection 8-A. For purposes of this subsection, “threshold amount” means 0.0003 of the Indian tribe’s most recent state valuation, as determined by the State Tax Assessor in the statement filed as provided in Title 36, section 381, relative to the year for which reimbursement is being issued.

2. Submission of reports. Municipalities shall submit reports as follows.

A. For purposes of this section, those municipalities that received reimbursement at 90% during the previous fiscal year of the State and those municipalities that expect to receive reimbursement at 90% during the current fiscal year of the State must submit monthly reports on forms provided by the department.

B. Those municipalities that did not receive reimbursement at 90% during the previous fiscal year and do not expect to receive reimbursement at 90% for the current fiscal year must submit quarterly or semiannual reports on forms provided by the department.

Indian tribes must submit monthly reports on forms provided by the department.

3. Claims. The Department of Health and Human Services may refuse to accept and pay any claim for reimbursement that is not submitted by a municipality to the department within 90 days of the payment on which that claim is based or at the end of the reporting period for which reimbursement is sought unless just cause exists for failure to file a timely claim.

§ 4312. Unorganized Territory

Residents of the unorganized territory shall be eligible for general assistance in the same manner as provided in this chapter. The commissioner shall establish standards of eligibility for the unorganized territory and shall have the same responsibilities with regard to the unorganized territory as apply to overseers in a municipality. The commissioner may appoint agents to administer the general assistance program within the unorganized territory. All costs of providing general assistance in the unorganized territory shall be charged to the Unorganized Territory Education and Services Fund established under Title 36, chapter 115[1] except that costs which the State would reimburse under section 4311, if the unorganized territory were a municipality, shall be paid by the General Fund.

§ 4313. Reimbursement to individuals relieving eligible persons; prior approval; emergencies

Municipalities, as provided in section 4307, shall pay expenses necessarily incurred for providing basic necessities to eligible persons anywhere in the State by any person not liable for their support provided that the municipality of responsibility shall be notified and approve

those expenses and services prior to their being made or delivered, except as provided in this section.

1. Emergency care. In the event of an admission of an eligible person to the hospital, the hospital shall notify the overseer of the liable municipality within 5 business days of the person's admission. In no event may hospital services to a person who meets the financial eligibility guidelines adopted pursuant to section 1716 be billed to the patient or to a municipality.

2. Burial or cremation. In the event of the death of an eligible person, the funeral director shall notify the overseer prior to burial or **cremation** or by the end of 3 business days following the funeral director's receipt of the body, whichever is earlier. Notwithstanding section 4305, subsection 3, paragraph C, a decision on any application for assistance with burial expenses need not be rendered until the overseer has verified that no relative or other resource is available to pay for the direct burial or cremation costs, but the decision must be rendered within 8 days after receiving an application. The father, mother, grandfather, grandmother, children or grandchildren, by consanguinity, living within or owning real or tangible property within the State, are responsible for the burial or cremation costs of the eligible person in proportion to their respective abilities. When no legally liable relative possesses a financial capacity to pay either in lump sum or on an installment basis for the direct costs of a burial or cremation, the contribution of a municipality under this subsection is limited to a reasonable calculation of the funeral director's direct costs, less any and all contributions from any other source.

§ 4314. Cooperation in administration of general assistance

1. State departments. Upon the request of any municipal official charged with the responsibility of administering general assistance, the Department of Health and Human Services and any other department of the State having information which has a bearing on the eligibility of any person applying for general assistance shall release that information. The information shall be restricted to those facts necessary for the official to make a determination of eligibility for general assistance.

2. Financial institutions. A treasurer of any bank, federally or state-chartered credit union, trust company, benefit association, insurance company, safe deposit company or any corporation or association receiving deposits of money, except national banks, shall, on request in writing signed by the overseer of any municipality or its agents, or by the

Commissioner of Health and Human Services or the commissioner's agents or by the Commissioner of Defense, Veterans and Emergency Management or the commissioner's agents, inform that overseer or the Department of Health and Human Services or the Bureau of Maine Veterans' Services of the amount deposited in the corporation or association to the credit of the person named in the request, who is a charge upon the municipality or the State, or who has applied for support to the municipality or the State.

3. Verification of employment. The applicant has responsibility for providing documentary verification of benefits received during the period for which assistance is requested, or in the month immediately prior to the application for assistance when those wages and benefits are expected to be the same during the period for which assistance is requested.

The overseer shall give the applicant written notice that if the applicant does not provide the documentary verification within one week of the application, the employer will be contacted.

Notwithstanding any other provision of law, every employer shall, upon written request of the overseer, release information regarding any wages or other financial benefits paid to the applicant or a member of the applicant's household. No employer may discharge or otherwise adversely affect an employee because of any request for information pursuant to this section.

4. Confidentiality. Any person who seeks and obtains information under this section is subject to the same rules of confidentiality as the person who is caretaker of the information which is by law confidential.

5. Refusal. Any person who refuses to provide any information to an overseer who requests it in accordance with this section shall state in writing the reasons for the refusal within 3 days of receiving the request.

6. Refusal; penalty. A person who refuses upon request to provide information under this section without just cause commits a civil violation for which a fine of not less than $25 and not more than $100 may be adjudged.

7. False information; penalty. A person who intentionally or knowingly renders false information under this section to an administrator commits a Class E crime.

§ 4315. False representation

Whoever knowingly and willfully makes any false representation of a material fact to the overseer of any municipality or to the department or its agents for the purpose of causing that or any other person to be granted assistance by the municipality or by the State is ineligible for assistance for a period of 120 days and is guilty of a Class E crime.

A person disqualified from receiving general assistance for making a false representation must be provided notice and an opportunity for an appeal as provided in sections 4321 and 4322.

If the fair hearing officer finds that a recipient made a false representation to the overseer in violation of this section, that recipient is required to reimburse the municipality for any assistance rendered for which that recipient was ineligible and is ineligible from receiving further assistance for a period of 120 days.

Any recipient whose assistance is terminated or denied under this section has the right to appeal that decision pursuant to the Maine Rules of Civil Procedure, Rule 80-B.

No recipient who has been granted assistance, in accordance with this chapter, may have that assistance terminated prior to the decision of the fair hearing officer. In the event of any termination of assistance to any recipient, the dependents of that person may still apply for and, if eligible, receive assistance.

§ 4315-A. Use of income for basic necessities required

All persons requesting general assistance must use their income for basic necessities. Except for initial applicants, recipients are not eligible to receive assistance to replace income that was spent within the 30-day period prior to the application on goods and services that are not basic necessities. The income not spent on goods and services that are basic necessities is considered available to the applicant. A municipality may require recipients to utilize income and resources according to standards established by the municipality, except that a municipality may not reduce assistance to a recipient who has exhausted income to purchase basic necessities. Municipalities shall provide written notice to applicants of the standards established by the municipalities.

§ 4316-A. Work requirement

1. Ineligibility for assistance. An applicant is ineligible for assistance for 120 days in all municipalities in the State when any municipality establishes that the applicant, without just cause:

A. Refuses to search for employment when that search is reasonable and appropriate;

B. Refuses to register for work;

C. Refuses to accept a suitable job offer under this section;

D. Refuses to participate in a training, educational or rehabilitation program that would assist the applicant in securing employment;

E. Deleted. Laws 1993, c. 410, § AAA-10, eff. June 30, 1993.

F. Refuses to perform or willfully fails to perform a job assigned under subsection 2; or

G. Willfully performs a job assigned under subsection 2 below the average standards of that job.

H. Deleted. Laws 1993, c. 410, § AAA-10, eff. June 30, 1993.

If a municipality finds that an applicant has violated a work-related rule without just cause, under this subsection or subsection 1-A, it is the responsibility of that applicant to establish the presence of just cause.

1-A. Period of ineligibility. An applicant, whether an initial or repeat applicant, who quits work or is discharged from employment due to misconduct as defined in Title 26, section 1043, subsection 23, is ineligible to receive assistance for 120 days after the applicant's separation from employment.

2. Municipal work program. A municipality may require that an otherwise eligible person who is capable of working be required to perform work for the municipality or work for a nonprofit organization, if that organization has agreed to participate as an employer in the

municipal work program, as a condition of receiving general assistance. The municipality may also require recipients, as a part of the municipal work program, to participate in a training, educational or rehabilitative program that would assist the recipient in securing employment. The municipal work program is subject to the following requirements.

A. A person may not, as a condition of general assistance eligibility, be required to do any amount of work that exceeds the value of the net general assistance that the person would otherwise receive under municipal general assistance standards. Any person performing work under this subsection must be provided with net general assistance, the value of which is computed at a rate of at least the State's minimum wage.

B. A person may not be required to work under this subsection for a nonprofit organization if that work would violate a basic religious belief of that person.

C. An eligible person performing work under this subsection may not replace regular municipal employees or regular employees of a participating nonprofit organization.

D. An eligible person in need of emergency assistance may not be required to perform work under this subsection prior to receiving general assistance. An applicant who is not in need of emergency assistance may be required to satisfactorily fulfill a workfare requirement prior to receiving the nonemergency assistance conditionally granted to that applicant.

E. Expenses related to work performed under this subsection by an eligible person must be considered in determining the amount of net general assistance to be provided to the person.

F. General assistance provided by a municipality for work performed by an eligible person under this subsection must be:

(1) Included in the reimbursable net general assistance costs; and

(2) Itemized separately in reports to the Department of Health and Human Services under section 4311.

G. A person may not be required to work under this subsection if that person is physically or mentally incapable of performing the work assigned.

3. Limitations of work requirement. In no case may any work requirement or training or educational program under this section interfere with a person's:

A. Existing employment;

B. Ability to pursue a bona fide job offer;

C. Ability to attend an interview for possible employment;

D. Classroom participation in a primary or secondary educational program intended to lead to a high school diploma; or

E. Classroom or on-site participation in a training program that is either approved or determined, or both, by the Department of Labor to be reasonably expected to assist the individual in securing employment. This paragraph does not include participation in a degree granting program, except when that program is a training program operated under the control of the Department of Health and Human Services or the Department of Labor.

4. Eligibility regained. A person who has been disqualified by any municipality for not complying with any work requirement of this section may regain eligibility during the 120-day period by becoming employed or otherwise complying with the work requirements of this section. An applicant who is disqualified due to failure to comply with the municipal work program may be given only one opportunity to regain eligibility during the 120-day disqualification period, except that if an applicant who regains eligibility is again disqualified for failing to comply with the municipal work program within the initial period of disqualification, the applicant is ineligible for assistance for 120 days and does not have the opportunity to requalify during the 120-day period.

5. Just cause defined. Just cause for failure to meet work requirements or the use of potential resources must be found when there is reasonable and verifiable evidence of:

A. Physical or mental illness or disability;

B. Below-minimum wages;

C. Sexual harassment;

D. Physical or mental inability to perform required job tasks;

E. Inability to work required hours or to meet piece work standards;

F. Lack of transportation to and from work or training;

G. Inability to arrange for necessary child care or care of an ill or disabled family member;

H. Any reason found to be good cause by the Department of Labor; and

I. Any other evidence that is reasonable and appropriate.

The overseer may not require medical verification of medical conditions that are apparent or are of such short duration that a reasonable person would not ordinarily seek medical attention. In any case in which the overseer requires medical verification and the applicant has no means of obtaining such verification, the overseer shall grant assistance for the purpose of obtaining that verification.

§ 4317. Use of potential resources

An applicant or recipient must make a good faith effort to secure any potential resource that may be available, including, but not limited to, any state or federal assistance program, employment benefits, governmental or private pension programs, available trust funds, support from legally liable relatives, child-support payments and jointly held resources where the applicant or recipient share may be available to the individual. Assistance may not be withheld pending receipt of such resource as long as application has been made or good faith effort is being made to secure the resource.

An individual applying for or receiving assistance due to a disability must make a good faith effort to make use of any medical and rehabilitative resources that may be recommended by a physician, psychologist or other professional retraining or rehabilitation specialist that are

available without financial burden and would not constitute further physical risk to the individual.

An applicant who refuses to utilize potential resources without just cause, after receiving a written 7-day notice, is disqualified from receiving assistance until the applicant has made a good faith effort to secure the resource.

An applicant who is found to be ineligible for unemployment compensation benefits because of a finding of fraud by the Department of Labor pursuant to Title 26, section 1051, subsection 1 is ineligible to receive general assistance to replace the forfeited unemployment compensation benefits for the duration of the forfeiture established by the Department of Labor.

§ 4318. Recovery Expenses

A municipality or the State, which has incurred general assistance program costs for the support of any eligible person, may recover the full amount expended for that support either from the person relieved or from any person liable for the recipient's support, their executors or administrators, in a civil action. In no case may a municipality or the State be authorized to recover through a civil action, the full or part of, the amount expended for the support of a previously eligible person, if, as a result of the repayment of that amount, this person would, in all probability, again become eligible for general assistance.

Notwithstanding any other provision of law, municipalities have a lien for the value of all general assistance payments made to a recipient on any lump sum payment made to that recipient under the former Workers' Compensation Act,1 the Maine Workers' Compensation Act of 19922 or similar law of any other state.

The department shall enter into an agreement with the Social Security Administration to institute an interim assistance reimbursement for the purpose of the repayment of state and local funds expended for providing assistance to Supplemental Security Income applicants or recipients while the Supplemental Security Income payments are pending or suspended. Written authorization must be given by the recipients.

A municipality may not recover from any recipient who has been injured while performing work under section 4316-A, subsection 2, any portion of any medical or rehabilitative

expenses associated with that injury or any portion of any other general assistance benefits associated with that injury.

Nothing in this section may be construed as limiting or affecting in any way the right of any individual to file an action under the Maine Tort Claims Act, Title 14, chapter 741,[3] except that a municipality that provides general assistance to a minor is absolutely immune from suit on any tort claims seeking recovery or damages by or on behalf of the minor recipient in connection with the provision of general assistance.

All collections, fees and payments received by the department from the Federal Government as a result of an interim assistance reimbursement must be dedicated to support the administration of the General Assistance program.

§ 4319. Liability of relatives for support

1. Relatives liable. A parent of a child under 25 years of age and a spouse living in or owning property in the State shall support their children or husband or wife in proportion to their respective ability. Liability for burial expenses is governed by section 4313.

2. Rental payments to relatives. A municipality or the State may decide not to make payments for rental assistance on behalf of an otherwise eligible individual when the rental payments would be made to a parent, grandparent, child, grandchild, sibling, parent's sibling or any of their children, unless the municipality finds that the rental arrangement has existed for 3 months prior to the application for assistance and is necessary to provide the relative with basic necessities.

3. Recovery of assistance provided. A municipality or the State, after providing general assistance to a dependent of a legally responsible parent or to a person's spouse who is financially capable of providing support, may then seek reimbursement or relief for that support by initiating a complaint to the Superior Court or District Court, including by small claims action, located in the division or county where the legally responsible parent or spouse resides. The court may cause the legally responsible parent or spouse to be summoned and upon hearing or default may assess and apportion a reasonable sum upon those who are found to be of sufficient ability for the support of the eligible person and shall issue a writ of execution. The assessment may not be made to pay any expense for relief provided more than 12 months before the complaint was filed. Any action brought under this section is governed by the Maine Rules of Civil Procedure. The court may, from time to time, make any further

order on complaint of an interested party and, after notice is given, alter the assessment or apportionment.

§ 4320. Liens on real estate

A municipality or the State may claim a lien against the owner of real estate for the amount of money spent by it to provide mortgage payments on behalf of an eligible person under this chapter on any real estate that is the subject of a mortgage, whether land or buildings or a combination thereof. In addition, a municipality may claim a lien against the owner of real estate for the amount of money spent by it to make capital improvements to the real estate, whether land or buildings or a combination of land and buildings, on behalf of an eligible person under this chapter.

The municipal officers, their designee or the State shall file a notice of the lien with the register of deeds of the county wherein the property is located within 30 days of making a mortgage payment or, if applicable, payment for capital improvements. That filing secures the municipality or State's lien interest for an amount equal to the sum of that mortgage or capital improvement payment and all subsequent mortgage or capital improvement payments made on behalf of the same eligible person. Not less than 10 days prior to the filing, the municipal officers, their designee or the State shall send notification of the proposed action by certified mail, return receipt requested, to the owner of the real estate and any record holder of the mortgage. The lien notification must clearly inform the recipient of the limitations upon enforcement contained in this section; it shall also contain the title, address and telephone number of the municipal official who granted the assistance. A new written notice including these provisions must be given to the recipient each time the amount secured by the lien is increased. The lien is effective until enforced by an action for equitable relief or until discharged.

Interest on the amount of money secured by the lien may be charged by the State or a municipality, but in no event may the rate exceed the maximum rate of interest allowed by the Treasurer of State, pursuant to Title 36, section 186. For the State, the rate of interest shall be established by the department. For a municipality, the rate of interest shall be established by the municipal officers. Interest shall accrue from and including the date the lien is filed.

The costs of securing and enforcing the lien may be recoverable upon enforcement.

No lien may be enforced under this section while the person named in the lien is either currently receiving any form of public assistance or, as a result of enforcement, would become eligible for general assistance.

In no event may the lien be enforced prior to the death of the recipient of general assistance or the transfer of the property.

§ 4321. Grant, denial, reduction or termination to be communicated in writing; right to a hearing

Any action relative to the grant, denial, reduction, suspension or termination of relief provided under this chapter must be communicated to the applicant in writing. The decision shall include the specific reason or reasons for that action and shall inform the person affected of his right to a hearing, the procedure for requesting such a hearing, the right to notify the department and the available means for notifying the department, if he believes that the municipality has acted in violation of this chapter. All proceedings relating to the grant, denial, reduction, suspension or termination of relief provided under this chapter are not public proceedings under Title 1, chapter 13,[1] unless otherwise requested by the applicant or recipient.

§ 4322. Right to a fair hearing

A person aggrieved by a decision, act, and failure to act or delay in action concerning that person's application for general assistance under this chapter has the right to an appeal. If a person's application has been approved, general assistance may not be revoked during the period of entitlement until that person has been provided notice and an opportunity for hearing as provided in this section. Within 5 working days of receiving a written decision or notice of denial, reduction or termination of assistance, in accordance with the provisions of section 4321, or within 10 working days after any other act or failure to act by the municipality with regard to an application for assistance, the person may request an appeal. A hearing must be held by the fair hearing authority within 5 working days following the receipt of a written request by the applicant for an appeal. The hearing may be conducted by the municipal officers, a board of appeals created under Title 30-A, section 2691, or one or more persons appointed by the municipal officers to act as a fair hearing authority. An appeal may not be held before a person or body responsible for the decision, act, and failure to act or delay in action relating to the applicant.

The person requesting the appeal and the municipal administrator responsible for the decision being appealed must be afforded the right to confront and cross-examine any witnesses presented at the hearing, present witnesses in their behalf and be represented by counsel or other spokesperson. A claimant must be advised of these rights in writing. The decision of such an appeal must be based solely on evidence adduced at the hearing. The Maine Rules of Evidence do not apply to information presented to the fair hearing authority. The standard of evidence is the standard set in Title 5, section 9057, subsection 2. The person requesting the appeal must, within 5 working days after the appeal, be furnished with a written decision detailing the reasons for that decision. When any decision by a fair hearing authority or court authorizing assistance is made, that assistance must be provided within 24 hours. Review of any action or failure to act under this chapter must be conducted pursuant to the Maine Rules of Civil Procedure, Rule 80-B. The municipality shall make a record of the fair hearing. The municipality's obligation is limited to keeping a taped record of the proceedings. The applicant shall pay costs for preparing any transcripts required to pursue an appeal of a fair hearing authority's decision.

§ 4323. Department of Health and Human Services; responsibilities

The Department of Health and Human Services shall, in accordance with this section, share responsibility with municipalities for the proper administration of general assistance.

1. Review. The department shall review the administration of general assistance in each municipality for compliance with this chapter. This review shall be made on a regular basis and may be made in response to a complaint from any person as necessary.

The department shall inspect the municipality's records and discuss the administration of the program with the overseer. The overseer or his designee shall be available during the department's review and shall cooperate in providing all necessary information.

The department shall report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice shall set forth the department's findings of whether the municipality is in compliance with this chapter.

2. Violation; penalty. If the department finds any violation of this chapter after review, it shall notify the municipality that it has 30 days in which to correct that violation and specify what action shall be taken in order to achieve compliance. The municipality shall file a plan with the department setting forth how it will attain compliance. The department shall notify

the municipality if the plan is acceptable and that it will review the municipality for compliance within 60 days of accepting the plan. Any municipality which fails to file an acceptable plan with the department or which is in violation of this chapter at the expiration of the 60-day period shall be subject to a civil penalty of not less than $500. The Department of Health and Human Services shall enforce this section in any court of competent jurisdiction. Every 30-day period that a municipality is in violation of this chapter after review and notification shall constitute a separate offense. In addition to the civil penalty, the department shall withhold reimbursement to any municipality which is in violation of this chapter until it reaches compliance.

3. Departmental assistance. Whenever the department finds that a person in immediate need of general assistance has not received that assistance as a result of a municipality's failure to comply with the requirements of this chapter, the department shall, within 24 hours of receiving a request to intervene and after notifying the municipality, grant this assistance in accordance with regulations adopted by it. The expense of that assistance granted, including a reasonable proportion of the State's administrative cost that can be attributed to that assistance, shall be billed by the department to the municipality. Should that bill remain unpaid 30 days after presentation to the municipality, the department shall refer the bill to the Treasurer of State for payment from any taxes, revenue, fines or fees due from the State to the municipality.

A municipality may not be held responsible for reimbursing the department for assistance granted under this subsection if the department failed to intervene within 24 hours of receiving the request to intervene or if the department failed to make a good faith effort, prior to the intervention, to notify the municipality of the department's intention to intervene.

4. Appeal. Any municipality or person who is aggrieved by any decision or action made by the department pursuant to this section shall have the right to appeal pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.[1] A request for that appeal shall be in writing and shall be made within 30 days of receiving notification. The appeal shall be held within 30 days of receipt of that request and shall be conducted by one or more fair hearing officers. In no event may an appeal be held before a person or body responsible for the decision or action. Review of any decision under this section shall be pursuant to the Maine Rules of Civil Procedure, Rule 80 C.

5. Emergency contact information. The department shall collect from each municipality emergency contact information for use by municipal residents in applying for assistance under

this section. The department shall forward the municipal emergency contact information periodically to the statewide 2-1-1 telephone number designated pursuant to Title 35-A, section 7108.

§ 4326. Non-lapsing Funds

Any balance remaining in the General Assistance--Reimbursement to Cities and Towns program in the Department of Health and Human Services at the end of any fiscal year must be carried forward for the next fiscal year.

26 M.R.S. § 1043

TITLE 26. LABOR AND INDUSTRY
CHAPTER 13. UNEMPLOYMENT COMPENSATION
SUBCHAPTER I. GENERAL PROVISIONS

Current through the 2013 1st Regular Session and 1st Special Session of the 126th Legislature

§ 1043. Definitions

23. Misconduct. "Misconduct" means a culpable breach of the employee's duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer. This definition relates only to an employee's entitlement to benefits and does not preclude an employer from discharging an employee for actions that are not included in this definition of misconduct. A finding that an employee has not engaged in misconduct for purposes of this chapter may not be used as evidence that the employer lacked justification for discharge.

A. The following acts or omissions are presumed to manifest a disregard for a material interest of the employer. If a culpable breach or a pattern of irresponsible behavior is shown, these actions or omissions constitute "misconduct" as defined in this subsection. This does not preclude other acts or omissions from being considered to manifest a disregard for a material interest of the employer. The acts or omissions included in the presumption are the following:

(1) Refusal, knowing failure or recurring neglect to perform reasonable and proper duties assigned by the employer;

(2) Unreasonable violation of rules that are reasonably imposed and communicated and equitably enforced;

(3) Unreasonable violation of rules that should be inferred to exist from common knowledge or from the nature of the employment;

(4) Failure to exercise due care for punctuality or attendance after warnings;

(5) Providing false information on material issues relating to the employee's eligibility to do the work or false information or dishonesty that may substantially jeopardize a material interest of the employer;

(6) Intoxication while on duty or when reporting to work or unauthorized use of alcohol while on duty;

(7) Using illegal drugs or being under the influence of such drugs while on duty or when reporting to work;

(8) Unauthorized sleeping while on duty;

(9) Insubordination or refusal without good cause to follow reasonable and proper instructions from the employer;

(10) Abusive or assaultive behavior while on duty, except as necessary for self-defense;

(11) Destruction or theft of things valuable to the employer or another employee;

(12) Substantially endangering the safety of the employee, coworkers, customers or members of the public while on duty;

(13) Conviction of a crime in connection with the employment or a crime that reflects adversely on the employee's qualifications to perform the work; or

(14) Absence for more than 2 work days due to incarceration for conviction of a crime.

B. "Misconduct" may not be found solely on:

(1) An isolated error in judgment or a failure to perform satisfactorily when the employee has made a good faith effort to perform the duties assigned;

(2) Absenteeism caused by illness of the employee or an immediate family member if the employee made reasonable efforts to give notice of the absence and to comply with the employer's notification rules and policies; or

(3) Actions taken by the employee that was necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment.

CHAPTER 14 – Municipal Ordinance

Please note: A copy of the municipality's GA ordinance should be inserted here.

CHAPTER 15 – Department of Health and Human Services GA Policy

Please note: Contact DHHS at 287-3707 to receive a copy of the DHHS General Assistance Policy Manual or submit a request electronically at http://www.maine.gov/dhhs/requestdocument.shtml

CHAPTER 16 – APPENDICES

APPENDIX 1: *Sample* Notice of Public Hearing to Adopt or Amend the General Assistance Ordinance

The following format is suggested for the notice required in 22 M.R.S. § 4305(1):

Public Notice

The municipal officers of the Town of _____ will meet at _____on the _____ day of _____20_____ , at _____ for the purpose of holding a public hearing on and enacting the following ordinance:

General Assistance Ordinance

The public will be given an opportunity to be heard prior to the consideration of the above ordinance by the municipal officers. A copy of the ordinance is (attached/available at _____ _____).

APPENDIX 2: *Sample* Notice of General Assistance Program; Hours of Operation

NOTICE

The municipality of _____ administers a General Assistance program for the support of the poor. Pursuant to Title 22 M.R.S. § 4305, the municipal officers have adopted an ordinance establishing that program. A copy of this ordinance and relevant statutes is available for public inspection at the Town Office and/or ___

_____.

Persons who wish to apply for General Assistance may do so at _____

_____during the following time(s):

Day(s): _____

Hour(s): _____

In an emergency, applicants may contact _____

at _____.

The municipality's General Assistance administrator must issue a written decision regarding eligibility to all applicants within 24 hours of receiving an application.

The Department of Health & Human Services toll-free telephone number, to call with a question regarding the General Assistance Program, is 1-800-442-6003.

This notice is posted pursuant to Title 22 M.R.S. § 4304-4305.

APPENDIX 3: *Sample* Memo to "Receiving" Municipality RE: Client Relocation

CONFIDENTIAL MEMO

To: _____, General Assistance Administrator

From: _____, General Assistance Administrator

Date: _____

RE: General Assistance Client Now Residing in Your Municipality

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This is to notify your office that the following individual and members of this household, as listed, have relocated to _____ from _____.

Adults

Name: _____ DOB _____ SS#: _____

Name: _____ DOB:_____ SS#:_____

Children

Name: _____ DOB: _____ Father: _____

Name: _____ DOB: _____ Father: _____

Name: _____ DOB: _____ Father: _____

Name: _____ DOB: _____ Father: _____

Client's address in your municipality is _____.

The client has been notified by this office that _____

is the municipality of responsibility until maximum assistance has been issued for the 30-day period of _____(*enter dates*).

Current status with this office is: Eligible _____ Ineligible _____

Reason: _____

In the event that you have need of additional information please contact me at _____, during the hours of _____.

APPENDIX 4: *Sample* Use-of-Income Guidelines (3 models)

Notice to All General Assistance Applicants
Use of Income Requirements

Income for basic necessities. Applicants are required to use their income for basic necessities. Except for initial applicants, no applicant is eligible to receive assistance to replace income that was spent within the 30-day period prior to an application for assistance on goods or services that are not basic necessities. All income spent on goods and services that are not basic necessities will be considered available to the applicant and combined with the applicant's prospective 30-day income for the purposes of computing eligibility (22 M.R.S.A §§ 4315-A). Applicants who have sufficient income to provide their basic necessities and who still need assistance with other basic necessities will be eligible, provided that their income does not exceed the overall maximum level of assistance.

Use-of-income requirements. Anyone applying for general assistance must document his/her use of income to the administrator. This documentation can take the form of cancelled checks and/or receipts that demonstrate that the applicant has exhausted all household income received over the last 30-day period. Any repeat applicants must verify that such an expenditure of income as for basic necessity.

Allowable expenditures include reasonable shelter costs (rent/mortgage); the cost of heating fuel, electricity, and food *up to the ordinance maximums*; telephone costs at the base rate *if the household needs a telephone for medical reasons*, the cost of non-elective medical services as recommended by a physician which are not otherwise covered by medical entitlement or insurance; the reasonable cost of essential clothing and non-prescription drugs, and the costs of any other commodity or service determined essential by the administrator.

Cable television, cigarettes/alcohol, gifts purchased, costs of trips or vacations, court fines paid, repayment of unsecured loans, credit card debt, costs associated with pet care, etc., are not considered basic necessities and will not be included in the budget computation.

The municipality reserves the right to apply specific use-of-income requirements to any applicant, other than an initial applicant, who fails to use his/her income for basic necessities or fails to reasonably document his/her use of income (22 M.R.S. § 315-A). Those additional requirements will be applied in the following manner.

5. The administrator may require the applicant to use some or all of his/her income, at the time it becomes available, toward *specific* basic necessities. The administrator may prioritize such required expenditures so that most or all of the applicant's income is applied to housing (i.e., rent/mortgage), energy (i.e., heating fuel, electricity), or other specified basic necessities.

6. The administrator will notify applicants in writing of the specified use-or-income requirements placed on them.

7. If upon subsequent application it cannot be determined how the applicant's income was spent, or it is determined that some or all of the applicant's income was not spent as directed and was also not spent on basic necessities, the applicant will not be eligible to receive either regular or emergency general assistance to replace that income.

8. If the applicant does not spend his/her income as directed but can show with verifiable documentation that all income was spent on basic necessities up to allowed amounts, the applicant will remain eligible to the extent of the applicant's eligibility and need.

APPENDIX 4a: City of Augusta - General Assistance Notice

REQUIREMENTS FOR USE OF INCOME AND RESOURCES
EFFECTIVE AFTER FIRST APPLICATION

TO: _____ DATE: _____

ADDRESS: _____

If your income for a 30 day period will not be sufficient to provide basic necessities needed for your household (using Augusta GA guidelines) you may be eligible for supplemental assistance from the City to provide those basic needs. However, first, you will be required to provide verification of the following:

A. Your household income

B. Your household expenses

C. Documentation (receipts) showing how your household income for the previous 30 days was used.

STATE LAW REQUIRES THAT ALL PERSONS APPLYING FOR GENERAL ASSISTANCE MUST USE THEIR INCONE FOR BASIC NECESSITIES AND THAT AFTER THE FIRST APPLICATION, ANY INCOME NOT USED FOR BASIC NECESSITIES DURING THE PREVIOUS 30 DAYS WILL BE CONSIDERED STILL AVAILABLE TO MEET THE HOUSEHOLD'S CURRENT NEEDS.

You will also be required to apply for and use all resources available to help meet your current needs, such as Food Stamps, TANF, Unemployment Benefits, HEAP, WIC, your liable relatives, savings and other assets. You will be required to meet any other appropriate eligibility requirements including actively seeking work and performing work for the City (workfare).

It is your responsibility to plan ahead and use your income wisely and within City GA guidelines. It is very important that you obtain and keep receipts for your expenditures to verify how your income is used each month.

Please remember this program is based on immediate need for the most necessary basic expenses which include current shelter, fuel, electricity, food, medications, essential medical services and essential clothing, etc. Basic phone cost is considered essential only where it is necessary for medical reasons. Transportation costs are considered essential only when required for work or for medically necessary travel.

The following are examples of items that are not considered basic necessities and that will not be allowed in budget computations: Phone bills and car costs (except as stated above), cable TV, cigarettes, alcohol, gifts purchased, fines paid, costs of trips, vacations, entertainment, and pet care. Payments on vehicles, furniture, education costs, credit cards, overdue loans are postponable/negotiable and will not be included in budget computations.

IMPORTANT

Augusta GA guidelines require that recipients utilize their income and resources for basic necessities within amounts established by the city ordinance in the following order:

1) Rent for the current month (receipt required)

2) Energy Costs; (lights and fuel) for the current month (bill and receipt of payment required)

3) Personal/Household Needs (reasonable amounts up to ordinance maximums)

4) Food (up to the ordinance maximum)

5) Other additional current priority needs such as medicines, work related expenses must be verified in order to be considered (bills and any receipts required)

The GA Administrator may provide that items in this category (5) take precedence over any item or items listed (1 through 4) when deemed appropriate after considering the needs and circumstances of the particular applicants.

FAMILIES OR INDIVIDUALS WITH REGULAR INCOME SUCH AS WAGES, TANF, SSI, SOCIAL SECURITY BENEFITS, VETERANS BENEFITS, ETC. WILL BE REQUIRED TO SHOW VERIFICATION EACH MONTH WHEN THEY APPLY THAT THEIR TOTAL INCOME IS USED TO PAY NECESSITIES AS STATED ABOVE. AFTER VERIFICATION (RECEIPTS), THAT YOU HAVE PAID THOSE EXPENSES, THE CITY WILL APPLY ANY ADDITIONAL ASSISTANCE YOU ARE ELIGIBLE FOR AND IN NEED OF TO REMAINING NECESSITIES IN THIS ORDER:

a) Food
b) Personal Household
c) Other (from the list 1-5 above as approved by the GA Administrator)

Assistance will generally be furnished on a weekly basis with attention directed to dates that income and resources will be received and to dates that expenses are due and services or goods are needed.

If it is determined that your household income was not used as directed and also was not used for basic necessities, your household will not be eligible to receive general assistance to replace that

income. Assistance will not be reduced if the household can verify income was exhausted to purchase basic necessities.

Any assistance you receive should be repaid by you at such time that you become financially able or by your liable relatives. Any assistance provided to you is to be used for only those persons stated on your application and approved by the GA Administrator. Services, merchandise, food, housing, etc. obtained by you from this program and given, swapped, sold, or provided in any way to other persons not approved by this program will be considered as obtained fraudulently and could result in a denial of assistance and court action.

NOTICE ISSUED BY: _____

DATE: _____

RECEIPT ACKNOWLEDGED: _____

DATE: _____

APPENDIX 4b: Town of Well's General Assistance Policy Notice

Rte. #109
Wells, ME 04090

RE: VERIFICATION OF INCOME AND EXPENSES

If your income for a thirty (30) day period is not sufficient to provide basic necessities needed for your household (using Wells guidelines) you may be eligible for supplemental assistance from the town to provide those basic needs. However, first, you will be required to verify both your household expenses and income and also that you did use all your income to purchase current basic necessities. You must also use all resources available to help meet your current needs, such as Food Stamps, T.A.N.F, H.E.A.P., W.I.C., your relatives, savings and other assets.

Families or individuals with regular monthly income such as T.A.N.F., S.S.I., Social Security Benefits, Veterans Benefits, etc. will be required to show verification each month when they apply that their INCOME was used to pay necessities.

WE WILL NOT SUPPLEMENT RENT OR ENERGY COSTS IF YOUR MONTHLY INCOME IS A SUFFICIENT AMOUNT FOR YOU TO MAKE DIRECT PAYMENTS YOURSELF. YOU MUST PAY THOSE COSTS AND THE TOWN WILL THEN APPLY ANY ADDITIONAL ASSISTANCE YOU ARE ELIGIBLE FOR AND IN NEED OF TO REMAINING NECESSITIES IN THIS ORDER:

If the Town of Wells does help to pay your rent then the following will exist. You will be required to pay a portion of your rent out of income received. The breakdown is as follows:

If your income falls between	**You must Pay this amount toward your rent**	
$300.00 - $400.00	80%	
$400.00 - $500.00	80%	
$500.00 - $600.00	80%	(OF YOUR INCOME)
$600.00 - $700.00	80%	
$700.00 - $800.00	80%	
$800.00 - $900.00	80%	

Please remember this program is based on immediate need for the most necessary basic expenses. Cable TV, cigarettes, gifts purchased, costs of trips or vacations, fines paid, etc. are not considered basic necessities and will not be included in our budget computations. Furniture payments, educational costs, overdue phone bills, loan payments, etc. can be postponed or negotiated and are not included in our budget computations. Car costs are not considered necessary unless required for work. Clothing costs be considered only when there is a clear need for essential clothing and applicants will be expected to make use of discount clothing stores, the "Clothes Line", thrift shops, etc. Only a basic phone expense will be allowed if the household needs a telephone for medical reasons. We do not consider a phone a necessity (unless the previous statement applies)

and you must verify that you met your housing, energy, food and other needs first, before paying phone bills.

It is your responsibility to plan ahead, and use your income wisely. We are not required to "replace" income you have misused or forfeited by your own actions. Any assistance you receive should be repaid by you at such time that you have become financially able or by your liable relatives, unless you have completed Town workfare in return for the assistance given.

If the applicant does not spend his/her income as directed, but can show with verifiable documentation that all income was spent on basic necessities up to allowed amounts, the applicant will remain eligible to the extent of the applicant's eligibility and need.

Any assistance provided to you is to be used for only those persons stated on your application and approved by the G.A. Administrator. Services, merchandise, food, housing, etc. obtained by you from this program will be considered as obtained fraudulently and could result in a denial of assistance and court action.

ISSUED BY: _____

RECEIPT ACKNOWLEDGED: _____

APPENDIX 5: MDOL Summary of Misconduct Under Employment Security Law

Please Note: Despite this document's original publication date, it remains a valid resource on the relevant subject matter. Statutory citations have been updated as necessary. 1/14

MISCONDUCT UNDER EMPLOYMENT SECURITY LAW
Referenced sections of law and cases

October 24, 1991

Thomas Wellman
Senior Hearing Officer
Division of Administrative Hearings
Maine Department of Labor

Section 1193(l) of the Employment Security Law provides, in part, for a disqualification if it is found an individual left regular employment voluntarily without good cause attributable to that employment. Good cause attributable to the employment means that the reason for leaving work must be directly related to the working conditions.

Section 1193(2) of the Employment Security Law provides, in part, that an individual shall be disqualified for benefits if he has been discharged for misconduct connected with his work.

Section 1043(23) of the Employment Security Law defines misconduct as conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has a right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligation to his employer.

Chapter 18 of the Rules Governing the Administration of the Employment Security Law states "A discharge is a termination of the employer-employee relationship which is initiated by the employer and which entitles the claimant to unemployment compensation benefits unless he is discharged for misconduct under subsection 2 of Section 1193 of the Employment Security Law. The burden of proof is on the employer to prove that the employee's conduct meets the statutory definition of misconduct.

In *Brousseau v. Maine Employment Security Commission*, 470 A.2d 327 (Me. 1984), the Maine Supreme Judicial Court has held that in order for a claimant to be disqualified under Section 1193(l)(A), it is necessary that he/she leave "voluntarily" by "freely making an affirmative choice to do so."

The Maine Supreme Judicial Court has held that "the statute sets a rule of reason, to be objectively applied based on the totality of the circumstances, not solely on the basis of a violation of a reasonable rule." *Moore v. Maine Department of Manpower Affairs*, et al., 388 A. 2d 516, 519 (Me. 1978).

Moore requires that it first be determined whether an employer's rule is reasonable, and if so, then whether the claimant's behavior in violation of that reasonable rule was unreasonable under all the circumstances. Inherent in Moore is that a reasonable rule must be reasonably communicated and reasonably applied.

In *Look v. Maine Unemployment Insurance Commission*, 502 A. 2d 1033 (Me. 1985), the court found that a claimant who lost his license because he was operating under the influence and consequently was discharged because he could not perform his job had acted unreasonably.

"The plaintiff knew that his ability to operate a motor vehicle was essential to the performance of his work. [New England Telephone Company] could reasonably expect that the plaintiff would not lose his license as a result of OUI conviction. The legislature has made it quite clear that individuals who choose to operate a motor vehicle after drinking intoxicating liquor face serious penalties, including the risk of license suspension. See 29-A M.R.S. Section 2411. Considering the totality of the circumstances, the plaintiff's decision to risk the loss of his license to operate a motor vehicle, an essential requirement of his job, is conduct that objectively constitutes an intentional and substantial disregard of the employer's reasonable interests.''

In *Lemay v. Ouellette*, Kennebec Superior Court, Docket No. CV-77-428 (1979), the Court stated that "hotheaded incidents" do not necessarily constitute misconduct. If the anger of the claimant is reasonably understandable and results only in harsh words, and there have been no previous similar incidents, then an employer would be hasty in dismissing the claimant.

Section 1193(7-A) of the Employment Security Law provides, in part, that an individual shall be disqualified for benefits subsequent to a discharge arising from his absence from work for more than two workdays due to his incarceration for conviction of a criminal offense.

The Maine Supreme Judicial Court has held that the claimant's behavior must be evaluated to determine whether the conduct for which the employee was discharged is, upon an objective standard, unreasonable under all circumstances. The type, degree and frequency of the conduct which resulted in the termination must be evaluated to determine whether it is tantamount to an intentional and substantial disregard of the employer's interests. *Sheink v. Maine Department of Manpower Affairs*, 423 A. 2d 519 (Me. 1980).

Whether or not there was good cause sufficient to warrant the award of unemployment benefits must be measured against a standard of reasonableness under all of the circumstances. *Snell v. Maine Unemployment Insurance Commission*, 484 A. 2d 609, 610 (Me. 1984).

APPENDIX 6: "Workfare–Understand It Before You Use It," *Maine Townsman*, January 1991

Note: Since the date of original publication, General Assistance law has been amended in several ways that required the original text to be changed. Specifically, the period of disqualification for a workfare-related violation was increased from "up to" 60 days to a fixed 120-day period. Also, workfare violators are now permitted only one single opportunity to regain eligibility within duration of any 120-day disqualification. The state minimum wage has also been increased a number of times since the original publication date. The text of the original article has been amended to reflect these changes. (1/14)

Workfare
Understand It Before You Use It
(from *Maine Townsman*, January 1991)
by Geoffrey Herman, MMA Paralegal

The current economic recession is placing extraordinary demands on municipal general assistance (GA) programs. If any of the proposals which are now being advanced by the Department of Health and Human Services (DHHS) to reduce the state's exposure to welfare programs are eventually implemented, the increased demands on municipal welfare programs will be staggering. While the DHHS apparently feels it necessary for financial reasons to reduce eligibility for public assistance in this time of need, municipal welfare officials take a different view. GA administrators recognize a governmental obligation to prevent people who are impoverished from becoming destitute. As part of that obligation, however, municipalities want the public assistance program they administer to be as accountable as it is fair and reasonable. No public assistance program can be administered effectively without the support of the taxpayers who supply its funding.

One aspect of the GA program which touches on the issue of accountability is the workfare program. As the deteriorating economy provides fewer and fewer regular job opportunities, many municipalities are reviewing their policies regarding the municipal workfare program.

22 M.R.S. 4316-A permits a municipality to require that a person who receives GA and is capable of working to perform work for the municipality or a nonprofit organization. As part of a workfare assignment, a municipality may also require that recipients participate in a training or educational program which would assist them in getting a job. There are a number of conditions attached to this general authority to issue work assignments to GA recipients:

- The number of hours of work a recipient may be assigned can be no more than the amount of assistance received divided by the state minimum wage ($7.50 per hour as of October 1, 2009), although hourly rates higher than the minimum wage may be used in the computation:

- Recipients may refuse to work for nonprofit organizations with religious affiliation, if to do so would violate the recipient's religious beliefs;

- It is against GA law to replace regular town employees or employees of the participating nonprofit organization with workfare recipients;

- The law expressly prohibits withholding the issuance of emergency GA while waiting for the recipient to perform his or her work assignment. Because all GA, whether emergency or non-emergency, must be issued within 24 hours of application, it is a general rule that neither emergency nor non-emergency assistance can be withheld while waiting for the recipient to perform a work assignment. The exception to this general rule is when a recipient has been disqualified from receiving assistance for failing to perform a workfare assignment without just cause and that recipient is attempting to regain eligibility by making up workfare time owed to the town. In this circumstance, the disqualified applicant may be required to perform all back work assignments before becoming eligible to receive assistance.

- Workfare related expenses incurred by the recipient must be included in the budget analysis of that recipient's need. Typically, special clothing (e.g., coveralls, boots, gloves, etc.) necessary to perform a workfare assignment are directly supplied by the municipality.

- No workfare assignment may interfere with the recipient's: (1) existing employment; (2) ability to "pursue a bona fide job offer" or attend an interview for a job; (3) participation in a primary or secondary educational program; or (4) participation in a job training program.

Whether reviewing an existing workfare program or contemplating the establishment of workfare, there are a few issues that should be considered by the municipal officers. First, what are the municipal goals regarding workfare; that is, what is the municipality expecting to achieve by instituting and maintaining a workfare program? Second, what administrative duties or obstacles are associated with maintaining a workfare program, including the issue of liability for workfare injuries? Finally, does the operation of a workfare program present an overall financial advantage or disadvantage to the municipality?

Municipal Goals

Although there is no legal requirement that a workfare program be operated according to any specific or formal municipal policy, it would be very helpful to the GA administrator and other municipal officials associated with the workfare program to understand what the program is intended to accomplish.

There is no single "correct" reason to operate a workfare program, but there are many inappropriate or indefensible reasons. For example, a workfare program should not be established nor should individual workfare assignments be made to humiliate or punish people for needing assistance. The primary objection to workfare voiced by some GA recipients and their legal advocates stems from the perception that workfare is assigned as a penalty for receiving assistance and is therefore demeaning and an affront to a recipient's sense of dignity. This false perception should not be fostered, and so it is very important that a recipient's contribution of labor through workfare is treated as positively as a regular employee's contribution of labor.

It would also be inadvisable to establish a workfare program to achieve a goal which will not be realized. For example, the municipal officers will only end up frustrated if they start up a workfare program in order to reduce the overall number of people applying for assistance. Although there is some anecdotal evidence that a few recipients will stop seeking help when workfare becomes a condition of receiving assistance, there is no statistical support that a workfare program deters applications or reduces the disbursement of assistance. It is no fun to apply for any form of public assistance, and the vast majority of GA applicants seek municipal assistance as a last resort and have a vital need for the assistance they seek. Also, while it is possibly true that some GA applicants will avoid municipalities that have an established workfare program, the total number of applicants who will actually choose where to live based on the local welfare requirements is extremely small. People are influenced by more compelling factors when it comes to choosing where they want to live.

The municipal officers will also be ultimately disappointed if they expect the workfare program to supply a significant amount of "free labor" to the municipality. As has been pointed out above, it is a violation of law to replace the labor contributed by a "regular employee" with workfare labor, which means that no regular employees could lose their jobs or have their hours reduced because their job duties were being accomplished by workfare participants. As a general rule, the work assignments that are given must be for work to which there is no end (e.g., sweeping, cleaning, floor stripping, painting, brush removal, snow removal, etc.), or work which would otherwise be contracted out or not get accomplished at all. Another reason why workfare is not a "free labor" windfall is that for a number of reasons discussed below, recipients performing workfare must be adequately supervised, and the costs of careful supervision can in some cases outweigh the value of the labor contribution.

Despite the foregoing, there are positive, constructive reasons to establish a workfare program. Although the claim would be hotly disputed by some GA recipients and their legal advocates, a municipal workfare program can be operated to provide an overall benefit to both the recipients and the municipality.

To begin with, some recipients prefer to work for their assistance. They would rather not feel obliged to the town in any way for the assistance granted to them, and workfare is one way to eradicate any sense of indebtedness to the municipality for the assistance granted. For this reason, the recipient who has performed workfare satisfactorily should be issued at convenient times some form of "receipt" for workfare performed which will document that there is no debt of any kind and the municipality will never seek recovery for the proportionate amount of assistance.

Also, if the town makes sure that recipients performing workfare are regularly provided some positive reinforcement for their efforts, the participant might obtain a sense of accomplishment and positive self esteem, and a positive self attitude is all-too-often not readily available to the welfare recipient. Coming third in line after the broad economic forces which contribute to poverty in the first place, and the unfortunate disincentives to work which are an inherent part of state/federal entitlement programs, the greatest obstacle preventing welfare recipients from

breaking out of the public assistance system is the pervading sense of powerlessness and lack of control that can accompany poverty.

It is also indisputable that some recipients can benefit from establishing a good work record. A properly administered workfare program can, at the very minimum, encourage recipients to develop desirable work habits. Furthermore, workfare recipients who do a good job with their work assignments should be encouraged to use the municipality as a reference when applying for regular employment. Indeed, many municipalities have given permanent jobs to people who demonstrate a positive job attitude through their workfare performance.

Finally, although there are some obstacles to assigning recipients to jobs requiring certain skills (see below), it is not impossible to use the workfare program as a limited job training program for some recipients.

The ultimate goal of any welfare administrator is to enable the assistance recipient to secure and keep a job, and anything that can be done to improve a GA recipient's employability is beneficial to both the recipient and the town.

Administering a Workfare Program

The legal authority to establish a workfare program is found in GA law. MMA's model General Assistance Ordinance, at Section 5.6, re-establishes that authority in the local ordinance, along with all the specific legal provisions governing the workfare program. Therefore, if the municipality is operating under the MMA model ordinance or an ordinance similar to the model, no ordinance changes need to be made to start up a workfare program. There is much more to administering a successful workfare program, however, than simply assigning work to recipients and hoping for the best. There has to occur a certain amount of preparation even before the first workfare assignment is issued, and any workfare program involves ongoing administrative responsibilities that should not be underestimated.

Pre-Program Tasks

Liability. The most often-asked question regarding workfare concerns municipal liability in the case of a workfare injury. It was at one time thought that if a recipient was injured when performing workfare, the costs associated with that person's injury would be covered by the Workers' Compensation Program. In 1986, the Maine Supreme Court settled that question by holding that a workfare participant is *not* an employee of the town for the purposes of the Workers' Compensation Act, and that there is no entitlement to relief from workfare injury under the Workers' Compensation Program *(Closson v. Southwest Harbor,* 512 A.2d 1028).

Some municipalities have overreacted to the *Closson* decision by thinking that municipalities are therefore directly exposed to all claims of workfare injury. This is not necessarily the case. All municipalities can establish the same type of insurance protection for workfare injuries as they currently maintain for any type of injury any person may receive due to municipal negligence.

All the municipality has to do is contact the town's general liability insurance agent and explain its intention to establish a workfare program. The agent will determine if any change to the town's current insurance policy has to be made, and will otherwise work with the town to establish the necessary insurance protection. It is very important that the town not assume that workfare insurance protection is automatically available under its general liability policy. If the insurance company is not aware of the town's workfare program and the insurance policy is not clear on the subject, an injury claim advanced to the insurance company may be denied.

Supervision and Inter-departmental Cooperation. There is another very important system that must be established before instituting a workfare program, and that involves inter-departmental communication. It is essential to the success of the program that the workfare policies be described to both the various municipal officials or employees to whom workfare participants will be assigned *as well as* all the municipal employees who will be working alongside workfare recipients.

The first task is to determine which municipal employees or officials, or which nonprofit organizations, are willing to cooperate with the GA administrator's workfare program. It is imperative that participants not be assigned to municipal personnel who are unwilling to participate in the program constructively. It would be a big mistake to assign participants to the elected road commissioner, for example, if he or she wanted no part of the program. Both the road commissioner and the participants would be unhappy, and there are the sensitive issues of liability and confidentiality which require some diligence and understanding on the part of the municipal supervisor who will be working with workfare participants.

Supervision. All workfare participants should be assigned to jobs which are appropriate for their skills and abilities. Therefore, the department heads or employees who can accommodate workfare participants should regularly specify to the GA administrator the types of jobs which will be available and the necessary job qualifications. It should also be noted that GA law provides that a workfare participant may be disqualified from receiving GA for 120 days statewide not only for willfully failing to perform the workfare, but also for willfully performing the workfare below "average standards of that job." Therefore, it is also crucial that the participants' level of performance be reported back regularly to the GA administrator so that he or she will know the extent to which any participant has fulfilled the workfare obligations. In short, a two-way communication system must be established between the GA office and any departments supervising workfare participants. With regard to any performance evaluation of a participant, it is helpful if the communication is in writing so that it will become part of that client's case record. A simple form for this could be prepared.

As has been discussed above, municipalities can be held financially responsible for injuries sustained by workfare participants, although general liability insurance coverage is available to protect the town's *direct* financial exposure. It is obviously in the municipality's interest to minimize the risk of injury from occurring in any municipal workplace. For a number of reasons, the most effective method of minimizing the occurrence of workfare injuries is the least cost-

effective method; that is, relatively close supervision. Workfare participants do not work for the municipality either regularly or for a long period of time. They may be unfamiliar with the job duties expected to perform, they are unfamiliar with the routine and standard practices of the job site, and they may not possess a solid background in the area of fundamental job abilities such as communication or teamwork skills. In short, workfare participants frequently require the heightened supervision necessary for a new employee. The eager motivation of a new employee, however, may not be a characteristic of the workfare participant.

Except under very highly supervised circumstances, workfare participants should not be working near power equipment (e.g., chainsaws, lawnmowers, wood chippers, etc.), working on ladders or staging high off the ground, or performing very physically demanding tasks if there is any question with regard to physical ability. On the other hand, there is no need for overbearing or constant supervision of work assignments which are neither demanding nor dangerous. Hopefully, the supervisor will have sufficient "people skills" to quickly assess the type and amount of supervision any particular workfare participant will need. It is important to remember that the person performing workfare is justifiably sensitive to being treated differently from other employees, and anything that can be done by the supervisor to de-emphasize the perception of special status will be for the good.

Confidentiality. All GA administrators-but not all municipal officials or employees - are aware of the confidentiality provisions in the law. 22 M.R.S. §§ 4306 provides that "no information relating to a person who is an applicant or recipient may be disclosed to the general public, unless expressly permitted by that person." A key element of this confidentiality provision is the term "to the general public." Clearly, other municipal officials or employees would not be construed as the "general public" where information regarding an applicant must be disclosed to them for the purposes of operating a workfare program. Issues of confidentiality would arise, however, if information about a workfare participant's receipt of assistance began to spread beyond the confines of the municipal officials or employees entrusted with that information. Persons to whom confidential information is disclosed must themselves treat that information confidentially. All supervisors and employees working alongside workfare participants should be briefed on the confidentiality provisions of the law. Even beyond the legal prohibition against revealing to the general public the names of people receiving GA, the extreme importance of enhancing a workfare participant's sense of self respect--in this case by not revealing a participant's workfare status to anyone--should be emphasized and re-emphasized to all municipal employees.

Starting Workfare

The actual administration of the workfare program begins with an initial screening and entry level discussion with the applicant. The two major criteria which the GA administrator must evaluate before considering a workfare assignment are (1) any physical or mental limitations on the recipient's ability to perform an available assignment, and (2) the time available to the recipient to perform the workfare.

No one may be required to perform workfare if they are physically or mentally incapable of performing the assignment. Where such a disability is apparent or of such a short duration that a reasonable person would not ordinarily seek medical verification, no physician's statement describing the limitation may be required by the town. On the other hand, if a non-apparent physical or medical disability is being claimed by the patient without any substantiation from a doctor, the GA administrator would only temporarily waive a work assignment by giving the recipient at least 7 days to submit a verifying doctor's statement. Generally speaking, work assignments would be waived for applicant's receiving Supplemental Security Income (SSI), although some SSI recipients may ask to be assigned workfare and there is nothing to bar a town from making such an assignment as long as the work is appropriate to the applicant's ability. Persons applying for SSI but not yet receiving that benefit would not be waived from a workfare assignment without a doctor's statement verifying the extent of their disability.

The GA administrator must also make an initial assessment of the time available to the recipient to perform the work assigned. As was noted above, no workfare assignment may interfere with a recipient's existing employment, participation in a primary or secondary educational program leading to a high school diploma, or participation in a bona fide job-training program. Therefore, the amount of time per week an otherwise eligible workfare participant must reasonably spend in these areas must be deducted from a standard 40-hour workweek. Furthermore, if the town is requiring the recipient to apply for a job at a certain number of places of employment per week, the amount of time reasonably necessary to accomplish that task would also be deducted from a 40-hour work week. After all these deductions, the remaining hours would be considered as available to perform workfare.

After the GA administrator has ascertained the number of hours available to the workfare participant, the next step is to calculate the number of work hours which are going to be assigned during the recipient's period of eligibility. GA law requires that the number of assigned hours be no more than the dollar amount of assistance granted for the period of eligibility divided by at least the prevailing minimum wage. It is sometimes impossible, however, to assign the total number of hours which would result from using the minimum wage in this calculation because there are simply not enough hours available to the participant. In this circumstance, the administrator would only assign the number of hours that are available to the participant and forget the rest. The remaining hours may not be "banked" and assigned for a future period of eligibility. Also, GA administrators are entirely free to use a wage rate higher than the minimum wage in the calculation of hours to be worked, and when the job assignment deserves a higher wage rate, or the wages paid for identical work to similarly skilled regular employees is higher than minimum wage, the administrator should consider using the prevailing wage rate rather than the minimum.

As will be discussed below, a workfare participant may not be penalized or sanctioned for a specific failure to perform a work assignment when the failure was for "just cause." One of the definitions of "just cause" is the "inability to arrange for necessary child care or care of (an) ill or disabled family member." For this reason, a single parent who is taking care of preschool age

children at home may easily and credibly establish a "just cause" reason not to perform workfare assignments. If the children being cared for are of school age, however, it is very possible to schedule workfare assignments for the parent during school hours. Furthermore, if there are at least two responsible adults in the household as well as preschool children, both adults could be assigned workfare providing the scheduling of the assignments always allowed at least one adult to be taking care of the children whenever necessary.

The work order form. One of the various GA forms provided by MMA is the work order form. All GA recipients to whom the administrator wishes to assign workfare should complete this form or a form similar to it. The form, which must be signed by the participant, is essentially an acknowledgment of the various details of the workfare program and of the GA recipient's ability and willingness to participate. As with all written forms used in the GA program which are signed by the recipient, every effort should be made to ensure that recipient completely understands the form before signing it. Administrators should not hesitate to go over the form orally with the recipient and answer any questions the recipient might have.

The first workfare assignment given to an applicant presents itself as the perfect opportunity to thoroughly explain the municipal policy regarding workfare to the new participant. The positive aspects of workfare should be emphasized, such as the opportunity for the participant to establish a good job record and job references. The applicant should also be encouraged to report back to the administrator if he or she is treated less than respectfully by supervisors or other municipal employees.

Finally, the workfare assignment issued should be very specific about when, where and to whom the participant should initially report. Participants should also be specifically instructed as to how to contact the municipality if for any reason they are unable to show up for their work assignment.

"Just Cause" and monitoring workfare performance. The administrator's work is not finished with issuing the workfare assignment. In some respects it has hardly begun. As workfare performance is most essentially a condition of future GA eligibility, every time a workfare participant applies for GA after having been assigned workfare, the administrator must determine if the work assignment was completed satisfactorily, and if not, whether the workfare failure was for "just cause." The law provides that workfare participants can be disqualified for receiving GA for 120 days statewide if they willfully fail to perform a workfare job assigned to them *without just cause* or if they willfully perform the workfare assignment below the "average standards" of that job.

GA law details eight specific "just cause" reasons for failing to perform a work requirement. Some of the "just cause" definitions apply more readily to work requirements other than workfare, such as the requirement that a GA recipient not quit his or her listing job *without just cause.*

"Just cause" is defined as existing when the following verifiable circumstances are associated with the work assignment:

· the recipient has an overall physical or mental disability, is physically or mentally unable to perform the particular tasks assigned, or cannot meet required piece work standards;

· the recipient is receiving less than minimum wages;

· the recipient was sexually harassed at the job;

· the recipient is unable to work the required hours;

· the recipient has no transportation to or from work or training;

· the recipient is unable to arrange for necessary child care or care of ill or disabled family members;

· any reason found to be good cause by the Department of Labor, (pursuant to the determination of eligibility for unemployment benefits); and

· any other reason which is reasonable and appropriate.

It is against this list of "just cause" reasons for failing to perform workfare that the GA *administrator* must weigh any circumstance of workfare failure that is reported. The participant has the burden of establishing a 'just cause' reason for failing to perform workfare; the administrator need not go to any special effort to ascertain why a participant did not perform a workfare assignment. When a person simply fails to show up to perform an assignment and does not contact the municipality as he or she was instructed, a disqualification should issue. If after receiving notice of the disqualification, the participant is able to convince the administrator that the workfare failure was, in truth, for "just cause," the disqualification could be revoked. Obviously, any person dissatisfied with a final decision regarding eligibility for GA has a right to appeal that decision, if the appeal request is timely, to the local fair hearing authority.

In order to disqualify a participant for willfully performing a job assignment below the "average standard" for that job, the municipality has the burden of establishing substandard performance as a matter of record. A "paper trail" should clearly demonstrate that if the workfare participant were a regular town employee, he or she would have been fired for violating established standards of acceptable performance and workplace behavior.

When to disqualify; period of disqualification. As soon as the municipality establishes that a workfare violation has occurred, the disqualification should issue in the form of a brief notice of disqualification mailed to the participant. Proactively notifying participants in a timely manner is a much fairer and responsible way to administer disqualifications than to wait until the applicant next reapplies for GA. On occasion, a participant will to elect not to perform a workfare assignment. In understanding that the result will be a qualification for 120 days, he or she may make a point of not applying for GA until that time. Upon reapplying 120 days later that person should not be then disqualified for another 120 days merely because the town never got around to issuing a formal qualification at the time of the violation.

The period of disqualification is for 120 days or until the applicant regains his or her eligibility by complying with the requirements which had been assigned; whichever is less. GA expressly provides that the applicant may be given only one opportunity to regain eligibility after a disqualification by agreeing to comply with the previously established requirements. The provision in the law which allows disqualified applicants their eligibility by agreeing to comply with a workfare requirement sometimes causes municipalities confusion. In order to regain eligibility, the applicant must catch up by actually performing the work hours previously owed to the municipality. Some disqualified participants and their legal advocates argue that because the law expressly prohibits withholding of emergency assistance waiting for workfare to be performed, no emergency assistance may be withheld to a participant who is seeking to regain eligibility by agreeing to comply with past due work requirements. Actually, when the pertinent sections of GA law are read together (22 M.R.S. §§ 4308(2)(A) and 4316-A (2)(D) and (4), it would appear that a disqualified workfare participant is not eligible to receive any kind of assistance, emergency or otherwise, unless and until eligibility has been regained, and that can only occur when the disqualified participant has complied with his or her past due assignments. At any rate, municipalities should not be under the impression that a person who has failed to perform workfare and has therefore been disqualified can simply waltz right into the town office and leverage more assistance on a mere promise.

As is the case with any disqualification (i.e., for either a work requirement violation, fraud or a failure to utilize a potential resource), only the responsible adults can be disqualified. The dependents of those responsible adults remain eligible for their GA needs. In determining household eligibility, the size of the household would be reduced by the number of disqualified individuals, although any income brought into the household by the disqualified individuals would be considered as available.

Obviously, the object of operating a workfare program is not to disqualify individuals from receiving assistance. A few GA recipients, however, will invariably test the municipality to find the limits of such concepts as “just cause,” “average standards” of performance, or physical or mental inability to perform. When this type of testing behavior comes into play, the best municipal response is to patiently establish reasonable but very specific standards of performance, and make certain the recipient is well aware of the consequences for failing to work with the town in good faith. The rest is up to the recipient, and the various appeal procedures.

Workfare:
A Financial Analysis

There are a multitude of factors which must all be weighed before determining whether a workfare program will be financially advantageous to the municipality. Some of these factors are: the size of the municipality; the GA caseload; the number of suitable workfare jobs available; and a variety of factors associated with workfare program operations.

Speaking very generally, the smallest towns may not have enough workfare jobs or supervisory personnel available to allow for the operation of a workfare program except in very limited circumstances. The somewhat larger municipalities which may be expending several thousands of dollars in GA annually may experience actual reductions in caseload pressure after instituting a workfare program, but that reduced pressure will likely only be temporary. While it is clear that a few potential GA recipients will simply refuse to participate in a workfare program, the total reduction in GA expenditure resulting from applicants refusing to participate in workfare will probably not be significant for municipalities with GA budgets over $20,000 or so. It should also be noted that any reduced expenditure of direct GA—which is reimbursable to some degree by the state--could very well be offset by increased administrative costs necessary to operate the program. Local administrative costs are not reimbursable. Almost all municipalities expending over $100,000 in GA annually have established workfare programs. The largest municipalities have the personnel infrastructure in place to operate a workfare program efficiently and make good use of the available labor.

More than a financial analysis should go into the decision to operate or not operate a workfare program. Workfare injects some accountability into the local welfare program and no public assistance program can be operated responsibly and effectively if there is no support for the program by the taxpayers who supply its funding. Beyond the issue of public support, a workfare program, if operated in good faith, can be very effective in helping GA recipients improve their chances of getting a job, and helping recipients out of the welfare trap and into the workplace is the ultimate goal.

APPENDIX 7: *Sample* Workfare Agreement (Non-profit Organizations)

Workfare Agreement

Agreement made this _____ day of _____, 20_____ , by and between the City/Town of _____ and _____ (hereinafter organization) a corporation organized and conducted under the laws of Maine pursuant to Title 22 M.R.S. §§ 4316-A(2), witnesseth:

WHEREAS the municipality administers a program of General Assistance to help citizens who are unable to provide for themselves or their families; and

WHEREAS the municipality requires able bodied recipients of such assistance to fulfill a work requirement, including performing work for the municipality or a non-profit organization upon the agency's consent (hereinafter referred to as workfare); and

WHEREAS the municipality wishes to enhance the work opportunities for recipients of General Assistance; and

WHEREAS the organization has available work and is willing to use recipients of General Assistance to perform work;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter contained and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties as follows:

The Organization agrees to:

1. Accept persons referred from the municipality whenever possible and assign them to appropriate work;
2. Provide a list of work which needs to be done, such list to be revised and updated as necessary;
3. Supervise persons performing workfare at all times, and ensure that work is being performed safely and diligently;

4. Provide timely reports to the General Assistance Administrator regarding the person's work performance;

5. Assign people to perform only that work which they are both physically and mentally capable of doing;

6. Not replace regular employees with persons performing workfare;

7. Require regular employees or supervisors to give evidence of the person's work performance in any hearing relating to the person's eligibility for General Assistance and to not charge an employee's or supervisor's accrued sick time or vacation time for an absence related to participation in such a hearing; and

8. Permit the General Assistance Administrator to conduct on-site inspections of the Organization's work area. These inspections may be conducted on a regular basis with or without notice to the organization.

The Municipality agrees to:

1. Assign people who are both physically and mentally capable of working;

2. Defend and indemnify the organization against any and all costs or damages or injuries to any person, including the recipient, or to any property that arises out of the person's work for the organization unless such costs, damages or injuries are caused by inadequate supervision or improper work assignment.

3. To compensate any employees or supervisors who testify at the request of the municipality at a hearing related to a person's eligibility for General Assistance, said compensation to consist of mileage at a rate of _____ per mile, plus any lost wages if the hearing is held during the employee or supervisor's working hours, including available overtime hours. Furthermore, if the hearing is held during working hours, including available or mandatory overtime hours, the municipality will compensate the Organization for the actual cost of replacing the absent employee or supervisor if the Organization assigns someone to cover for the absent employee or supervisor. If the hearing is not held during working hours, including available overtime hours, the municipality shall pay the employee mileage at the rate of _____ per mile plus $ _____.

Dated this _____ day of _____, 20_____ in witness whereof

_____

_____

_____

_____

The above signed being the duly elected and authorized officers of the municipality, and

_____

_____

_____

_____

The duly elected officers and/or their appointed designees, of the Organization.

APPENDIX 8: General Assistance Lien Forms

Contents:

APPENDIX 8a: Notification of Lien Filing-Pursuant to 22 M.R.S. § 4320

Form 1: Notice of mortgage lien filing to be sent to recipient, record owner if other than recipient, and mortgage holder at least 10 days prior to filing notice of lien.

To: _____

_____

From: Municipality of _____

Please take notice that on the _____ day of _____ , 20 ____ the municipal officers of the municipality of _____ , or their designee, shall cause a lien notice to be filed in behalf of the municipality in the _____ County Registry of Deeds to secure the mortgage payment made, for the municipality of _____. His/Her address and telephone number are:

_____

_____ _____.
(Mailing address) (Telephone)

The amount of the mortgage payment is $ _____ . The mortgage payment was issued to the mortgagee for real estate and/or any building thereon, said real estate being bounded and described as follows:

The record owner of the property is _____ .

The mortgage payment was issued on behalf of _____.

This lien shall also secure all subsequent mortgage payments made on behalf of the same recipient by the municipality, plus interest at the rate of _____ percent per year, plus the costs of securing and enforcing the lien. A new notification shall be given to you each time the amount secured by the lien is increased.

This lien cannot be enforced while the above named recipient is either currently receiving any form of public assistance or, as a result of enforcement, would become eligible for general assistance.

In no event will this lien be enforced prior to the death of the recipient or the transfer of the property.

Dated: _____

By:

_____	_____
Name	Selectperson/Councilor
_____	_____
Name	Selectperson/Councilor
_____	_____
Name	Selectperson/Councilor
_____	_____
Name	Selectperson/Councilor
_____	_____
Name	Selectperson/Councilor

Municipal Officers of _____

or by,

_____
Duly Authorized Designee of the Municipal Office

APPENDIX 8b: State of Maine Notice of Lien to Secure Payment of Mortgage-Pursuant to Title 22 M.R.S. § 4320

Form 2: Notice of lien for payment of mortgage to be filed with the Registry of Deeds.

We, the undersigned municipal officers of the municipality of _____ Maine, County of _____by our own hand or by our designee, hereby certify that a mortgage payment was made by the municipality on the _____ day of _____, 20 ___ in the amount of _____ dollars and _____ cents ($ _____) on certain real estate including any buildings thereon, owned by said real estate being bounded and described as follows:

Pursuant to Title 22 M.R.S. § 4320, a lien is claimed by said municipality on said real estate and buildings in the amount of _____ dollars and _____ cents ($_____) plus the amount of any and all subsequent mortgage payments made by the municipality on the said property, plus interest, plus the costs of securing and enforcing the lien.

Written notification of this filing was sent to the recipient of this mortgage payment, the record owner if other than the recipient, and any record holder of the mortgage, by certified mail, return receipt requested, on the _____ day of _____, 20_____, in accordance with the provisions of Title 22 M.R.S. § 4320.

Dated: _____

By:

_____ _____

(name) Selectperson/Councilor (name) Selectperson/Councilor

_____ _____

(name) Selectperson/Councilor (name) Selectperson/Councilor

_____

(name) Selectperson/Councilor

Municipal Officers of _____

or by

_____

Duly Authorized Designee of the Municipal Office

STATE OF MAINE

_____ , ss

Personally appeared the above-named _____ and acknowledged the above instrument to be his/her/their free act and deed.

Before me

_____

Notary Public/Attorney at Law

_____

(Print Name)

Date _____

APPENDIX 8c: Notification of Increase in Amount Secured by a Municipal Lien-Filed Pursuant to 22 M.R.S. § 4320

Form 3: Notice of additional mortgage payments to be sent to recipient, record owner if other than recipient, and mortgage holders.

To: _____

_____

_____

From: Municipality of _____

This notice is to inform you that the amount secured by the municipal lien filed on _____, 20 _____, against property owned by _____ has increased as a result of an additional mortgage payment made by the municipality on behalf _____ of in the amount of $ _____.

The total of the mortgage payments made by the municipality to date is $ _____, which total does not include accrued interest or other costs.

You will receive an additional notice each time the amount secured by the lien is increased.

This lien cannot be enforced while the recipient of the mortgage payments is either currently receiving any form of public assistance or would become eligible for general assistance as a result of enforcement.

In no event will this lien be enforced prior to the death of the recipient or the transfer of the property.

Dated: _____

By:

_____ _____

(name) Selectperson/Councilor (name) Selectperson/Councilor

_____ _____

(name) Selectperson/Councilor (name) Selectperson/Councilor

_____

(name) Selectperson/Councilor

Municipal Officers of _____

or by

_____

Duly Authorized Designee of the Municipal Office

STATE OF MAINE

_____ , ss

Personally appeared the above-named _____ and acknowledged the above instrument to be his/her/their free act and deed.

Before me

_____

Notary Public/Attorney at Law

_____

(Print Name)

Date _____

APPENDIX 8d: Notification of Lien Filing Pursuant to 22 M.R.S. § 4320

Form 1: To be sent to record owner, mortgage holder and recipient, if other than the record owner, at least 10 days prior to filing notice of capital improvement lien.

To: _____

_____

_____

From Municipality of _____

Please take notice that on the _____ day of _____ 20_____ the municipal officers of the municipality of _____ or their designee, shall cause a lien notice to be filed in behalf of the municipality in the _____ County Registry of Deeds to secure the capital improvement, for the municipality of His/Her address and telephone number are:

_____ _____
(mailing address) (telephone)

The amount of the capital improvement payment is $ _____ . The capital improvement payment was issued to cause an improvement to real estate and/or any buildings thereon, said real estate being bounded and described as follows:

_____

_____

_____

The record owner of the property is _____

The capital improvement payment was issued on behalf of _____.

This lien shall also secure all subsequent capital improvement payments made on behalf of the same recipient by the municipality, plus interest at the rate of _____ percent per year, plus the costs of securing and enforcing the lien. A new notification shall be given to you each time the amount secured by the lien is increased.

This lien cannot be enforced while the above-named recipient is either currently receiving any form of public assistance or would, as a result of enforcement, become eligible for general assistance.

In no event will this lien be enforced prior to the death of the recipient or the transfer of the property.

Dated: _____

By:

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

Municipal Officers of _____

or by,

_____
Duly Authorized Designee of the Municipal Office

APPENDIX 8e: State of Maine-Notice of Lien to Secure Recovery of Improvement Payment Pursuant to Title 22 M.R.S. § 4320

Form 2: Notice of lien to be filed with the Registry of Deeds within 30 days of issuing the capital improvement payment.

We the undersigned municipal officers of the municipality of _____, Maine, County of _____ by our own hand or by our designee, hereby certify that a capital improvement payment was made by the municipality on the _____ day of _____, 20 ___ in the amount of _____ dollars and _____ cents on certain real estate including any buildings thereon, owned by _____ , said real estate being bounded and described as follows:

_____

_____

_____

Pursuant to 22 M.R.S. §§ 4320, a lien is claimed by said municipality on said real estate and buildings in the amount of _____ dollars and cents ($ _____), plus the amount of any and all subsequent capital improvement payments made by the municipality on said property, plus interest, plus the costs of securing and enforcing the lien.

Written notification of this filing was sent to the record owner, any record holder of a mortgage and _____ , the recipient of the capital improvement payment by certified mail return receipt requested on the _____ day of _____, 20 ____ , in accordance with the provisions of Title 22 M.R.S. § 4320.

Dated: _____

By:

_____ (name) Selectperson/Councilor

_____ (name) Selectperson/Councilor

_____ (name) Selectperson/Councilor

_____ (name) Selectperson/Councilor

_____ (name) Selectperson/Councilor

Municipal Officers of _____

or by

_____

Duly Authorized Designee of the Municipal Office

STATE OF MAINE

_____ , ss

Personally appeared the above-named _____ and acknowledged the above instrument to be his/her/their free act and deed.

Before me

_____
Notary Public/Attorney at Law

_____
(Print Name)

APPENDIX 8f: Notification of Increase in Amount Secured by a Lien Filed- Pursuant to 22 M.R.S. § 4320

Form 3: Additional Capital Improvement Payments. To be sent to record owner, mortgage holders and recipient, if other than the record owner.

To:_____

_____

_____

From Municipality of _____

This notice is to inform you that the amount secured by the municipal lien filed against property owned by _____has increased as a result of an additional capital improvement payment made by the municipality on behalf of _____ in the amount of $_____.

The total of the capital improvement payments made by the municipality to date is $ _____ which total does not include accrued interest or other costs.

You will receive an additional notice each time the amount secured by the lien is increased.

This lien cannot be enforced while the above-named recipient is either currently receiving any form of public assistance or would, as a result of enforcement, become eligible for general assistance.

In no event will this lien be enforced prior to the death of the recipient or the transfer of the property.

Dated: _____

By:

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

Municipal Officers of _____

or by,

_____
Duly Authorized Designee of the Municipal Office

APPENDIX 8g: Notification of Increase in Amount Secured by a Municipal Lien-Filed Pursuant to 22 M.R.S. § 4320

Form 4: To be sent to record owner, mortgage holders and recipient of the capital improvement, if other than the record owner.

To:_____

_____

_____

From Municipality of _____

This notice is to inform you that the amount secured by the municipal lien for capital improvement payments issued on behalf of _____ and filed against property owned by _____has increased as a result of the addition of interest as allowed by law in the amount of $ _____.

The total amount now secured by the lien is $ _____.

You will receive an additional notice each time the amount secured by the lien is increased.

This lien cannot be enforced while the recipient of the capital improvement payment or payments is either currently receiving any form of public assistance or would, as a result of enforcement, become eligible for general assistance.

In no event will this lien be enforced prior to the death of the recipient or the transfer of the property.

Dated: _____

By:

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

_____
(name) Selectperson/Councilor

Municipal Officers of _____

or by,

_____
Duly Authorized Designee of the Municipal Office

APPENDIX 8h: Discharge of Lien Created by Title 22 M.R.S. § 4320

KNOW ALL BY THESE PRESENTS

THAT WE the undersigned, in our capacity as the Municipal Officers of _____ Maine, do hereby acknowledge that on the_____ day of _____, 20 ___ the municipality received full payment and satisfaction of the lien created under the applicable provisions of 22 M.R.S. § 4320 by the filing of a lien certificate on _____, 20 ___ in the Registry of Deeds for the County of _____ (certificate recorded in said registry in Book _____ at Page _____ and of the debt thereby secured, and in consideration thereof the municipality does hereby cancel and discharge the lien and release unto _____ of _____ Maine, and his/her heirs and assigns forever, the premises therein described.

IN WITNESS WHEREOF, WE, _____ and _____ in our capacity as the duly authorized and elected Municipal Officers of Maine, have hereunto set our hands and seals this ____ day of _____ , 20 ____.

_____ _____

(name) Selectperson/Councilor (name) Selectperson/Councilor

_____ _____

(name) Selectperson/Councilor (name) Selectperson/Councilor

_____

(name) Selectperson/Councilor

Municipal Officers of _____

or by

_____

Duly Authorized Designee of the Municipal Office

STATE OF MAINE

_____, ss

Personally appeared the above-named _____ and acknowledged the above instrument to be his/her/their free act and deed.

Before me

_____

Notary Public/Attorney at Law

_____

(Print Name)

Date _____

APPENDIX 9: "Poverty Abatements," MMA Legal Services Packet

This packet includes the following attachments:

- Title 36 M.R.S. §§ 841-844 (Appendix 9a)
- "Poverty Abatements," *Maine Townsman*, February 1991 (Appendix 9b)
- 2013 Poverty Guidelines (U.S. HHS) (Appendix 9c)
- *Sample* Poverty Abatement Application Form (Appendix 9d)
- *Sample* Application for Property Tax Abatement Because of Poverty and/or Disability (Appendix 9e)
- *Sample* Notice of Executive Session (Appendix 9f)
- *Sample* Notice of Decision (Appendix 9g)

Important issues and considerations include:

I. Generally

Under 36 M.R.S. §§ 841, municipalities may abate (forgive) a property tax for "error or mistake," including illegality or irregularity (§ 841(1)), or for reason of "infirmity or poverty" (§ 841 (2)). This latter section authorizes the municipal officers, "on their own knowledge or on written application," to "make such abatements as they believe reasonable in the real and personal taxes on all persons who, by reason of infirmity or poverty, are in their judgment unable to contribute to the public charges." See 36 M.R.S. § 841(2).

Although at first glance Section 841(2) appears succinct and straightforward, it provides very little in the way of guidance on the question of when to grant a poverty abatement. As a result, a review of relevant case law and an understanding of General Assistance (GA) financial analysis are essential for a thorough understanding of poverty abatements (see Sections III and IV below).

II. Statutorily Required Procedures

While the statute does little to explain the operation of the eligibility standard that governs a poverty abatement application, it does provide procedures to guide the review of applications for poverty abatements. In summary, Section 841(2) provides that:

An applicant may apply for an abatement within 3 years from the date the taxes are committed (although municipal officers may extend the 3-year period);

The municipal officers must provide that any person who indicates an inability to pay all or part of assessed taxes will be informed regarding their right to apply for an abatement;

Individuals making applications for abatement must receive assistance in filing an application (this assistance however, does not reduce the applicant's burden of proof);

Application forms for requesting an abatement based on poverty or infirmity must be made available to applicants and must contain notice that a written decision shall be made within 30 days of the date of application;

Municipal officers must provide persons the opportunity to apply for an abatement during normal business hours;

Municipal officers must maintain the confidentiality of "all applications, information submitted in support of the application, files and communications relating to an application for abatement and the determination on the application for abatement";

Poverty abatement hearings and proceedings must be held in executive session;

Municipal officers must provide persons applying for abatement written notice of their decision within 30 days of application; and

Any decision on an application for poverty abatement must provide the applicant with the specific reason or reasons for the decision and must inform the applicant of the right to appeal and the procedure for requesting an appeal.

III. Case Law

As previously mentioned, the statute (§ 841(2)) does not set forth an explicit eligibility standard for poverty abatement determinations. Therefore, it is necessary to rely on existing case law for guidance. The following selected principles derived from Maine Supreme Court cases may lead to a clearer understanding of poverty abatements:

Although the law says municipal officers "may" grant abatements as they think reasonable, "may" will mean "shall" in cases where the word "may" is used for the purpose of imposing a public duty upon public officials for the sake of the public good (such as where an applicant's poverty is indisputable). ***Schwanda v. Bonney***, 418 A.2d 163 (Me. 1980).

Applicants seeking a poverty abatement have the burden of proving that they are eligible for the abatement. It is not the municipal officers' responsibility to prove that applicants are not entitled to an abatement. ***Joyce v. Town of Lyman***, 565 A.2d 90 (Me. 1989).

To obtain a poverty abatement, an applicant has the burden of proving that by reason of poverty or infirmity, the applicant is unable to contribute to the public charges. 36 M.R.S. § 841 (2); ***Macaro v. Town of Windham***, 468 A.2d 604 (Me. 1983); ***Joyce v. Town of Lyman***, 565 A.2d 90 (Me. 1989); and ***Gilmore v. City of Belfast***, 580 A.2d 698 (Me. 1990).

The purpose of 36 M.R.S. § 841 (2) (which is not clearly stated in the statute) is "to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay." Therefore, while an applicant may possess a valuable asset such as a house, that applicant still may have no ability to pay property taxes, so that a municipality may not rely on the mere existence of the asset to deny a poverty abatement. The municipality instead must look to an applicant's realistic financial capacity to pay his or her taxes ***Macaro v. Town of Windham***, 468 A.2d 604 (Me. 1983).

An applicant is only eligible for a poverty tax abatement for the tax year(s) in question and for the period subsequent to the application if the applicant shows no capacity to pay the taxes during that time. Thus, if an applicant was indigent at the time of application but not so during the tax year in question, the applicant would not be eligible. Further, if an applicant was indigent during the tax year in question but then at time of the poverty abatement application became able to pay the taxes due, that applicant also would be ineligible. ***Gilmore v. City of Belfast***, 580 A.2d 698 (Me. 1990).

A purchaser under a "land installment agreement" lacks standing to seek a poverty abatement of taxes on this property, even though the agreement may make the purchaser responsible for the payment of taxes, since the legal ownership of the property at issue remains with the seller. ***Mason vs. Town of Readfield***, 1998 ME 201, 715 A.2d 179.

The amount of a Circuit Breaker Program rebate received by the taxpayer should be applied to the amount of tax due before determining the amount of the poverty abatement. The Superior Court stated that "the Legislature left such determinations to the commissioners' independent judgment" and that there was support in the statutes for such a determination. 36 M.R.S. § 844, § 6216; ***Sager v. Town of Bowdoinham***, 2004 ME 40, 845 A.2d 567.

The Legislature in 2005 amended 36 M.R.S. § 841(2) to provide that the municipal officers may only grant abatements of taxes "on the primary residence of" infirm or impoverished applicants. That amendment was a legislative reversal of the Law Court's holding in the 2004 case of ***Hustus v. Town of Medway***, 2004 ME 41, 845 A.2d 563. Hustus had provided that a poverty abatement could be granted for an entire property even though a portion of it was dedicated to commercial use.

IV. Determining Eligibility

Poverty: Despite the fact that the statute includes both "infirmity" and "poverty" as eligibility criteria, the real issue is "poverty." That having been said, it is important to recognize that Maine's poverty abatement scheme contains no specific formula for determining poverty, or the inability to contribute to the public charges. Municipal officers have some latitude regarding such determinations, but the test most generally used and accepted by municipal counsel is whether a person's reasonable expenses outweigh that person's income (as determined on the basis of a General Assistance - like financial assessment).

Property: As discussed above, 36 M.R.S. § 841(2) now provides that poverty abatements are only available on an applicant's primary residence. However, the statute does not clarify whether the property must be used exclusively as a residence. The statute therefore gives municipal officers little guidance in a situation where an applicant maintains a home occupation out of his or her primary residence. The municipal officers might take the position that any poverty abatement granted be proportional to the percentage of property that is used for residential purposes, or they might take the position that dual-use property is simply not eligible for a poverty abatement. Either position is potentially open to challenge since the amended Section 841(2) has not yet been considered by the courts.

In such instances a municipality may reduce the risk of having a reviewing body or court overturn a denial that results from the nonresidential nature of the property by also determining the merits of the application. There are two principal reasons for doing so. First, after performing the analysis the municipality may establish that the applicant does not qualify for the abatement on financial grounds, and not just because of the nature of the property. Second, there also is an argument that the non-residential property in question might be viewed as an available "resource." Available resources are generally viewed, as items/property, which could be utilized by the applicant to generate funds needed to meet basic necessities (e.g., by selling or mortgaging).

Financial Analysis: A useful starting point is the U.S. DHHS (Department of Health and Human Services) Poverty Guidelines in order to determine whether the applicant meets the federal definition of poverty. However, denying an applicant simply because he or she exceeds these poverty guidelines probably would not be adequate, since this would not establish whether the applicant could in fact "contribute to the public charges" as required by the statute.

Perhaps a more helpful evaluative tool is a modified General Assistance (GA) financial analysis. Such an analysis assists in determining whether the applicant has (or had) sufficient income to meet basic necessities. A GA analysis compares an applicant's income against the applicant's (or household's) actual need and as such may provide a more accurate reading of the applicant's economic situation. By way of example, a family receiving TANF (Temporary Assistance for Needy Families) benefits may be considered over the federal poverty guidelines by virtue of their benefit amount. However, if that family had unforeseen emergency expenses (i.e., a portion of their home burned, a car needed replacement or major medical bills had to be paid), the family might qualify economically under this modified GA financial analysis. A GA-type analysis also will assist in determining whether the applicant failed to make use of available resources, and so may establish that the applicant had been otherwise able to contribute to the public charges. But remember, poverty abatements are not GA and a strict application of the GA rules or GA maximums is therefore not appropriate.

Please refer to the MMA's General Assistance Manual for in-depth guidance on conducting a GA financial analysis. Municipalities may also wish to contact MMA Legal Services 1-800-452-8786 or DHHS 1-800-442-6003 with specific questions.

The Application: In addition to the above two program guidelines which assist in the analysis, applicants should be required to complete a poverty abatement application form. A good form will elicit all the basic information about the property in question and the applicant's financial situation for the year(s) in question. All such application forms must include a statement regarding the municipality's obligation to render a written decision within 30 days of receipt of the application.

Period of Inquiry: It is important to keep in mind that when performing a poverty abatement analysis for past taxes, the applicant's current financial situation is only partially at issue—the applicant's economic situation at all times since the taxes were due is central to the analysis. Also, an applicant's current GA eligibility does not automatically render him or her eligible for a poverty tax abatement for a prior tax year.

V. The Decision-Making Process

Section 841(2) requires that "[h]earings and proceedings held pursuant to [§ 841(2)] shall be in executive session." Therefore, a board or council should make a motion at a public meeting "to enter into executive session to deliberate over an abatement pursuant to 36 M.R.S. § 841 (2)." The motion must be approved by a 3/5 vote and must be recorded. Any deliberation regarding the application should occur in executive session. The municipal officers may invite other municipal officers to attend provided their attendance is necessary, i.e., they are involved in the case and will provide information. In addition, if the applicant requests to be present during the executive session, he or she may be allowed to attend. A notice (see sample linked above) informing of the fair hearing should be sent to the applicant/appellant. If the applicant is present, he or she should not interfere with the deliberations but may be asked to respond to questions. The board or council cannot make a decision in executive session; the purpose of the executive session is for deliberation only.

After coming out of executive session, the board or council should make a motion such as "I move to grant an abatement of the amount of $ _____ pursuant to Title 36 M.R.S. § 841(2)." The municipal officers' ultimate decision is a matter of public record, but since poverty abatements are confidential, the recipient's name is not included in the public record (as opposed to a record of abatement of an over-assessment, which is a public record).

Regardless of the outcome, the board must issue a written decision to grant the abatement, deny the abatement or partially grant the abatement within 30 days of the date of application. The written decision must include the specific reasons for the decision and must inform the applicant of his or her appeal rights and of the procedure for requesting an appeal (see sample notice of decision linked above).

VI. Appeal

Applicants whose abatement requests are refused may appeal the decision within 60 days to one of two bodies, depending on the municipality. 36 M.R.S. §§ 843, 844:

- Board of Assessment Review, in municipalities that have created this board, or
- County Commissioners, in municipalities which have not adopted a Board of Assessment Review.

Decisions of either body may be appealed to the Maine Superior Court.

VII. Confidentiality

Section 841 requires that "all applications, information submitted in support of the application, files and communications relating to an application for abatement and the determination on the application for abatement shall be [kept] confidential." For more information on this subject refer to the Information Packet "General Assistance Confidentiality and Disclosure of Information" and also the General Assistance Manual.

VIII. Poverty Abatements & General Assistance

General Assistance may, in certain circumstances, be utilized to assist people requiring assistance with their property taxes. According to MMA's model ordinance (for those municipalities that have adopted it) those conditions are:

a) The property tax in question is for the applicant's place of residence;
b) There is a tax lien on the property which is due to mature within 60 days of the date of application;
c) As a matter of municipal policy or practice, or on the basis of information obtained from the applicant's mortgagee, if any, it is reasonably certain that a tax lien foreclosure will result in subsequent eviction from the residential property; and
d) The applicant, with sufficient notice, applies for property tax relief through the Maine Resident Property Tax Program, when available.

In addition to the above conditions, the municipality must have informed the person applying for GA for assistance with their taxes that the poverty abatement process exists and is an option. It is then the applicant's choice whether to pursue one program over the other. It is important, however, to inform the applicant that GA would only be available in the event of an imminent eviction whereas the abatement procedure is available early on—from the date the taxes are committed.

IX. Other Tax Relief

Regardless of whether an applicant qualifies for a poverty abatement, municipal officials can provide residents with information regarding other types of property tax relief programs. There are

several available programs that, either in addition to the poverty abatement process or in tandem with it, may offer relief to a taxpayer. These other programs include:

Maine Property Tax Fairness Program (formerly the Circuit Breaker Program) (maximum refund $300 or $400 if over age 70) Contact: Maine Revenue Services (207) 287-2011

Homestead Exemption (depending upon income, a portion of the value of a homestead is exempt from taxation; application form must be filed with the municipal assessor)

Exemptions for widows or children of wartime veterans (see 36 M.R.S. § 653)

Exemptions for veterans (see 36 M.R.S. § 653)

Exemptions for the legally blind (see 36 M.R.S.A § 654)

Note: Given the existence of these tax relief programs, it is not unreasonable for a municipality to advise a poverty abatement applicant to apply for potential tax relief from any or all of the above resources prior to applying for prospective abatements. This instruction should be indicated in the written decision. However, it would be inappropriate to impose such a requirement on an individual who had not been given an earlier instruction and/or when time exigencies (i.e., application deadlines) make it impossible to obtain relief.

Date of last revision: 10/13

This packet is designed to provide general information and is not intended as a substitute for legal advice for specific situations. The statutes and other information herein are only current as of the date of publication.

APPENDIX 9a: 36 M.R.S. §§ 841-844. Abatement Procedures; Notice of Decision; Appeals; Appeals to County Commissioners

36 M.R.S. § 841. ABATEMENT PROCEDURES

1. Error or mistake. The assessors, either upon written application filed within 185 days from commitment stating the grounds for an abatement or on their own initiative within one year from commitment, may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment, provided that the taxpayer has complied with section 706.

The municipal officers, either upon written application filed after one year but within 3 years from commitment stating the grounds for an abatement or on their own initiative within that time period, may make such reasonable abatement as they consider proper to correct any illegality, error or irregularity in assessment, provided the taxpayer has complied with section 706. The municipal officers may not grant an abatement to correct an error in the valuation of property.

2. Hardship or poverty. The municipal officers, or the State Tax Assessor for the unorganized territory, within 3 years from commitment, may, on their own knowledge or on written application, make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of hardship or poverty, is in their judgment unable to contribute to the public charges. The municipal officers, or the State Tax Assessor for the unorganized territory, may extend the 3-year period within which they may make abatements under this subsection.

Municipal officers or the State Tax Assessor for the unorganized territory shall:

A. Provide that any person indicating an inability to pay all or part of taxes that have been assessed because of hardship or poverty be informed of the right to make application under this subsection;

B. Assist individuals in making application for abatement;

C. Make available application forms for requesting an abatement based on hardship or poverty and provide that those forms contain notice that a written decision will be made within 30 days of the date of application;

D. Provide that persons are given the opportunity to apply for an abatement during normal business hours;

E. Provide that all applications, information submitted in support of the application, files and communications relating to an application for abatement and the

determination on the application for abatement are confidential. Hearings and proceedings held pursuant to this subsection must be in executive session;

F. Provide to any person applying for abatement under this subsection, notice in writing of their decision within 30 days of application; and

G. Provide that any decision made under this subsection include the specific reason or reasons for the decision and inform the applicant of the right to appeal and the procedure for requesting an appeal.

For the purpose of this subsection, the municipal officers may set off or otherwise treat as available benefits provided to an applicant under chapter 907 when determining if the applicant is able to contribute to the public charges.

3. Inability to pay after 2 years. If after 2 years from the date of assessment a collector is satisfied that a tax upon real or personal property committed to him for collection cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, he shall notify the municipal officers thereof in writing, under oath, stating the reason why that tax cannot be collected. The municipal officers, after due inquiry, may abate that tax or any part thereof.

4. Veteran's widow or widower or minor child. Notwithstanding failure to comply with section 706 or section 1181, the assessors, on written application within one year from the date of commitment, may make such abatement as they think proper in the case of the unremarried widow or widower or the minor child of a veteran, if the widow, widower or child would be entitled to an exemption under section 653, subsection 1, paragraph D, except for her or his failure to make application and file proof within the time set by section 653, subsection 1, paragraph G, provided that the veteran died during the 12-month period preceding the April 1st for which the tax was committed.

5. Certification; record. Whenever an abatement is made, other than by the State Tax Assessor, the abating authority shall certify it in writing to the collector, and that certificate shall discharge the collector from further obligation to collect the tax so abated. When the abatement is made, other than an abatement made under subsection 2, a record setting forth the name of the party or parties benefited, the amount of the abatement and the reasons for the abatement shall, within 30 days, be made and kept in suitable book form open to the public at reasonable times. A report of the abatement shall be made to the municipality at its annual meeting or to the mayor and aldermen of cities by the first Monday in each March.

6. Appeals. The decision of a chief assessor of a primary assessing area or the State Tax Assessor shall not be deemed "final agency action" under the Maine Administrative Procedure Act, Title 5, chapter 375.

7. **Assessors defined.** For the purposes of this subchapter the word "assessors" includes assessor, chief assessor of a primary assessing area and State Tax Assessor for the unorganized territory.

8. **Approval of the Governor.** The State Tax Assessor may abate taxes under this section only with the approval of the Governor or the Governor's designee.

36 M.R.S. § 842. NOTICE OF DECISION

The assessors or municipal officers shall give to any person applying to them for an abatement of taxes notice in writing of their decision upon the application within 10 days after they take final action thereon. The notice of decision must include the reason or reasons supporting the decision to approve or deny the abatement request and state that the applicant has 60 days from the date the notice is received to appeal the decision. It must also identify the board or agency designated by law to hear the appeal. If the assessors or municipal officers, before whom an application in writing for the abatement of a tax is pending, fail to give written notice of their decision within 60 days from the date of filing of the application, the application is deemed to have been denied, and the applicant may appeal as provided in sections 843 and 844, unless the applicant has in writing consented to further delay. Denial in this manner is final action for the purposes of notification under this section but failure to send notice of decision does not affect the applicant's right of appeal. This section does not apply to applications for abatement made under section 841, subsection 2.

36 M.R.S. § 843. APPEALS

1. **Municipalities.** If a municipality has adopted a board of assessment review and the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and, if the board thinks the applicant is over-assessed, the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property or properties with an equalized municipal valuation of $1,000,000 or greater either separately or in the aggregate, either party may appeal from the decision of the board of assessment review directly to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure. If the board of assessment review fails to give written notice of its decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to Superior Court as if there had been a written denial.

1-A. **Nonresidential property of $1,000,000 or greater.** With regard to nonresidential property or properties with an equalized municipal valuation of $1,000,000 or greater either separately or in the aggregate, either party may appeal the decision of the local board of assessment review or the primary assessing area board of assessment review to the State Board of

Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied, as provided in subsections 1 and 2. The board shall hold a hearing de novo. If the board thinks that the applicant is over-assessed, it shall grant such reasonable abatement as the board thinks proper. For the purposes of this section, "nonresidential property" means property that is used primarily for commercial, industrial or business purposes, excluding unimproved land that is not associated with a commercial, industrial or business use.

2. **Primary assessing areas**. If a primary assessing area has adopted a board of assessment review and the assessors or municipal officers refuse to make the abatement asked for, the applicant may apply in writing to the board of assessment review within 60 days after notice of the decision from which the appeal is being taken or after the application is deemed to have been denied, and if the board thinks the applicant is over-assessed, the applicant is granted such reasonable abatement as the board thinks proper. Except with regard to nonresidential property or properties with an equalized municipal valuation of $1,000,000 or greater, either separately or in the aggregate, either party may appeal the decision of the board of assessment review directly to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the board of assessment review fails to give written notice of its decision within 60 days of the date the application was filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial.

3. **Notice of decision.** Any agency to which an appeal is made under this section is subject to the provisions for notice of decision in section 842.

4. **Payment requirements for taxpayers.** If the taxpayer has filed an appeal under this section without having paid an amount of current taxes equal to the amount of taxes paid in the next preceding tax year, as long as that amount does not exceed the amount of taxes due in the current tax year or the amount of taxes in the current tax year not in dispute, whichever is greater, by or after the due date or according to a **payment** schedule mutually agreed to in writing by the taxpayer and the municipal officers, the appeal process must be suspended until the taxes, together with any accrued interest and costs, have been paid. If an appeal is in process upon expiration of a due date or written payment schedule date for payment of taxes in a particular municipality, without the appropriate amount of taxes having been paid, whether the taxes are due for the year under appeal or a subsequent tax year, the appeal process must be suspended until the appropriate amount of taxes described in this subsection, together with any accrued interest and costs, has been paid. This subsection does not apply to property with a valuation of less than $500,000.

36 M.R.S. § 844. APPEALS TO COUNTY COMMISSIONERS

1. Municipalities without board of assessment review. Except when the municipality or primary assessing area has adopted a board of assessment review, if the assessors or the municipal officers refuse to make the abatement asked for, the applicant may apply to the county commissioners within 60 days after notice of the decisions from which the appeal is being taken or within 60 days after the application is deemed to have been denied. If the commissioners think that the applicant is over-assessed, the applicant is granted such reasonable abatement as the commissioners think proper. If the applicant has paid the tax, the applicant is **reimbursed** out of the municipal treasury, with costs in either case. If the applicant fails, the commissioners shall allow costs to the municipality, taxed as in a civil action in the Superior Court, and issue their warrant of distress against the applicant for collection of the amount due the municipality. The commissioners may require the assessors or municipal clerk to produce the valuation by which the assessment was made or a copy of it. Either party may appeal from the decision of the county commissioners to the Superior Court, in accordance with the Maine Rules of Civil Procedure, Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the application is filed, unless the applicant agrees in writing to further delay, the application is deemed denied and the applicant may appeal to the Superior Court as if there had been a written denial.

1-A. County board of assessment review. The county commissioners in a county may establish a county board of assessment review to hear all appeals to the county commissioners. The board has the powers and duties of a municipal board of assessment review, including those provided under section 844-M.

2. Nonresidential property of $1,000,000 or greater. Notwithstanding subsection 1, the applicant may appeal the decision of the assessors or the municipal officers on a request for abatement with respect to nonresidential property or properties having an equalized municipal valuation of $1,000,000 or greater, either separately or in the aggregate, to the State Board of Property Tax Review within 60 days after notice of the decision from which the appeal is taken or after the application is deemed to be denied. If the State Board of Property Tax Review determines that the applicant is over-assessed, it shall grant such reasonable abatement as it determines proper. For the purposes of this subsection, "nonresidential property" means property that is used primarily for commercial, industrial or business purposes, excluding unimproved land that is not associated with a commercial, industrial or business use.

3. Notice of decision. An appeal to the county commissioners is subject to the provisions for notice of decision in section 842.

4. **Payment requirements for taxpayers.** If the taxpayer has filed an appeal under this section without having paid an amount of current taxes equal to the amount of taxes paid in the next preceding tax year, as long as that amount does not exceed the amount of taxes due in the current tax year or the amount of taxes in the current tax year not in dispute, whichever is greater, by or after the due date, or according to a payment schedule mutually agreed to in writing by the taxpayer and the municipal officers, the appeal process must be suspended until the taxes, together with any accrued interest and costs, have been paid. If an appeal is in process upon expiration of a due date or written payment schedule date for payment of taxes in a particular municipality, without the appropriate amount of taxes having been paid, whether the taxes are due for the year under appeal or a subsequent tax year, the appeal process must be suspended until the appropriate amount of taxes described in this subsection, together with any accrued interest and costs, has been paid. This subsection does not apply to property with a valuation of less than $500,000.

APPENDIX 9b: "Poverty Abatements," Maine Townsman, February 1991 by Geoffrey Herman, MMA Paralegal

Note: The following article is based largely on an article written by Geoff Herman and published in the February, 1991 edition of the Maine Townsman. The text of the original article has been updated to reflect an amendment to poverty abatement law enacted in 2005 and the 2013 repeal of the so-called "Circuitbreaker" program, and has further been amended to include guidance obtained from more recent court decisions with respect to the proper operation of the program. 1/14

A tough economy, shrinking resources for municipalities from the state and federal governments, upward pressure on property taxes and tightened bank credit can push-up the delinquency rate on property tax payments and lead more people to make application to the municipal officers for poverty abatements.

The law governing the poverty abatement process (36 M.R.S. § 841(2)) is short and to the point. The first sentence of that law contains the entire standard by which eligibility for a poverty abatement is determined. After that opening sentence, only seven points of application and administrative procedure follow.

Looking at the law, the determination of an applicant's eligibility for a poverty abatement might appear to be quite a simple task, but it isn't. Because the brief poverty abatement statute offers the municipal officers very little in the way of guidance, municipal officials must turn for direction to pertinent court cases and a General Assistance financial analysis.

Poverty Abatement Law

36 M.R.S. § 841(2) permits the municipal officers on their own knowledge, and requires the municipal officers on written application, to

> *"make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of hardship or poverty, is in their judgment unable to contribute to the public charges."*

This "reasonable" evaluation represents the entire standard of eligibility as required by statute. The underlying purpose of the poverty abatement law is not expressed in the statute. It is stated, instead, in a Maine Supreme Court decision, *Macaro v. Town of Windham*, 468 A.2d 604 (Me. 1983). The Law Court closed that decision with the observation that *"The obvious purpose of 36 M.R.S. § 841(2) is to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay."*

The procedural requirements of the law are as follows:

- All persons who have indicated an inability to pay all or part of their property taxes must be informed of their right to apply for a poverty abatement. The formal method of ensuring compliance with this requirement is to include a statement declaring the taxpayer's right to apply for a poverty abatement on all 30-day notices served on delinquent taxpayers prior to filing tax liens. This does not mean that a tax lien must be filed before a poverty abatement can be considered. An applicant may apply for a poverty abatement whenever he or she owes taxes to the municipality, from the date the tax bill is received to 3 years from the date of that tax commitment. The 3-year limitation can be extended by the municipal officers.

- The municipality must prepare and make available poverty abatement application forms. These application forms must include a statement that the municipal officers will issue a written decision to the applicant within 30 days of the date of application.

- The municipal officers must ensure that individuals receive the assistance necessary to file an application. The requirement that municipal assistance be provided when preparing an application does not alter or lessen the applicant's burden of proof. The petitioners for a poverty abatement have the burden of proving that they are unable to contribute to the public charges. Joyce v. Town of Lyman, 565 A.2d 90 (Me. 1989).

- The entire hearing and deliberation process regarding a poverty abatement application must be conducted by the municipal officers in the executive session, and all application documentation and decision paperwork must be treated as confidential. A full discussion of the confidential nature of the poverty abatement procedure is found below.

- A written decision on the poverty abatement request must be issued to the applicant within 30 days of the date of application. In the past, municipal officers sometimes "tabled" an abatement decision until the property was ripe for tax lien foreclosure. There is nothing in the poverty abatement law allowing any tabling action. For this reason, the municipal officers should recognize that their responsibility in the process is to carefully evaluate the information presented by the applicant and determine if the applicant has met both (1) his or her burden of proof, and (2) the eligibility standards in the law based on a "reasonable" evaluation. Quite clearly, a denial could be issued if the municipal officers were unable to determine eligibility because the applicant had failed to produce necessary documentation or the actual year for which the taxes were levied had not yet concluded.

The written decision must include the specific reason or reasons for the decision. The municipal decision must also explain the right of appeal, the route of appeal, and the appeal procedure. Specifically, the written decision must state that any appeal request must be made within 60 days from the date the municipal officers' decision was issued to the applicant. For municipalities with an established Board of Assessment Review (BAR), the BAR is the route of appeal. For the few municipalities still designated as primary assessing areas, the appeal route is to the State Board of Assessment Review. For all other municipalities, the appeal goes to the County Commissioners or the County's Board of Assessment Review if the county has established one.

Determining Eligibility

The standard of eligibility in state law is the inability of the applicant "to contribute to the public charges." The two applicable causes of that "inability to contribute" are cited as "hardship or poverty." From a practical standpoint, the central standard of eligibility for a poverty abatement is simply poverty, and the demonstration of "hardship" is only helpful to the extent it throws light on the reasons behind the household's economic situation. Along the same lines, in the absence of illness or disability or any other obvious factor causing the applicant's impoverishment, the municipal officers may seek to ascertain not only if the applicant is impoverished but also why. Decisions handed down by Maine courts on this subject indicate that the analysis of "inability" can go beyond a simple financial analysis to include as well a review of all the circumstances surrounding or causing poverty.

Non-residential or second-home property. Before the poverty abatement law was amended in 2005 there was room for confusion over whether the owners of non-residential property or a "summer camp" could be found eligible for a poverty abatement. The Legislature addressed that confusion in 2005 by amending the law to make it clear that only the taxes paid on a "primary residence" could be abated under this program.

The period of inquiry. The first step in the eligibility determination process is to ascertain the applicant's financial ability to pay his or her property tax. An initial question that presents itself here concerns the period of time for which an applicant's poverty should be evaluated. A Maine Supreme Court case from the early 1990s (*Gilmore v. City of Belfast,* 580 A.2d 698) provided guidance in this area.

The plaintiffs in this case applied for a poverty abatement for the three tax years from 1986 through 1988. The Belfast municipal officers granted the abatement for the 1988 tax year but denied the abatement for the two earlier tax years. The plaintiffs subsequently appealed the Belfast board's decision through the local Board of Assessment Review and into the courts. One of the plaintiffs' main arguments was that the City was bound to grant their abatement for the entire three-year period under review because they were clearly impoverished at the time of application.

The Maine Supreme Court rejected this argument with gratifying clarity, finding that the poverty abatement statutes "do not mandate that the determination of poverty must be made only on the basis of circumstances existent at the time of the hearings before the City Council or Board of Assessment Review. Rather, the City…may take account all of the facts and circumstances relevant to the taxpayer's alleged inability to pay."

It is fair to interpret this decision to mean that a poverty abatement applicant has the burden of proving an inability to contribute to the public charges both at the time of the application and during the tax years for which the abatement is being requested.

The financial analysis. The simplest eligibility test is to determine if the applicant's income during the tax year(s) in question falls above or below the federal poverty level. Despite the

simplicity of such a test, the municipal officers should require a more detailed review of financial ability such as would result from a General Assistance (GA) analysis.

A GA analysis compares an applicant's income against that applicant/household's actual need, which may or may not include expenses generally assumed to be necessary. For example, Social Security benefits frequently place Social Security recipients just over the federal poverty level, but when actual household or medical expenses are taken into account it may become clear the household is, in fact, impoverished.

The poverty abatement application, therefore, should include a GA application or something quite similar. One relevant distinction, however, is that eligibility for GA is determined by looking only at a 30-day prospective period of time. For that reason, the GA analysis prepared for a poverty abatement applicant should be annualized. The municipal officers should be able to ascertain the applicant's GA eligibility during the course of the tax year or years in question, rather than only the applicant's immediate and prospective financial situation.

There are at least two other advantages of using a GA application (or something similar) as the poverty abatement application. First, there are certain forms of federal public assistance (benefits issued through the Supplemental Nutrition Assistance Program, formerly known as "food stamps," and the LIHEAP fuel assistance program) which should not be considered as income for the purposes of evaluating an applicant's eligibility for a poverty abatement, and the GA application already avoids their consideration. Also, a GA application gathers information regarding the applicant's household make-up, assets, employment history and debt burden which throws light on the reasons behind the applicant's financial situation.

As indicated above, it is possible (although perhaps not frequently so) for an impoverished applicant to be found able to contribute to the public charges. One reason for such a finding might be that the applicant unreasonably failed to make use of available resources or liquidate unnecessary assets. Another reason might be that despite the applicant's limited income on paper, he or she nonetheless managed to purchase goods or services of considerable value during the tax years in question which are clearly non-necessities. From a poverty abatement analysis, property taxes fall immediately behind all reasonably required expenditures for basic needs, as defined by the GA program. After the basic needs are covered, however, property taxes are the next highest priority.

The Application Process

MMA has a model poverty abatement application form and several application forms used by Maine municipalities; the municipal officers may want to review these forms. Generally, the application should elicit basic information about the property in question (map and lot number, total number of acres, assessed value, etc.) and the necessary financial information for the tax year(s) under review. The application must also include a statement declaring the municipal officer's obligation to issue a written decision within 30 days of receipt of the application.

Because the municipal officers have only 30 days to act on the application, the board's deliberation on the request should be scheduled for a meeting well within that 30-day time period. Prior to the deliberation, the GA administrator or another municipal official assigned to the task should be reviewing the application to make sure it is complete and informing the applicant of any documentation the town will require to support the application.

Confidentiality. Unlike the administration of a GA application, which is an entirely non-public process, the deliberation on a poverty abatement request must be held in executive session, which is a behind-closed-door deliberation embedded within a regular public proceeding. Furthermore, poverty abatement law provides that *"all applications, information submitted in support of the application, files and communications relating to an application for (the poverty) abatement and the determination on the application for abatement shall be confidential."*

The conjunction of Maine's Right to Know law and the confidentiality provisions of poverty abatement law give the municipal officers only a narrow path upon which to proceed. The Right to Know law now requires the articulation of the specific authorizing statute within the motion to enter into executive session. Therefore, when it becomes time during a regular meeting of the selectboard or council to deliberate on a poverty abatement request, the municipal officers should entertain a motion "to enter into executive session to deliberate on an abatement request pursuant to 36 M.R.S.A., Section 841(2)." An appropriate alternative motion would be "to enter into executive session pursuant to 1 MRSA, Section 405, sub-section 6(F)." This particular subsection 6(F) of the Right to Know statute governing permitted executive session allows behind-closed-door meetings for *"Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute."* Since complete anonymity is the key to all poverty abatement procedures, the content-neutral wording of this authorizing statute might be the preferred way to enter into this somewhat unique type of executive session.

Either way, the motion to enter into executive session may not mention the applicant's name or other information that might identify the applicant to the general public. The Right to Know law also provides that executive sessions must be used exclusively for deliberation, and that no formal action may be taken behind closed doors.

Therefore, the board's formal action on a poverty abatement request must be taken after returning to public session, but again the motion to act would be phrased in such a manner as to not identify the applicant. The wording of the motion should be something to the effect of "to (grant/deny/or partially grant) an abatement request made pursuant to 36 M.R.S. § 841(2) in the sum of $ _____ for tax year 20 ___ ." Another option is to assign a case number to the application and refer to that case number in the motion and discussion.

36 M.R.S. § 841(5) provides that non-poverty abatements, such as abatements granted when the property in question was over-assessed, must be certified to the tax collector and a record of that abatement be kept in a special book for regular public inspection. This section of law expressly

prohibits poverty abatement records from being kept in such a book. The tax collector would still be issued a fully informative certification of the poverty abatement, but that certification should be clearly identified as a confidential record which may not be released to the general public.

Finally, some towns list all abatements granted in the town report. If such a listing is to include poverty abatements, the poverty abatements should be recorded in such a way that the recipient of the abatement cannot be identified.

Poverty Abatements vs. General Assistance

The General Assistance program is another option on the local level for people needing help with their property taxes. Partly because a GA analysis plays such an important role in the poverty abatement determination, there is some confusion as to how these two programs are coordinated. Another source of this confusion is the one-time claim by the Department of Health and Human Services (DHHS) that General Assistance could not be used to pay a property tax until the applicant had refused to apply for or been denied a poverty abatement.

After DHHS issued its "interpretive memo" in 1989 prohibiting GA payments for property taxes unless the poverty abatement process had been exhausted, there was a considerable back-and-forth between DHHS and MMA. The end result is the language in MMA's model General Assistance Ordinance and the DHHS Maine General Assistance *Policy Manual,* both of which allow General Assistance to be issued for property taxes under certain circumstances.

By MMA's model ordinance, those circumstances are that: (1) the property tax in question is for the applicant's place of residence; (2) there is a tax lien on the property which is due to mature within 60 days of the date of application; and (3) the applicant, with sufficient notice, applies for the Maine Resident Property Tax Program (the "Circuit Breaker" Program). Furthermore, the MMA model ordinance and the DHHS regulation require the municipality to inform anyone applying for GA for property tax purposes about the poverty abatement process.

Given the current state of pertinent DHHS and local regulation, it should be noted that one of the most significant differences between GA and the poverty abatement process is that GA is not available to directly pay a property tax unless a foreclosure shall occur within 60 days, whereas a person may apply for and be granted a poverty abatement whenever his or her taxes are owed.

Generally, the municipal officers have an interest in assisting people with their property taxes through the GA program rather than through the poverty abatement process. GA expenditures are reimbursed to some degree by the state, while abatements represent an entire revenue loss and a shifting of the tax burden to the rest of the taxpaying population. The municipal officers should not, however, allow this financial interest to interfere with the applicant's choice of assistance option.

The procedure which should be followed, therefore, is to inform all persons requesting property tax assistance of the two local programs: GA and the poverty abatement process. The differences

between the two procedures should be explained. After the applicant has decided to apply for either GA or a poverty abatement, that application should be processed in good faith.

Finally, the potential availability of GA does not equate with an "ability to contribute to the public charges." Therefore, it would be inappropriate to deny a poverty abatement request for the reason that the GA program is an "available resource."

Poverty abatements and "Circuitbreaker" benefits. The Maine Residents Property Tax and Rent Refund "Circuitbreaker" Program was repealed for claims beginning on or after August 1, 2013. The "Circuitbreaker" Program was replaced by a refundable Property Tax Fairness Credit that can be claimed on the Maine Individual Income Tax Form. To claim the credit, an applicant must file a 1040ME Tax Form with the Property Tax Fairness Credit Worksheet that is included beginning in January 2014. Qualifying applicants can receive as much as $300, or $400 if 70 years of age or older.

Homeowners and renters who meet ALL of the following requirements are eligible for the credit:

- Were Maine residents during any part of the tax year;
- Owned or rented a home in Maine during any part of the tax year and lived in that home during the year;
- Had a Maine adjusted gross income of not more than $40,000; and
- Paid property tax on a home in Maine during the tax year that was more than 10% of Maine's adjusted gross income or paid rent to live in a home or apartment in Maine during the tax year that was more than 40% of Maine's adjusted gross income.

Abating taxes on foreclosed property. It is sometimes the case that poverty abatements are requested for property which has already gone through tax lien foreclosure. For example, a person applies for an abatement for the three tax years from 2008 through 2010, foreclosure has occurred on the 2008 lien, but the liens for the other two tax years have yet to mature.

In this case, the municipal officers could deny the abatement for the 2008 tax year with a finding that the foreclosure has discharged the lien and otherwise satisfied the applicant's tax obligation for that year. The property owner has a burden to apply for an abatement in a timely manner, and the municipal officers would not have the authority to reverse or annul the foreclosure through an after-the-fact abatement. (The municipal officers would still be obliged, however, to review the applicant's abatement request for the more recent tax years.) Along the same lines, the Maine Supreme Court indicated in a case in the late 1990s (***Mason vs. Town of Readfield***, 1998 ME 201) that "standing" (i.e., possessing a right, title or interest in the property at issue) is required in order to apply for and receive a poverty abatements. Once the municipality forecloses on property, the former owner no longer has standing, at least with respect to the tax year for which the foreclosure occurred.

Conclusion

The various issues raised by this article represent but a few of the questions that are generated by this seemingly simple law. The poverty abatement application process is reasonably straightforward. Applications are processed and written decisions are issued within 30 days. The decision is made by the municipal officers rather than the assessor(s) and the deliberations are conducted in executive session. The entire process is confidential. The written decision must give the specific reasons for the decision and must also state the appropriate appeal route.

The actual decision-making process is less straightforward, but a fairly meticulous financial analysis of the applicant's ability to "contribute to the public charges" is usually determinative.

The extraordinary importance of the property tax as the municipality's fundamental revenue source, and the related importance that the property tax burden be fairly borne, place the municipal officers in a difficult position when reviewing a poverty abatement request. They become caught between the tragedy of the poverty itself and the strong disinclination to shift the tax burden onto others, many of whom are only slightly more (and sometimes less) able to "contribute to the public charges."

The reasonableness of the municipal officers is the ultimate standard against which poverty abatement requests must be weighed. While reasonableness is easy to talk about, it can be an annoyingly elusive concept when its application is required.

APPENDIX 9c: 2014 Poverty Guidelines

One Version of the [U.S.] Federal Poverty Measure

The following figures are the 2014 HHS poverty guidelines which are scheduled to be published in the *Federal Register* on January 22, 2014. (Additional information will be posted after the guidelines are published.)

2014 POVERTY GUIDELINES FOR THE *48 CONTIGUOUS STATES* AND THE DISTRICT OF COLUMBIA	
Persons in Family/Household	**Poverty Guideline**
1	$11,670
2	15,730
3	19,790
4	23,850
5	27,910
6	31,970
7	36,030
8	40,090

For families/households with more than 8 persons, add $4,060 for each additional person.

http://aspe.hhs.gov/poverty/14poverty.cfm

APPENDIX 9d: *Sample* Application for Property Tax Abatement Because of Poverty and/or Disability

Note: Fillable PDF version on the MMA Website

TOWN/CITY OF _____
(Under 36 M.R.S. § 841)

A. INFORMATION REGARDING APPLICANT

1. Full name of applicant: _____

2. Marital status: Married ____ Divorced____ Widowed ___ Separated ___ Single ___

3. A. Mailing address: _____

   _____

   B. Residence: _____

4. Phone number: _____

5. Date of birth: _____

6. Social Security number: _____

7. Are you or your spouse a disabled veteran? Yes _____ No _____ . If either you or your spouse is disabled, write down who is disabled and describe the disability.

   _____

   _____

B. INFORMATION REGARDING OTHER MEMBERS OF THE HOUSEHOLD

8. If married, full name of spouse: _____
   (Note: If in a domestic partnership, please provide information regarding domestic partner for all spouse-related questions.)

   Spouse's date of birth: _____

9. Spouse's Social Security number: _____

10. Children, from all marriages, residing in the household, or for whom the applicant is legally responsible:

Full Name	Birth Date	Residence	Occupation

11. Other members of the household:

Full Name	Birth Date	Relation to Applicant	Occupation

C. INFORMATION REGARDING PROPERTY

12. Location of the property for which you are requesting a tax abatement: _____

_____

13. Approximate acreage: _____

14. Purchase date: _____

15. How much equity do you have in the property? _____

16. Property use: Residence _____ Business _____ Rental _____

17. Year(s) for which an abatement is requested: _____

D. OTHER INFORMATION

18. Have you initiated bankruptcy proceedings during any of the years for which an abatement is requested? _____

19. Has any of your property been attached or seized under legal proceedings? _____

_____

If yes, identify the legal proceedings, the property involved, and the present status of the case._____

20. Are there any liens upon your property at this time? _____ If yes, please detail.

_____

21. During any of the years for which abatement is requested, and the 2 years prior, have you or your spouse done any of the following?

a) Placed anything of value in which you have an interest in the hands of a third person? _____

If yes, describe the value and circumstances of the transfer. _____

_____

What is your current interest in the property?_____

b) Made any assignment of any property for the benefit of your creditors?

_____

If yes, give the date, name and address of assignee, and terms of assignment.

_____

_____

c) Made any gifts, other than usual presents, to family members?

_____

_____

If yes, give name and address of recipient and value of gift: _____

_____

Was the gift conditional? If yes, describe the conditions _____

For each year abatement is requested, you must submit:

* A supplementary questionnaire.

* A photocopy of your federal and state income tax returns, all schedules, and, if applicable, your spouse's.

* A photocopy of W-2 form(s) for yourself and, if applicable, your spouse.

APPENDIX 9e: Supplementary Questionnaire–Application for Property Tax Abatement Because of Poverty and/or Disability

TOWN/CITY OF _____

Complete a separate supplementary questionnaire for each year for which abatement is requested.

22. Year for which abatement is requested: _____

23. Property valuation: _____
(This information is on your tax bill.)

24. Property tax amount: _____

25. Unpaid tax balance: _____

26. Amount of property tax abatement requested, if different from unpaid tax balance: _____

_____

E. EMPLOYMENT INFORMATION

	Applicant	Spouse
Trade or occupation		
Employer		
Employer address		
Employment dates		
If unemployed, why?		

If unemployment was or is due to illness or disability, attach a current physician's statement describing the type and length of illness or disability.

F. ASSET INFORMATION

27. Were you granted general assistance in the year for which abatement is requested?
_____ If yes, amount: _____

28. List all other real estate owned by you or other members of your household:

Description of Property	Location	Acres	Assessed Value

29. List all checking accounts, savings accounts, safe deposit boxes, etc. you maintained alone or with someone else in the year for which abatement is requested.

	Name of Bank	Average Monthly Balance
Checking Accounts		
Savings Accounts		
Safe deposit box		
Other		
(CDs, savings bonds, trust funds, etc.)		

30. List all life insurance policies in effect for the year in which abatement is requested.

Company and Address	Face Amount	Current Value

31. List all other assets, such as motor vehicles, recreation vehicles, and machinery, etc., other than household furnishings.

Description	Date Acquired	Current Value

32. Did you apply for and receive a state property tax rebate under the Maine Residents Property Tax Program (the "Circuit Breaker" Program)? _____If yes, amount of rebate: _____

33. List monthly (or average monthly) income from **all** sources, for **all** members of the household: (submit proof)

	Yes	No	Monthly Amount
TANF			
Supplemental Security Income (SSI)			
Social Security Benefits			
Veteran's benefits			
Wages			
Unemployment compensation			
Worker's compensation			
Medicaid			
Business income			
Other income (child support, alimony, interest insurance proceeds, income from relatives, renters, etc.)			

Total *monthly* income from all sources: _____

Total *yearly* income from all sources: _____

G. LIABILITY INFORMATION

34. Estimated monthly needs:

(Note: If some of the expenses listed below are paid once a year, divide that amount by 12 to get the monthly amount. Similarly, if expenses are paid twice a year, divide the amount by 6 to get the monthly amount.)

Food	$
Household Supplies (paper towels, detergent, etc.)	$
Personal Supplies (soap, toothpaste, etc.)	$
Medications (non-prescription)	$
Other Medication	$
Medical Insurance	$
Dental Costs	$
Life and other Insurance	$
Clothing	$

Shelter:

Mortgage Payment	$
Property Tax	$
Trailer Lot Rent	$
Heating Fuel	$
Electricity	$
Gas	$
Telephone	$
Water	$
Sewage	$
Homeowner's Insurance	$
Trash Removal	$
Home Repairs	$

Transportation:

Automobile Payments	$
Automobile Insurance	$
Automobile Excise Tax and Registration	$
Driver's License Fee	$
Automobile Repairs	$
Transportation Costs (gas, oil, etc. for other than driving to and from work)	$

Work-Related Expenses:

Transportation cost to and from work	$
Cost of special equipment	$
Cost of special clothing	$
Cost of lunch or dinner at work	$
Child care costs	$
Other: Installment payments: (specify to whom)	

35. List all debts.

Creditor's Name:	Total Amount Owed
	$
	$
	$

APPENDIX 9f: Application for Abatement of Local Property Tax

To the Municipal Officers for the Municipality of _____

(Name of city or town where you are applying)

In accordance with the provisions of 36 M.R.S. § 841, I am applying in writing for abatement of my property taxes as noted above. The above statements are true to the best of my knowledge and belief.

Dated: _____

APPLICANT: _____

A decision on this application must be made by the _____ , 20_____ within 30 days, in accordance with 36 M.R.S. § 841. If you are aggrieved by the decision of the municipal officers, you may appeal the decision to the within 60 days.

APPENDIX 9g: *Sample* Application for Property Tax Abatement Because of Poverty and/or Disability-Town of Brunswick

A. INFORMATION REGARDING APPLICANT

1. Full name of applicant:

2. Marital status: ❒ Single ❒ Married ❒ Separated ❒ Divorced ❒ Widow ❒ Widower

3. a. Mailing address: _____

   b. Residence: _____

4. Phone number: _____

5. Date of birth: _____

6. Social security number: _____

B. INFORMATION REGARDING OTHER MEMBERS OF THE HOUSEHOLD

7. If married, full name of spouse: _____

8. Spouse's date of birth: _____

9. Spouse's Social Security number: _____

10. Children, from all marriages, residing in the household, or for whom the applicant is legally responsible: _____

Full Name	Birth Date	Residence	Occupation

11. Other members of the household:

Full Name	Birth Date	Residence	Occupation

C. INFORMATION REGARDING PROPERTY

12. Location of the property for which you are requesting a tax abatement: _____

_____

13. Approximate acreage: _____

14. Purchase date: _____

15. How much equity do you have in the property? _____

16. Property use: ❒ Residence ❒ Business ❒ Rental

17. Year(s) for which an abatement is requested: _____

D. OTHER INFORMATION

18. Have you initiated bankruptcy proceedings during any of the years for which an abatement is requested? _____

_____

19. Has any of your property been attached or seized under legal proceedings? _____

If yes, identify the legal proceedings, the property involved, and the present status of the case. _____

20. Are there any liens upon your property at this time? _____

If yes, please detail. _____

21. During any of the years for which an abatement is requested, and the 2 years prior, have you or your spouse done any of the following?

a) Placed anything of value in which you have an interest in the hands of a third person? _____

If yes, describe the value and circumstances of the transfer.

_____

What is your current interest in the property? _____

b) Made any assignment of any property for the benefit of your creditors? _____.

If yes, give the date, name and address of assignee, and terms of assignment.

_____

c) Made any gifts, other than usual presents, to family members? _____ .

If yes, give name and address of recipient and value of gift. _____

_____

Was the gift conditional? _____

If yes, describe the conditions. _____

_____

For each year an abatement is requested, you must submit:

* A supplementary questionnaire.

* A photocopy of your federal and state income tax returns, all schedules, and, if applicable, your spouse's.

* Photocopy of W-2 form(s) for yourself and, if applicable, your spouse.

Supplementary Questionnaire–Town of Brunswick, Application for Property Tax Abatement Because of Poverty and/or Disability

Complete a separate questionnaire for each year for which an abatement is requested.

22. Year for which an abatement is requested: _____

23. Property valuation: _____

24. Property tax amount: _____

25. Unpaid tax balance: _____

E. EMPLOYMENT INFORMATION

	Applicant	Spouse
26. Trade or occupation		
27. Employer		
28. Employer address		
29. Employment dates		
30. If unemployed, why?		

If unemployment was or is due to illness or disability, attach a current physician's statement describing the type and length of illness or disability.

F. ASSET INFORMATION

31. Were you granted general assistance in the year for which an abatement is requested?

_____ If yes, amount: $ _____

32. List all other real estate owned by you or other members of your household:

Description of Property	Location	Acres	Assessed Value

33. List all checking accounts, savings accounts, safe deposit boxes, etc. you maintained alone or with someone else in the year for which an abatement is requested.

	Name of Bank	Average Monthly Balance
Checking Accounts		
Savings Accounts		
Safe deposit box		
Other		
(CDs, savings bonds, trust funds, etc.)		

34. List all life insurance policies in effect for the year in which an abatement is requested.

Company and Address	Face Amount	Current Value

35. List all other assets, such as motor vehicles, recreation vehicles, and machinery, etc., other than household furnishings.

Description	Date Acquired	Current Value

36. Did you apply for and receive a state property tax rebate under the Maine Residents Property Tax Program? If yes, amount of rebate: _____

37. List monthly (or average monthly) income from **all** sources, for **all** members of the household: (submit proof)

	Yes	No	Monthly Amount
TANF			
SSI			
Social Security			
Veteran's benefits			
Wages			
Unemployment compensation			
Worker's compensation			
Medicaid			
Business income			
Other income (child support, alimony interest insurance proceeds, income from relatives, etc.)			

Total ***monthly*** income from all sources: _____

Total ***yearly*** income from all sources: _____

G. LIABILITY INFORMATION

38. Average monthly expenses:

	Actual	Allowed by General Assistance
Mortgage (principal and interest)		
House insurance		
Property taxes		
Heat		
Electricity		

	Actual	Allowed by General Assistance
Water		
Sewer		
Cooking Fuel		
Telephone		
Food		
Clothing		
Personal Supplies		
Prescriptions		
Medical/Dental		
Life insurance		
Medical insurance		
Necessary transportation		
Loan payments		
Childcare		
Other		
TOTAL MONTHLY EXPENSES:		
TOTAL YEARLY EXPENSES:		

39. List all Debts

Name and Address	Purpose	Date Debt Incurred

40. Abatements for poverty and/or infirmity may be granted if the Town Council determines that you were unable to pay your taxes or contribute to the public charge in the year for which you are applying for an abatement. In your own words, state below your reasons for requesting this abatement, and why you feel you qualify for a property tax abatement.

SIGNATURES:

Date: _____

_____
Town Assessor

Date: _____

_____
Welfare Director

.....

DECISION

_____The abatement requested is allowed in the amount of _____.

_____The abatement requested is denied because _____.

Date: _____

_____ _____

_____ _____

_____ _____

_____

I understand that my signature on this application shall serve as authorization for the Town Council or its designee(s) to investigate the information contained in this application and supplementary questionnaire and any and all other information pertinent to its making a determination on this application. I further authorize the Town Council or its designee(s) to have access to certain records, be they confidential or not, including but not limited to financial institutions, Internal Revenue Service records, Maine Department of Taxation records, medical records and reports, hospital records and reports, Veterans Administration records and reports, Department of Human Services records and reports, and insurance records.

I hereby certify that all of the information in this application and supplementary questionnaire(s) is true to the best of my knowledge and belief.

Date: _____

_____
Applicant's Signature

Date: _____

_____
Spouse's Signature

Subscribed and sworn to before me this day.

Date: _____

_____
Notary Public

A decision on this application must be made by the Brunswick Council within 30 days, in accordance with 36 M.R.S.A., section 841. If you are aggrieved by the decision of the municipal officers, you may appeal the decision to the Brunswick Board of Assessment Review within 60 days.

APPENDIX 9h: Notice of Executive Session

FOR THE PURPOSE OF DELIBERATING OVER POVERTY ABATEMENT CASE

_____ PURSUANT TO (36 M.R.S. §§ 841 ET SEQ.)

Date: _____

Dear _____:

The Board of Selectpersons will be meeting in executive session to deliberate over your poverty abatement request.

Date: _____

Time: _____

Place: _____

Please notify _____ regarding whether you will be in attendance. Although the Board will be reviewing the information you have submitted on the application form, it is possible that the Board may wish to ask you further questions.

Please note that poverty abatement proceedings are conducted in executive session in order to maintain the confidentiality of your application. As a result, your name will not appear on public notices concerning the executive session nor will it appear on the ultimate decision.

Regardless of the outcome, the Board will issue a written decision within 30 days of the date of application unless otherwise agreed to in writing.

If you have any questions about this notice or the executive session, please contact me.

Sincerely,

_____
Administrator

_____
Municipality

APPENDIX 9i: Notice of Decision–Town of Anytown

June 16, 2013

Jill Smith
5 Mill Road
Anytown, Maine 01234

RE: Tax Abatement—Account #456, Map #1, Lot #2

Dear Ms. Smith:

At a meeting held on June 15, 2013, the Anytown board of selectpersons met to consider your application for a poverty tax abatement of the 2012 taxes assessed on property which you own on Mill Road, shown as Map #1, Lot #2 on the town's tax maps. After reviewing the information that you provided, the board made the following findings and conclusions:

FINDINGS: Ms. Smith is the owner of ½ acre of land and a modular home assessed as Map #1, Lot #2. This property is Ms. Smith's primary residence. It is subject to a $5000 mortgage. She is employed as a cashier at a local store earning $16,400 per year. She owns a 1990 Ford Escort that she needs to get to her job. She owns no other items of personal property of significant value. The applicant's 2012-tax bill is $475.

Ms. Smith's annual disposable income for the tax year in question was $16,400. The federal poverty level for a household of 4 is $16,450. Her annualized expenses, including mortgage obligation (excluding property taxes) for the 2012 tax year as shown on her application were for $17,800. At least $1,460 of those expenses were for regularly purchased commodities or services which the municipal officers ***do not*** *consider* ***basic necessities,*** i.e., needs that rank more important in priority than the application's property taxes. These include cable TV payments of $460 per year and telephone expenses of $1000 per year over basic rates, where there is no medical or work-related need for long-distance telephone communication.

Therefore, Ms. Smith's basic needs expenditure (excluding property taxes for the tax year in question) was:

$ 17,800. (total expenses)
- 1,460.(non-basic necessities)
$ 16,340. (basic necessities)

Therefore, her disposable annual income of $16,400 exceeded her necessary expenses by $60 (i.e., $16,400 - $16,340).

In the interim period between the close of the tax year in question and the date of this application, Ms. Smith's income and expense situation has not changed. A tax lien has just been recorded against her property and will foreclose in 18 months if it remains unpaid.

CONCLUSIONS: On an annual basis Ms. Smith's ***income of $16,400 exceeded her expenses for basic needs by only $60.*** Her income is $50 under the federal poverty level, her home is modest and she owns just enough land to satisfy the town's minimum lot size. She owns no items of personal property which could be easily converted to cash, other than the car, which she needs for transportation to work. She is not in imminent danger of losing her property because the tax lien is not due to foreclose for 18 months.

DECISION: The selectpersons ***grant an abatement of $415 (i.e., $475 - $60)*** to Jill Smith to be applied against her 2012 tax bill on Map #1, Lot #2, due to reasons of poverty. This amount reflects the $60 per year of excess income shown on her application. *Ms. Smith is advised to apply for the following tax relief programs: Maine Residents Property Tax Fairness Act, Maine Revenue Services and Homestead Exemption (application form must be filed with the municipal assessor).*

APPEAL: If you are dissatisfied with this decision, you have a right to appeal the decision to the town's board of assessment review ***within 60 days*** of receiving this decision. If you fail to appeal, the decision of the selectpersons is final.

Please call the town office at (207)_____-_____ if you have any questions.

Sincerely,

/s/_____

/s/_____

/s/_____
Selectpersons, Town of Anytown

APPENDIX 10: MMA's Website–General Assistance - Selected Resources

Maine Municipal Association

DHHS Hotline: GA Administrators, have questions? 1-800-442-6003

Required Amendments to General Assistance Ordinances
2013-2014 Ordinance: [right click on link and "save target as"]

Ordinance & Appendices [pdf] OR Ordinance & Appendices [Word]
Replace Appendices with updated below.

2013-2014 Ordinance Maximums:

- Maximums Memo 7/1/2013
- Ordinance Maximums, 2013 - 2014
  - Appendix A, 07/01/13 - 06/30/14
  - Appendix B,10/1/13 - 9/30/14
  - Appendix C,10/1/13 - 9/30/14
  - Appendix D, E, & F, 10/1/13 - 9/30/14
  - Summary Sheets
- Adoption of Ordinance Appendices A - C [PDF] Word Version 2013-2014

HUD Fair Market Rents 2014 for Existing Housing

GA Guide for Immigrants/Refugees and Limited-English Proficiency Persons

General Assistance Guide to Applicant Rights and Responsibilities

All Information Packets

Sample: GA/Confidentiality

GA Application and Instructions - Non-interactive GA Application & Instructions to print and fill in.

Related Links

- Links to Assistance Resources and Government Programs
- General Assistance Manual
- Maine Welfare Directors Association

Forms

sample Decision - Eligibility

sample Decision - Ineligibility

sample Narrative Case Record

sample Notice of Fair Hearing

sample Notice of Fair Hearing Decision

sample Request for Fair Hearing

sample Workfare Agreement

Confidentiality and Disclosure of Information Policy-Forms

2-1-1 Maine Resource Directory - a searchable database of community resources containing information on 3,000+ social services throughout the State of Maine.

sample form dealing with Burial or Cremation services, costs, City of Portland

sample General Information Disclosure Form

sample Information Confidentiality Policy-Agreement

sample Request for Confidential Information - Financial

sample Request for Confidential Information - General

sample Request for Confidential Information - Medical

SSI Interim Assistance (DHHS) [takes you to the MMA GA Manual, Appendix 18 - DHHS Information and Sample Forms]

U.S. Department of Health and Human Services Food Stamps - Basis of Issuance - (48 States and District of Columbia)

You are Entitled to a Free Interpreter - Poster - available for use in 20 languages

APPENDIX 11: Summary of Other Available Resources

It is important for GA administrators to be aware of other benefit programs and resources available to their clients. This is important for several reasons. First, an obvious reason, if the administrator can direct a GA applicant to apply for benefits outside of GA, this will reduce the applicant's need for GA. It is also important because these programs can help improve the overall well-being of the GA applicant. GA applicants often require a host of services and as a result GA administrators should not only provide GA but should also be prepared to guide clients to additional programs.

The following is a partial list and summary of the most common programs available statewide *(also refer to Appendix 10 for links from MMA's website)*:

Temporary Assistance for Needy Families (TANF)

TANF provides temporary financial assistance to families of needy, dependent children who are deprived of parental support or care because of the death, continued absence or incapacity (TANF/IC) of a parent, or the underemployment (TANF/UP) of the principal wage earner while the family works towards becoming self-supporting.

All individuals have the right to file an application for TANF benefits. An application is considered an application for Medicaid. Eligibility for financial assistance and for Medicaid is determined separately.

Individuals should be encouraged to file an application as soon as possible, since benefits will be calculated from the date of application or from the date of statutory eligibility, whichever occurs later.

As a condition of eligibility each applicant/recipient who is not exempt must participate in the ASPIRE-TANF Program which helps recipients reach the goal of self-sufficiently by providing support for retraining and employment (unless exempted).

NOTE: TANF applicants and recipients will receive benefits by an electronic coded debit card known as The Pine Tree Card. The card will be used to access benefits from a point of sale (POS) device at retail stores or an automatic teller machine (ATM) at banks.

TANF-Alternative Aid Assistance (AAA)

The Alternative Aid voucher payment is assistance to applicants who seek short-term help to obtain or retain employment. The intent of the program is to help families remain self-supporting by providing voucher payments worth up to three months of the TANF benefits for which they are eligible. The expectation is that by providing a larger amount of benefits in a shorter time period, the family will be able to obtain or retain a job and will not become dependent on the TANF program.

The Department will pay vendor payment(s) for the application month and the two subsequent months for which the family is eligible. The benefits will be authorized within 30 days of application. No cash benefit is paid to the family. Vendor payments are authorized after the expense has been confirmed.

Parents as Scholars (PaS)

The PaS Program is a student financial aid program based on need and limited to 2,000 parents who have dependent children deprived of parental support or care because of the death, continued absence, incapacity of a parent, or the under employment of a parent who is the principal wage earner.

Recipient and applicant families who qualify for TANF assistance on or after 6/20/97 may apply to participate in the PaS program instead of TANF. Individuals with marketable bachelor's degrees are ineligible for the Parents as Scholars

An enrollee must participate in a combination of education, training, study or work-site experience for an average of 20 hours per week in the first 24 months of the program. Aid under this chapter may continue beyond 24 months if the enrollee remains in an educational program and agrees to participate in either of the following options which are the result of Legislative action which becomes effective on September 18, 1999:

- Fifteen hours per week of work-site experience in addition to other education, training or study; or
- A total of 40 hours of education, training, study or work-site experience.

TANF Worker Supplement (TWS)

TWS is a TANF supplement available to working families who received TANF or PaS in 1 of the 3 months immediately preceding the month of ineligibility. Increased hours of work or increased earnings must have caused the closure. TWS is restricted to the purchase of food products, like the Federal Food Supplement Program.

TWS is available in the following situations:

- For TANF/IC only, if the number of hours worked by the individual who had been determined incapacitated increases to more than 20 hours per week.
- For TANF/UP only, if the number of hours worked by the principal wage earner increases to more than 130 hours per month.
- For a family with a parent who is sanctioned from the assistance grant, if the sanctioned parent goes to work for 30 hours or more.

- If an increase in earnings or hours of work that occurs in conjunction with another change that causes ineligibility.

TWS is a food assistance benefit that can only be used for the types of food purchases allowed by the Food Stamp Program. Eligibility for TWS will continue for 3 consecutive years if not interrupted by a change in circumstances beginning with the first month of regular basic TANF ineligibility. Families applying for TWS after the first month of eligibility forfeit those months. There will be no retroactivity.

TANF-Emergency Assistance Program (EA)

In addition to the basic TANF and PaS programs, the Department of Health & Human Services administers a limited program of Emergency Assistance. In the event of lack of funds as outlined by the Legislature, the program will end.

Payment of services through the Emergency Assistance program is limited to children and their families who are threatened by destitution or homelessness because of emergency situations. The program does not cover all emergencies and there must be a reasonable expectation that the emergency can be alleviated through the use of Emergency Assistance funds.

The Emergency Assistance program is not a substitute for the locally administered General Assistance program, although it can be a supplement to that program and a potential resource. Eligibility is not dependent upon denial of General Assistance or the complete expenditure of General Assistance benefits prior to application. The Department of Health and Human Services will distribute application forms to municipalities upon request. Municipalities should consider having this form in the town office to expedite the application process.

Assistance will be limited to one consecutive 30-day period in any consecutive 12-month period. There are various limits based on the category of emergency and particular items or services needed. The following are situations deemed to be emergencies:

- Disasters such as fire, flood, or storm causing damage and/or loss of property and goods.
- Inadequate, broken or worn conditions of a well, chimney, septic system, furnace, heating stove, or a related essential service which infringes upon a family's ability to cope with the elements.
- The need for housing due to condemnation of structure, domestic violence, unsafe or unhealthy conditions for the child(ren) which has been certified by a public official, or actual eviction not caused by misuse of property or other types of willful disturbance by applicant, relatives or their guests.

- Actual or potential shut-off of electricity, gas, bottled gas, or water and sewer bills. (Potential shut-off shall means receipt of termination of service notice from the respective utility.)

- Inability to perform daily living functions due to a physical or mental incapacity requiring special clothing or equipment not covered by Medicaid or Vocational Rehabilitation.

Supplemental Nutrition Assistance Program (SNAP)

Maine's SNAP is called the Food Supplemental Program. This program helps low-income people buy the food they need for good health. Individuals are eligible if they work for low wages, are unemployed or work part time, receive welfare or other public assistance payments, are elderly or disabled and live on a small income, or are homeless.

The amount of benefit received is based on the U.S. Department of Agriculture's Thrifty Food Plan, which is an estimate of how much it costs to buy food to prepare nutritious, low-cost meals for your household. This estimate is changed every year in October to keep pace with food prices.

To apply individuals need to visit or call their local DHHS Office for Family Independence and complete an inter-active interview. If found eligible applicants will receive benefits by an electronic coded debit card known as The Pine Tree Card.

Child Support Enforcement

Administered by DHHS, the Division of Maine Child Support: Enforcement and Recovery (DSER) provides support enforcement services for all children who are in need of securing support from their parent(s) regardless of their place of residence, circumstances, and whether or not they qualify for other forms of assistance. Support enforcement services include locating missing parents to enforce child support obligations or establish paternity, establishing child support obligations, collecting and enforcing support obligations, establishing paternity, and enforcing health insurance or medical expense obligations. Because child support promotes a self-supporting family GA administrators should always direct parents to DSER if they are aware of a non-supportive parent and/or spouse situation. Child support should always be treated as an available resource for purposes of GA. (Contact telephone # 1-800-442-6003).

Hospital Free Care

No hospital may deny services to any Maine resident solely because of the inability of the individual to pay for those services. Every hospital must adopt and adhere to a free care policy that provides for a determination of inability to pay, defines the service to be provided as free care, and takes into account other sources of payment for care. Income eligibility guidelines for free care are to be based on one hundred and fifty percent (150%) of the Federal Poverty Level Guidelines. Administrators should also note that the free care provisions govern hospital–related services only, and so the free care applicant may still face doctors' bills and bills for outpatient services in

addition to prescriptions even after being found eligible for free care. GA administrators made find it necessary to contact the hospital for specific rules and obligations regarding free care.

Community Health Centers & Clinics

Community health centers and clinics provide medical services to people on a sliding fee scale. The centers do not have their own prescription drug program, but they may be able to provide samples of the medication. Most centers will assist patients enroll in existing patient assistance programs provided by drug companies (see below). For a list of centers in Maine see http://www.biin.org/uploads/Community_Health_Centers.pdf.

Drug Company Patient Assistance Program

Many drug companies have special programs to help people who cannot afford the cost of their brand name prescription drugs. Physicians often know about these programs and should be asked about the availability of drug assistance through such private companies. Because these are not public benefit programs, acceptance is entirely up to the drug company. These programs do not cover generic drugs. Two helpful websites are:

- www.needymeds.com which has up-to-date information about patient assistance programs, a list of drugs that are covered, and a list of the drug companies and;
- http://www.prescriptionassistanceprogram.com assists patients who may qualify to enroll in one or more of the many patient assistance programs available providing prescription medicine free-of-charge to individuals in need, regardless of age, if they meet the sponsor's criteria.

Maine's Low Cost Drug for the Elderly and Disabled Program

Maine's Low Cost Drugs for the Elderly or Disabled Program helps pay for prescription drugs for people whose income is no more than 185% of the federal poverty level. Individuals must be 62 or older or age 19 and older and medically qualified for Social Security Disability Income. If an individual spends more than 40% of his/her income on prescription drugs, the income level increase. To request an application or for more information about the medications covered have individuals call 1-866-796-2463 or TTY Maine relay 711. Additionally, the local Area Agency on Aging can help individuals with income guidelines and with applying, they can be reached at 1-877-353-3771.

Maine Rx Plus Program

Mainers of all ages with income under 350% of the federal poverty level may be eligible for prescription drug discounts through the Maine Rx Plus Program. To apply individuals can call 1-866-796-2463 or TTY (207)287-1828. Once enrolled, individuals will receive a benefit card to show at a participating pharmacy in Maine for the discount.

Low Income Home Energy Assistance Program

This program, commonly referred to as "LIHEAP," provides assistance to low-income homeowners and renters to pay for heating costs. The amount of assistance is based on household size, income, energy costs, and other factors. Those that have heat included in their rent may still apply for LIHEAP. Additional help may be available for homeowners and renters with less than a 3-day supply of heating fuel or are in danger of having utility services disconnected and have no means to pay the energy company. Applications for LIHEAP are accepted from August 15th through April 30th of each year through your local Community Action Program (CAP). (The names and addresses of Maine's CAP agencies are found at the end of this Appendix).

Central Heating Improvement Program (CHIP)

Central Heating Improvement Program (CHIP) provides grants to repair or replace central heating systems that serve low-income households. CHIP funds may be used only to repair or replace dangerous, malfunctioning or inoperable heating systems that pose a threat to health and safety. There are grants available for LIHEAP-eligible owner-occupied homes and for rental properties occupied by LIHEAP-eligible tenants. There may be a waiting list for this program. When an individual applies for LIHEAP as discussed above they are automatically considered for CHIP assistance as well.

MaineHousing's Weatherization Program

MaineHousing's Weatherization Program provides grants to LIHEAP-eligible homeowners and renters to reduce energy costs by improving home energy efficiency. Weatherization improvements may include insulation, weather-stripping, caulking, and some safety-related repairs. There be a waiting list for this program. When an individual applies for LIHEAP as discussed above they are automatically considered for the Weatherization Program as well.

Temporary Housing Assistance Program (THAP)

The Temporary Housing Assistance Program provides emergency assistance in obtaining housing to persons who are homeless or who are in danger of becoming homeless. THAP funds generally may be used only for payment of security deposits, rent arrearages and forward rent payments, payment for other expenses necessary to prevent eviction or to establish a person in a residential rental unit. This program is also administered by the Maine State Housing Authority and CAP agencies.

MaineCare & Cub Care

MaineCare is Maine's Medicaid program, which is a welfare health benefit program authorized by federal law as part of the Social Security Act and administered by DHHS. There are strict eligibility criteria based on income and assets. MaineCare provides direct payments to health care providers for eligible services.

The Cub Care program was established to provide health coverage for low-income children, under 19 years of age, who are ineligible for benefits under MaineCare but whose family income meets the higher allowable limits of the Cub Care program.

Individuals should visit a regional DHHS office to determine financial eligibility. Some MaineCare services, such as nursing home care and in-home service require both financial and medical eligibility determined by the Office of Elderly Service and Office of Family Independence.

Medicare

Medicare is a health insurance program for people 65 years of age and older. Certain people younger than age 65 can qualify for Medicare, too, including those who have disabilities, permanent kidney failure or amyotrophic lateral sclerosis (Lou Gehrig's disease). The program helps with the cost of health care, but it does not cover all medical expenses or the cost of most long-term care. Individuals may purchase a Medicare supplement policy (called Medigap) from a private insurance company to cover some of the costs that Medicare does not.

Medicare has four parts:

- Part A (Hospital Insurance): helps pay for inpatient care in a hospital or skilled nursing facility, some home health care and hospice care.
- Part B (Medical Insurance): helps pay for doctors' services and many other medical services and supplies that are not covered by hospital insurance.
- Part C (Medicare Advantage): allows individuals with Parts A and B to receive all their health care services through one of the provider organizations under Part C.
- Part D (Prescription Drug Coverage): helps pay for medications doctors prescribe for treatment.

Contact telephone # 1-800-633-42227 or TTY 1-877-486-2048, or individuals can apply at their local Social Security office.

Social Security

This is a federal program administered by the Social Security Administration. It is funded through Social Security taxes paid by workers, employers, and people who are self-employed. It does not have eligibility criteria based on income or assets. It is available to people who retire at age 65 (reduced benefits are available to those who retire at 62 years of age); or who have become totally disabled prior to retirement age and have reached a "fully insured status." Certain dependents are eligible under specific situations, including a dependent minor child whose parent died, or a widow(er) caring for the deceased worker's minor child.

Individuals can apply in person at any Social Security office, online at www.ssa.gov, or by calling 1-800-772-1213, or TTY 1-800-325-0778.

Supplemental Security Income (SSI)

The federal government primarily funds this program, although some state funds supplement SSI benefits in Maine. It is an income maintenance program for low-income people who are aged, blind, or disabled and who have little or no other income or resources. In order to qualify due to a disability the person must show that she/he is unable to return to her/his former work and is unable to do any other type of work. The disability must be expected to last at least 12 months or result in death.

NOTE: Municipalities should familiarize themselves with this program since it is set up with a reimbursement provision (lien) for municipalities that provide interim GA to a client awaiting SSI benefits. GA applicants must sign appropriate forms in order for this reimbursement to occur. Municipalities should contact DHHS at 1-800-442-6003 for information and forms necessary to file a lien on a GA recipient's SSI benefits.

Unemployment Benefits

Unemployment insurance provides temporary, partial wage replacement to workers who are unemployed through no fault of their own. There are three unemployment programs in Maine: (1) State Unemployment Insurance (UI) for workers who have lost their jobs for reasons beyond their control; (2) Workshare for workers at qualified businesses experiencing a temporary slowdown at work; and (3) Other Special Programs for workers laid-off from the military or Federal Government, people who lost their jobs due to foreign trade and natural disasters, and laid-off workers enrolled in training.

To be eligible for Unemployment Benefits people must have worked a certain amount of time in the previous year and earned a base amount of money in each of two calendar quarters in the year prior to the quarter in which they apply. People must be unemployed at least one week prior to applying for Unemployment Benefits. If a person qualifies, she/he must fulfill certain eligibility conditions in order to continue to receive benefits. These include being "able and available for work", and registering for work at an unemployment office. People who quit work without just cause, were discharged for misconduct connected with their work, refuse to accept suitable work, knowingly make false statements in order to receive the benefits, or who are out of work due to a strike or other labor dispute are not eligible for unemployment benefits.

Unemployment Claims Center # 1-800-593-7660.

Winter Disconnect Rule

Maine's Public Utilities Commission (PUC)'s Winter Disconnection Rule runs from November 15th to April 15th. During the six-month "winter" period, Mainers who contact their electric or gas utility company, or the PUC's Consumer Assistance Division (CAD), to make reasonable monthly

payments will not be disconnected. CAD will work with consumers to establish affordable monthly payment arrangements, and to find financial assistance for paying electric or gas bills.

CAD will also help consumers access available financial assistance through program and protections such as the Low-Income Assistance Program, a year-round assistance subsidy that provides utility bill discounts or credits to low-income fam ilies and the Energy Crisis Intervention Program for families which have received a disconnection notice and cannot negotiation or honor an existing payment plan.

Customers who have difficulties paying their electric or gas bills should contact their utility to address the problem. If they are not satisfied with the result, they should call CAD at 1-800-452-4699.

CMP's Electricity Lifeline Program (ELP)

CMP's ELP offers help with electricity bills for eligible customers who may receive a benefit based on household income and estimated electricity usage. Individuals who are CMP customers and are eligible for LIHEAP (see above) may qualify. Individuals may also qualify if they live in subsidized housing and qualify to participate in the oxygen pump and ventilator program, which provides financial assistance for qualified, low-income customers who use an oxygen pump/ventilator at least 8 hours each day. Application for the ELP is made through local Community Action Programs (see above under LIHEAP).

Bangor Hydro and Maine Public Service's Low Income Assistance Program (LIAP)

Bangor Hydro and Maine Public Service's LIAP offers a one-time annual benefit for customers who meet income guidelines based on the federal poverty guidelines. Individuals who are Bangor Hydro and Maine Public Service customers are eligible who are certified through their LIHEAP application (see above) made through their local CAP office. Customers who are enrolled in LIAP and use an oxygen pump/ventilator for at least 8 hours each are may be eligible for a monthly credit to their account.

Other utility services companies may offer similar programs and individuals should be encouraged to contact them directly or contact their local CAP office for assistance.

Miscellaneous Tax Relief Programs

In addition to municipal tax relief through "poverty abatements" (see Appendix 9), municipal officials can provide residents with information regarding other types of property tax relief programs. There are several available programs that, either in addition to the poverty abatement process or in tandem with it, may offer relief to a taxpayer. These other programs include:

Maine Property Tax Fairness Credit and Rent Refund "Circuitbreaker" Program

Contact: Maine Revenue Services (207) 624-7849

Homestead Exemption

Application is filed with the municipal assessor

Veteran's Widow, Widower, or Minor Children Tax Exemption (*see* 36 M.R.S. § 841 (4))

Contact: Maine Revenue Services (207) 624-7849

Estates of Veterans Tax Exemptions (*see* 36 M.R.S. § 653)

Contact: Maine Revenue Services (207) 624-7849

Estates of Legally Blind Tax Exemption (*see* 36 M.R.S.A § 654)

Contact: Maine Revenue Services (207) 624-7849

Community Action Program Offices

Aroostook County

Aroostook County Action Program (ACAP)
771 Main St., Presque Isle – (207) 764-3721
40 Alfalfa Ave., Fort Kent – (207) 834-5135
91 Military St., Houlton – (207) 532-5311
88 Fox St., Madawaska – (207) 728-6345

Cumberland County

The Opportunity Alliance
500 Monument Square, Portland - (207) 523-5049

Franklin County

Western Maine Community Action (WMCA)
20A Church St., East Wilton – (207) 645-3764

Lincoln & Sagadahoc Counties

Midcoast Maine Community Action (MMCA)
34 Wing Farm Parkway, Bath – (207) 442-7963

Oxford & Androscoggin Counties

Community Concepts – (207) 743-7716 or TTY (207) 783-7951
17 Market St., South Paris
240 Bates St., Lewiston
284 Main St., Wilton

Piscataquis, Penobscot & Knox Counties

Penquis
262 Harlow St., Bangor – (207) 973-3500 or TDD (207) 973-3520
50 North St., Dover-Foxcroft – (207)564-7116
40A Main St., Lincoln – (207) 794-3093
315 Main St. Ste 205, Rockland – (207) 596-0361

Somerset & Kennebec Counties

Kennebec Valley Community Action Program (KVCAP)
97 Water St., Waterville – (207) 859-1500
28 Mary St., Skowhegan – (207) 474-8487
22 Armory St., Augusta – (207) 622-4761

Waldo County

Waldo Community Action Program (WCAP)
9 Field St., Belfast – (207) 338-6809

York County

York County Community Action Corporation (YCCAC)
6 Spruce St., Sanford – (207) 324-5762
15 York St., Bldg 9, Biddeford – (207) 283-2402
120 Rogers Rd., Rm A102, Kittery – (207)439-2699

Washington & Hancock Counties

Washington Hancock Community Agency (WHCA)
248 Bucksport Rd., Ellsworth – (207) 664-2424
7 VIP Dr., Machias – (207) 259-5015

Important Phone Numbers

Maine Municipal Association	1-800-452-8786
Department of Health and Human Services - General Assistance Unit	1-800-442-6003
Public Utilities Commission—Community Assistance Division	1-800-452-4699
Legal Services for the Elderly	1-800-750-5353

Pine Tree Legal Assistance, Inc.: see Appendix 15 for locations and telephone numbers.

APPENDIX 12: Workfare Agreement

Workfare Agreement

I understand that persons who are able to work and need general assistance may be required to work for the municipality or for a designated organization as a condition of receiving general assistance. I understand that by signing this agreement form, I agree to perform work for the municipality in return for any assistance I am granted.

I understand that unless I have good reason, I must satisfactorily perform the workfare assignment as a condition of receiving future General Assistance or as a condition of receiving General Assistance currently being granted to me pursuant to the "workfare first" policy described below. I further understand the following:

- that any amount of the workfare assignment that is not performed because I am temporarily unable to perform the assignment for just cause reasons shall be reassigned.
- that in no circumstances will the number of hours I work exceed the value of the assistance I receive computed at the rate of at least the state's minimum wage.
- that in addition to being an eligibility criteria, the value of any workfare I perform will reduce (in proportion to the value of workfare performed) the amount I am ultimately responsible to reimburse the municipality.
- that the municipality may not assign any work that would interfere with my: existing employment, ability to accept work, ability to attend a job interview, or ability to participate in an approved vocational training program. In addition, I understand that I cannot be required to work for a nonprofit organization if that work would violate religious beliefs.
- that if I refuse to perform work or fail to perform work for the municipality without just cause, I may be disqualified from receiving assistance for 120 days, unless I become employed or regain my eligibility in accordance with the procedures described in the municipal General Assistance ordinance.
- that a refusal or failure to perform a workfare assignment includes:
    - not reporting to the assignment, without just cause;
    - not completing the assignment, without just cause;
    - willfully failing to perform the assignment without just cause; or
    - willfully performing the assignment below average work standards without just cause.

"**Workfare first" policy**. I understand that under the authority of 22 M.R.S.A. § 4316-A(2)(D), the administrator may, in accordance with the following guidelines, require me to perform a workfare assignment prior to the actual issuance of the non-emergency general assistance benefit conditionally granted.

1) In no circumstance will emergency general assistance for which I am eligible be withheld pending the satisfactory performance of workfare. I understand emergency general assistance to be assistance that is immediately necessary to prevent a dangerous or life-threatening situation.

2) I understand that I have a right under this policy to be provided a written decision prior to performing any workfare for the municipality associated with my request for assistance.

3) I understand that in addition to any disqualification penalty that may apply, the consequences of refusing to perform or completely failing to perform the "workfare first" assignment, without just cause, or performing the entire workfare assignment below the average standards of that job, without just cause, will be the termination of the entire general assistance grant.

4) I understand that if some of the workfare first assignment is satisfactorily performed but there has been a failure to perform the remainder of the assignment, without just cause, the administrator shall issue a grant of general assistance in the amount of the number of workfare hours satisfactorily performed times the hourly rate used to calculate the duration of the workfare assignment. In addition to any disqualification penalty that may apply, the remaining value of the conditionally issued general assistance grant shall be reassigned.

6/20/00

Questions to be answered by the workfare participant:

1) Do you agree to perform the following workfare assignment for the municipality*(Municipality enter all relevant information)*:

(Check One: Yes ☐ No ☐)

If "no," please explain.

2) Do you agree to perform the above workfare assignment for the municipality for _____ hours at the rate of $_____ an hour in return for the assistance you are granted? (Check One: Yes ☐ No ☐)

If "no," please explain.

3) Do you have the full physical, mental, emotional, and medical ability to perform workfare, with or without a reasonable accommodation? (Check One: Yes ☐ No ☐)

If "no," please explain.

4) Have you ever been disciplined for or had any safety problems in your jobs? (Check One: Yes ☐ No ☐)

If "no," please explain.

Declaration of the Workfare Participant

To my knowledge there is no reason I would be prevented from accepting or completing my workfare assignment. This workfare agreement and its conditions have been explained to me and I understand what my responsibilities are under the municipal work program. I understand that I have a right to review the municipal General Assistance ordinance and a copy of Maine's General Assistance statutes.

I certify that the above information is true, correct and complete and that no information has been knowingly withheld. I understand that false representation is a violation of state law and may result in my being ineligible to receive assistance for 120 days and prosecution for committing a Class E crime.

_____ _____

Applicant's Signature Date

I hereby certify that I have informed the applicant of his/her rights and responsibilities under the municipal workfare program.

_____ _____

Administrator's Signature Date

6/20/00

APPENDIX 13: Notice of Lien (In Anticipation of a Disposition of Accident/Injury Claims)

City/Town of _____

I, _____ hereby agree to reimburse the City/Town of _____ , Maine for any and all general assistance benefits provided to me and/or my family during a period of incapacity and up to the time of a financial settlement, due to an accident that occurred _____

_____

_____

_____

_____

and I also authorize and direct my attorney, _____ or any successor attorney I may retain to reimburse the City/Town of _____ directly for any and all general assistance costs incurred by myself and/or my family from the date of the accident to the date of the financial award, costs or legal costs reasonably incurred as a result of (1) the accident and/or (2) any claim, action, settlement or litigation directly resulting from the accident.

This agreement shall serve as a lien notice for the foregoing purpose.

Signed: _____

Witnessed: _____

Date: _____

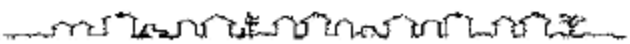
APPENDIX 14: The Rights of Tenants in Maine-Pine Tree Legal Assistance

PINE TREE LEGAL ASSISTANCE

The Rights of Tenants in Maine

Find more easy-to-read legal information at www.ptla.org

Contents



PTLA #639 (09/11)

How To Use This Handbook

This handbook gives you a quick look at Maine's landlord-tenant laws as of September 2011. The law is always changing. Also, you may need more information. If you have a problem with your landlord, ask for legal help. Call Pine Tree Legal or a lawyer you know.

If your rent is subsidized, read the "Subsidized Housing" section at page 23 first. **If you own your own mobile home and rent a lot**, go to "Mobile Home Parks" at page 23.

This handbook sometimes refers you to **Small Claims Court**. Call Pine Tree Legal or your local District Court for instructions.

Area Pine Tree Offices

Office	Telephone
Augusta	622-4731
Bangor	942-8241
Machias	255-8656
Lewiston	784-1558
Portland	774-8211
Presque Isle	764-4349

Multi-lingual language line: 774-8211
TTY: 711

Tips Before You Rent

- ✓ **Read the lease or rental agreement carefully before you sign or put money down.** Ask about anything you do not understand. Look for hidden charges or penalties. If you sign the lease, you may be stuck paying those charges.
- ✓ If something is important to you, get it in writing. Don't count on an oral promise.
- ✓ Make a list of major problems in the apartment. Include the condition of walls, floors, windows, and other areas. Try to get the landlord to sign your list. This will help protect you when it comes time to move out.
- ✓ If the building was built before 1978, beware of possible lead-based paint problems. Owners of these older buildings must tell you of any known lead-based hazards and show you any relevant records before you rent. Your landlord must give you a form notice explaining the dangers of lead-based paint. He must also give you a government pamphlet called "Protecting Your Family from Lead in Your Home." (See more at page 9.)
- ✓ Find out who pays for hot water, heat, electricity, parking, snow removal, and trash disposal.
- ✓ Find the utility controls. Ask questions. Where is the thermostat? Who controls it? Where is the electric box? Where is the hot water heater?
- ✓ You have the right to know the energy costs for the living unit before you rent. If you will be paying an energy bill (such as electric or heating oil), ask the energy supplier for billings on your unit for the past 12 months. The company must tell you. Or ask to see the landlord's "Energy Efficiency Disclosure Statement." (Contact the Maine Public Utilities Commission 1 (800) 452-4699 for more information about this law.)
- ✓ Be sure that all utilities and appliances are working right. Make sure the landlord agrees to fix appliances, furnace and all other building systems.

- ✓ Bedbugs are becoming a major issue in some parts of Maine. It is against the law for a landlord to rent a living unit with bedbugs. If you ask about when the building was last treated and declared free of bedbugs, the landlord must tell you.

- ✓ Your landlord must show you a written "smoking policy." This tells you where smoking is prohibited and identifies any smoker-friendly areas. Your landlord can include this in the lease or give you a separate notice to read and sign. You have the right to know this information before you pay a deposit or commit to a rental contract.

- ✓ If you share rent, remember that the landlord can charge you for all of the rent if your roommates don't pay their share.

- ✓ Try to talk with another tenant about the building and the landlord.

- ✓ Check about off-street parking, public transportation, and stores. Try to check the neighborhood at night.

- ✓ Check to see that all the windows and doors can be locked and are not broken. Are there window screens?

- ✓ Your landlord's insurance probably does not protect you from damage or loss of your furniture or other property. Consider buying tenant's insurance if you want this protection.

- ✓ Be careful about putting money down to "hold an apartment." If you decide later not to rent it, the landlord may refuse to return your money. You can sue him in Small Claims Court, but this will take time. Also, depending on how the judge interprets your agreement, you may not get all of your money back. For example, the court may decide that you put the money down as a security deposit. (See section on security deposits at page 4.)

- ✓ If a landlord suggests that you buy a surety bond, instead of paying a security deposit, be careful. A few basic rules about surety bonds:

  1. You cannot be forced to buy one. It is your choice.
  2. You will not get back the money you pay for the bond, even if you owe the landlord nothing when you move out.
  3. Although a surety bond can save you money in the short-run, it may cost you more in the long-run if you leave owing rent or damages. The surety company can choose to sue you for the money it pays to the landlord under the bond.
  4. Buying a bond will not save you from getting a bad mark on your credit report, if you leave owing the landlord money. Contact Pine Tree Legal for more information.

- ✓ **Get something to keep your records in. Keep in your file:**

  - ❑ your lease or rental agreement
  - ❑ security deposit receipt
  - ❑ dated list of things wrong with the apartment
  - ❑ rent receipts (or cancelled checks)
  - ❑ landlord's address and phone number
  - ❑ all other papers about your tenancy

Types of Rental Agreements

Leases

The agreement you make with your landlord affects what rights you will have. You may sign a

written agreement called a lease. A lease lists the names of the landlord and tenant, the address of the apartment, the length of the lease, and the day the rent is due. Most leases contain much more than this. Read these "extra conditions" carefully and understand them before you sign. This handbook will give an idea of what to look for in a lease.

If you sign a lease, be aware that it sets out the rules you and your landlord agree to follow. For example, it will probably say whether the landlord can evict you before the lease ends, what reasons he must have, and what kind of notice he must give you. If the landlord is trying to evict you, a judge will look at what your lease says to decide the case. If something in a lease is grossly unfair to you, a judge **may** say that it can't be used against you. But **usually** your rights depend on what the lease says.

Note: If you have a written agreement that does not have a "lease term" (a specific amount of time you will be renting), then you have a "rental agreement," not a lease. Our advice to you is the same. **Read the agreement and understand it before you sign!**

A new statute, effective September 2011, clarifies that either the landlord or the tenant can choose to end the lease if the other party has "materially breached" the lease. This requires a written 7-day notice, served in-hand, or, after 3 good faith efforts, mailed by first class mail, with a copy left at the other party's home. Read more about landlord's duty to seek a court order before evicting a tenant at page 14 "Evictions."

The Maine Attorney General's office posts a "model lease" form that landlords and tenants can use for reference: *maine.gov/ag/dynld/documents/clg16.pdf*

Tenancies at Will

When you rent without a lease, you become a "tenant at will." Maine law gives you certain rights we will tell you about here. For example, to evict you, your landlord must give you time after a written notice and must get a court order if you are still not out. Read more about this under "Evictions" at page 14.

Hotels, Motels, Inns, and Rooming Houses

Generally, if you are staying in a hotel or motel, you are not a tenant and do not have the rights of a tenant. A motel owner can evict you on short notice and without going to court.

If you live in a rooming house, are you a tenant? This is a gray area of the law. The owner may say that you are not a tenant because she has an "innkeeper's license" or runs a "lodging house." But there is more to it. If the owner acts like a motel owner by:

- providing clean sheets and towels
- cleaning your room
- signing guests in and out in a registry
- renting rooms by the day, rather than by the month

then you are probably not a tenant. But if the owner does **not** do these things, then he is probably a landlord, and you **do** have the rights of a tenant.

If you live in an inn or rooming house and you are not sure about your rights, call Pine Tree Legal (page 2).

Security Deposits

What is a security deposit?

A security deposit is money you give to your landlord when you move in. Your landlord can use it to cover any

unpaid rent or damages. You may not use your security deposit to cover your last month's rent unless your landlord agrees.

NOTE: A surety bond is very different from a security deposit. If your landlord suggests that you buy a surety bond, read our tips at page 3.

How much can my landlord charge for a security deposit?

Your landlord cannot charge more than two times your monthly rent. If you live in subsidized housing, your security deposit should be much less. Check with your housing authority.

Does my landlord have to return my security deposit to me?

If you owe back rent or you have damaged your apartment, your landlord may deduct those costs from your security deposit. If you owe your landlord more than the amount of your security deposit, he may sue you in court.

Does my landlord have to pay me interest when returning my security deposit?

No, not unless you both agreed to this. If you live in subsidized housing, check your lease or ask the housing authority. Your landlord **may** have to pay interest on your deposit. (See page 24 for mobile home park rules.)

Can my landlord keep my security deposit to pay for routine upkeep?

No, your landlord **cannot** keep your security deposit for "normal wear and tear." Examples of "normal wear and tear" could be:

- a worn carpet
- chipped paint
- worn finish on wood floor
- faded or dingy paint

This means that your landlord cannot charge you for routine upkeep, such as periodic cleaning and painting.

The landlord can deduct the cost of fixing damages which are beyond "normal wear and tear." Examples of these damages could be:

- broken windows
- holes in the wall
- leaving trash or other items that have to be thrown away
- leaving your apartment so dirty that it's unhealthy or unsafe

If your apartment is damaged by a storm, a fire, or a vandal, tell your landlord right away. He cannot charge you for the repairs if you or your guests did not cause the damage. It is also a good idea to make a police report.

What kind of notice do I have to give if I am moving?

If you are a tenant at will (no written lease), you must give your landlord a 30 day written notice. The notice period should end on a rent day. You and your landlord can agree to a shorter notice period, if you agree in writing.

If you have a lease, read it to see what kind of notice you must give.

If you do not give the right notice, your landlord may try to charge you for time after you move. If you have a lease, she may try to charge you rent for the rest of the lease term. Again, this will depend on what the lease says.

Your landlord must try to re-rent your apartment as soon as she knows you have moved out. If she re-rents your apartment

right away, she can only charge you for the time you were there and the time it took her to find a new tenant. For example, your rent is $500 a month and you moved out on the 10th day of the month without notice. Your landlord re-rents the apartment on the 15th of the month. You owe $250, or half a month's rent. Your landlord may also charge you reasonable expenses for re-renting the apartment if you did not give the right notice.

Note: If you are moving out because your landlord has "substantially breached" the lease, the rules are different. You must give the landlord a written 7-day notice, served in-hand, or, after 3 good faith efforts, mailed by first class mail, with a copy left at the landlord's home. The notice should explain your intention to leave based on the landlord's failure to uphold his duties under the lease. If you follow these rules, then the lease ends, and you have no more responsibilities under the lease.

When does my landlord have to return my security deposit?

Your landlord must either return all of your security deposit or send you a letter telling you why he is not giving some or all of it back. He must send this letter to your "last known address." Give your landlord your new address, or make sure your mail is being forwarded so that you will get the letter.

If you are a tenant at will (no written lease), your landlord must give back the deposit or send you the letter within **21 days** after you move out and return the key. **If you have a lease**, check to see what it says. If there is nothing in the lease about this, or if the lease gives more than 30 days, then your landlord has **30 days** to return the deposit. This is the legal limit.

What can I do if my landlord does not return my security deposit?

⇒**Step One**

Contact your landlord and ask her to give back your deposit.

⇒**Step Two**

If the 21 or 30 days has gone by and you still don't have the deposit, send your landlord a letter asking for return of your deposit within 7 days. Write that if your deposit is not returned, you will bring legal action. Your landlord should return your full deposit. (We have a form letter you can use. Call Pine Tree Legal.)

⇒**Step Three**

Sue your landlord in Small Claims Court. Ask your District Court clerk for a pamphlet explaining the steps. In your written complaint, ask the Court to order your landlord to pay you **two times** the deposit amount plus your court costs. The judge will order this unless the landlord can show at the court hearing that she had good reason not to return the deposit to you.

Note: If your landlord lives in your building and there are 5 living units or fewer, then you can still sue to get your deposit back but you cannot get twice that amount.

If I take my landlord to court, can he/she sue me?

Keep in mind before you sue that if you owe your landlord money, he will probably bring these claims against you to counter your claim for return of the deposit. So, if you owe him more money than he owes you, suing in court is probably not a good idea. On the other hand, if he sues you, you can "counterclaim" for return of your deposit and for any other money he owes you.

Does my landlord have to keep my security deposit in any special account?

Yes. He has to keep security deposits in an account that is separate from his other accounts and safe from his creditors. This includes protecting your money from a lender who forecloses on the building and from a trustee in bankruptcy. If you ask, the landlord must tell you the name of the bank where the money is deposited and the account number.

What if my landlord doesn't follow these "separate account" rules for protecting my deposit?

You can take your landlord to court. If you win you can get:

- "actual damages" (your losses)
- $500, or
- one month's rent,

whichever is greatest, plus your court costs. Also, the court can order the landlord to pay your lawyer's fees.

This right to sue starts on June 1, 2010 for all deposits paid after that date. For security deposits paid before that date, you can sue your landlord if he violates the rules after October 1, 2010. (This new law gives landlords an extra four months to bring pre-existing accounts into compliance.)

What if my landlord sells my building?

If your building is sold (or passes to a new owner for any reason), your landlord must give your security deposit to the new owner or give it back to you. If he gives it to the new owner, he must mail you a notice with that person's name and address and how much money was passed on to him. He can deduct charges for back rent or damages.

Remember, if you follow these tips you will have a better chance of getting your security deposit back.

- ❑ Get a payment receipt and keep it.
- ❑ When you move in, make a list of the defects. Keep the list and give a copy to your landlord.
- ❑ Clean your apartment and take away all of your things, including trash.
- ❑ Take pictures or write down what is right and what is wrong with the apartment when you leave. Have a witness look over the apartment just before you move out. (He can testify in case you have to go to court).
- ❑ If you don't get the deposit back right away, leave your new address with the landlord (so he can send you your deposit).
- ❑ Try not to owe any rent when you leave.

Rent

Should my landlord give me a receipt when I pay my rent?

If you pay any of your rent in cash, the landlord must give you a receipt at the same time. The receipt must include:

- the date
- the amount paid
- your name
- what the payment was for
- the landlord's signature

If you live in a building with 5 apartments or fewer and your landlord lives there, he does not have to give rent receipts. If your landlord won't give a receipt, try to pay with a check or money order and keep your own records.

Can my landlord charge interest on a late payment of rent?

Yes. If you do not pay your rent within 15 days after it is due, your landlord can charge a late fee. The fee cannot be more than 4% of one month's rent. For example, if your rent is $800 per month, the late charge cannot be more than $32. **To charge a late fee, your landlord must tell you about it in writing when you agree to rent from him.**

General Assistance

Does my landlord have to accept general assistance (GA) rent vouchers?

Yes. Your landlord cannot refuse your rent just because the town is paying some or all of it.

What if the landlord refuses to take GA vouchers?

First, find out why your landlord will not take GA vouchers. Maybe the problem is that the town only pays by the week but your landlord charges by the month. Ask the town to pay by the month or to agree with your landlord on a payment schedule. If the town will not help, call the General Assistance Unit at the Department of Health and Human Services in Augusta. Their toll free number is **1-800-442-6003**. If that does not help, call your local Pine Tree Legal office (listed on page 2).

Your landlord cannot refuse to take GA simply because he doesn't like city vouchers. You can file a discrimination complaint with the Maine Human Rights Commission in Augusta: **624-6050**. If they cannot help, call your local Pine Tree Legal office.

Rent Increases

Can my landlord increase my rent?

Yes, if you are a tenant at will (without a lease). Your landlord must give you a **45 day written notice** of any rent increase. If your landlord does not do this, you have two choices.

1. You can refuse to pay the increase, **or**
2. You can pay under protest and later sue your landlord for the amount you were overcharged. You can ask the court to order the landlord to pay for your court costs and lawyer's fees. Or you can sue in Small Claims Court without a lawyer.

If you choose not to pay the increase, your landlord may try to evict you. See "Evictions" at page 14.

If you have a lease, the landlord probably cannot increase the rent during the lease term. Read your lease to find out if it says something different.

If you live in subsidized housing, your rent is based on your income. So, your rent can be raised or lowered if your income changes. Also, there are special "earnings disregard" rules if you start working. Read your lease. Then contact Pine Tree Legal if you think you are paying too much.

Can my landlord increase my rent if there are serious problems with my apartment?

No. If there are serious problems, which are unsafe or could make you sick, the landlord must fix the problems before she can charge more rent. For example, your landlord cannot increase your rent if there is no heat in the winter. If you or your guests have caused the problems, then your landlord can raise your rent.

Unsafe or Unfit Housing

Does my landlord have to keep my home safe and in decent condition?

Yes. Maine law gives tenants an "implied warranty of habitability." This means that your landlord must promise that your home is safe and fit to live in.

Examples of landlord violations:

- undrinkable water
- no heat or too little heat in the winter
- a combination of problems, such as leaking ceilings, unsafe heating system, broken windows, and roaches

The heating system should be able to heat your living space to at least 68°. (For more details, ask for our pamphlet "How Much Heat?")

What can I do if my home is not safe?

⇒Step One

Ask your landlord to fix the problem. If he does nothing, you may want to follow up with a **written** demand. Keep a copy of your letter.

⇒Step Two

Call your city hall or town office and ask about any housing codes that may apply to your building. If your town has a building code enforcement officer, you can ask him to look at your home and send the landlord a letter demanding that he fix any code violations. State law also requires each town to have a health officer, who can inspect and require that unhealthy conditions be remedied (or the building vacated). Also, each town must have a local plumbing inspector to enforce state and local plumbing-related rules.

⇒Step Three

If you cannot get local help, you may be able to get some help, or other referrals, from these state agencies:

- Fire hazards:
  State Fire Marshall's Office
  Inspections Unit
  626-3880 **TTY: 287-3659**
- Electrical wiring problems:
  Senior Electrical Inspector
  624-8519 (leave a voicemail for inspector); for general inquiries, call
  624-8603 **TTY: 1-888-557-6690**
- Plumbing problems:
  Plumbing Inspector
  624-8639 **TTY: 1-888-557-6690**
- Wastewater, drinking water, and radon:
  DHHS Division of Environmental Health
  TTY: 1-800-606-0215
  Wastewater program: **287-5689**
  Drinking water: **287-2070**
  Mold, radon, indoor air quality: **287-5676**
- Mold:
  Office of Local Public Health: **287-6227**
  Health Inspection Program: **287-5671**

Also, the non-profit agency Maine Indoor Air Quality Council (**626-8115**) is a reliable resource and posts useful information here: www.maineindoorair.org

What if I think there is lead paint in my apartment?

You can be tested or have your children tested for lead. Ask your family doctor or clinic about lead tests. If your child's test shows a very high level of lead, the lab will tell the Childhood Lead Poisoning Prevention Program in Augusta. They can inspect your home for free and order your landlord to remove the lead. This program gives other help and information as well.

If you want to check the paint or water in your home for lead, ask your landlord for help or call one of these state agencies:

- The Health and Environmental Testing Laboratory at **287-2727** (Water testing)
- Maine State Housing Authority **1-800-452-4668** (Paint testing; they can also test for lead in soil where your child plays.)

Some Community Action Programs (CAPs) can also help you with dust testing.

For more information contact:

➢ Childhood Lead Poisoning Prevention Program, DHHS: **1-866-292-3474**
➢ Lead Hazard Control Program, MSHA: **1-800-452-4668**

If you have a young child who has been harmed by a landlord's failure to tell you about known lead hazards, or failure to give you other required warnings (see page 2), he may be fined or ordered to pay you damages. Get legal advice.

For all places built before 1978, a landlord must give you 30 days advance notice before doing any repairs or renovations that disturb lead-based paint. This notice includes postings on all exterior entry doors and a certified mail letter to all residential units in the building. Or the landlord can post the notices and get a signed written waiver from an adult in each unit. The waiver must contain specific warnings. Your landlord can be fined up to $500 for each violation of these notice rules. If you believe that you or your children have suffered harm because your landlord failed to notify you, you can report the violation to your local District Attorney or the Maine Attorney General's Consumer Protection Division: **1-800-436-2131**.

The purpose of this law is to make sure that you have the chance to protect yourself and your children from lead dust while the work is being done. Also, your landlord must use lead-safe practices so as to minimize the danger. Read more in our pamphlet: "What You and Your Family Should Know about Lead."

Bedbugs: What can I do to avoid them and get rid of them?

Bed bugs have become much more common in Maine. They are difficult to get rid of. As with other health and safety issues, the first step is to contact your landlord and ask him to have the building professionally treated. You and others in the building will also have to take steps to help combat the problem

Before you rent:

It is illegal for a landlord to rent an apartment that he knows (or suspects) to have bedbugs. He must also tell you whether other nearby apartments in the building have bedbug problems.

Before you rent ask when the apartment and nearby units:

➢ were last inspected for bedbugs, and
➢ found to be free of bedbugs.

The landlord must give you an honest answer.

What happens if my apartment is infected with bedbugs after I move in?

First, you must tell your landlord right away. After that, both you and your landlord must make efforts to fix the problem. Here is how it works:

➢ After you notify your landlord, he must inspect your apartment within 5 days.
➢ Next, your landlord must contact a state certified pest control expert within 10 days of inspecting and finding bedbugs.
➢ Then your landlord must take all reasonable steps to treat the problem, based on the expert's advice.

- Your landlord and the pest control expert will probably need access to your bed, furniture and other belongings. They must be respectful of your privacy but at the same time do whatever inspections are needed to take care of the problem. You need to cooperate to get rid of the bedbugs. Your landlord must tell you the costs of your participation in the process.

NOTE: Your landlord should always give you 24-hour advance notice before entering your apartment or sending pest control experts, unless it's an emergency. See "Landlord Entering Your Home" at page 22.

What if I can't afford to "cooperate?"

To help get rid of the bedbugs, you may be asked to move furniture, launder clothing and linens, or take other steps to assist in the process. If you cannot afford to do these things or are not able to do them, your landlord can go ahead with the necessary steps and charge you for any costs specific to you (such as moving your furniture or laundering your linens). If your landlord fronts these costs for you, after first telling you how much they will be, he can ask that you repay those costs over a 6-month period (or longer, by agreement).

What should I do if my landlord doesn't do anything to get rid of the bedbugs?

You can take your landlord to court. You can get at least $250 or your "actual damages" (whatever you lost). You must show that:

- you did not cause the problem;
- you gave your landlord oral or written notice of the problem when you learned about it;
- the landlord didn't take prompt steps to get rid of the bedbugs; and
- you did not owe the landlord any back rent when you gave the notice.

Note: If your landlord tries to evict you within six months of your complaint, the law may protect you. See "Retaliation Defenses" at page 17.

TIPS

- ✓ Make sure you have correctly identified the bug. You can send samples to the University of Maine Cooperative Extension's Insect Lab.
- ✓ Avoid picking up beds, mattresses and other old furniture off the street or from the dump.
- ✓ When moving to a new place from one with bed bugs, make sure that you are not bringing the bugs, or their eggs, with you in your belongings.

We post links to more information on bed bugs at www.ptla.org/tenants6.htm.

What can I do about mold?

If you think you have mold, ask your landlord to find and fix the water problem that is allowing mold to grow, then to fix any water damage. If this doesn't work, follow the steps at page 8. Approach your landlord again with findings from your local health officer and your doctor, if you can get them.

The state's Health and Environmental Testing Laboratory is no longer doing mold testing. Some private labs will do testing, but it is expensive.

For More Information Contact:

- Office of Local Public Health **287-6227**
- The non-profit agency Maine Indoor Air Quality Council (**626-8115**) is a reliable

resource and posts useful information here: www.maineindoorair.org
- The federal EPA posts "A Brief Guide to Mold, Moisture and Your Home" here: www.epa.gov/iaq/molds/moldguide.html

Does my landlord have to provide smoke and carbon monoxide alarms?

Yes. All apartments must have working smoke and carbon monoxide alarms in or near bedrooms. Single-family homes built or renovated after 1981must also have smoke alarms. Any renovation that adds a bedroom must include a carbon monoxide alarm. In apartment buildings with more than three stories, all hallways must have smoke alarms. All new alarms put in after October 2009 must plug into the wall and have a battery backup.

If you are deaf or hard-of-hearing, you may request a non-audible alarm. If your landlord refuses, you may put one in yourself and deduct the actual cost from your rent. (See "Can I fix the problem myself?" at page 12.)

Any smoke detectors located within 20 feet of kitchen or a bathroom containing a tub or shower must be photoelectric-type smoke detector.

Landlords may be fined up to $500 for each violation of these rules.

Tenants should:

- Test alarms periodically
- Make sure the batteries are working
- Not disable alarms, and
- Notify the landlord in writing when an alarm is not functioning properly.

How do I know if my building has dangerous radon levels?

Radon is a gas you can't see or smell that can be harmful to your health. According to Maine DHHS radon is the second leading cause of lung cancer. Beginning in 2012, your landlord must test for radon in your building. He must do this every 10 years. Whoever tests your building must be registered with the state's Division of Environmental Health at DHHS. Your landlord must notify you in writing about radon in your apartment. This notification must include the date of the most recent test, the radon level in your building, and the health risks of radon. If the test results show the radon levels in your apartment are dangerous, your landlord has six months to lower the radon levels to a safe amount. Your landlord must notify you again when radon levels are safe.

For more information contact:
DHHS Division of Environmental Health
287-5676 TTY: 1-800-606-0215

Can I fix the problem myself?

Sometimes if a repair is not too major, you can "repair and deduct." You can fix the problem and deduct the cost of the repair from your next month's rent. Here are the rules:

1. Your problem must be one that makes your home unhealthy or unsafe. Examples:

- no heat or not enough heat in the winter
- unsafe drinking water
- falling ceiling
- unsafe wiring

2. You must be able to fix the problem for less than $500, or half of your monthly rent, whichever is greater. For example:

- If your rent is $800 per month, you can spend up to $500 to do the repair.
- If your rent is $1200, you can spend up to $600.
- This amount is increased to two times your monthly rent if your building is in foreclosure.

3. You, your family, or your guests did not cause the problem.

4. Before you fix the problem, you must write a letter to your landlord. Send the letter by certified mail, return receipt requested. In the letter, ask your landlord to fix the dangerous condition within 14 days, **or sooner if it is an emergency**. Tell him that if he does not do the repair, you will have it fixed and deduct the cost from your rent. (We have a form letter you can use. Call Pine Tree Legal if you want a copy.) If your landlord offers to fix the problem, then you must let him into your home to do the repair. See "Landlord Entering Your Home" at page 22.

5. If you have the work done, both the work and the materials must be of good quality. If your problem is with the heating, plumbing, or electricity, you must get a licensed worker to do the repairs.

6. After the work is done, send the landlord a copy of the bill. Keep the original bill. Then you can deduct the cost from your rent payment.

Here are a few more "repair and deduct" limitations:

- You cannot use "repair and deduct" if your landlord lives in your building **and** there are fewer than 5 apartments.
- If you do the repairs yourself, you can deduct for parts and materials but not for your labor.

- Members of your immediate family cannot charge for labor either.
- You cannot hold your landlord responsible if anyone gets hurt doing the repairs.

What if the repairs cost more than $500.00 or half my monthly rent (or 2x monthly rent if building is in foreclosure)?

You and your neighbors may be able to use "repair and deduct" together to fix a bigger problem. For example, your building might have a bad roof or furnace that costs a lot to fix. If you had 8 tenants who each pay $800 per month, you could pay for a repair costing as much as $4000 (8 x $500).

Caution: We do not know of anyone who has tried this before in Maine. If you want to try a group "repair and deduct," try to talk with a lawyer first.

My landlord just stopped paying his utility bills. What can I do?

Your agreement was that the landlord would pay for utilities- such as lights, electric heat, fuel or water. Then he stopped paying. You can legally put the account in your name, pay the bill, and then deduct the cost from your rent.

If this doesn't work to make your even, you can sue the landlord for "actual damages" (your losses). The court can also order the landlord to pay the court costs and lawyer's fees.

Can I just refuse to pay my rent if my landlord won't fix things?

No. You will risk eviction and can still be charged for the rent while you are living there. Talk to a lawyer before you decide to stop paying rent.

Exception to the rule: If your apartment burns down or is so damaged that you can no longer live there (and it's not your fault), you do not have to pay rent from the day you are forced out.

I have tried all of the things you have suggested but my home still is not safe. What about suing my landlord in court?

Warning your landlord of court action may be enough to get him to fix the problem. If not, you may either want to move or to sue.

To win a lawsuit, you must meet these tests:

- ❑ Your problem must be serious--something that makes your home unsafe or unhealthy.
- ❑ You, your family or guests did not cause the problem.
- ❑ You must tell your landlord about the problem **in writing** within a reasonable time, and give her a reasonable time to get it fixed. (Telling the building manager or someone else who collects rent for the landlord may be good enough. But the best way to prove that your landlord knew about the problem is by giving her written notice and keeping a copy.)
- ❑ You should be fully up-to-date in your rent payments at the time you give the landlord written notice.

If your landlord does not fix the problem within a reasonable time after you give the written notice, talk to a lawyer about going to court or file a complaint in Small Claims Court yourself. (If you need quick action, going to Small Claims Court may take too long.)

At a court hearing the judge will decide whether your landlord has given you a safe and healthy place to live. The judge may order any of these remedies:

- that your landlord fix the apartment
- that your rent be less until the landlord does the repairs
- that your landlord pay you back some of the rent you have paid

Can my landlord make me agree to live in a home that is unsafe or unfit?

No. A landlord cannot force you to accept unsafe or unfit housing. You can agree **voluntarily** to live with certain unsafe or unfit conditions. The agreement does not stand unless:

- ☐ it is in writing
- ☐ it says exactly what unsafe conditions you have agreed to live with
- ☐ it says exactly how much the rent was lowered because of the unsafe conditions

Learn more from our pamphlet: "How Much Heat and Other Basic Utilities Does My Landlord Have to Provide?"

Evictions

Can my landlord turn off my utilities or change the locks on my door or otherwise kick me out without first going to court?

No. It is illegal for your landlord to throw you out by force. Your landlord must get a court order before he evicts you. If your landlord tries get around this by changing the locks, taking your property, or shutting off any of your utilities, he has broken the law. If you take him to court and ask for immediate help, the court may stop the landlord and order him to pay you for your losses or $250.00, whichever is greater, plus your court costs. If you have a lawyer and you win the case, the court can also order your landlord to pay your attorney fees.

NOTE: The electric company must determine if tenants are living in a place before cutting off service at the owner's request. If you agree to put the service in your name, the electric company cannot cut you off.

Does my landlord have to have a reason to evict me?

This depends on whether you are a tenant at will or have a written lease.

If you have a written lease, your landlord probably has to have a reason to evict you. This is also the rule if you live in **subsidized housing** or own your own home in a **mobile home park.**

If you are a tenant at will (no lease), your landlord can evict you without giving a reason. However, he must give you 7 or 30 days notice in writing. There are some exceptions to this, explained below.

Does my landlord have to warn me before I can be evicted?

Yes. The type of notice he must give depends on what type of tenancy you have.

➢ If you have a written lease:

- Your landlord can evict you for a "material breach" of the lease. This means that you have violated one of your major duties under the lease, such as payment of rent, not disturbing other tenants in the building, not causing major damage, or some other "material" lease clause. **Know what your lease says so that you will know exactly what you have agreed to.** (Note: You have a similar right if your landlord "materially breaches" the lease. (Read more at page 3-4 under "Leases.")

- If you have "materially breached" the lease, your landlord can serve you with a 7-day notice to quit. The notice must advise you of your right to contest the eviction in court. Read more about 7-day notice rules at page 16.

- **End of lease term.** If your lease does not say that it automatically renews when the lease term ends, your landlord can go to court without giving you any notice. But he can do this only during the seven days following the end of your lease term. For example, you have a one year lease that ends on February 28. Your landlord may file a court complaint between March 1 and March 7, asking for an eviction order without giving you a notice first. (**If your rent is subsidized**, your lease probably renews automatically, so this paragraph does **not** apply to you.)

➢ If you are a tenant at will (no lease):

Your landlord must give you either a 30-day or 7-day written notice to leave, or he can combine both of these into one notice. Any notice must advise you of your right to contest the eviction in court. This is called a "Notice to Quit."

<u>30-day written notice</u>

Your landlord can evict you with 30 days notice for almost any reason or no reason.

<u>Exceptions:</u> You may be able to stop the eviction if your landlord is evicting you because of "retaliation" or "illegal discrimination." Read "Retaliation defense" and "Discrimination defense" at page 18.

The notice must not terminate the tenancy until the last date for which rent has been paid, or later. For example, if your rent is paid through the end of June, your notice period cannot end before June 30th. Also, the notice must give you a full 30 days. (Example: A notice ending the tenancy on

June 30 must be given to you no later than May 31.) If the notice does not follow these rules, you may be able to stop or delay the eviction. Get legal advice.

7-day written notice

To evict you with a 7-day notice, your landlord must have a reason and state that reason in writing. The reason must be one of these:

- ✓ You have **seriously** damaged the apartment and have not repaired the damage.
- ✓ You have been a "nuisance" to other tenants or neighbors. (Examples: You pick fights with your neighbors, don't let them sleep, or destroy their property.)
- ✓ You have made the apartment unlivable or unfit to live in.
- ✓ You have changed your door locks and have refused to give your landlord a duplicate key (see page 23).
- ✓ You are 7 days or more behind in rent.

If the reason is that you have not paid your rent, the notice **must include** these two sentences:

> **"If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void."**
>
> **"After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated."**

This means that you can stop the eviction by paying the rent you owe. After 7 days, if you do not pay up what you owe before your next rent date, you have to pay both months' rent to stop the eviction. You can still stop the eviction by paying all rent owed even after the landlord takes you to court to get an eviction order. But to stop the eviction then, you have to pay all of the rent due **and** the landlord's court costs. These costs are:

- cost of serving the court papers
- court filing fee

Your last chance to stop the eviction is just before the court issues the "writ of possession." Your landlord can get this "writ" **7 days** after he gets the Court order.

Does the landlord, or his agent, have to give me the "Notice to Quit" in person?

Yes. In a tenancy at will, the landlord, or his agent, must deliver the 7-day or 30-day notice to the tenant in person. The notice does not have to be served by a sheriff.

> **Exception:** The landlord, or his agent, must make 3 good faith efforts to hand deliver you the notice. If he still cannot find you after 3 tries, he can mail you the notice and leave a copy at your home.

What if I rent my home from my employer?

If your landlord is also your employer, he may be able to go to court to evict you without first giving you a written notice to quit. Get legal advice. Your landlord must still go to court to evict you.

What if I do not move out after I get an eviction notice?

Your landlord must go to court to evict you! If you do not move out by the end of the notice period, then

your landlord can have you served with court papers. The court case is called a "Forcible Entry and Detainer." (This does **not** mean that the landlord can enter your home by force or detain you.) The papers say that he is trying to evict you. They ask the court to hold a hearing, to decide if you can be evicted. If you want to fight the eviction, you have a right to be heard in court. A landlord **cannot** legally evict you without a court order.

Here is what will happen:

⇒ A deputy sheriff will give you court papers: a summons and a complaint. The landlord can have these papers served on you anytime after the end of the notice period. The summons will tell you the date, time and place of the court hearing. You must get the papers at least 7 days before the court hearing.

⇒ **Seek legal advice immediately.**

⇒ If you end up going to the hearing without a lawyer, ask for a **recorded hearing**. Send a letter to the court ahead of time. Your request should be at least 24 hours in advance. Then ask for a recording again when you get to court.

⇒ **Be on time for your hearing.**

⇒ The judge may tell you that you must go to "mediation" before having a court hearing. (Read more about this and other court procedures in our pamphlet on Evictions.) If you do not come to an agreement during mediation, then you will go on to a formal court hearing.

⇒ At the court hearing the landlord will tell the judge what notice he gave you and why he wants to evict you. Then you have a chance to explain why you should not be evicted. Here are some common defenses:

- **Improper notice defense**

Your landlord must follow all of the notice rules. (Most of the notice rules are explained above.) If you think that your notice to quit did not meet all of the rules, explain that to the judge. If the judge finds that your landlord did not follow all of the notice rules, then the landlord loses and he will have to start the eviction process all over again.

- **Unsafe or unfit housing defense**

If your landlord is trying to evict you because you are behind in paying rent, you may be able to stop the eviction if you didn't pay because of serious problems with your home that your landlord refused to fix. This is called a "warranty of habitability defense" because the landlord has broken his promise to rent you a safe home. (See "Unsafe or Unfit Housing" section at page 9.)

If the judge finds that the landlord has not fixed serious problems that you told him about, then you can ask the court:

- ✓ To let you out of your lease, **OR**
- ✓ To let you stay and to pay a lower rent until the landlord makes your home safe. If you stay, the judge will also decide how much back rent you must pay, at the lower rate.

- **Retaliation defense**

There are laws to protect you if your landlord tries to evict you because you asserted your rights. For example, if you can show that the landlord is trying to evict you because you:

- ➢ Complained to the city of code violations
- ➢ Asked your landlord in writing to do necessary repairs
- ➢ Filed a fair housing (discrimination) complaint with the government, or

- Started or joined a tenants' union

The judge should not let the landlord evict you.

Warning: If the landlord convinces the judge that he is trying to evict you for some other good reason (like causing a "nuisance"), then you may still be evicted. Also, a new law (eff. 9/2011) does not allow this defense where the eviction is based on failure to pay rent or causing substantial damage to the premises unless you had tried to use "repair and deduct" because of bad living conditions. (See "Can I fix the problem myself?" at page 12.)

You also have the right **not** to pay an unlawful rent increase and **not** to pay for common utilities. (See sections on "Rent" at page 7 and "Heat and Utility Charges for Common Areas" at page 21.) If your landlord is trying to evict you for one of these reasons, explain that to the judge. These defenses **might** stop the eviction.

- Discrimination defense

You should not be evicted because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare, or
- being a single parent, being pregnant or having children

Read more about "Discrimination" at page 21.

Note: If you or someone in your family has a physical or mental impairment, most landlords must allow for "reasonable accommodations" to help you stay in your home. You can ask for this help even after you get an eviction notice. A court should not allow your landlord to evict you if your landlord has not tried a "reasonable accommodation." Try to get a lawyer to help you with this defense.

Caution: Your landlord may have more than one reason for trying to evict you. Even if you have a good defense to one of his complaints, the judge may still allow the eviction if the landlord has another good reason why he wants you to move out.

Will the court give me extra time to move?

Most judges do not believe that the law gives them the power to grant extra time where you have no legal defense. You may try to negotiate with the landlord or his lawyer for some extra time. Or, if you have the option to talk to a court mediator, you can try to get an agreement for extra time through mediation. But, unless you have an agreement, the court will probably not delay the eviction.

Note: We have another pamphlet about going to eviction court. If you cannot find a lawyer, call Pine Tree Legal (page 2) and ask for help.

Can I be evicted during the winter or if I have children?

Yes. Maine law allows your landlord to evict you at any time during the year and even if you have children. However, you cannot be evicted **because** you have children. See "Discrimination" section at page 21.

NOTE: If you are evicted, your children still have the right to be in school. For more

information, ask for our pamphlet: "Rights of Homeless Students to Attend School."

What happens if I do not go to the eviction hearing in court?

If you do not go to the court hearing and your landlord does, you will lose. The judge will most likely enter a "default judgment" against you. Then the landlord can go back to court 7 days later and get a "writ of possession."

If you owe the landlord money for rent or damages, he cannot get a court order for this at the eviction hearing. He can only ask for an eviction order. He can sue you later, if he wants to, for any money you owe him.

What happens if I go to court and lose?

If the court rules against you and you do not appeal, then your landlord can get a "writ of possession" from the court 7 days later.

What is a "writ of possession?"

This paper comes from the Court and gives the landlord the right to get his property back from you. Your landlord can ask a law enforcement officer to give you a copy of the "writ." You must move out of your apartment within 48 hours after getting the "writ." If you do not move out, you will become a trespasser. The landlord then, and only then, has the right to have the police remove you by force (and to put your things in storage at your expense).

Can I appeal my case?

Yes. You can appeal your case if you believe that the court's decision was wrong.

There is an appeal deadline. Any appeal must be filed before the "writ" issues (see above). To be safe, file the appeal with the District Court within 6 days of the day the judge signed the order against you. (The absolute deadline is 30 days from judgment, if a "writ" was not issued earlier.)

On appeal you can have a new trial with a jury. To get a jury trial, you must prove to the Court that you and your landlord disagree about the **facts** of the case. If you only disagree about what the **law** means, the appeals court will only review the record of your first hearing to see if the judge made any legal mistakes in deciding the case.

Be prepared to pay rent to the landlord or into a court escrow account while your appeal is pending.

If you want to appeal, especially if you are going to ask for a jury trial, try to get a lawyer. This would be hard to do on your own.

Abandoned Property

What happens if I move and do not take all my property with me?

If you move out without taking your property with you, you could lose it. So take all your things with you when you leave if you can. Don't leave things behind to pick up later. If this is not possible, Maine law does offer some protections.

The law says your landlord must store your property in a safe, dry, secured place. Then she must mail a notice to your "last known address," saying she plans to get rid of your things and listing the items. (Leave a forwarding address if you want to get the notice.) You must claim your property within **7 days** after the notice was sent. If you do this, your landlord must store the property for at least another **14 days**, giving you time to get your things. Pick up your things within the 14 days. If you do this, **your landlord cannot make you pay any rent owed, damages, or costs of storage as a condition for giving back your property.**

If you don't claim the property within 7 days, or don't pick it up within 14 days, your landlord may:

- sell the property for fair market value,
- get rid of anything he thinks has no fair market value, or
- return your property to you only if you pay for rent owed, damages, and costs of storage

If he sells your property, he must send any money left over to the State Treasurer in Augusta, after deducting what you owe him for rent, damages, and storage costs.

NOTE: Effective September 2011, there are new rules for mobile home park owners who claim that a tenant has abandoned a mobile home. Go to Mobile Home section to read more (page 23).

What if I can't get my things because I am hospitalized due to my disability?

Write to your landlord and ask him to make a "reasonable accommodation" for you, giving you more time or a chance to get someone to help you move your things.

Note: If you re not moving out voluntarily, your landlord must follow eviction rules to get you out.

Remember: The best way to protect your property is to take it with you when you leave. Even though the law says that your landlord must protect your property, things can go wrong.

- Sometimes it is hard to get back what you have lost or to prove what it is worth.
- If your landlord does not have your current mailing address, you won't get his notice. Then you could easily miss the 7 day deadline for claiming your things.
- If you fail to act within the deadline, your landlord can deduct for money you owe, which will be more as time goes on if there are storage fees.
- If your landlord damages your property, it will be difficult to recover that loss.
- Your landlord might ignore the law and get rid of your things illegally.

Sale of Your Building

What happens if my landlord sells my building?

The sale of your building may affect your rights.

If you do not have a written lease, your old tenancy will end. The new owner must let you stay for at least as long as you have paid for. You and your new landlord can make a new agreement. If your new landlord accepts rent from you, then you have a new tenancy.

If you have a lease, you probably have the right to stay until the end of your lease term. Read your lease to see if it says anything different. If your lease term is for more than 2 years, you should record your lease in your county Registry of Deeds **before** the sale, to help protect your lease rights. This rule also applies if you have a long-term lease with no specific ending date.

Does the new landlord have to give me a notice to quit before evicting me?

Yes. Even if you are a tenant at will (no lease), your new landlord must give you a 30-day or a 7-day written notice, unless your old landlord already gave you the notice. (See "Eviction" section at page 14.)

What if my building is in foreclosure?

A federal law signed in May 2009 may give you more protections. This law states that, in a foreclosure situation, you must be given at least 90 days notice to move. Or, if you have a lease, you must be allowed to stay until the end of your lease term. For more details ask for our handout "Federal Law Helps Renters in Foreclosure."

Discrimination

Landlords may not discriminate against you because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare
- being a single parent, being pregnant or having children

This means that a landlord cannot refuse to rent to you, charge you extra, or evict you for any of these reasons.

Note: The state law barring discrimination based on sexual orientation went into effect on December 28, 2005. This law also protects trans-gendered people. And it prohibits discrimination based on another person's belief that you are gay or trans-gendered, even if you are not.

If you think your landlord has illegally discriminated against you, contact Pine Tree Legal or one of these offices:

Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051
phone: **624-6050** TTY: **1-888-577-6690**

U.S. Fair Housing Office (HUD)
10 Causeway Street, Room 321
Boston, MA 02222-1092
phone: 1-617-994-8300
toll-free: **1-800-827-5005**
TTY: **1-617-565-5453**

Pine Tree Legal has more information about housing discrimination. Please call us (see page 2).

Heat and Utility Charges for Common Areas

Can my landlord make me pay for heat and utilities outside of my apartment?

If you live in an apartment building, you may find out that you are paying for heat, lights, or other utilities for "common areas," such as hallways, basements, or a common hot water heater or furnace. It is illegal for your landlord to make you pay those costs alone. For example, the hall lights should not be hooked up to your meter.

If you find out that you are paying for heat or utilities going to "common areas" or to someone else's apartment, take these steps.

⇒ First talk to your landlord. Ask her to put in a separate meter or to lower your rent to make up for the extra money you are paying.

⇒ If you agree to lower your rent, do it in writing. Write down exactly how much

less rent you will pay in exchange for paying for the extra heat or utility costs.

⇒ If you have been paying these extra charges for some time, ask your landlord to pay you back. If you cannot figure out how much you should be paid, check with your heating or utility company or city electrician to find out if they will help you.

⇒ If your landlord refuses to pay what is fair, you can sue. If you win, you can get $250.00 or your "actual damages" (how much you lost), whichever is more. The landlord will have to pay your court costs and lawyer's fees. Or you can file your claim in Small Claims Court on your own.

Caution: If you are not ready to move, think about whether you want to sue now or later. Read the section on "Evictions" at page 14. If you are not protected by a lease, then you may want to wait and sue after you have moved or are ready to move, in case the landlord retaliates with an eviction.

Cable TV, Dishes, Antennas

If I live in an apartment building, can my landlord stop me from getting cable TV, a satellite dish or an antenna?

Generally, no. Your landlord can refuse to allow these installations **only if** he has "good cause" to deny that company. "Good cause" could be:

- if that company has broken agreements with the landlord before
- if that company has damaged the building before and has not fixed it
- some similar valid complaint against that company

Maine has detailed laws about how cable TV companies and landlords must deal with each other. Call Pine Tree Legal if you want a copy of that law.

The Federal Communications Commission also has rules allowing tenants to have small dishes (one meter or less in diameter) and certain types of "customer-end" antennas. But you must have "exclusive use" of the area where you install the dish or antenna, such as a balcony (not common areas, such as the roof of an apartment building, unless your landlord allows it). Call Pine Tree Legal for more information.

Landlord Entering Your Home

Can my landlord come into my apartment or house at any time?

No. If your landlord wants to come into your home to make non-emergency repairs, or to show or inspect the apartment, she must give you "reasonable notice." Normally, this means at least 24 hours notice.

Your landlord can come in only at "reasonable times." Generally, this means during the daytime or evening, not in the middle of the night. There may be other factors that make certain times "unreasonable" for you.

Exception: If there is an emergency, your landlord can enter after a shorter notice or without notice. For example, the pipes burst or there is a fire in your apartment.

What can I do if my landlord comes in without giving me reasonable notice?

If your landlord does not follow these rules, or if your landlord tries to come in without good reason to the point you feel harassed, you can sue your landlord. The judge can order your landlord to pay you for your

"actual damages," or $100.00, whichever is more. She can also order the landlord to stop coming into your apartment without good reason and without fair notice. If you have a lawyer and you win at hearing, the court can also order your landlord to pay your lawyer fees.

If you cannot get a lawyer and if you need fast protection from serious, repeated harassment, you can file a Protection from Harassment complaint in District Court. Call Pine Tree Legal if you want more information about how to do this.

Is it legal to change the locks to keep my landlord out?

No. If you need to change your locks for any reason, you must notify your landlord. Also, you must give him a key within 48 hours of the change. Your landlord may give you a 7-day eviction notice (see page 16) if you change the locks without following these rules. He can also charge you for any damage caused, if he needs to enter in an emergency and is locked out.

Subsidized Housing

If a housing authority or similar agency pays all of part of your rent, your housing is "subsidized." Your rent may be subsidized even if your house or apartment is owned by a private landlord. "Public housing" is also subsidized.

If you need to find out where to apply for subsidized housing in your area, contact:

Maine State Housing Authority
89 State House Station
353 Water Street
Augusta, Maine 04330
Toll-free phone: **1-800-452-4668**
TTY: **1-800-452-4603**

If you live in "subsidized housing," you should have a standard lease. This lease gives you more protections than most non-subsidized tenants have. For example, your lease may have a "grievance procedure" which gives you the right to an informal out-of-court hearing on a complaint you have against your landlord. **Your lease probably gives you more protections against eviction than the ones described in this handbook.** It may say that your landlord cannot evict you unless he has "good cause" or unless he can prove you broke the lease.

If you are in one of the 3 major HUD subsidy programs (public housing, Section 8, or voucher choice), you cannot be evicted because you were the victim of domestic violence, dating violence, sexual assault or stalking. You may have other rights under federal law that are not explained in your lease.

Different subsidized housing programs have different rules and different form leases. **Read your lease!** If you are not sure of your rights under your lease or if you are being evicted from subsidized housing, **contact your local Pine Tree Legal office** (page 2).

Mobile Home Parks

Who is protected by the mobile home park laws?

This section applies to you if you **own your mobile home and rent a lot in a mobile home park.** Also, these handbook sections above apply to you:

If you **rent a mobile home,** you have the same rights as a tenant in an apartment building or house. Read the earlier sections of this handbook, which apply to you. To read about your security deposit, see below.

If you **own your mobile home and rent the land it sits on but not in a mobile home park**, you should talk to a lawyer if you have a problem. (Only some parts of this handbook apply to you.)

What is a mobile home park?

A mobile home park is a piece of land that has, or is laid out to have, two or more mobile homes on it.

How much can I be charged for a security deposit and how do I get it back?

The "Security Deposit" section at page 4 applies to you, with these exceptions:

- The park owner may charge up to 3 times the monthly rent for a security deposit.
- For the period before September 12, 2009, the landlord must pay 4% interest on your deposit. For later periods, the park owner must pay you a market-based rate of interest. Your landlord must put your money in a separate, protected bank account (which can be pooled with other deposits). You should get all of the interest earned on your deposit. In the alternative, your post 9/12/09 interest will be based on the Federal Reserve's secondary market 6-month CD rate for each year the landlord has been holding your deposit.

Read the "Security Deposit" section at page 4 to find out how to get your deposit back if the park owner refuses.

What kind of fees can I be charged?

The park owner may charge fees. Fees may include rent, utilities, incidental service charges, security deposit and an entrance fee. Before you move into the park, the park owner must explain all fees to you in writing. Before increasing any fees, he must give **all tenants** at least 30 days written notice.

If you are moving into a mobile home that is already in the park, the park owner cannot charge you more than 2 times the monthly rent for an entrance fee. He cannot call this fee something else, in order to get around this limit.

The park owner cannot require you to buy your oil or bottled gas from him. He cannot choose your dealer; that is **your** choice.

The park owner cannot require you to buy from him any under skirting, equipment for tying down mobile homes or any other equipment.

Park Rules

What kind of rules can the park owner have?

The rules must be reasonably related to keeping order and peace in the mobile home park. All park rules must be fair and reasonable. A rule is presumed to be unfair if it does not apply to all park tenants. (However, the park owner may be able to prove that a non-uniform rule is fair, if he has a compelling reason for the rule.) The park owner must give **all tenants** at least 30 days notice of any rule change before it takes effect.

These rules are **not** legal and a park owner **cannot** enforce them:

- A rule that says the park owner is not responsible for his own negligence

- A rule that says you have to pay the park owner's legal fees (in an eviction, for example)
- A rule that says you must give the park owner a lien on your property if you owe him money
- A rule that gives up your right to challenge the fairness of any park rule or any part of your lease or rental agreement

How do I find out what the park rules are?

Before you sign an agreement to rent, the park owner must give you:

☐ a copy of the mobile home park rules **and**
☐ a copy of the Maine mobile home park laws

Eviction

Does the park owner have to have a reason to evict me?

Yes. He must have a reason and he must be able to prove it in court. His reason must be on this list. (These rules apply to you, all household members, and your guests.)

1) You did not pay rent, utility charges or **reasonable** service charges. You will not be evicted if you pay the amount you owe **plus a fee** before the end of the notice period. The notice must give you at least 30 days. The fee is 5% of what you owe, up to a maximum of $5.00. (A 2005 law allows park owners to charge interest on late payments. See page 7. It is unclear how this new rule on interest charges intersects with this older $5 fee rule. Call Pine Tree Legal (see page 2) if you need advice on this issue.)

2) You broke a mobile home park law. Before giving you an eviction notice, the park owner must tell you in writing what law you have broken and give you a reasonable chance to comply.

3) You broke a **reasonable** park rule. (See section on "Park Rules.") Before giving you an eviction notice, the park owner must tell you in writing what rule you have broken and give you a reasonable chance to comply.

4) **You violated Paragraph 1, 2 or 3 above three times within 12 months. After 3 chances within a one-year period, you can be evicted even if you corrected all three violations.**

5) You damaged the property in some way. "Damage" does not include "normal wear and tear." Normal wear and tear is what happens to property over time from normal use.

6) You **repeatedly** disturbed the peace and quiet or safety of other tenants.

7) You violated a term of your written lease that the lease says you can be evicted for. **Read your lease before you sign!**

8) The park is condemned or changed to some other use. Before evicting you for "change of use," the park owner must have told you about this when you moved in or must give you a **one-year** written notice.

9) If the park owner wants to evict you because he plans to renovate the park, he must give you between 6 months to 12 months notice. He may also have to pay for your moving costs.

Exceptions:

- If there is a serious problem that is dangerous for tenants, the park owner can evict you "temporarily" with a shorter notice, if he pays your costs.
- If it is **not** an emergency, he can give a 30-day written notice to "temporarily" evict, if he pays your costs.
- If the government orders the park owner to do a major renovation that requires evictions, the park owner can give a shorter notice.

Note: If you are being evicted for reason #9 above, talk to a lawyer or Pine Tree Legal.

What kind of notice do I get?

Before taking you to court to get an eviction order, the park owner must give you a written notice to quit. The notice must:

- be in writing
- state the reasons for the eviction
- give you **45 days** before your tenancy ends

Note: The notice period is different in some cases, like for nonpayment of rent (30 days). To find out these exceptions, read the list 1-9 above.

The park owner, or his agent, must give this notice to you in person.

Exception: He can send the notice by mail and leave a copy at your home if he has tried for 3 days to serve you in person and has not been able to find you. He must have a witness.

If someone has a lien on your mobile home (such as a seller to whom you are still making payments), the park owner may also notify the lien-holder of the eviction. If your contract with the lien-holder allows it, she may try to repossess your home to protect her interest in the property. Get legal advice.

What happens at the end of the notice period?

If you have not moved and the park owner still wants to evict you, she must file a complaint in District Court asking the court to allow the eviction. This is called a "Forcible Entry and Detainer" action. A deputy sheriff will serve you with a copy of the complaint and a court summons. The summons will tell you the date and time of the court hearing.

At the hearing, the judge will listen to both sides. If the judge finds that the park owner did not follow all of the notice rules or did not prove one of the reasons for eviction listed above, the judge will dismiss the case and you will not be evicted. But if the park owner gets the eviction order from the court, she can then ask the Sheriff's Department to evict you and your family **and to remove your mobile home from the lot**.

Talk to a lawyer right away if you get a notice to quit or a court complaint and summons.

What if the park owner is trying to evict me because I complained, because I am in a tenant group, or for some other unfair reason?

The Court should not evict you if you prove that the park owner's main reason for trying to evict you is that:

- You helped to start a tenant's organization or you belong to a tenant's organization; or

- You have complained about the park owner's violations of mobile home park laws.

If you think that the park owner is trying to evict you because you complained about unsafe conditions in the park, read the section above on "Retaliation Defense" at page 17. This defense to eviction **may** apply to you. If you believe that the park owner is illegally discriminating against you because of your:

- race
- color
- sex
- sexual orientation
- physical or mental impairment
- religion
- ancestry or national origin
- getting welfare
- being a single parent, being pregnant or having children

See "Discrimination" section at page 21.

What if I refused to pay rent because of bad living conditions in the park?

If the park owner is trying to evict you because you owe rent and there are unsafe living conditions in the park, you may have a good defense to the eviction. Read the section "Unsafe or unfit housing defense" under "Evictions" at page 17. These rules also apply to mobile home park tenants. In your case, the problem might be dangerous outside wiring or unsanitary septic system, instead of lack of heat.

Additional rule for mobile home parks: You must have given the park owner or his agent notice of the problem when your rent was paid up.

What if the court orders an eviction and I can't move my mobile home right away?

The park owner must mail you a "14-day notice" - sent first class mail, with proof of mailing. The notice tells you that the park owner plans to get rid of your mobile home. You have 14 days to claim the mobile home before this happens. The landlord must send this notice to your "last known address." In order to get the notice, you must let your landlord know where you are getting mail. Otherwise, the 14 days could lapse without your knowing about it.

If you claim the mobile home within 14 days, then the park owner must give you another 21 days to move it. If the weather or roads prevent you from moving the mobile home, then the park owner must give you more time to move it. But he can charge you for any actual costs he incurs as a result of the delay.

If you do not claim your mobile home within 14 days - or move it within the 21 days (or other agreed-upon time period) - then the park owner may treat the mobile home as "abandoned property."

The park owner can:

- Hold your mobile home until you pay all back rent, damages, legal fees, and storage costs; OR
- Sell the mobile home for a "reasonable fair market price." He can then deduct from the sale money his costs: back rent, damages, legal fees, storage costs, marketing expenses, and taxes. (He may also dispose of any property that has "no reasonable fair market value.")

If there is money left over after the sale and deduction of expenses, the park owner must send it to your last known address. If the mailing is returned by the post office, then the park owner must forward the money to

the Treasurer of State. The park owner cannot keep any money that is left over.

Unsafe or Unfit Conditions

What areas must the park owner take care of?

A park owner must promise that the space he rents and its facilities are "fit for habitation." This means that they are safe and healthy. For example, if your septic system backs up or your park road becomes impassable, the park owner must fix the problems. On the other hand, you must fix problems inside your home, unless they were caused by the park owner.

What if the park facilities are unsafe or unhealthy?

You can file a court action against the park owner. Before going to court you should take these steps:

- ☐ Talk with the park owner or manager about the problem.
- ☐ Talk with other tenants about the problem and meet as a group with the owner or manager.
- ☐ Contact the local code enforcement officer, plumbing inspector or fire chief and ask for an inspection.
- ☐ Contact the Maine Manufactured Housing Board:
  35 State House Station
  Augusta, ME 04333
  Phone: **624-8612**
  TTY: **1-888-577-6690**

If you still cannot resolve the problem, talk to a lawyer or Pine Tree Legal before going to court. Also, read the section about suing your landlord in court at page 14. The procedures and remedies are very similar.

What happens if I am forced to leave my mobile home during repairs?

If you must leave for a short time so things can be fixed, the park owner cannot charge you any rent until you move back in. If the owner offers you a reasonable place to stay, then the court will not order the park owner to pay for your costs of staying somewhere else.

Sale of Your Mobile Home

Can the park owner interfere if I want to sell my mobile home?

No.

- The park owner **cannot** charge you a fee for selling, unless you asked him to sell it for you and signed a contract agreeing to pay him.
- The park owner **cannot** force you to hire him as your sales agent.
- The park owner **cannot** restrict any advertising you do, as long as it is reasonable.

You must tell the park owner before you put up any "For Sale" signs in the park.

If your mobile home was built before June 15, 1976, the park owner can require you to show that it meets the state standards.
If the buyer plans to stay in the park, he should make sure that the park owner will accept him as a tenant. He can back out of a sale agreement within the first 30 days if the park owner does not agree to rent the lot to him.
He can also back out of the deal if the park owner wants the home removed because it does not meet state or park standards. The park owner cannot require removal because of park standards unless these standards are clearly stated in the park rules and are reasonable.

Sale of Mobile Home Park

Does the park owner have to let me know if he is selling the park?

Yes, in most cases.

General rule: The park owner must give you and all other tenants 45 days written notice of his intent to sell. During the 45 days, he cannot contract to sell the park.

Exception: The park owner does not have to give the 45-day notice if the buyer's deed says that he cannot change the use of the park for two years after he buys it. This deed restriction must also say that tenants have the right to enforce it.

What if the new owner tries to close the park anyway?
You can sue the new owner in Superior Court and ask the judge to order the buyer to keep renting the lots for at least two years. You can also make a money claim for any damages you have suffered. You can sue alone or as a group of tenants or as a tenant association. If you have a lawyer, the judge can order the park owner to pay your lawyer fees if you win.

Notice

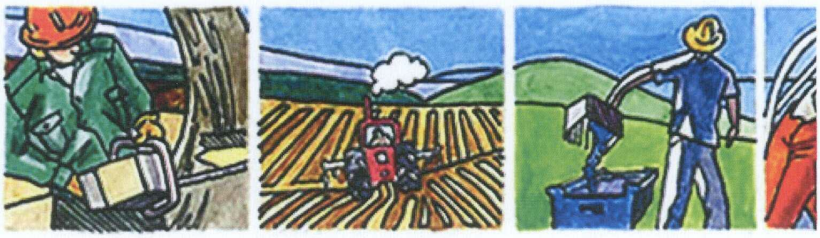
Pine Tree Legal Assistance
Partially updated September 2011

We have tried to make this accurate as of the date above. Sometimes the laws change. We cannot promise that this information will always be up to date and correct. If the date above is not this year, call us to find out if there is an update.

This information is not legal advice. By sending you this, we are not acting as your lawyer.

APPENDIX 15: Pine Tree Legal Assistance-Legal Library

PINE® TREE LEGAL ASSISTANCE



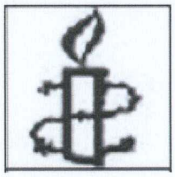
feedback

Home

Topic Library

Consumer

Bankruptcy, Credit Practices/Credit Reports, Debt Collection and Repossession, Defective goods, Financial Literacy / Protect Against Fraud, Identity



Individual Rights / Selected Groups

Immigrants, Migrant Workers, Non-Discrimination, Other Human Rights

Education

ASPIRE, Parents as Scholars, and higher education, Homeless Students / Students Not Living at Home, Job Search and Job Training, School Discipline / Suspension

Native Americans

Cross Border Rights, Discrimination / Native Americans, Domestic Violence / Native Americans, Indian Child Welfare Act, Juvenile Issues / Native Americans, Public

Employment

Child Care, Employment of Minors, Independent Contractor vs. Employee, Job Discrimination, Family Medical Leave, Job Search and Job

Public Benefits / Cash Assistance

Child Care, Earned Income Tax Credit /Other Tax Credits, Energy Assistance, DHHS Appeal Hearings, Food Programs, General

Family Law

Adoption, Child Care, Child Support, Divorce and Parental Rights, Domestic Violence, Emancipation, Grandparent Rights, Guardian Ad Litem, Guardianship, Name

Some Court Procedures

Appeals, Court Fee Waivers, Criminal Matters, Emancipation, Protection from Harassment, Name Change, Small Claims

Health Care

Affordable Care Act (ACA), Children's Health Insurance (Katie Beckett program), Free and Low-Cost Care, Family Medical Leave, Home and Community Based Care, Lead

Taxes

Earned Income Tax Credit /Other Tax Credits, Income Taxes, Payroll Withholdings, Property Taxes, Other Taxation

Housing

Emergency Rental Assistance, Foreclosure, Homeownership, Hotels, Motels and Rooming Houses, Housing Discrimination, Renting/Tenants' Rights, Subsidized

Veterans/Military

Maine Laws for Servicemembers, Maine Laws for Veterans

feedback

Soomaali | 主頁 | español | Tiếng Việt | По-русски | hrvatski | Français | العربية | Polski | Acooli | فارسی | Thuɔŋjäŋ | Khmer | kreyol

HelpMELaw | KIDS LEGAL | Volunteer Lawyers Project | Stateside Legal | Terms of Use | Staff Library

http://www.ptla.org/topics

APPENDIX 16: General Assistance-City of Rockland Purchase Order Procedure

GENERAL ASSISTANCE – CITY
OF ROCKLAND

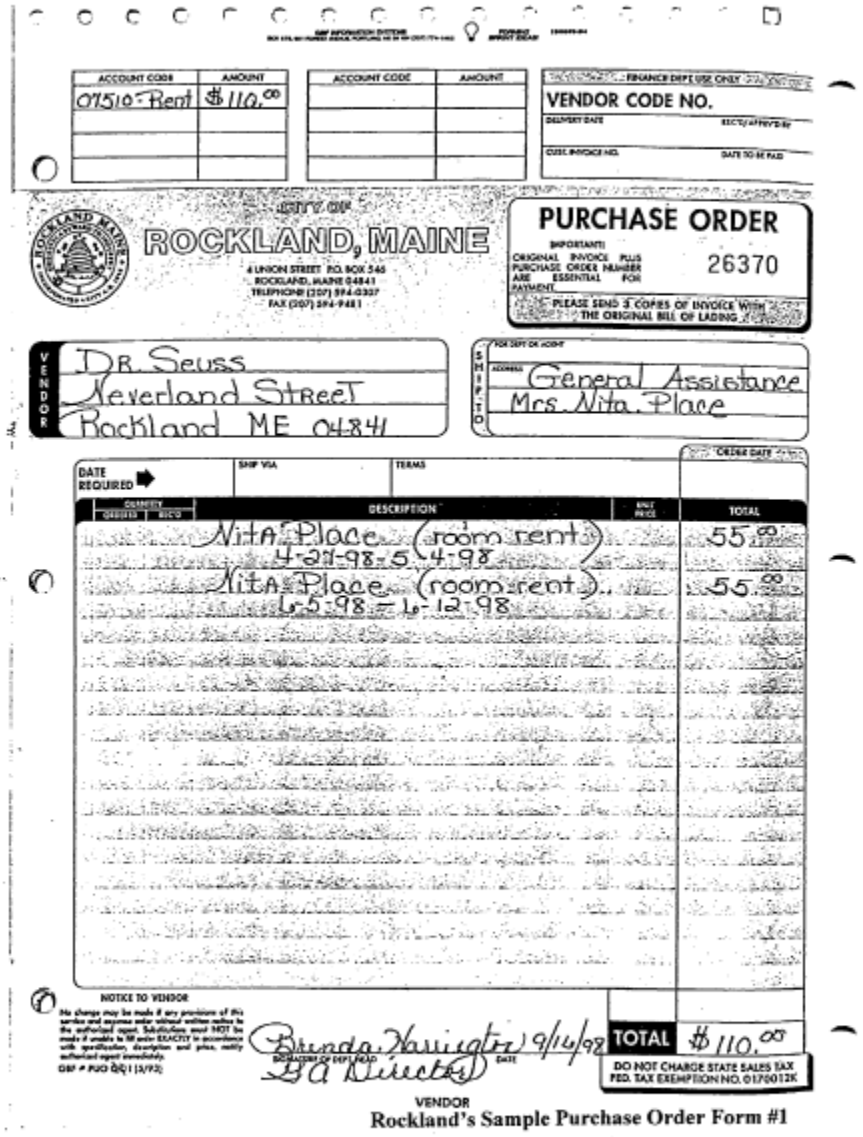
PURCHASE ORDER PROCEDURE

Rent: A purchase order (P.O.) will be written (see form #1, P.O. #26370). The P.O. has 4 parts. The white copy (Vendor copy) will be completed with the name and address of the vendor; the "Ship to" section contains the words General Assistance (GA) as well as the client's name. The upper left hand corner contains the account number (rent) and the total $ amount for this particular P.O. This page as well as the gold page (Receiving Copy) will be mailed to the vendor. The yellow copy (Finance Dept.) is forwarded to the Finance Department (Accounts Payable). The GA Director will retain the pink copy (Department Copy). The gold copy as mentioned previously will also be given to the vendor (see form #2). This page contains a section to be completed by the rental agent certifying that only the client occupies the unit. It then requires the rental agent to sign and date. This gold copy is to be returned to GA along with an itemized bill. Once the gold copy of the P.O. is received, along with an itemized bill (form #3), it is stamped, dated, okayed by the GA Director and forwarded to Accounts Payable for payment. see form #4).

Groceries/Medications/CMP/Oil Vendors: Other P.O.'s for vendors such as grocery stores/pharmacies/Wal-Mart/oil companies/CMP are completed in the same fashion (see form #5 Purchase Order #34586. In this example, the P.O. will be completed in the same way as before. The name and address of the vendor, the "ship to" section contains the words General Assistance as well as the client's name. The description section will state: groceries; oil for residence at (give complete address of client); medications (list the medications and the Medicaid rate); personal items; clothing; electricity for (give the complete address of the client as well as their CMP account number and the name that shows on the bill). With any food purchases, I also write tax exempt, no alcohol or tobacco (see form #6) and I attach a list of "non-allowable snack items" to the P.O.(see form #7). In the case of personal items, I attach a list of allowable items. In this particular case, either the white copy is given to the client, or in the case of CMP, the white copy is forwarded to the vendor (CMP). I have also spoken to CMP and advised them of the amount to be paid by GA and have informed them of the P.O. number. The yellow copy is given to Accounts Payable and the GA Director retains the pink and gold copy. Once the bill is received, the gold copy is stamped, dated and okayed by the GA Director and forwarded to Accounts Payable for payment. (see form # 8).

Rockland has only one person in Accounts Payable. She is the only person who sees this P.O. and would have knowledge of the client's name. She has already been advised as to confidentiality.

Brenda Harrington
General Assistance Director
City of Rockland



ACCOUNT CODE	AMOUNT
07510 - Rent	$110.00

ACCOUNT CODE	AMOUNT

FINANCE DEPT USE ONLY

VENDOR CODE NO.

DELIVERY DATE — RECTD/APPVD By

CUST. INVOICE NO. — DATE TO BE PAID

CITY OF
ROCKLAND, MAINE
6 UNION STREET P.O. BOX 546
ROCKLAND, MAINE 04841
TELEPHONE (207) 594-0307
FAX (207) 594-9481

PURCHASE ORDER

IMPORTANT! ORIGINAL INVOICE PLUS PURCHASE ORDER NUMBER ARE ESSENTIAL FOR PAYMENT.

26370

PLEASE SEND 3 COPIES OF INVOICE WITH THE ORIGINAL BILL OF LADING

VENDOR
Dr. Seuss
Neverland Street
Rockland ME 04841

SHIP TO
FOR DEPT OR AGENT
ADDRESS
General Assistance
Mrs. Nita Place

DATE REQUIRED | SHIP VIA | TERMS | ORDER DATE

QUANTITY ORDERED	QUANTITY RECD	DESCRIPTION	UNIT PRICE	TOTAL
		Nita Place (room rent) 4-21-98-5-4-98		55.00
		Nita Place (room rent) 6-5-98 - 6-12-98		55.00

NOTICE TO VENDOR
No change may be made if any provisions of this order are omitted without written notice to the authorized agent. Substitutions must NOT be made if unable to fill order EXACTLY in accordance with specification, description and price, notify authorized agent immediately.
GBF # PUO 86(1) (3/93)

Brenda Harrington 9/14/98
SIGNATURE OF DEPT. HEAD — DATE
GA Director

TOTAL $110.00

DO NOT CHARGE STATE SALES TAX
FED. TAX EXEMPTION NO. 0170012K

VENDOR

Rockland's Sample Purchase Order Form #1

ACCOUNT CODE	AMOUNT	ACCOUNT CODE	AMOUNT
57510 - Rent	$110.00		

FINANCE DEPT USE ONLY

VENDOR CODE NO.

DELIVERY DATE — RECD/APPROVED BY

CASE INVOICE NO. — DATE TO BE PAID

CITY OF

ROCKLAND, MAINE

4 UNION STREET P.O. BOX 546
ROCKLAND, MAINE 04841
TELEPHONE (207) 594-0307
FAX (207) 594-9481

PURCHASE ORDER

IMPORTANT! ORIGINAL INVOICE PLUS PURCHASE ORDER NUMBER ARE ESSENTIAL FOR PAYMENT.

26370

PLEASE SEND 3 COPIES OF INVOICE WITH THE ORIGINAL BILL OF LADING

VENDOR: Dr. Seuss
Cleveland Street
Rockland ME 04841

SHIP TO: FOR DEPT OR AGENT
ADDRESS: General Assistance
Mrs. Nita Place

DATE REQUIRED | SHIP VIA | TERMS | ORDER DATE

QUANTITY ORDERED	RECD	DESCRIPTION	UNIT PRICE	TOTAL
		Nita Place (room rent) 4-27-97-5-4-98		55.00
		Nita Place (room rent) 6-5-98 – 6-12-98		55.00

Statement to be signed by owner/rental agent:
In accepting payment, I hereby certify that this unit is occupied by ONLY the following people: (list all members of household):

Nita Place

To the best of my knowledge, no one else resides there or appears to reside there either full or part time:

Signed: Dr. Seuss
Owner/Rental Agent

Date: 9/14/98

NOTICE TO VENDOR
No change may be made if any provision of this service and expense order without written notice to the authorized agent. Substitutions must NOT be made if unable to fill order EXACTLY in accordance with specification, description and price, notify authorized agent immediately.
GBF # PUO 0001 (5/93)

[illegible] 9/14/98
SIGNATURE OF DEPT. HEAD — DATE

TOTAL $110.00

DO NOT CHARGE STATE SALES TAX
FED. TAX EXEMPTION NO. 01700012K

RECEIVING COPY

Rockland's Sample Purchase Order Form #2

[redacted]

DR. Seuss
Neverland St
Rockland ME
04841

6-6-98

City of Rockland
Record Room
Rockland ME 04841

Please Rent $ 110.00 for the following person stay at the Record Room

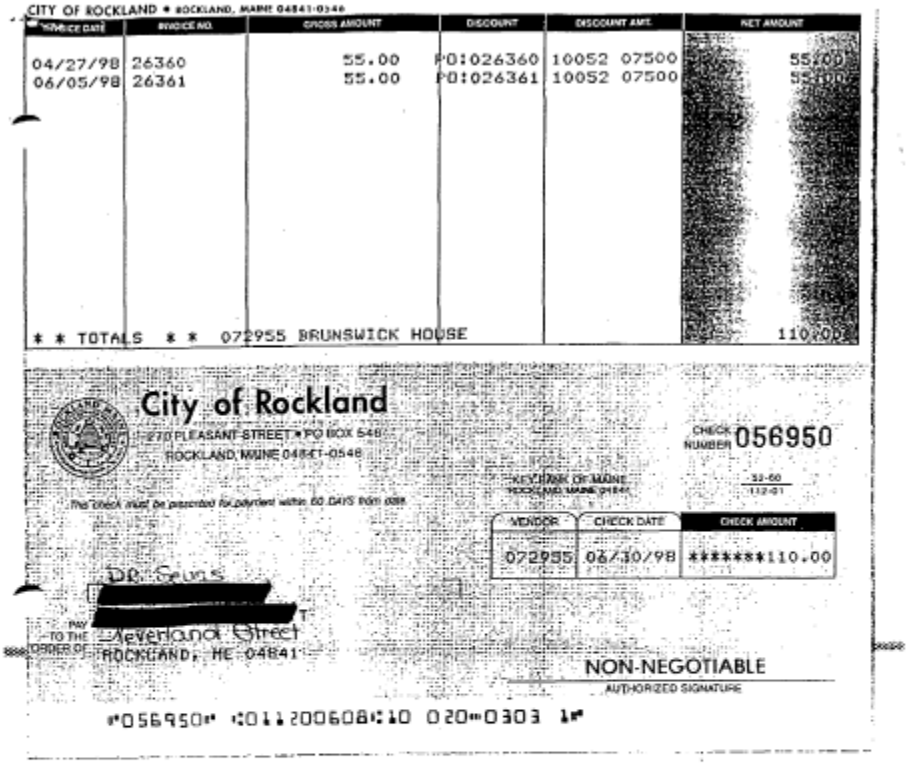
Nita Place
[redacted]
Nita Place

4-27-98 TO 5-4-98 $ 55
6-5-98 TO 6-12-98 55
Total Due $ 110.00

[redacted]

6/12/98
bmh
O.K.

Rockland's Sample Purchase Order Form #3



CITY OF ROCKLAND • ROCKLAND, MAINE 04841-0546

INVOICE DATE	INVOICE NO.	GROSS AMOUNT	DISCOUNT	DISCOUNT AMT.	NET AMOUNT
04/27/98	26360	55.00	PO:026360	10052 07500	55.00
06/05/98	26361	55.00	PO:026361	10052 07500	55.00
* * TOTALS * *		072955 BRUNSWICK HOUSE			110.00

City of Rockland

270 PLEASANT STREET • PO BOX 548

ROCKLAND, MAINE 04841-0548

This check must be presented for payment within 60 DAYS from date

KEYBANK OF MAINE
ROCKLAND, MAINE 04841

CHECK NUMBER 056950

33-60
112-81

VENDOR	CHECK DATE	CHECK AMOUNT
072955	06/30/98	*******110.00

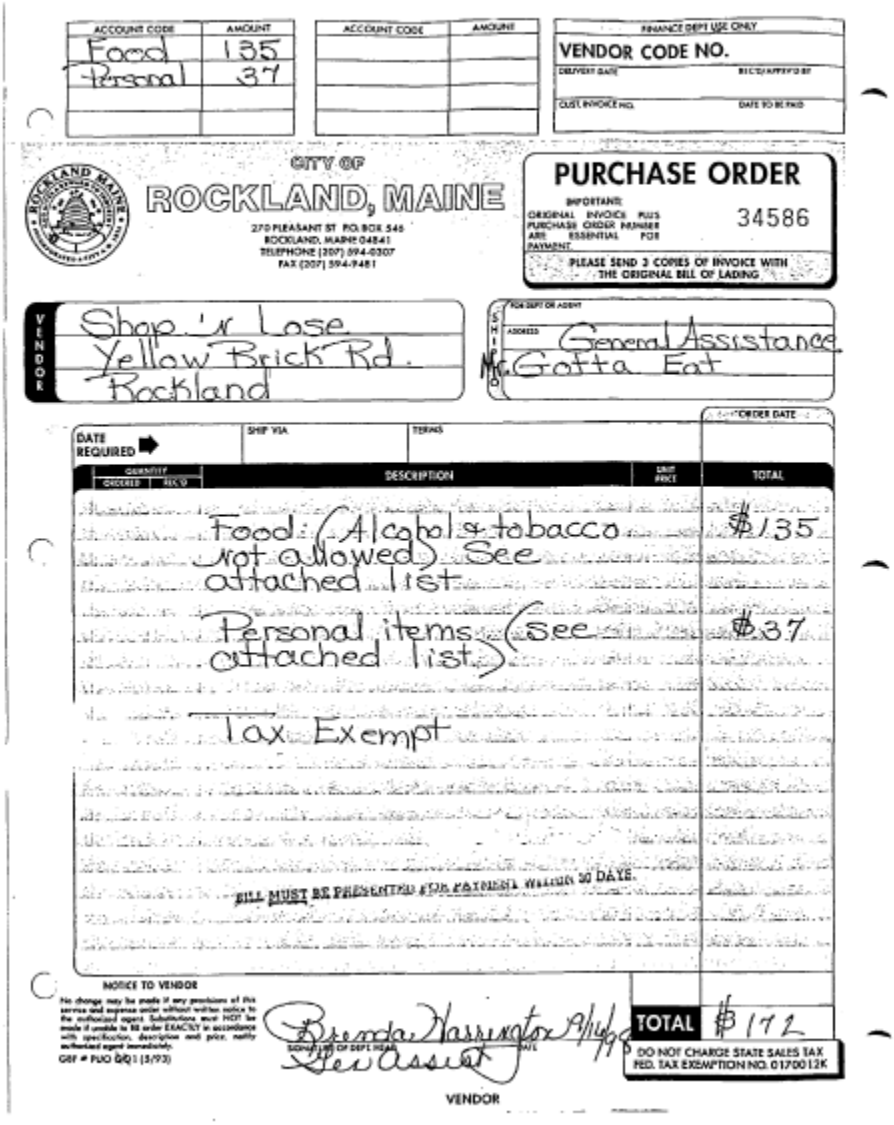
PAY TO THE ORDER OF Dr. Seuss [redacted] Cleveland Street ROCKLAND, ME 04841

NON-NEGOTIABLE

AUTHORIZED SIGNATURE

"056950" :011200608:10 020-0303 1"

Rockland's Sample Purchase Order Form #4



ACCOUNT CODE	AMOUNT
Food	135
Personal	37

ACCOUNT CODE	AMOUNT

FINANCE DEPT USE ONLY
VENDOR CODE NO.
DELIVERY DATE — RECD/APPVD BY
CUST. INVOICE NO. — DATE TO BE PAID

CITY OF
ROCKLAND, MAINE
270 PLEASANT ST P.O. BOX 546
ROCKLAND, MAINE 04841
TELEPHONE (207) 594-0307
FAX (207) 594-9481

PURCHASE ORDER

IMPORTANT:
ORIGINAL INVOICES PLUS PURCHASE ORDER NUMBER ARE ESSENTIAL FOR PAYMENT.

34586

PLEASE SEND 2 COPIES OF INVOICE WITH THE ORIGINAL BILL OF LADING

VENDOR
Shop 'r Lose
Yellow Brick Rd.
Rockland

SHIP TO
FOR DEPT OR AGENT
ADDRESS General Assistance
Mr. Gotta Eat

DATE REQUIRED | SHIP VIA | TERMS | ORDER DATE

QUANTITY ORDERED	QUANTITY REC'D	DESCRIPTION	UNIT PRICE	TOTAL
		Food: (Alcohol & tobacco not allowed) See attached list		$135
		Personal items (see attached list)		$37
		Tax Exempt		

BILL MUST BE PRESENTED FOR PAYMENT WITHIN 30 DAYS.

NOTICE TO VENDOR
No change may be made in any provisions of this service and expense order without written notice to the authorized agent. Substitutions must NOT be made if unable to fill order EXACTLY in accordance with specification, description and price, notify authorized agent immediately.
GBF # PUO GEQ 1 (5/93)

Brenda Harrington 9/14/98
SIGNATURE OF DEPT. HEAD — DATE
Lee Assist
VENDOR

TOTAL $172

DO NOT CHARGE STATE SALES TAX
FED. TAX EXEMPTION NO. 0170012K

Rockland's Sample Purchase Order Form #5

TAX EXEMPT

TAX EXEMPT

Selection must be for the maintenance or sanitation of the home or for personal hygiene and health.

HOUSEHOLD/PERSONAL CARE

TAX EXEMPT

Not allowed

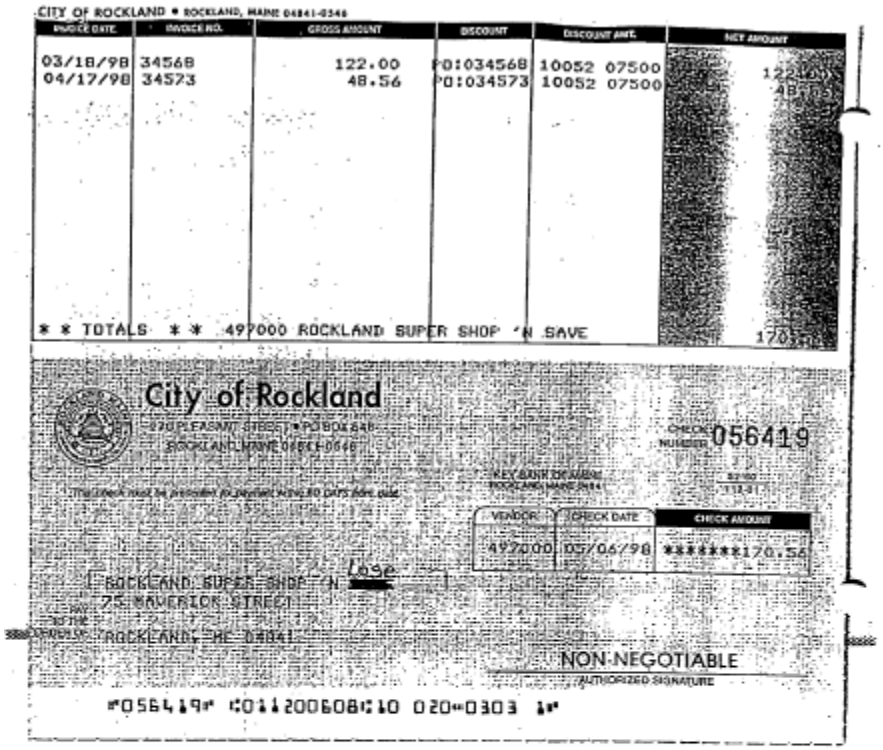
"SNACK FOODS"

Includes but is not limited to the following under Maine's Expanded Sales Tax:

- Breakfast Bars
- Brownies
- Cakes
- Candy
- Cheese Puffs
- Cheese Sticks
- Chips (potato, nacho, tortilla, corn etc.)
- Cookies
- Crackers, including cheese 'n crackers and peanut butter 'n cracker snacks
- Croissants
- Dessert Breads, i.e. banana, pumpkin and date nut breads.
- Dips
- Doughnuts
- Drinks containing no fruit or vegetable juice i.e. Gatorade or 10-K
- Frozen Novelties
- Frozen Yogurt
- Fruit Rolls
- Fruit Snacks
- Fruit Bars
- Granola Bars
- Gum
- Ice Cream
- Ice Milk Products
- Ice Cream Sauce and Toppings, including Chocolate syrup
- Ice Cream Cones
- Ice Cream Novelties
- Iced Tea, instant and pre-mixed
- Marshmallow Creme
- Marshmallows
- Meat Sticks (Beef Jerky, Slim Jims, etc.)
- Muffins, except English Muffins
- Natural Food snacks, i.e. Trail Mix, Yogurt covered Raisins, Carob coated products, etc.
- Pastries, i.e. Cinnamon Rolls, Fritters, Cream Horns, Turnovers, etc.
- Pies
- Popcorn Cakes
- Popped Popcorn
- Potato Sticks
- Pork Rinds
- Powdered and liquid drink mixes, except powdered milk and infant formula
- Pretzels
- Ready-to-eat-pudding
- Rice Cakes
- Roasted Nuts
- Sherbert
- Toaster Pastries

NO

Rockland's Sample Purchase Order Form #'s 6 & 7



CITY OF ROCKLAND • ROCKLAND, MAINE 04841-0548

INVOICE DATE	INVOICE NO.	GROSS AMOUNT	DISCOUNT	DISCOUNT AMT.	NET AMOUNT
03/18/98	34568	122.00	PO:034568	10052 07500	122.00
04/17/98	34573	48.56	PO:034573	10052 07500	48.56
* * TOTALS * *		497000 ROCKLAND SUPER SHOP 'N SAVE			170.56

City of Rockland

120 PLEASANT STREET • PO BOX 548
ROCKLAND, MAINE 04841-0548

CHECK NUMBER 056419

This check must be presented for payment within 90 DAYS after date.

KEY BANK OF MAINE
ROCKLAND, MAINE 04841

VENDOR	CHECK DATE	CHECK AMOUNT
497000	05/06/98	*******170.56

PAY TO THE ORDER OF ROCKLAND SUPER SHOP 'N [redacted]
25 RIVERIOR STREET
ROCKLAND, ME 04841

NON-NEGOTIABLE
AUTHORIZED SIGNATURE

⑈056419⑈ ⑆011200608⑆10 020⑈0303 1⑈

Rockland's Sample Purchase Order Form # 8

APPENDIX 17: Application for General Assistance

Town/City of _____

APPLICATION FOR GENERAL ASSISTANCE

Administrator: Please read the following to the applicant or have the applicant read it in your presence.

PENALTY FOR FALSE REPRESENTATION. Any person who knowingly and willfully makes any written or oral false statement of a material fact to the administrator for the purpose of causing himself/herself to be granted assistance will be ineligible for assistance for 120 days and may be prosecuted for committing a Class E crime, which carries a penalty of up to a $1,000 fine and one year in jail (22 M.R.S.A. § 4315).

1. HOUSEHOLD (Please type or print)

Name of Applicant (Last name, First name, Middle Initial)	DOB	Social Security Number	Telephone Number
Mailing Address (Street, City, State, ZIP code)			Length of Residence
Applicant's Most Recent Previous Address(Street, City, State, ZIP code)			Length of Residence

Applicant is: ☐ Married ☐ Divorced ☐ Widowed ☐ Separated	Has the applicant ever applied for General Assistance from this or another municipality? ☐ Yes ☐ No	Type of assistance granted	When
		Municipality	

Number in household:	How many are related?	How many are not related?	Total number of people for whom applicant is seeking assistance:

PEOPLE LIVING WITH THE APPLICANT	RELATIONSHIP	BIRTHDATE	SOCIAL SECURITY #
1 Name			
2 Name			
3 Name			
4 Name			
5 Name			

NAMES AND ADDRESSES OF SPOUSE, EX-SPOUSE, PARENTS, GRANDPARENTS AND CHILDREN'S PARENTS WHO ARE *NOT* MEMBERS OF THE HOUSEHOLD

1 Name	Age	2 Name	Age
Mailing Address		Mailing Address	
Relationship	Telephone Number	Relationship	Telephone Number
3 Name	Age	4 Name	Age
Mailing Address		Mailing Address	
Relationship	Telephone Number	Relationship	Telephone Number

2. EMPLOYMENT INFORMATION

A. Is applicant currently employed? ☐ Yes ☐ No If **Yes**, type of job:		
If Yes, Name of Employer	Address of Employer	Length of Employment

LIST THREE PREVIOUS EMPLOYERS		
1 Name	Address	Length of Employment
2 Name	Address	Length of Employment
3 Name	Address	Length of Employment

Under what circumstances did the Applicant leave his/her last place of employment?	Date of separation from employment

If unemployed, has applicant registered with the CareerCenter? ☐ Yes ☐ No If yes, when?	Highest level of education completed	Was applicant in the military? ☐ Yes ☐ No Branch _____

Job Skills

B. Are any other members of the household employed? ☐ Yes ☐ No If **Yes**, who and where? (List below)			
	HOUSEHOLD MEMBER	**EMPLOYER**	**TOWN/CITY**
1	Name		
2	Name		

3. ASSISTANCE REQUESTED

ASSISTANCE REQUESTED: Place a check mark next to each type of assistance being requested. Enter the amounts being requested, if known.

✓	ASSISTANCE	AMOUNT	✓	ASSISTANCE	AMOUNT
	1. Food	$		6. Heating Fuel	$
	2. Rent	$		7. Household/Personal Supplies	$
	3. Mortgage	$		8. Other (specify)	$
	4. Electricity	$		9. Other (specify)	$
	5. LP Gas	$		**TOTAL ASSISTANCE REQUESTED**	$

4. INCOME

INCOME: Check **YES** or **NO** for each type of income. Enter the amount of all money to be received (in the next 30 days) by: (1) the applicant; (2) the applicant's family; and (3) unrelated household members, if they pool their income. Check how often income is received.

TYPE OF INCOME	YES	NO	MONEY APPLICANT RECEIVES		MONEY FAMILY RECEIVES		MONEY OTHERS RECEIVE		OFFICE USE ONLY
			AMOUNT	HOW OFTEN	AMOUNT	HOW OFTEN	AMOUNT	HOW OFTEN	MONTHLY TOTAL
A. Employment	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
B. TANF	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
C. Social Security	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
D. Military/ Veterans Benefits	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
E. Retirement or Pension Plan	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
F. Unemployment Benefits	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
G. Worker's Compensation	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
H. Child Support/ Alimony	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
I. SSI– Supplemental Security Income	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
J. Bank Accounts & Cash on Hand	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
K. Income from Relatives	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
L. Other (please specify)	☐	☐		☐ weekly ☐ monthly ☐ other	$	☐ weekly ☐ monthly ☐ other		☐ weekly ☐ monthly ☐ other	$
For Repeat Applicants Only: M. Investment Asset(s) Value (See Section 5, C)									$
N. Misspent Income & Unverified Expenditures (during the last 30 days)									$
SUBTOTAL – MONTHLY HOUSEHOLD INCOME									$
O. LESS: Total monthly work-related expenses (i.e., actual work-related travel up to ordinance maximums, work-related child care, etc.)									$
TOTAL – MONTHLY HOUSEHOLD INCOME									$

5. ASSETS

Assets: Check **yes** or **no** for each asset owned and enter the value. Enter who in the household owns the asset.				
TYPE OF ASSET	YES	NO	VALUE	ASSET OWNED BY
A. Home	☐	☐		
B. Real Estate *(other than home)*	☐	☐		
C. Investments: Stocks, Bonds, Retirement Account(s), Life Insurance, etc.	☐	☐		
D. Vehicle(s) *(e.g., car, truck, motorcycle)*	☐	☐		
	☐	☐		
E. Recreational Vehicle(s) *(e.g., camper, ATV, snowmobile, boat)*	☐	☐		
F. Other	☐	☐		

6. EXPENSES

MONTHLY EXPENSES	ACTUAL COST FOR NEXT 30 DAYS	ALLOWED AMOUNT	OFFICE USE ONLY
1. Food	$	$	
2. Rent — NAME AND ADDRESS OF LANDLORD:	$	$	
3. Mortgage — MORTGAGE HOLDER:	$	$	
4. Electricity	$	$	
5. LP Gas	$	$	
6. Heating Fuel — TYPE: (i.e., oil, electricity, etc.)	$	$	
7. Household/Personal Supplies	$	$	
8. Other Basic Needs (please specify)	$	$	
	$	$	
TOTAL MONTHLY HOUSEHOLD EXPENSES:	$	$	

7. OTHER EXPENSES

NOTE: The administrator should be aware of the following to gain an understanding of the applicant's financial situation.

A. Do you have any debts (e.g., bank loans, car payments, credit cards)? ☐ Yes ☐ No

If **Yes**, give: (1) name; (2) purpose money was borrowed; and (3) amount (list below)

NAME	PURPOSE	AMOUNT
1		$
2		$

B. Do you owe any doctors, or have any medical bills? ☐ Yes ☐ No

If **Yes**, give name and amount (list below)

DOCTOR'S NAME	AMOUNT	DOCTOR'S NAME	AMOUNT
1	$	2	$

8. DEFICIT

A. **Overall Maximum Level of Assistance Allowed** (See GA Ordinance Appendix A)	$	D. **Deficit** (If line A is greater than line B)	$
B. **Income** (See Section 4)	$	E. ***Surplus** (If line B is greater than line A)	$
C. **Result** (Line A minus line B)	$	* **NOTE:** If a surplus exists, applicant is not eligible for regular GA. Proceed to Section 9 to determine if "unmet need" results in eligibility for "emergency" GA.	

9. UNMET NEED

A. **Allowed Expenses** (See Section 6)	$	D. **Unmet Need** (Amount from line C, but only if line A is greater than line B)	$
B. **Income** (See Section 4)	$	E. **Deficit** (See Section 8, line D)	$
C. **Result** (Line A minus line B)	$	F. **Amount of GA Eligibility** (The lower of line D and line E)	$

INSTRUCTIONS:

1) If Section 8, line B (income) is greater than line A (overall maximum), then applicant has a surplus of $_____ and will not be eligible for General Assistance **unless** the GA administrator determines there is need for emergency assistance.

2) If Section 9, line A (allowed expenses) is greater than line B (income), the result will be an "Unmet Need" (line D).

3) If there is both an "Unmet Need" (Section 9, line D) and a "Deficit" (Section 9, line E), the applicant will be eligible for the **lower** of the two amounts. This lower amount is the amount of assistance the applicant is eligible for in the next 30-day period, or a proportionate amount for a shorter period of eligibility (e.g., if the applicant needs one week's worth of GA assistance, they should receive 1/4 of the 30-day amount).

Administrator: Please read the following to the applicant or have the applicant read it in your presence.

In accordance with Maine law (22 M.R.S.A. § 4321) you have the right to be given a written decision concerning your application within 24 hours of submitting a completed application. If you disagree with the administrator's decision on the application, you have the right to a fair hearing before an impartial hearing authority. If you believe that the municipality has violated state law with respect to your application, you have the right to notify the State Department of Human Services in Augusta (1-800-442-6003).

STATEMENT BY APPLICANT: I hereby affirm that the facts in this application are true, correct and complete, and that I have not knowingly withheld any information. I understand the Administrator has the right to verify any information necessary to determine my eligibility and hereby give my consent. I understand if I refuse to give my consent it may result in my not being eligible to receive assistance; therefore, I hereby give my express permission for the Administrator to contact the following specific sources or persons to verify any or all information material to the determination of General Assistance eligibility for my household:

- employer(s) (past/present);
- persons, organizations or businesses referenced in this application;
- past, present and/or future landlord;
- bank(s) or financial institutions;
- the Department of Human Services or any department of the State of Maine;
- the area CAP agency;
- relatives, specify: _____ _____
- persons/vendors to whom I owe money (e.g., utility company, fuel dealer, car dealership);
- physician(s) with information related to my ability to work or receive other benefits: _____
- the following specific sources of information: _____ _____

Applicant's Signature: _____ Date: _____

Administrator's Signature: _____ Date: _____

INSTRUCTIONS

ADMINISTRATOR: This form **must** be used the first time a person applies for GA and then at least every six months. Also, whenever there have been changes in the household (that may effect eligibility) a new application must be taken. If a municipality chooses to use a new application only every six months, "re-application" forms must be used in the interim. Although municipalities may choose to have applicants use "re-application" forms, the preferred method is to use a new application **every time** an individual applies for GA.

1. HOUSEHOLD

The purpose of this section is to determine how many people live with the applicant, their relationship to the applicant, and what other liable relatives the applicant may have.

Although the Administrator should know how many people are living with the applicant, it is important to note that everyone's income will not necessarily be included (see Section 4, INCOME).

Anyone may apply for assistance. It does not have to be the "head of the household." It can be anyone who can provide the information the administrator needs to determine eligibility.

The administrator also needs to know the names and addresses of "liable relatives" not living with the applicant to determine if they can provide some assistance to the applicant. "Liable relatives' are spouses, and parents of applicants under the age of 25 who are financially able to assist the applicant.

2. EMPLOYMENT INFORMATION

The purpose of this section is to gain an understanding of the applicant's ability to work. Any applicant who has quit his or her job without just cause or who has been discharged from employment for misconduct is automatically **ineligible for GA for the 120-day** period beginning with the date of separation from employment. Furthermore, after people apply for GA, they are expected to comply with all workfare or work search requirements placed on them.

3. ASSISTANCE REQUESTED

The Administrator should ask the applicant what assistance is being requested and check off only those basic necessities requested.

4. INCOME

When determining the applicant's eligibility you must know the applicant's income and income received by other household members. Certain kinds of income must be **excluded** including: the applicant's Food Stamps, fuel assistance benefits (HEAP, ECIP), Family Development Accounts, Vista income, earned income received by children still in high school, and income received by certain household members. Refer to Section 1, HOUSEHOLD on the application regarding the total number of people for whom the applicant is seeking assistance, since the income of those people would be included. Actual work-related expenses must be subtracted from income.

The Administrator must count income received by liable relatives living with the applicant, plus income received by other household members such as children, sisters, brothers, roommates only if they pool their income. Pooling means sharing a dwelling unit and living as a family where funds and expenses are intermingled. There is a presumption in GA law that people living in the same dwelling unit are pooling their income, but applicants can rebut the presumption by convincing you they are not sharing resources.

Example: All the income of an unmarried man and woman living together as a family would be counted.

Example: Two women lived together as roommates for the purpose of splitting costs. One of them applied for GA. The Administrator should count 100% of the applicant's income but only her share (50%) of expenses. The applicant's roommate's income would not be included because she proved they do not pool their income.

Regardless of how often income is received, the Administrator should determine need by calculating the "Monthly Household Income" based on the next 30 days. The Administrator has the choice of providing assistance for shorter periods than 30 days.

5. ASSETS

This section is important to help the Administrator learn if the applicant has any assets, which he/she can use to meet his/her immediate needs, or which can be converted to cash. The applicant is expected to use money in bank accounts and all other investments. The applicant is entitled to his/her home (although if mortgage assistance is requested, the municipality may place a lien on it). The applicant can own one vehicle, provided it is not too expensive (see the GA Ordinance). The applicant is expected to sell or convert unnecessary assets into cash if he/she will need on going assistance.

6. EXPENSES

The Administrator must calculate "Monthly Expenses". In the first column, the Administrator should enter the applicant's *actual expenses* to gain an understanding of the applicant's financial situation. In the next column, the Administrator should enter the amount for each basic necessity that is *allowed* in the GA ordinance, *or* the amount actually paid by the applicant, ***which ever is less***. For example, if the applicant's actual rent is $600 but the maximum level of assistance allowed in the GA Ordinance is $550, the Administrator should enter $550 in the second column (Allowed Amount). If the situation was reversed, however and the applicant paid $550, but the ordinance allowed $600, the Allowed Amount would be $550, the lesser amount.

Exception: Due to federal law, the Administrator should always enter the ***maximum food amount*** (see Appendix C of the GA Ordinance) allowed by the ordinance is the second column.

7. OTHER EXPENSES

This section should be used to refer the applicant to budget counseling, etc, if they are overextended financially.

8. DEFICIT

This calculation is an initial "screen," or test for eligibility. If there is no deficit, the applicant should be denied general assistance unless he or she is an emergency situation. Proceed to Section 9 after completing Section 8.

9. UNMET NEED

This section informs the Administrator whether the applicant is in need of general assistance (i.e., his/her income during the next 30 days is less than both the allowed expenses (Section 6) **and** the overall maximum (Section 8). If the applicant has a deficit and is in need, refer back to Section 6 to determine how many of the items the applicant requested can be granted by the Administrator. For example, if the applicant wants help with food, rent and electricity, but the applicant is only eligible for $75, the Administrator can apply that amount toward the item(s) the applicant needs most, in accordance with the maximums in the ordinance. The most the Administrator may provide is the ***lower of the two amounts*** in Section 9, lines D and E. However, this amount **can be exceeded** in an **emergency**. If the applicant is eligible for more assistance than the amount of assistance they are requesting, the Administrator should provide assistance only for the requested assistance at this time. The applicant can apply again, within the next 30 days, to receive the balance if needed.

Notice of Fair Hearing

Original to be sent to Claimant

Yellow copy to be retained in the Administrator's file

NOTICE OF FAIR HEARING

_____ 20 _____

Dear _____:

The Fair Hearing which you requested will be held

Date: _____ Time:_____ Place: _____

If you are unable to attend at this time please notify me immediately.

The hearing will be before an impartial higher authority who was not involved in making the decision on your request for assistance. The decision of the authority will be based on the evidence presented at the hearing. You have the right to:

- confront and cross-examine witnesses;
- present witnesses and written evidence on your behalf;
- be represented by an attorney (at your own expense) or other person.

You will be advised of the hearing authority's decision in writing within 5 working days of the hearing. If you have any questions about this notice or the hearing, please contact me.

Sincerely,

_____
Administrator

_____
Municipality

MMA Form #4-A (1/00)

REQUEST FOR A FAIR HEARING

Date: _____20 _____

Municipality: _____

To the General Assistance Administrator:

I would like a Fair Hearing to review the decision on my request for General Assistance. The reason(s) I want a hearing is/are:_____

_____

_____

I believe that I am entitled to the following assistance:_____

_____

_____

I understand that the hearing will be before one or more people who did not have any involvement in the decision on my request for assistance. I also understand that I have the right to be represented by an attorney (at my expense), to present witnesses and evidence on my behalf and to confront and cross-examine witnesses presented against me.

_____
Client's Signature

Notice of Fair Hearing Decision

NOTICE OF FAIR HEARING DECISION

Date: _____ 20 ____

Dear _____:

A Fair Hearing was held on _____ regarding your request for General Assistance.

1. ISSUE: _____

2. FINDINGS OF FACTS MADE AT HEARING:

3. DECISION BY FAIR HEARING AUTHORITY: It is the decision of the Fair Hearing Authority that you are _____ to receive General Assistance.

4. REASON(S) FOR DECISION: _____

5. STATE AND LOCAL LAW SUPPORTING DECISION: _____

By: _____
(Signature of Official reporting decision)

Fair Hearing Authority

_____
Municipality

6. RIGHT OF JUDICIAL REVIEW: If you are dissatisfied with this decision you have a further legal right to judicial review under the Maine Rules of Civil Procedure, Rule 80B. To take advantage of this right you must file a petition for review with the Superior Court within 30 days of the receipt of the Fair Hearing decision (22 M.R.S.A. § 4322).

FHA-5-1

MMA Form #6 (1/00)

Notice of General Assistance Eligibility

Please Read Both Sides Carefully

Notice of General Assistance Eligibility

Date: _____

Dear _____ :

You have been found eligible to receive General Assistance from _____ (date) to _____ (date), for the following reason(s):

☐ You are in need (your income is less than the maximum levels in the ordinance). (22 M.R.S.A. §§ 4301(7), 4301(8A), 4301(10), 4305, 4308)

☐ You are eligible for emergency assistance (22 M.R.S.A. §§ 4308(2), 4315-A)

You will receive the following assistance:

Type	Amount
_____	$ _____
_____	$ _____
_____	$ _____
	Total: $ _____

In order to be eligible for any assistance in the future:

1. You must do the following items that are checked:

- **Benefits:** Apply for the following within 7 days:

☐ TANF ☐ Family Crisis (EA) ☐ Subsidized Housing
☐ WIC ☐ Unemployment Comp. ☐ Veterans Benefits
☐ Food Stamps ☐ Workers' Comp. ☐ Other: _____
☐ Fuel Assistance (HEAP/ECIP) ☐ SSI/SSDI

- **Assets:** You must make a good-faith effort to liquidate the following assets:

☐ Bank Account ☐ Retirement Account *(IRA)* ☐ Recreational Vehicle
☐ Stocks/Bonds ☐ Real Estate *(other than home)* ☐ Boat
☐ Life Insurance ☐ Vehicle ☐ Other: _____

- **Work/Education:**

☐ Diligently seek work at _____ places a week
☐ Visit the CareerCenter Office for job counseling and placement
☐ Apply for vocational rehabilitation training
☐ Apply for ASPIRE
☐ Register for and attend classes at _____
☐ Seek budget counseling at _____
☐ Sign up for and complete workfare
☐ Provide a doctor's statement describing any limitations in your ability to work and period of time you will be limited.
☐ Other: _____

2. By the next time you apply you must: 1) read the back of this decision regarding use-of-income requirements and limitations on emergency assistance; 2) _____

MMA Form #3A Revised 10/99

3. If you want to receive General Assistance in the future:

- You must make a good-faith effort to make all reasonable efforts to reduce your need for General Assistance, including using available and potential resources such as other government benefit programs, assistance from legally liable relatives, employment opportunities, etc.
- If you are able to work, but are unemployed you must make a good-faith attempt to find a job, accept a job offer, and participate in any training or rehabilitation program that would help you become employed.
- You must not quit your job unless you can document a good reason for doing so, nor must you be fired for misconduct.
- If you are assigned workfare, you must complete your work assignment satisfactorily.
- You must report your household income and expenses completely and accurately and report any changes in the household or income to the administrator.
- Should you receive a lump sum payment between the date of this decision and any future application for General Assistance, you must report to the Administrator the receipt and the amount of that lump sum payment. Under certain circumstances the municipality has the right to consider (i.e., prorate) lump sum income available to your household for as long as 12 months after an application for General Assistance. Lump sum income that is spent toward basic necessities will not be prorated, therefore you should keep receipts of your expenditure of lump sum income in order to preserve your eligibility for General Assistance during the 12-month period after receiving a lump sum payment.
- You must not commit fraud or violate rules of other programs which would cause you to lose other public benefits such as TANF or Unemployment Compensation.
- You must show that your income has been used for basic necessities such as: rent/mortgage, fuel, utilities, non-elective medical services, non-prescription drugs, telephone when medically necessary, necessary work-related expenses, clothing, personal supplies and food. Income received within a 30-day period and spent on non-necessities shall be considered available to the household resulting in a reduction or denial of future benefits. Examples of spending for non-necessities include expenditures for tobacco or alcohol, gifts, trips or vacations, court fines, repayments of unsecured loans, credit card debt, etc.
- The municipality reserves the right to apply specific use-of-income requirements to any applicant who fails to use his or her income for basic necessities or fails to reasonably document his or her use of income. These requirements will take the form of written directives to spend all or a portion of prospective income toward priority basic necessities such as housing (rent/mortgage), energy (heating fuel/electricity), or other specified basic necessities. Failure to abide by these requirements may result in an ineligibility for General Assistance to replace the misspent income, unless you are able to show with verifiable documentation that all income was spent on basic necessities up to the maximum amounts allowed by ordinance.
- For you to be eligible for emergency General Assistance in the future (for example, to avert an eviction or disconnection of electric service), you will have to be able to demonstrate that you could not have prevented the emergency situation from occurring with the income and resources available to you. Please refer to the municipal General Assistance ordinance to review the guidelines the administrator may follow to limit the amount of emergency General Assistance you will be eligible for if you could have financially prevented or partially prevented the emergency from occurring.

Important:

Failure to fulfill one or more of these requirements may result in your being ineligible to receive assistance the next time you apply, or even disqualification from the program for 120 days.

Assistance that you receive must be repaid to the municipality if you are ever financially able to repay it. Parents who are financially able are required by law to help their children under the age of 25, as spouses are legally required to financially support each other. The municipality has the right to require these relatives to repay any assistance that is granted.

If you are dissatisfied with this decision, please feel free to discuss it with me. You have the right to have a fair hearing. A person who was not involved with this decision will decide whether you are eligible for assistance. If you would like a fair hearing, you must request a hearing **in writing within 5 working days** of when you receive this notice. You have the right to be represented by an attorney, at your expense, and to present witnesses and written evidence on your behalf. Forms to request a hearing are available from my office.

You also have the right to contact the State Department of Human Services in Augusta (1-800-442-6003) if you think this decision violates state law.

If you have any questions, do not hesitate to contact me.

Sincerely,

_____

General Assistance Administrator

MMA Form #3A Revised 10/99

General Release-Request for Confidential Information, Pursuant to 22 M.R.S. §§ 4306, 4314

General Release

Request for Confidential Information

Pursuant to 22 M.R.S.A. § § 4306, 4314

This form to be signed by the **General Assistance Applicant**

Applicant's Name	Social Security Number ___ – ___ – ____
Applicant's Mailing Address	
Municipality	
Address	
Source Name	Source Address

I hereby request and authorize that the above-named source provide the above-named municipality with the following information:

Signature of General Assistance Applicant: Date:

Request for Confidential Financial Information, Pursuant to 22 M.R.S. § 4314(2)

REQUEST FOR CONFIDENTIAL FINANCIAL INFORMATION

Pursuant to 22 M.R.S.A. § 4314(2)

*This section to be signed by the **General Assistance Applicant***

Applicant's Name	Social Security Number ___ – ___ – ____
Applicant's Mailing Address	
Municipality	Address
Financial Institution	Address

I hereby request and authorize the release (to the above-named municipality) of any and all information pertaining to the accounts held to my credit including: savings and checking accounts, stocks, bonds, certificates of deposits, trusts, retirement accounts, and loan/mortgage payment records.

Signature of General Assistance Applicant: _____ Date: _____

*This section to be completed by the **General Assistance Administrator***

Name	Municipality	Telephone
Mailing Address		

*This section to be completed by the **Financial Institution***

Financial Institution Address		Name of Account Holder	
Type of Account		Account No.	Balance
Type of Account		Account No.	Balance
Type of Account		Account No.	Balance
Date of most recent withdrawal	Amount of most recent withdrawal	Date of most recent deposit	Amount of most recent deposit
Has account been closed? ☐ Yes ☐ No	Closing date	Safety deposit box? ☐ Yes ☐ No	Other assets (stock, bonds, CDs, etc.)? ☐ Yes ☐ No

Please list other assets and their worth (stock, bonds, CDs, etc.) held by the above applicant.

Signature of person representing the financial institution: _____

Typed or printed: _____ Date: _____

IMPORTANT: In accordance with the above authorization, please return this form to the General Assistance Administrator listed above. Your prompt reply will help expedite my request in this matter. Thank you.

7/00

Request for Confidential Medical Information

REQUEST FOR CONFIDENTIAL MEDICAL INFORMATION

*This section to be signed by the **General Assistance Applicant***

Name	Social Security Number ___ – ___ – ____
Mailing Address	
Municipality	Name of Health Care Provider
Mailing Address of Health Care Provider	

- I understand that I may refuse authorization to disclose all or some healthcare information but that refusal may result in the denial of my General Assistance application.
- I hereby give my consent to the above-named municipality to receive medical information from the above-named health care provider regarding my ability/inability to work in order to determine my eligibility for General Assistance.
- My consent to release this information is effective until _____ *(date not to exceed thirty months from date of authorization),* and I authorize subsequent disclosures regarding this information during this time period.
- I understand that I may revoke this authorization at any time by executing a written revocation and providing a copy of that revocation to the person I have authorized to release this information. My revocation is not effective until the person I authorize to release information has received notice of my revocation. Revocation of this authorization may result in the denial of General Assistance benefits.
- I understand that I am entitled to a copy of this authorization form.

_____ _____

Signature of General Assistance Applicant Date

*This section to be completed by the **General Assistance Administrator***

Name	Municipality	Telephone
Mailing Address		

*This section to be completed by the **Health Care Provider***

The above-named person has applied for General Assistance (GA) from the above-named municipality. In order to determine GA eligibility, information regarding the applicant's illness/disability preventing him/her from working must be obtained. Please answer the following at your earliest opportunity and return this form to the General Assistance Administrator listed above.

1. Does the applicant have any illness, injury, or disability that limits his/her ability to work? ☐ Yes ☐ No
2. Are there any restrictions on the kinds of work the applicant can perform, how many hours he/she can work, etc. ☐ Yes ☐ No
3. If you answered yes to #2, please explain: _____
4. Can the applicant perform the following:

	Yes	No
• Look for work	☐	☐
• Attend an education or training program	☐	☐
• Work full-time	☐	☐
• Work 20 hours or less a week	☐	☐

(If yes, how many hours _____)

Please use the reverse side, or additional paper if necessary.

5. If there are any physical or psychological limitations regarding the applicant's ability to work, how long do you expect this condition to last before he/she may work?
6. Would you recommend any vocational education, physical rehabilitation, or other services to help the applicant and if so, what?

_____ _____

Signature of Health Care Provider Date

MMA Form #9 (4/2000)

UCC Financing Statement

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

	1a. ORGANIZATION'S NAME				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

	2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

	3a. ORGANIZATION'S NAME				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11)

Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read and follow all Instructions, especially Instruction 1; use of the correct name for the Debtor is crucial.
Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.
Send completed form and any attachments to the filing office, with the required fee.

ITEM INSTRUCTIONS

A and B. To assist filing offices that might wish to communicate with filer, filer may provide information in item A and item B. These items are optional.
C. Complete item C if filer desires an acknowledgment sent to them. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form the Acknowledgment Copy or a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor's name.** Carefully review applicable statutory guidance about providing the debtor's name. Enter only one Debtor name in item 1 -- either an organization's name (1a) or an individual's name (1b). If any part of the Individual Debtor's name will not fit in line 1b, check the box in item 1, leave all of item 1 blank, check the box in item 9 of the Financing Statement Addendum (Form UCC1Ad) and enter the Individual Debtor name in item 10 of the Financing Statement Addendum (Form UCC1Ad). Enter Debtor's correct name. Do not abbreviate words that are not already abbreviated in the Debtor's name. If a portion of the Debtor's name consists of only an initial or an abbreviation rather than a full word, enter only the abbreviation or the initial. If the collateral is held in a trust and the Debtor name is the name of the trust, enter trust name in the Organization's Name box in item 1a.

1a. Organization Debtor Name. "Organization Name" means the name of an entity that is not a natural person. A sole proprietorship is **not** an organization, even if the individual proprietor does business under a trade name. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed public organic records to determine Debtor's correct name. Trade name is insufficient. If a corporate ending (e.g., corporation, limited partnership, limited liability company) is part of the Debtor's name, it must be included. Do not use words that are not part of the Debtor's name.

1b. Individual Debtor Name. "Individual Name" means the name of a natural person; this includes the name of an individual doing business as a sole proprietorship, whether or not operating under a trade name. The term includes the name of a decedent where collateral is being administered by a personal representative of the decedent. The term does not include the name of an entity, even if it contains, as part of the entity's name, the name of an individual. Prefixes (e.g., Mr., Mrs., Ms.) and titles (e.g., M.D.) are generally not part of an individual name. Indications of lineage (e.g., Jr., Sr., III) generally are not part of the individual's name, but may be entered in the Suffix box. Enter individual Debtor's surname (family name) in Individual's Surname box, first personal name in First Personal Name box, and all additional names in Additional Name(s)/Initial(s) box.

If a Debtor's name consists of only a single word, enter that word in Individual's Surname box and leave other boxes blank.

For both organization and individual Debtors. Do not use Debtor's trade name, DBA, AKA, FKA, division name, etc. in place of or combined with Debtor's correct name; filer may add such other names as additional Debtors if desired (but this is neither required nor recommended).

1c. Enter a mailing address for the Debtor named in item 1a or 1b.

2. **Additional Debtor's name.** If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. For additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.

3. **Secured Party's name.** Enter name and mailing address for Secured Party or Assignee who will be the Secured Party of record. For additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP). If there has been a full assignment of the initial Secured Party's right to be Secured Party of record before filing this form, either (1) enter Assignor Secured Party's name and mailing address in item 3 of this form and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Assignee's name and mailing address in item 3 of this form and, if desired, also attach Addendum (Form UCC1Ad) giving Assignor Secured Party's name and mailing address in item 11.

4. **Collateral.** Use item 4 to indicate the collateral covered by this financing statement. If space in item 4 is insufficient, continue the collateral description in item 12 of the Addendum (Form UCC1Ad) or attach additional page(s) and incorporate by reference in item 12 (e.g., See Exhibit A). Do not include social security numbers or other personally identifiable information.

Note: If this financing statement covers timber to be cut, covers as-extracted collateral, and/or is filed as a fixture filing, attach Addendum (Form UCC1Ad) and complete the required information in items 13, 14, 15, and 16.

5. If collateral is held in a trust or being administered by a decedent's personal representative, check the appropriate box in item 5. If more than one Debtor has an interest in the described collateral and the check box does not apply to the interest of all Debtors, the filer should consider filing a separate Financing Statement (Form UCC1) for each Debtor.

6a. If this financing statement relates to a Public-Finance Transaction, Manufactured-Home Transaction, or a Debtor is a Transmitting Utility, check the appropriate box in item 6a. If a Debtor is a Transmitting Utility and the initial financing statement is filed in connection with a Public-Finance Transaction or Manufactured-Home Transaction, check only that a Debtor is a Transmitting Utility.

6b. If this is an Agricultural Lien (as defined in applicable state's enactment of the Uniform Commercial Code) or if this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 6b and attach any other items required under other law.

7. **Alternative Designation.** If filer desires (at filer's option) to use the designations lessee and lessor, consignee and consignor, seller and buyer (such as in the case of the sale of a payment intangible, promissory note, account or chattel paper), bailee and bailor, or licensee and licensor instead of Debtor and Secured Party, check the appropriate box in item 7.

8. **Optional Filer Reference Data.** This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information that filer may find useful. Do not include social security numbers or other personally identifiable information.

APPENDIX 18: The Review Process for General Assistance

The following procedures are used for the on-site review of General Assistance Program. The Department of Health and Human Services has 3 Field Examiners who do the reviews in separate parts of the state. The procedures used may vary in some aspects from Field Examiner to Field Examiner and from municipality to municipality, as we must allow for large and small caseloads, professional welfare directors and selectmen or other part-time employees.

Entrance Conference – Either by phone at the time of scheduling or in person prior to the review, there should be an entrance conference which allows the examiner to explain to the administrator the purpose of the review, the scope of the review (fiscal/case records), the time period to be reviewed and the case selection process.

Fiscal Review – The purpose of this part of the review is to allow the examiner to verify that the amount submitted to the Department for reimbursement is the amount of General Assistance paid to vendors for direct costs of the program. This is done by reviewing bills paid, computer printouts, ledgers and warrants or a combination of these. It is imperative that no administrative costs are billed to the Department. If client reimbursements are reported, the examiner is to review the process used to arrive at the amount reported to ensure that the reimbursement formula (10%-50%-90%) was used properly so the municipality and the state gets their correct share. You are only to report on the 099 the amount of the state's share which will then be subtracted from the reimbursed amount.

Case Selection – In many instances, the examiner will be reviewing all cases for the time period in question. In small municipalities, the examiner may need to go back a number of months to achieve readings of ten cases, which is the ideal minimum. In large municipalities, cases may be selected at random. The method described in our policy manual is not always the best method due to caseload sizes and other factors.

Case Review – The examiner will review the application process whereby an application is processed for periods no longer than 30 days and that the application covers the payment selected and for 30 days forward. Receipts are to be requested for non-initial applications with misspent or non-verified expenditures added to the 30-day prospective income. The budget is to be computed using actual expenses or the allowed maximums, whichever is less. The deficit or the unmet need is the amount authorized whichever is less, unless an emergency exists. Ordinarily, recipients are not to receive more than the lesser of the deficit or unmet need, unless an emergency exists which could not have been averted by the client's income and resources. Narratives are to be entered in the case record whenever maximums are exceeded to justify amounts authorized. Appropriate forms should be used for all cases, including decision forms and notices on use of income requirements and emergency assistance. Copies of decision forms should be in the file as well as documentation that clients were notified of use of income and limits on emergency assistance. Receipts do not need to be entered in the case record. However, documentation should show that they were seen and used appropriately.

Requiring applicants to apply for other resources can be one of the easiest procedures to miss during case reviews. However, it is very important that applicants be required to apply for other programs when appropriate. TANF, SSI, UIB, WIC, etc. are available to many of our clients.

Other Issues at Review – The examiner must ensure that an updated general assistance ordinance is available for review by all applicants upon requests and that a notice of its availability is posted. The same is true for the statutes pertaining to General Assistance. Notice is to be posted which lists regular business hours, and emergency phone number to be called outside of business hours, the name of a person to be contacted in an emergency, the requirement that written decisions are to be issued within 24 hours, and the Department's toll-free number for reporting alleged violations. Notices related to the availability of statutes and ordinances and the posted hours and emergency services must be posted in plain sight 24 hours a day. This means that a notice placed on a bulletin board, etc., in a building, which is locked after normal business hours will not be acceptable.

Exit Conference – This allows the examiner to meet with the administrator to review his/her findings – good or bad. The examiner will explain errors/mistakes found and what needs to be done to correct the situation. This is also the time when the administrator can question, challenge or refute the review findings. The examiner will seek the administrator's signature and explain that the administrator has 10 days to submit written comments in response to the review findings prior to written notification of compliance/non-compliance is issued. All decisions are subject to fair hearing rights.

State of Maine Department of Health and Human Services Monthly General Assistance Reimbursement Report

Every municipality is required by statute to submit a general assistance report to the department of human services on a monthly, quarterly, or semi-annual basis even if there were no general assistance expenditures.

COMPLETING THE MONTHLY GENERAL ASSISTANCE REIMBURSEMENT REPORT

PLEASE TYPE OR PRINT CLEARLY ALL INFORMATION ON FORM

1. Enter name of Municipality and County.
2. Enter Month and Year of reporting period.

*** The Department shall refuse to pay claims for reimbursement that are not submitted within 90 days of the end of the reporting period. (**Example: Claims made for January expenditures are due no later than April 30th.) The only exception shall be when it is determined that good cause for not submitting the report exists. Those requesting a good cause exception, please submit a letter of explanation to the General Assistance Program Manager at the address on front of form.

3. Enter the number of cases paid for during the reporting period. A household is counted as one case. Count the case only once during the reporting period regardless of the number of payments made for that case. Enter the total number of persons included in the cases.

4. Enter the breakdown of information for each category. If you paid assistance for 2 cases, one with 2 people and one with 5 people, the breakdown may look like this:

Housing cases 2 people 7 amount paid	$550.00
Electricity cases 1 people 5 amount paid	$ 70.00
Food cases 1 people 2 amount paid	$ 23.00
Prescription cases 1 people 1 amount paid	$ 30.00*

** (The prescription was paid for one person even though there are more people in the case.)*

Total GA Expenditures: **$673.00**

* Enter **100%** of any amount received from clients or other Municipalities for which the Department has already reimbursed you. **Do not include SSI reimbursements received from the Department.** (Example: You received $100 from a client, for assistance you paid for 6 months earlier).

Minus total amount reimbursed by clients/municipalities: - **$100.00**
* Enter the total GA claimed for this reporting period. **$573.00**

($673 total expenditure for the reporting period minus the $100 received from a client)

Enter the reimbursement requested at 50%: **$286.50**
($573 x .50)

Enter the reimbursement requested at 90%: **$ 0.00**
(Municipalities are entitled to 90% once obligation is reached).

Enter the total year to date GA expended. The State's fiscal year begins 7/1. (Examples: 1. July's total year to date GA expended would be the same figure as the total GA expended for the July reporting period. 2.August total year to date GA expended would be the total GA expended for the August reporting period added to the total year to date GA expended shown on the July report.) This process continues for each remaining month in the State's fiscal year July 1st to June 30th.

5. Enter State Obligation amount.

6. Applicants receiving TANF would have listed a dollar amount under TANF as income on the income section of the application form. Enter the total number of TANF cases in #1 and enter the total GA paid for TANF cases in #2.

7. If your municipality requires GA recipients to perform workfare for the municipality or a non-profit organization, enter the # of cases, the # of people performing the workfare, the # of hours worked and the total Dollar Value of the work performed. (You must use at least minimum wage in calculating the dollar value of the work performed).

8. Enter the case names or the case numbers if your municipality is reporting five cases or fewer.

9. Signature of the GA Administrator or designee and date of signature is required. This may not be the person preparing the form.

10. Please type or print the name of the person preparing the form along with a telephone number.

Please review the pink copy returned to Municipality for any adjustments, which may have been made to your reimbursement report.

STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
MONTHLY GENERAL ASSISTANCE REIMBURSEMENT REPORT

PLEASE SEE INSTRUCTIONS ON THE BACK

Municipality _____ County _____ Reporting Period _____

During this reporting period we paid for _____ number of cases which included _____ number of persons.
*The total number of cases and persons in the household should be counted one time.

IMPORTANT All statistical information should reflect the number of cases, persons, etc., for whom assistance was actually paid for during the reporting period, not what you have authorized during the reporting period.

Breakdown:	Cases	People	Amount
Housing			
Emergency Housing(Shelter,etc.)			
Heating(all types)			
Electric Service(non heating)			
Propane gas(non heating)			
Food			
Prescriptions			
Medical Services			
Dental			
Burials/Cremations			
Diapers/BabySupplies			
Household/Personal			
All Other Needs			
TOTAL GA EXPENDED THIS PERIOD			
***Minus Total Amount Reimbursed by clients/Other Municipalities(100%)**			-

**Please enter the total amount you received from clients or other municipalities for which the Department has already reimbursed you.Do not include SSI reimbursements from the State of Maine.

THIS BOX FOR DHS USE ONLY

$ _____

Total GA claimed this reporting period: $ _____
Reimbursement requested at 50%: $ _____
Reimbursement requested at 90%: $ _____
Total year to date GA expended: $ _____
(from 7/1 of current State fiscal year through end of this reporting period)

State Threshold amount : $ _____
(This figure was sent to you from DHHS. Your reimbursement rate is 50% until you reach your obligation amount after which, your reimbursement rate is 90%.)

The following information is requested for GA recipients who receive TANF (Temporary Assistance for Needy Families) from the State of Maine. See instruction #6 for explaination of who is eligible for TANF.

1. Total # of TANF cases paid for _____ 2. Total GA expenditures for TANF cases $_____

The following information is requested for GA recipients who performed Workfare for the Municipality:

# of cases _____ # of People _____ # of Hours Performed _____ Dollar Value $ _____

If your municipality is reporting five cases or fewer for the reporting period, please list the case names or case numbers.

1)_____ 3)_____ 5)_____
2)_____ 4)_____

I HEARBY CERTIFY THAT THE AMOUNT CLAIMED FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. RECORDS TO VERIFY THIS CLAIM ARE ON FILE IN THE MUNICIPAL OFFICE AND WILL BE RETAINED FOR A PERIOD OF NOT LESS THAN THREE YEARS FROM THE DATE OF THIS DOCUMENT. RECORDS WILL BE AVAILABLE TO ANY REPRESENTATIVE OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR AUDIT PURPOSES.

SIGNATURE: _____ DATE: _____
GA Administrator or Designee

PREPARER'S NAME: _____ PHONE: _____
Please type or print

FOR STATE OFFICE USE ONLY

_____ Paid as submitted _____ Adjusted/Corrected Amount approved for Reimbursement $ _____

RETAIN COPY NUMBER 4 (GREEN) FOR MUNICIPAL FILE, FORWARD COPIES 1,2,3, WITHOUT DETACHING TO:

Department of Health and Human Services
General Assistance
11 State House Station, 268 Whitten Road
Augusta, ME 04333
(800) 442-6003

SWGA-004589 (rev. 10/04)

Common Questions Regarding SSI Reimbursement

1. There are two different authorization forms. Does it matter which form is used?

   Yes. The *initial payment agreement* is to be signed by the applicants who have not received SSI payments before, or by those whose benefits have been terminated for at least one year. (A client had been incarcerated for four years. Upon release, he would need to file again, this time using an initial payment agreement). The *initial post eligibility agreement* is to be used if an applicant had received SSI previously which has been suspended or has been terminated for less than one year.

   If the incorrect form is received by the Social Security Administration, it is returned to the Department of Human Services. At that time, the process has to be initiated again at your office with the original agreement voided.

2. The authorization forms are in quadruplicate. Does it matter who gets which copy?

   No. The Department would prefer to have the original signature. However, it doesn't matter. It only matters that the copies go to DHHS, your local Social Security Administration office, the client and the clients' file.

3. What is the purpose of the vendor form?

   In order for the state to issue a check to the client for his share of the retroactive check, the receiver (vendor) must be known to our payment system. In these cases, our clients become the vendor and it is the client's information that is needed—current **mailing** address, social security number and ***client's signature***. Your signature is not necessary on the vendor form. Clients must be alerted to report all changes of address and be aware that a new vendor form must be filled out and signed each time their mailing address changes. If a client's mailing address and actual residence address differ, we are only concerned with the mailing address on the vendor form. Do not put both on the vendor form. (Applicant's legal residence line at the bottom of the authorization forms is to alert us of the municipality involved in cases where the mailing address lists a different locality.)

   If the client is filling out a vendor form for the first time, only use the section on the left side of the form. If it is a change of address after a first form was signed, put the new address on the left and the old address (listed on previous vendor form) on the right side.

4. What if I fail to send in a vendor form with the authorization?

   If we receive an authorization form without a vendor form, we will return the authorization form and request the vendor form to be sent in along with the authorization. It is imperative that the client be on our vendor system. Failure on the Department's part to issue the client his share of the retroactive check within *ten* working days after receipt of the check may result in the discontinuation of the process.

To keep this process in place, the receipt of the vendor form, with client information and signature, is as important as the authorization form itself.

5. Can I use one authorization form and, one vendor form if I have two people applying (usually a husband and wife)?

   No. This is a situation where you will have to prorate. Each applicant may receive their own SSI retroactive payment and we can recoup from each of them. An example would be: Mr. and Mrs. Jones each apply for SSI and receive General Assistance while waiting for their retroactive payments. They receive a total of $2,140 in assistance which includes a prescription for Mrs. Jones which cost $140. When Mrs. Jones gets her SSI retroactive payment we can recoup $1,140. When Mr. Jones receives his SSI retroactive payment we can recoup $1,000.

6. If a child is applying, who signs the forms?

   Keep in mind the purpose of the forms. The *authorization* form would need parent name (Mary Smith) for applicant (John Smith, Jr. - Son) in the address. The social security number would be that of the son. The parent would need to sign the form. The *vendor* form is for DHHS to issue a check. All information (name, address and social security number) would need to be that of the vendor, in this case, the **parent** who will be receiving the check for the child.

7. What if there is a payee?

   Same process as above. However, there is nothing in the regulations which would require us to issue the check to the payee. If you know a payee is involved, please follow steps outlined in answer #6. If a payee is not known to you or DHHS, we will be alerted by the letter from the Social Security Administration near the time of the receipt of the retroactive payment. If, due to time constraints, we cannot get the payee to fill out a vendor form, we have a system in place whereby the check to the client is pulled prior to mailing and inserted into an envelope addressed to the payee.

8. Should I have all applicants sign the authorizations forms?

   No. Only those applicants who are being required to apply for SSI or those who are currently pending an SSI eligibility determination should be signing an authorization.

9. What if an applicant, who is required to sign an authorization, refuses to do so?

   The applicant who is being required to apply for SSI or who has a pending SSI application and who refuses to sign an authorization to allow the Department to receive a retroactive check and deduct the state/local share for the direct costs of General Assistance is to be ***denied*** General Assistance.

10. If my client is already on SSI, does he have to sign an authorization?

    No. The authorization forms are only to deduct monies from the retroactive SSI payment. This in no way involves monthly payments or individuals who are currently receiving SSI. In these situations, the amount of SSI being received is considered in determining eligibility for GA. If your client's SSI monthly payments are suspended or terminated, he should be required to appeal, or file again, and then he would need to sign a *post eligible authorization* to capture monies from his potential future lump sum.

11. Should I wait to send the authorization form in when I have a significant amount or when sending in my monthly/quarterly claims for reimbursement?

    The form needs to be received at the Social Security Office within 30 days of being signed. If the signed authorization is not received within 30 days, it is not binding on the client. A new one has to be signed and the municipality and the State cannot recoup any money for the assistance given before the 2nd form is signed. Once SSA gets it, we also need it to get names/addresses/soc security #s in place. Some applications for SSI are expatiated.

12. How important are reports on changes of address?

    Very important. Once the authorization is received by the Social Security Administration, the retroactive check, if any, is sent to DHHS unless the authorization is voided. We can only issue the client his share at the address on the vendor system. These checks cannot be forwarded by law. We've already had clients waiting up to two weeks before we could have the check returned, a new vendor form updated and the check reissued.

13. What if clients move to a different municipality?
    No. Please send a copy to SSA and DHHS immediately to start the process in place. Some applications for SSI are expedited. The client must be told to report all changes of address and to fill out new vendor forms. We will contact each municipality and reimburse each, if appropriate. For new applicants in your municipality, please ask if an authorization form has been signed. If so, a new vendor form must be filled out and signed by the client. A new authorization form is not required if the applicant has signed an authorization form in another municipality, however, it would alert the Department that the applicant has also received General Assistance in your municipality.

14. How can I get more forms?

    Forms are available from the Department using the same number you call to request your monthly expenditure and reimbursement forms and statistical reports 1-800-442-6003 or 287-3736. Please be specific as to whether you need the initial payment forms or the initial post eligibility payment forms.

15. Once we are contacted by DHHS and report the amount of assistance granted during the applicable time period, do we have any more responsibility?

Yes. DHHS would like you to follow up the conversation with a written notification of the amount for our files. The written notification needs to include the amount of assistance granted and the information about workfare performed. Please use the form provided to report the assistance granted and workfare performed. The Department tries not to make mistakes when processing the reimbursement checks and if every municipality uses the same form it will help us to do our job more accurately.

16. Do we deduct the amount of workfare performed from the amount of assistance granted to get a net amount of General Assistance to be deducted from the retroactive check?

    Yes. Due to last year's court decision, the Department changed the sections of policy that deal with workfare. If an applicant performs workfare for the municipality while receiving General Assistance and waiting for an SSI retroactive payment, the municipality needs to keep track of the number of hours of workfare performed. There has to be a monetary value of at least minimum wage assigned to each hour of workfare performed. The value of the workfare performed by the SSI recipient during the applicable time period will be subtracted from the General Assistance received when determining the amount that the client must reimburse the municipality and the state.

17. If the individual receiving the SSI retroactive payment is part of a household which received General Assistance, how much of the assistance that was given is deducted from the SSI retroactive payment?

    We can deduct only the prorated portion of the benefit that was for the SSI recipient. In other words, if the individual is part of a four person household, only one-fourth of the General Assistance benefit is reported for the reimbursement. The SSI is for that individual only. That individual signed the authorization form. If some of the assistance is specifically for the SSI recipient, then you would add that amount to the prorated amount. An example would be: Mr. Smith is in a household of four. The household received $400 for rent in April and $78 for a prescription that was for Mr. Smith. We could deduct $178 form Mr. Smith's retroactive payment.

18. How does the Department calculate how much of the recipient's SSI retroactive payment is available to reimburse the Department and municipality?

    The best way to explain the calculation process is to include an example from the training manual put out by the Social Security Administration. This manual is used by the Department to administer the SSI Interim Assistance Reimbursement program.

19. When the total amount is known, how do we determine what amount is our share and what amount belongs to DHHS?

    For each month that payment for this individual was made, a claim was submitted to the Department for reimbursement. For each of these monthly payments, you must figure the

level of reimbursement you received from the Department. Monthly percentages would only fluctuate if your levels have changed from 50% to 90% or 10% to 100% (90% and 10%) during the particular time period involved.

20. How long does it take to issue a check to the client and to the municipality once it is received by DHHS and DHHS' share is deducted?

    For any given week, barring unforeseen circumstances, all checks are processed on Friday morning. The checks for the municipality and the client are processed at the same time. Checks are then cut by the following Wednesday and mailed either Wednesday or Thursday. (If it is a week with a holiday, checks are mailed one to two days later.)

21. If SSA needs to locate a client for an additional review and the client cannot be located, have we lost our money from reimbursement?

    Not necessarily. According to SSA officials in Boston, if all medical information is received and a determination of eligibility can be made, we will still receive the retroactive SSI check, regardless whether or not the client can be located for an additional contact (which is not always the case). We would deduct our portion and the municipal portion and send the balance to the last address known on our vendor file. The check would most likely be returned to us.

    If SSA needs more information, and a determination cannot be made prior to contact with the applicant, no assistance can be granted. If there is contact within 60 days, the case is reactivated. SSA may also grant good cause if contact is made at a later date. Bottom line is – unless an eligibility determination can be made, no SSI payments can be released.

22. What about attorney's fees?

    We've had numerous phone conversations with various attorneys who are very upset that we are not allowing their fees to be deducted from the lump sum prior to our deducting the amount of direct costs of General Assistance paid on behalf of the client. We have no obligation to do so, nor does the Social Security Administration. The Department of Human Services does allocate funds to Pine Tree Legal Assistance, Inc. for the purpose of assisting SSI applicants in their endeavors to receive SSI.

23. The authorization is for the SSI retroactive check only. I have a client who, with the advice of his attorney, withdrew her application for SSI at the time she was granted both SSA and SSI. This meant that no SSI lump sum would be processed and, therefore, no reimbursement for the state or the municipality. The attorney, however, is able to collect his fee from the client who would get a full retroactive SSA check. Is this legal?

    Yes, this practice is now happening nationwide, especially in Massachusetts. For those persons who have applied for both SSA and SSI, (there shouldn't be very many) and whose eligibility is determined at the same time (even fewer), withdrawal from SSI can

take place. When this is done at the local SSA office, the only thing the SSA officials can do is alert the recipient that they will lose all SSI payments due them and will most likely lose medical benefits. They have no authority to do more. They will not be able to alert us or you of the withdrawal. The withdrawals are coded as denials and, therefore, will not be known to our system other than as denials.

Clients are supposed to inform you of their status for the potential programs; however, if the client is not "current", you'll not be able to ask him at an application interview whether or not he's been granted. If a withdrawal is made prior to a check being issued, the Department is not going to know.

If it becomes known that a client refuses the SSI resources, a disqualification is to take place until a reapplication is made. Of course, in most, if not all cases, medical determinations have been made and therefore any retroactive check should be small because the time period involved should be short.

24. Do I report the amount of SSI reimbursement my municipality received from a client **via the state** on the statistical form (099)?

    No. They are two separate processes. Keep them separate.

25. Does the client's portion of the lump sum fall under the lump sum provision of our ordinance?

    Yes. That portion must be prorated and accounted for in the same way as any other lump sum income.

26. If the Social Security Administration sends the Retroactive payment directly to the client instead of to the Department, is there anything that can be done to recoup the money owed the municipality and the State?

    Yes. The municipality may recover the amount expended for the support of the client while the client was waiting for the SSI Retroactive payment in a civil action (22 M.R.S. sect.4318). The client is now informed of this when the Authorization form is signed.

5/7/99
CB/cjc

EXAMPLE 4 MONTHS OF GA PAYMENTS OUTSIDE THE INTERIM PERIOD

Facts

- 3/l/89, Dan Cook signs an IAR authorization at the State welfare office. He begins receiving interim assistance (IA) in January 1989. Mr. Cook receives $300, the full [A amount payable for a month.]

- 3/3/89, Mr. Cook applies for SSI benefits.

- 3/6/89, FO receives Mr. Cook's authorization.

- 8/17/89, Mr. Cook is determined eligible for SSI payments as of 3/l/89.

- 6/89, Mr. Cook has too much income, and is not eligible for an SSI payment for that month.

- 9/7/89, State agency receives a $1,672.00 retroactive check for Mr. Cook with a notice containing the following breakdown for the retroactive check:

  3/l/89 - 5/31/89 - $368 per month
  7/l/89 - 8/31/89 - $1 00 per month
  9/l/89 - 9/30/89 - $368

  1/89 through 9/89, the State paid Mr. Cook a total of $2,100 in IA.

State Recoupment of Reimbursable Interim Assistance

- The State can be reimbursed $1,200 as follows:

Month	IA Payment[1]	SSI Payment	Amount State Could Recoup[2]	Amount of SSI Check Available for Recoupment
JAN	$ 300.00	$ 0.00	$ 0.00	$ 0.00
FEB	300.00	0.00	0.00	0.00
MAR	300.00	368.00	300.00	368.00
APR	0.00	368.00	0.00	0.00
MAY	300.00	368.00	300.00	368.00
JUNE	300.00	0.00	0.00	0.00
JULY	300.00	100.00	300.00	100.00
AUG	0.00	100.00	0.00	0.00
SEPT	300.00	368.00	300.00	368.00
	$2,100.00	$1,672.00	$1,200.00	$1,204.00

[1] This column represents the IA payments made for a particular month.

[2] This column represents the total amount of IAR the State could recoup if the amount of the SSI check available for recoupment is equal to or greater that this amount.

- The State can recoup $1,200, because the amount of the SSI check available for recoupment is $1,204.

- Do not recoup any money for January and February since Mr. Cook did not become eligible for SSI until March 1, 1989.

- Do not recoup any money for April, June and August since IA and SSI were not both paid to Mr. Cook for these months.

- Send Mr. Cook the excess amount of $472 ($1,672 - $1,200).

Authorization for Reimbursement of Interim-Assistance Initial Payment or Initial Post-Eligibility Payment

Name: _____ Social Security Number: _____

Address: _____ City/Town/Zip Code: _____

The term State means the Maine Department of Human Services.

What am I authorizing the State to do by signing this authorization if I checked the block called Initial Payment Only?

❑ Initial Payment Only

If I am found eligible to receive Supplemental Security Income (SSI) benefits, I understand that I am authorizing the Commissioner of the Social Security Administration (SSA) to send to the State:

- My first retroactive payment of SSI benefits, or
- An amount equal to the amount of reimbursable public assistance the State gave to **me, if law restricts the manner in which my SSI money can be released to me.**

What am I authorizing the State to do by signing this authorization if I checked the block called Initial Posteligibility Payment Only?

❑ Initial Post-eligibility Payment Only

If I am found eligible to receive SSI benefits, I understand that I am authorizing the Commissioner of SSA to send to the State:

- My first retroactive post-eligibility payment of Supplemental Security Income (SSI) benefits, or
- An amount equal to the amount of reimbursable public assistance the State gave to me when law restricts the manner in which my SSI money can be released to me.

How will the State be paid for the reimbursable public assistance it gave to me if I checked the block called Initial Payment Only?

If I am found eligible to receive SSI money, SSA will send my first retroactive SSI payment to the State or an amount equal to the amount of reimbursable public assistance

the State gave to me when law restricts the manner in which my SSI money can be released to me. The State may:

- Deduct from my first retroactive SSI payment the sum of all State public assistance benefits made to, or on behalf of, me by the State in situations when law does not restrict the manner in which my SSI money can be released to me, or

- Have SSA send it an amount equal to the amount of reimbursable public assistance the State gave to me when law restricts the manner in which my SSI money can be released to me, for months beginning with:

- The first month for which I am eligible to receive an SSI payment and ending with, and including:

- The month my SSI payment begins, or

- The following month if the State cannot promptly stop making its last public assistance payment to me.

The State cannot be reimbursed for assistance it gave to me if that assistance was financed wholly or partly from Federal dollars.

How will the State be paid for the reimbursable public assistance it gave to me if I checked the block called Initial Post-eligibility Payment Only?

If I am found eligible to receive SSI money, SSA will send my first retroactive posteligibility SSI payment to the State or an amount equal to the amount of reimbursable public assistance the State gave to me when law restricts the manner in which my SSI money can be released to me. The State may:

- Deduct from my first retroactive post-eligibility SSI payment the sum of all State public assistance benefits made to, or on behalf of, me by the State in situations when law does not restrict the manner in which my SSI money can be released to me,

or

- Have SSA send it an amount equal to the amount of reimbursable public assistance the State gave to me when law restricts the manner in which my SSI money can be released to me, for months beginning with:

- The day of the month I again become eligible to receive an SSI payment following a period of suspension or termination, and ending with, and including:

- The month my SSI payments resume, or

- The following month if the State cannot promptly stop making its last public assistance payment to me.

The State cannot be reimbursed for assistance it gave to me if that assistance was financed wholly or partly from Federal dollars.

Can the State use this authorization for an Initial Payment of SSI benefits and an Initial Posteligibility Payment of SSI benefits?

No. I am authorizing the State to use this form for only one payment event. If both payment blocks are checked, this form is not binding on the State or me. If both blocks are checked, the State and I must sign a new form with only one of the payment blocks checked.

Does this authorization serve as a protective filing for SSI benefits?

Yes, if I checked the Initial Payment Block, signing this form serves as a signed statement of my intention to claim SSI benefits if I have not filed an SSI application as of the date this authorization is received by the State. My eligibility for SSI benefits may begin as early as the date I sign this form if I file an application at a Social Security office for SSI benefits within 60 days after that date. This form also serves as a notice from SSA that I have sixty days from the date the State receives this form to file for SSI benefits. However, if I do not file an application for SSI benefits at a Social Security office within 60 days after that date, then I understand that I cancel my intention to claim SSI benefits and this authorization no longer protects my filing date for SSI.

How long is this authorization binding on the State and me if I checked the Initial Payment Block?

If I checked the Initial Payment Block, this authorization is binding on the State and me for one calendar year beginning with the date the State received it. If the State does not notify SSA within thirty (30) calendar days of the date that I signed this authorization, the authorization is not binding on the State or me. Also, this form must be signed and dated by both a State representative and me to be a valid agreement that authorizes the State to receive interim assistance reimbursement from my SSI payments. However, if I have already applied for SSI before the State received this authorization, or I apply for SSI within one calendar year of the date described above, or I file a timely request for an administrative or judicial review within the time permitted under SSA's regulations, this authorization will remain in effect, even if beyond the one calendar year period, until such time as:

- SSA makes the initial SSI payment on my initial claim; or

- SSA makes a final determination on my claim; or

- The State and I both agree to terminate this authorization.

How long is this authorization binding on the State and me if I checked the Initial Post-eligibility Payment Block?

If I checked the Initial Post-eligibility Payment Block, this authorization is binding on me and the State for one calendar year beginning with the date the State received it. If the State does not notify SSA within thirty (30) calendar days of the date that I signed this authorization, the authorization is not binding on the State or me. Also, this form must be signed and dated by both a State representative and me to be a valid Agreement that authorizes the State to receive interim assistance reimbursement from my SSI payments.

However, if I file a timely request for an administrative or judicial review within the time permitted under SSA's regulations, this authorization will remain in effect, even if beyond the one calendar year period, until such time as:

- SSA makes the initial SSI post-eligibility payment following a suspension or termination of my SSI benefits; or

- SSA makes a final determination on my appeal; or

- The State and I both agree to terminate this authorization.

What rights and appeals are available to me under this authorization?

The State is required to:

1. Pay to me any balance due from the retroactive SSI payment within 10 working days of the receipt of my SSI payment.

2. Give me written notice explaining:

    - How much SSA repaid the State for interim assistance it gave to me;

    - The balance, if any, due me unless the Social Security Act requires SSA to pay me such balance. [In such an event, SSA will notify me of the manner in which the balance will be paid to me.]; and

- That I will have an opportunity for a hearing with the State if I disagree with its actions regarding repayment of interim assistance or any action it took regarding this authorization.

If I am found eligible to receive SSI benefits, and by mistake the first SSI retroactive payment is sent to me, when it should have been sent to the State, what actions can the State take to get back the sum of all State public assistance benefits made to, or on behalf of, me by the State?

If this happens, the State can demand that I pay to it the amount that it would have deducted if SSA had sent this first retroactive payment to the State. If I do not pay this amount, the State can seek to collect this amount from me through court action or other legal remedy. The Commissioner of SSA will not be a party to, or responsible for, participating in the state's recovery efforts under these circumstances.

_____ Date _____
Signature of Recipient

_____ Date _____
Signature of State Representative

Mail: White copy to DHHS, Yellow copy to local Social Security, give Pink copy to client, and Gold copy for your file DHHS

State of Maine-New Vendor & Vendor Update Form

STATE OF MAINE
New Vendor & Vendor Update Form

FILL OUT FORM COMPLETELY - ALL AREAS ARE REQUIRED - ONLY ONE NAME & TIN PER A FORM

FEDERAL TAXPAYER ID NUMBER
TIN

Vendor Customer Number (if known) VC#

Account or Client Number (if known)

TIN Type	Organization Type	Classification
○ Social Security No.	○ Individual	☐ Individual ☐ Sole Proprietorship ☐ Nonresident Alien
○ Employer ID No.	○ Company	☐ Corporation ☐ Foreign* (W8 required) ☐ Partnership ☐ Trust ☐ State Gov't ☐ Other Gov't ☐ Other

NEW PAYMENT ADDRESS	OLD
Name	Name
Alias/DBA	Alias/DBA
C/O	C/O
Address	Address
C/S/Z	C/S/Z
Phone	Phone

NEW PHYSICAL / PROCUREMENT ADDRESS	OLD
Name	Name
Address	Address
C/S/Z	C/S/Z

Contact Name:

Email Address:

Contact Phone

Note

Authorized Signature,
Title & Current Date:

I certify that the above information is accurate & correct as of the current date signed on this form. I am responsible for updating & maintaining my information on a regular basis by written communication via this form or via the internet at the Vendor Self Service web site.

OFFICE USE ONLY — Information on State Agency Submitting Vendor Form — OFFICE USE ONLY

State Agency & SHS # *

Agency Contact Person Name & Title*

Contact's Phone #

Jan 2008

Form available online:
http://www.maine.gov/dhhs/ofi/dser/pdf/application.pdf
(scroll to page 10)

Interim Assistance Reporting Form

INTERIM ASSISTANCE REPORTING FORM

CLIENT: ____________ SSI# ____________ MUNICIPALITY: ____________

RETRO. PERIOD of SSI AWARD FROM: ____________ TO: ____________

DATE FIRST RECEIVED ASSISTANCE: ____________

Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %	Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %
Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %	Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %
Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %	Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %
Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %	Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %
Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %	Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %
Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %	Assistance Authorized Workfare Y/N Month/Year ______ Hours ______ Total Assistance ______ Hr. Rate ______ Total Paid ______ Amt. ______ Reimb. Rate ____ %

Total Assistance Authorized $ ____________ **Total Assistance Paid** $ ____________

Municipal Share $ ____________ State Share $ ____________

Signature of Preparer: ____________ Date: ____________

Interim Assistance Reporting Form DHS CB/dl Rev.1/04

Misspent Money Calculation Form

MISSPENT MONEY CALCULATION FORM

DOCUMENTATION OF PAST 30 DAYS USE OF INCOME

Income: _____
_____
_____
Total: _____

HOUSEHOLD RECEIPTS

Food: _____
Housing: _____
Utilities: _____
Propane: _____
Fuel: _____
Household: _____
Personal: _____
_____
_____
_____
_____
_____
Total:

OTHER RECEIPTS

Phone: _____
Cable: _____
Tobacco: _____
Alcohol: _____
Magazines: _____
Pet Food: _____
Other: _____
_____
_____
_____
_____
_____
Total:

Total Income: _____
Less Total Receipts: _____
Plus Misspent Money: _____

** Total Added to Line "L": _____

** See line L in the income section of the MMA Application to add Misspent money.

DOCUMENTATION OF PAST 30 DAYS USE OF INCOME

Income: _____
_____
_____
Total: _____

HOUSEHOLD RECEIPTS

Food: _____
Housing: _____
Utilities: _____
Propane: _____
Fuel: _____
Household: _____
Personal: _____
_____
_____
_____
_____
_____
Total:

OTHER RECEIPTS

Phone: _____
Cable: _____
Tobacco: _____
Alcohol: _____
Magazines: _____
Pet Food: _____
Other: _____
_____
_____
_____
_____
_____
Total:

Total Income: _____
Less Total Receipts: _____
Plus Misspent Money: _____

** Total Added to Line "L": _____

** See line L in the income section of the MMA Application to add Misspent money.

DHS Form

Department of Health and Human Services-Regional Office Locations in Maine

Department of Human Services
Regional Office Locations in Maine

Fort Kent District Office 92 Market Street Fort Kent, Maine 04743-1447 834-7700 1-800-432-7340 FAX: 834-7701 TDD: 834-7702	Caribou District Office 14 Access Highway Caribou, Maine 04736 493-4000 1-800-432-7366 FAX: 493-4001; TDD: 493-4034
Bangor Regional Office 396 Griffin Road Bangor, Maine 04401 561-4100 1-800-432-7825 FAX: 561-4122 TDD: 561-4124	Houlton Regional Office 11 High Street Houlton, Maine 04730 532-5000 1-800-432-7338 FAX: 532-5027
Skowhegan District Office 140 North Avenue Skowhegan, Maine 04976 474-4800 1-800-452-4602 FAX: 474-4888 TDD: 474-4891	Calais District Office 88A South Street Calais, Maine 04619 454-9000 1-800-622-1400 FAX: 454-9012 TDD: 454-3415
Farmington District Office 25 Main Street Farmington, Maine 04938 778-8211 1-800-442-6382 FAX: 778-8210 TDD: 778-8239	Machias District Office 13 Presott Drive Machias, Maine 04654 255-2000 1-800-432-7846 FAX: 255-2022 TDD: 255-6866
Augusta Regional Office 219 Capital Street Augusta, Maine 04333 624-8200 1-800-452-1926 FAX: 624-8124 TDD: 624-8004	Ellsworth District Office 17 Eastward Lane Ellsworth, Maine 04605 667-1600 1-800-432-7823 FAX: 667-5364 TDD: 667-1639
South Paris Regional Office 243 Main Street Suite #6 South Paris, Maine 04281 744-1200 1-888-593-9775 FAX: 743-8735 TDD: 744-1224	Rockland District Office 360 Old County Road Rockland, Maine 04841 596-4217 1-800-432-7802 FAX: 596-4331 TDD: 596-4201
Lewiston Regional Office 200 Main Street Lewiston, Maine 04240 795-4300 1-800-482-7517 FAX: 795-4444 TDD: 784-4421	Portland Regional Office 161 Marginal Way Portland, Maine 04101 822-2000 1-800-482-7520 FAX: 822-2310 TDD: 822-2293
Biddeford District Office 208 Graham Street Biddeford, Maine 04005 286-2400 1-800-322-1919 FAX: 286-2408 TDD: 286-2402	Sanford District Office 39 St. Ignatius Street Sanford, Maine 04073 490-5400 1-800-482-0790 FAX: 490-5463 TDD: 490-5466

Family Independence-District Office Locations in Maine

Family Independence
An Office of the Maine Department of Health and Human Services

District Office Locations in Maine

DistrictOffice Location	Address	Telephone Numbers
Augusta District Office	35 Anthony Avenue 11 SHS Augusta, Maine 04333	(207) 624-8090 ASPIRE (207)624-8080 or 1-800-452-1926 FAX: 207-624-8124 TTY: Maine relay 711
Bangor District Office	396 Griffin Road Bangor, Maine 04401	(207)561-4100 or 1-800-432-7825 FAX: 207-561-4493 TTY: Maine relay 711
Biddeford District Office	208 Graham Street Biddeford, Maine 04005	(207)286-2400 or 1-800-322-1919 FAX: 207-286-2546 TTY: Maine relay 711
Calais District Office	392 South Street Calais, Maine 04619	(207)454-9000 or 1-800-622-1400 FAX: 207-454-9012 TTY: Maine relay 711
Caribou District Office	30 Skyway Drive Unit 100 Caribou, Maine 04736	(207)493-4000 or 1-800-432-7366 FAX: 207-493-4004 TTY: Maine relay 711
Ellsworth District Office	17 Eastward Lane Ellsworth, Maine 04605	(207)667-1600 or 1-800-432-7823 FAX: 207-667-5364 TTY: Maine relay 711
Farmington District Office	114 Corn Shop Lane Farmington, Maine 04938	(207)778-8400 or 1-800-442-6382 FAX: 207-778-8429 TTY: Maine relay 711
Fort Kent District Office	137 Market Street Fort Kent, Maine 04743-1447	(207)834-7700 or 1-800-432-7340 FAX: 207-834-7780 TTY: Maine relay 711
Houlton District Office	11 High Street Houlton, Maine 04730	(207)532-5000 or 1-800-432-7338 FAX: 207-532-5027 TTY: Maine relay 711
Lewiston District Office	200 Main Street Lewiston, Maine 04240	(207)795-4300 ASPIRE (207)795-4423 or 1-800-482-7517 FAX: 207-795-4551 TTY: Maine relay 711
Machias District Office	13 Prescott Drive Machias, Maine 04654	(207)255-2000 or 1-800-432-7846 FAX: 207-255-2022 TTY: Maine relay 711
Portland District Office	161 Marginal Way Portland, Maine 04101	(207)822-2000 or 1-800-482-7520 FAX: 207-822-2310 TTY: Maine relay 711
Rockland District Office	91 Camden Street Suite 103 Rockland, Me 04841	(207)596-4217 or 1-800-432-7802 FAX: 207-596-4331 TTY: Maine relay 711
Sanford District Office	890 Main Street Suite 208 Sanford, Maine 04073	(207)490-5400 or 1-800-482-0790 FAX: 207-490-5499 TTY: Maine relay 711
Skowhegan District Office	98 North Avenue Suite 10 Skowhegan, Maine 04976	(207)474-4800 or 1-800-452-4602 FAX: 207-474-4890 TTY: Maine relay 711
South Paris District Office	243 Main Street Suite #6 South Paris, Maine 04281	(207)744-1200 or 1-888-593-9775 FAX: 207-743-8735 TTY: Maine relay 711