

Maine
Municipal
Association

General Assistance Manual

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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.A. means the Maine Revised Statutes Annotated. An example of a reference to the Maine Statutes would be 30-A M.R.S.A. § 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.A. § 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.A. § 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.A. § 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 **anyone**² 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 5601 or as the municipality may require the clerk to be bonded pursuant to 30-A M.R.S.A. § 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.A. § 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.A. § 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.A. § 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 child care, or an inability to send an authorized representative to apply in person. 22 M.R.S.A. § 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.A. § 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.A. § 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.A. § 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 he 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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 subtotal. 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, commingle 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.A. § 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
<u>Personal supplies</u>	<u>35</u>
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

<u>MONTHLY EXPENSES</u>		<u>ACTUAL COST FOR NEXT 30 DAYS</u>	<u>ALLOWED AMOUNT</u>	<u>OFFICE USE ONLY</u>
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.A. § 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

<u>MONTHLY EXPENSES</u>		<u>ACTUAL COST FOR NEXT 30 DAYS</u>	<u>ALLOWED AMOUNT</u>	<u>OFFICE USE ONLY</u>
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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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-day's 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.A. § 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.A. § § 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.A. § 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.A. § 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 $\frac{3}{4}$ of \$800 = \$600. They would qualify for $\frac{3}{4}$ of the rental expense, their rental eligibility would be $\frac{3}{4}$ 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.A. § § 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.A. § 8101 et seq.) provides ample protection from such liability. For example, 14 M.R.S.A. § 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.A. § 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.A. § 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.A. § § 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.A. § 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.A. § 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.A. § 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.A. § 4306
- Title 22 M.R.S.A. § 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.A. § § 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.A. § 402(3)(A)). One example of this is found in the municipal general assistance (GA) statute—the confidentiality provision at 22 M.R.S.A. § 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.A. § 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.A. § § 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.A. § 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 IV*).

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 O’Brien’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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 4301(8-A) has one definition of "lump sum payment," and Workers' Compensation law, in 39-A M.R.S.A. § 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.A. § 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. Select persons, 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.A. § 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.A. § 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.A. § 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.A. § 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 sometime 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) does not 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.A. § 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.A. § 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.A. § 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.A. § § 4301 et seq.) and the body of law known as municipal “Home Rule” authority found at 30-A M.R.S.A. § § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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.A. § 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”** (Exhibit 1)
- **Notice of General Assistance Eligibility** (Exhibit 2)
- **Notice of General Assistance Ineligibility** (Exhibit 3)
- **Request for a Fair Hearing & Notice of Fair Hearing** (Exhibit 4)
- **Notice of Fair Hearing Decision** (Exhibit 5)
- **GA Fair Hearing Proceeding “A Script”** (Exhibit 6)
- **Basic Guide to Memorandum of Support** (Exhibit 7)
- **Sample Memorandum of Support for GA Administration’s Decision** (Exhibit 8)

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

Notice of General Assistance Eligibility

Dear _____: Date: _____

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:

- | | | |
|--|---|---|
| <input type="checkbox"/> TANF | <input type="checkbox"/> Family Crisis (EA) | <input type="checkbox"/> Subsidized Housing |
| <input type="checkbox"/> WIC | <input type="checkbox"/> Unemployment Comp. | <input type="checkbox"/> Veterans Benefits |
| <input type="checkbox"/> Food Stamps | <input type="checkbox"/> Workers' Comp. | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Fuel Assistance (HEAP/ECIP) | <input type="checkbox"/> SSI/SSDI | |

• **Assets:** You must make a good-faith effort to liquidate the following assets:

- | | | |
|---|--|---|
| <input type="checkbox"/> Bank Account | <input type="checkbox"/> Retirement Account (IRA) | <input type="checkbox"/> Recreational Vehicle |
| <input type="checkbox"/> Stocks/Bonds | <input type="checkbox"/> Real Estate (other than home) | <input type="checkbox"/> Boat |
| <input type="checkbox"/> Life Insurance | <input type="checkbox"/> Vehicle | <input type="checkbox"/> 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) _____

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

Notice of General Assistance Ineligibility

Please Read Carefully

Notice of General Assistance Ineligibility

Dear _____: Date: _____

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