

Chapter 10

General Assistance

Fair Hearings & DHS

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 zoning 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 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 Human Services (DHS) in the administration of GA. It expanded the state's involvement from merely *monitoring* all GA programs to *supervising* GA. The Legislature also gave DHS 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 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 DHS 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 DHS 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 DHS role has changed now that all municipalities are eligible to receive at least 50% state reimbursement for GA expenditures (*see "Reimbursement," page 10-6*). (*Refer to Appendix 18 for information on the DHS "Review Process for General Assistance" in addition to relevant DHS forms*).

Review. The state's laissez-faire attitude changed drastically in 1983 when the Legislature mandated that the DHS be responsible for the proper administration of GA and assist municipalities in complying with the state law (§ 4323). In 1993, the DHS role was slightly relaxed with a removal of a DHS obligation to review

all municipal ordinances for legal compliance. At the present time, GA law instructs DHS to review each municipality's GA program (known as an "audit"). This requires DHS 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 DHS 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 DHS audit.

Violations. If, after conducting a review, DHS 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 DHS describing what steps it will take to comply with the law. The DHS 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 (§ 4323(2)).

Complaints & Direct Assistance. In addition to the annual or regular program reviews by DHS, 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, DHS 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 DHS 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 DHS and the town, DHS and the applicant, DHS 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 DHS 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 at § 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 DHS can act immediately and grant assistance to applicants. The DHS 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 DHS 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 DHS if the Department failed to intervene within 24 hours of receiving the request to intervene or if the DHS failed to make a good faith effort to notify the municipality of the DHS action prior to the intervention.

If the DHS does intervene in a timely manner and with prior notice and the municipality is billed and fails to pay the bill within 30 days, DHS 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, DHS 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 DHS 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 DHS cannot reach the administrator or if DHS cannot resolve the complaint with the municipality and if it is satisfied that an emergency exists, DHS 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 DHS obligation to review all municipal ordinances for legal compliance was removed as of July 1, 1993, a DHS authority to review, upon complaint, the specific maximum levels of assistance was retained.

Written Notice. Whenever complaints are made against a municipality, the DHS 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 DHS 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 DHS 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 (§ 4323(4)).

Just because DHS threatens to intervene or actually intervenes, that doesn't mean that the DHS is correct and is exercising its authority properly. The state, just as municipalities, can make mistakes. If a municipality is contacted by the DHS 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 DHS 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 DHS 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 DHS 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.

DHS Rules. The DHS 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 DHS, General Assistance Unit, State House Station #11, Augusta, 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, .0003 of Lewiston's 2000 state valuation is \$386,925. Therefore, once Lewiston issues \$386,925 in GA during the fiscal year ending June 30, 2000, 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 DHS 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 2000, let us assume the town of Mars Hill will issue \$60,000 in net GA. Mars Hill's 2000 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 - \$11,100)]. 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 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 2000. 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 2000. 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 DHS. It is important to note that municipalities do not have to reach their "obligation" in order to submit for DHS reimbursement.

Reports. All municipalities must file reports with DHS that detail their GA expenditures. The reimbursement claim forms are provided by DHS. 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. DHS 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 DHS 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 DHS to find out where the applicant should apply.