Chapter 11

General Assistance

Questions & Answers

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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 $1500 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(19907)). 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 redetermined 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 who was 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 4 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 judgements. 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 DHS 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 a 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 re-applies 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 can not 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 Human Services (DHS) <u>does not</u> share this opinion. DHS 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 or responsible, and the law governing an applicant's right to regain eligibility after failing (without just case) 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 at 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 (i.e., the town meeting) 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 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. DHS must also receive confirmation that the municipality has adopted the appropriate maximums each year.

Finally, it is a good idea to appoint an 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,

3. Standards of eligibility. Municipalities **may establish standards of eligibility**, in addition to need, as provided in this chapter. Each ordinance shall establish standards which shall:

   A. Govern the determination of eligibility of persons applying for relief and the amount of assistance to be provided to eligible persons; (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:

a) applicant's name, address, date of birth, **Social Security number**, and phone number;
b) names, date(s) of birth, and **Social Security number(s)** of other household members for whom the applicant is seeking assistance;
c) total number of individuals in the building or apartment where the applicant is residing;
d) employment and employability information;
e) all household income, resources, assets, and property;
f) household expenses;
g) types of assistance being requested;
h) penalty for false representation;
i) applicant's permission to verify information;
j) 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 Human Services (DHS) <u>does not</u> share this opinion. DHS advises that municipalities <u>may not</u> deny benefits to individuals who refuse to provide Social Security numbers. As a result of DHS'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.*