Chapter 2

General Assistance

Eligibility Criteria

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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 if 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 Although Maine repealed settlement in 1973, it continued to have a durational residency requirement until 1976 when durational residency was also repealed *(P.L.1975 ch. 704).*

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, in a six to three decision, 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 ground 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 residency."

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!*** *(§ 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 hobo 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 didn't 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 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 & Intermunicipal 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" (§ 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 DHS who resolves these disputes. *(§ 4307(5)).*

When there is a dispute that can't be resolved, the municipality that decides to grant the assistance must first tell the other municipality that it will be billed for the GA. Prior to granting the assistance, however, the administrator could ask the Department of Human Services to intervene, or could refer the other administrator to MMA.

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 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 aren't any jobs in town, that the town has no intention of supporting them for the rest of their lives, that they should leave town and then force them on a bus to another town or state!

It is legal, however, to help people relocate to another town *if the applicant 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 at 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 <u>6 months</u>** 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, prior to placing a GA recipient in a temporary dwelling, always call DHS to see if other alternatives exist.

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 ***<u>prior</u>*** to granting assistance; if you fail to provide such prior notice the responsible municipality does not have to reimburse you *(§ 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 MMA for clarification of the issue, or if negotiations are futile you can report the situation to the Department of Human Services.)*

It is important to emphasize that the ***30-day** responsibility falling on the "sending **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 (*first example below*); if they are there *more than six months* they are the responsibility of the municipality where the institution is located (*second example 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 (*third example below*), *(§ 4307(2))*.

Example: 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: 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: 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 couldn't 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 Joa 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 their municipality 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, DHS 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 DHS 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 rents 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 selectman 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 would 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 the 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 Availability of Misspent Income"* section on page 2-19. Furthermore, municipalities are authorized under this definition of "initial applicant" to limit 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 *Misuse of Income* section on page 2-46.

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.* It is no longer the case that a person who applied for GA in the past but has not applied within the last six months or twelve months is an "initial" applicant.

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 now clarifies that a *person is an applicant of 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 seemed 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 flesh 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, DHS 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 since December 23, 1991, 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 certainly known.

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 begins on page 2-17. 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. On December 23, 1991, in an effort to control the overall cost of the GA program to the state and municipalities, the Legislature enacted a provision of GA law *(§ 4305(3-B))* that created for every applicant/household an "aggregate" or overall maximum level of assistance; 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 *110% of Fair Market Rent (FMR) levels established by the federal Department of Housing and Urban Development (HUD).* For municipalities located in Metropolitan Statistical Areas, the overall maximum level of assistance is *110% of the average Fair Market Rental value for metropolitan and non-metropolitan municipalities within the county where the municipality is located.*

Four counties in Maine have metropolitan and non-metropolitan Fair Market Rental values: Androscoggin, Cumberland, Penobscot and York. These HUD FMR levels are published annually in the federal register and made effective on October 1 of each year. The **FMR's** 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 which 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 on pages 2-42 through 2-46. The only point that should be noted here is 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 "Emergencies," page 2-42).*

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 stamps*** *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 *(DHS General Assistance Policy Manual, Section IV, "Food").*

The theory behind the federal law is that food stamps were intended to supplement and not replace all other existing food programs, and the federal Congress wanted to avoid the food stamp 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. *(See page 2-17 for other kinds of "excluded" income.)*

Accordingly, by MMA ordinance design, 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 $493. 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 $551, and so after subtracting Pat's income of $493 the administrator determined Pat's deficit to be $58.

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, which has been surfacing, 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 DHS'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 inquire of the mother in this case, 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 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 DHS 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 (§ 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 Food Stamps and fuel assistance benefits (HEAP). Also, excluded by federal law is income earned under the Americorp program and VISTA job-training program. In addition, the 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) (see Appendix 11)*.

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., food stamps) provided the funds in FDA's 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 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 *(§ 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 line "O" of Section 4. Income, of MMA's GA application).*

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 Laing's 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 establishes two separate municipal authorities:

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 recently established authorities are 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. Such a notice is provided in the boilerplate language on the back of all *Notice of Decision* forms produced by MMA.

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.

In 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 recent 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

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 $1000 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 exampleincom, 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 deliberately 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 a month would be required to, if nothing else, pay the rent. If after the rent obligation was taken care of there was 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. 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 pro-ration.* In 2002, the Legislature amended §4301 (8-A) and §4308 to explicitly exclude "first time" applicants from the lump sum payment rule.

The lump sum pro-ration process is also found in the TANF program. An 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 pro-ration 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 Pro-ration: Initial Applicants. The definition of "Lump Sum Payment" in GA law, found at § 4301(8-A), provides that a lump sum payment is a one-time, windfall-type payment *that is received* ***after*** *an initial application for GA.* Lump sum pro-ration, therefore, 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.

Beyond that type of inquiry, however, the administrator cannot go 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 pro-ration 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 pro-ration 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 pro-ration 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 pro-ration 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 Pro-ration: 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:

a) 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.

b) 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 pro-ration 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 liens or credit, the proceeds of which can be verified as having been spent on basic necessities: or payment of bills earmarked for the purpose for which the lump sum is paid *(§4301(7)).*

c) 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 Pro-ration: 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 Pro-ration. 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 pro-ration is achieved by dividing the pro-ratable portion of the lump sum payment by the *maximum monthly assistance allowed to a household of the applicant's size according to the ordinance*. 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 pro-ration 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 pro-ration. If the result is 12 or greater, the period of pro-ration shall be no more than 12 months from the date of that GA application. In either circumstance, the period of pro-ration begins *when the applicant received the lump sum payment.* The period of pro-ration is the heart of the lump sum rule. During the period of pro-ration, 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 pro-ration process clearly stated that applicants remain eligible for *emergency GA* even during a period or pro-ration. That is no longer the case. As of July 1, 1993, the so-called "emergency override" provision was removed from Lump Sum pro-ration law. This means that a *household will **not** be eligible for either "regular" or "emergency" GA during a period of pro-ration*, unless they can establish additional eligibility (e.g., for a change in household composition).

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 worker's 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 pro-ration 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 pro-ration.

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 $3000 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. Fifteen minutes later Pine Tree Legal was on the phone complaining about the decision and requesting a hearing. The decision of the local Fair Hearing Authority (FHA) was that the pro-ration 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 pro-ration.

Income–Other Issues

Net vs. Gross Income. For the purpose of determining an applicant's income, the *ad-ministrator 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," pages 3-18).*

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

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

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

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

Against the actual income received by self-employed applicants, the administrator should only deduct the expenses that were actually incurred as a result of producing the income if those expenses have been paid or need to be immediately paid by the applicant during the 30-day income projection period. *If the applicant's business is not producing at least a* ***minimum-wage income****, the*

applicant should be required to perform workfare for the municipality or make a good faith effort to secure bona fide employment, or both.

Income from Household Members. One circumstance that causes confusion in the attempt to determine eligibility is when a person applies for GA and it is determined that the applicant is living in the same dwelling unit with other people who are not members of the applicant's household. In this circumstance, whose income and whose 30-day needs are used in the calculation of eligibility? The answer to this question turns on the determination of whether the various people living in the dwelling unit are *pooling* or *not pooling* their respective incomes.

- **Pooled income.** If the people living in dwelling unit pool their income; that is, co-mingle their funds and mutually share both income (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.

  In the past, people have applied for GA with the simple claim that they are not "pooling" their income with another person who shares the dwelling unit. At times this self-declaration of non-pooling did not ring true, but is was very difficult for the municipality to clearly establish the actual financial arrangements and responsibilities of the various household members. In 1991, the Legislature went a long way toward clearing up this issue by defining "pooling of income" 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."
  -A).)

What is accomplished by this recently enacted definition of "pooling of income" is 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 some sort of 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 some documentation, such as receipts, banking records, and landlord or other vendor agreements that clearly show that the applicant has been and is currently solely and entirely responsible for his or her prorata 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 on 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 have no legal liability to support, it is therefore 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,"* page 4-2.

Roommates. Against the presumption of pooling that is now part of GA law, there is obvious fact that some people are living together as roommates in fact. 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 prorata 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 prorata 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 prorata 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 4 the GA ordinance allows the following monthly maximums:

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

Bernard's share is 1/4 of $1123 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 prorata 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 Legislature addressed this issue in December, 1991 with an amendment to the definition of "household" *(§ 4301 (6)).* The pertinent part of the definition now 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 subsection of statute reveals the manner in which the cost of the applicant's housing expenditures are determined when: (1) a number of people are living under the same roof: (2) there is no pooling of income; and (3) not all household members are applying for assistance. Simply stated, eligibility is determined by budgeting the applicant's expenses as his or her proportionate share of the actual, shared household expenses. This calculation of the applicant's prorated housing costs applies even when the applicant claims to owe a rental payment to another person in the household.

Example: Marsden Hartley applied for assistance in Georgetown. Marsden claimed that he must pay his roommate $300 a month rent for his room in the mobile home. The rent covers heating and utility costs. Marsden is responsible for

buying his food and personal supplies, and so he also asked for his full food and personal care allowance. Marsden's total request is for $450 worth of GA. The Georgetown administrator explained the law to Marsden and asked for documentation describing the entire household's actual 30-day costs; namely, the total rent or mortgage costs for the mobile home, the total electric bill and the total need for heating fuel over the next 30-day period. Marsden's roommate did not want to provide that information, but reluctantly demonstrated that the actual rent the roommate had to pay to a third-party landlord was only $150. The 30-day electric bill was $40, and the mobile home's fuel tank was topped off just a few days before Marsden applied for GA. Based on this information, the administrator *(using MMA's GA Application (Section 6))* calculated Marsden's 30-day need as:

6. EXPENSES

MONTHLY EXPENSES	ACTUAL COST FOR NEXT 30 DAYS	ALLOWED AMOUNT	OFFICE USE ONLY
1. Food	$ 112	$ 112	
2. Rent — NAME AND ADDRESS OF LANDLORD:	$ 150	$ 75	1/2 of $150
3. Mortgage – MORTGAGE HOLDER:	$ ----	$ ----	
4. Electricity	$ 40	$ 20	1/2 of $40
5. LP Gas	$ ----	$ ----	
6. Heating Fuel — 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 1 in Sagadahoc County) was $424. With a deficit of $424 and an unmet need of $236, the administrator correctly found Marsden to be eligible for $236 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 prorata cost 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 Human Services, Division of Health Engineering, pursuant to 10-144A 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 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, 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 2, which will usually lower the entitlement amount *(the entitlement amount is always less for a household of 2 than it is for 2 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 can not 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 will 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.

By standards set forth in MMA's model GA ordinance, 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 concerns the ownership of real estate. If applicants own real estate, other than a home that is occupied as their residence, the municipality *may limit* ***on-going*** *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 require (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 "expenses" are calculated.

6. EXPENSES

MONTHLY EXPENSES	ACTUAL COST FOR NEXT 30 DAYS	ALLOWED AMOUNT	OFFICE USE ONLY
1. Food	$ 100	$ 335.00	
2. Rent — NAME AND ADDRESS OF LANDLORD:	$ 475	$ 379.00	
3. Mortgage – MORTGAGE HOLDER:	$ ----	$ ----	
4. Electricity	$ 80	$ 70.00	
5. LP Gas	$ ----	$ ----	
6. Heating Fuel — TYPE: (i.e., oil, electricity, etc.)	$ 170	$ 106.25	
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 Rate $.28)
Day Care	$ 40	$ 0	
	$	$	
TOTAL MONTHLY HOUSEHOLD EXPENSES:	$ 1,175	$ 977.35	

Food: Under the food category, Pat Johnston had figured the family's 30-day need to be around $100 more than the food stamps they received. The administrator indicated that according to GA rules, food stamps were 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 $.85 a gallon. Since the actual heating cost was unknown, the administrator budgeted in the ordinance maximum of 125 gallons at $.85/gallon, or $106.25

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 know, 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 overall maximum level of assistance is 110% of the HUD Fair Market Rent values, and those precise values are now found at Appendix A of 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)	$ 977.35	D. **Unmet Need** (Amount from line C, but only if line A is greater than line B)	$ 494.35
B. **Income** (See Section 4)	$ 483.00	E. **Deficit** (See Section 8, line D)	$ 95.00
C. **Result** (Line A minus line B)	$ 494.35	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 ¾ 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 $494.35. Note, a disparity such as this between the deficit and the unmet need tests 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 $494.35) for a 30-day period**, unless** she is facing an emergency situation.

In this case, Pat was not facing an emergency. Although her food stamps could not be considered as either income or a resource, Pat acknowledged that she had enough food stamps 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 light 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 light 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 lights 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 (§ 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 GA is specifically available to people who would not normally be eligible *(§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 *(§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. In 1999, §4308(2) was expanded to include 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 now 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; will the local grocery store provide the household with food on credit, 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 deter-mines 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 $2000, 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 $2000.

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, DHS 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 *(§ 4308).*

Disqualified Applicants. If people have been disqualified from receiving GA because they 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,*" page 4-1.

Misuse of Income. The other situation, which 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. The municipal authority to limit emergency assistance when the emergency could have been averted is relatively new law (effective date July 17, 1991), and deserves some discussion.

Historically, it is the policy of most municipalities not to pay back bills due to the fact that GA is intended for current needs and there is no good way of determining whether people were eligible to receive GA at the time an old debt was incurred. Because municipalities and advocates have waged a perennial struggle over this issue, in 1985 the Legislature amended the law so that municipalities would not have to pay bills which are more than two months old if the applicant had "sufficient income, money, assets or other resources available to pay for the basic necessities when the bill was received." With PL 1991, Ch. 591, this so-called "back bill" provision of GA law was completely repealed and replaced with new language. The essential effect of the change in language was to do away with the concept of a 60-day-old "back bill."

Under the current 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 now read 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 new wording of § 4308(2)(B) also creates new 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, a debt that should not exist. Clearly, the new language of this section of law 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 a 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 force 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.