Chapter 3

General Assistance

Eligibility—Other Conditions

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Once the administrator has determined that the applicants are in *need* (i.e., their income is less than the maximum levels of assistance), the administrator's next step is to consider other eligibility conditions. Generally, these eligibility conditions apply only to people who are *not first-time applicants*, i.e., people who have applied for GA at some time in the past. As will be discussed, an exception to this general rule occurs when a person has quit his or her job without just cause or has been discharged from employment for misconduct. Any applicant who falls into that category—whether an initial or repeat applicant—is automatically ineligible to receive assistance during the 120-day period following the date of job separation.

Work Requirement. Everyone who is able to work is expected to fulfill the work requirement *(§ 4316-A)*. People who violate the work requirement are *ineligible to receive GA for **120 days***, except under certain circumstances *(see "Just Cause," below, and "Eligibility Regained," page 3-15)*.

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

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

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

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

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

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

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

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

For example, if a man quit his job because he didn't get along well with his boss, that is not just cause. But if he quit his job because he had to work nights and no one was available to care for his young son and daughter that would be just cause. Therefore it is critical to inquire into the reasons behind someone's failure to comply with the work requirement. Just because the administrator should undertake this type of inquiry does not mean that the municipality has a burden of proving that there was no just cause reason for the work-related failure. In fact, GA law places the burden of proof squarely on the applicant *(§ 4316-A (1))*.

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

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

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

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

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

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

agreed to do workfare in the future and was granted assistance. She had regained her eligibility because she complied with the workfare assignment.

Example: Jonathan and Jill London applied for GA for their family. Jonathan received Supplemental Security Income (SSI) for an undisclosed disability, but he was able to care for their two small children. Jill was informed that she would have to apply for work to at least three separate employers a week in order to be eligible for future assistance. Jonathan said that no wife of his was going to work, and informed the administrator that Jill would not be looking for any jobs. The administrator disqualified Jonathan and Jill from receiving GA for 120 days, but noted in her decision the eligibility of the Londons' two children. Section 4309(3) provides that no dependents (or persons whose presence is required in order to care for dependents) will lose their eligibility due to the ineligibility of other members of the household (*see "Dependents," page 4-1).*

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

Despite the clear intention of the law, municipal administrators were sometimes frustrated when employed recipients did not quit their jobs but behaved in such a way at their workplace that they were discharged from their employment for misconduct. A Maine Supreme Court decision (*Gilman v. Lewiston,*. 524 A.2d 1205 (Me. 1987)) ruled that the ineligibility due to job quit could not be applied to applicants who were discharged for misconduct. As a result, in 1991, the Legislature addressed the issue by amending GA law in such a way that municipalities were authorized to disqualify for 90 days (the disqualification period at that time) any *non-initial* applicant whom the administrator established was discharged from his or her employment for misconduct, as misconduct is defined in Maine law at 26 M.R.S.A. § 1043(23). *(See below for a full discussion of this definition.)*

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

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

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

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

The Hearings Officer's determination, of course, is subject to appeals into the courts, and a body of case law has developed which provides further guidance as to what is and what is not "misconduct." Because GA law specifically cites the definition of "misconduct" in unemployment law, it is very probable that if a GA disqualification for misconduct was appealed into the courts, the judge would apply unemployment case law to the facts before the court to reach a decision.

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

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

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

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

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

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

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

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

neglect to perform reasonable and proper duties assigned by the employer;

- Unreasonable violation of rules that are reasonably imposed and communicated and equitably enforced;
- Failure to exercise due care for punctuality or attendance after warnings;
- Intoxication, illegal drug use or being under the influence while on duty or when reporting to work;
- Unauthorized sleeping while on duty;
- Insubordination or refusal without good cause to follow reasonable and proper instructions from the employer.

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

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

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

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

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

Municipal Work-for-Welfare Program (Workfare). In addition to requiring recipients to seek work in the private sector, the municipality also has the option of establishing a *workfare* program. The workfare program allows municipalities to require GA recipients to perform work for the municipality or a non-profit organization in return for any assistance they receive *(§ 4316-A (2))*. For a sample

agreement governing workfare referrals between a municipality and a non-profit organization, see Appendix 7. Before a municipality can institute a workfare program, the municipal officers must adopt it as part of the GA ordinance. The MMA model GA ordinance contains language authorizing the operation of a workfare program. After its adoption the municipality can require physically and mentally able people to do work for the municipality. State law specifically exempts from workfare people who are incapable of performing the workfare assignment for reasons of mental or physical incapacity. Also exempted are people who must stay home to care for a child who is not yet in school, or for any ill or disabled member of the household.

Just Cause. Once a municipality adopts workfare, if a recipient refuses to participate in the workfare program or if he or she agrees and then willfully fails to complete the assignment or performs the work assignment below average standards *without just cause*, that individual is to be disqualified for 120 days. The just cause provisions are the same as those for *the "work requirements" (see page 3-1).*

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

Limitations. There are some limitations on how workfare is administered:

- In no case may a person be required to perform workfare prior to receiving assistance *when that person is in need of and eligible for **emergency** GA.*
- *No workfare assignment can interfere with a recipient's existing employment*. The MMA model GA ordinance captures this non-interference rule by limiting the total workfare assignment to ***40** hours per week*. Any hours of actual employment for which the recipient is scheduled to work would be subtracted from the workfare 40-hours per week maximum. Therefore if a person is working full-time, the administrator cannot require participation in the workfare program. If a person works part-time, for instance 15 hours a week, the maximum number of hours he or she could perform workfare would be 25 hours. If a person is also expected to search for work, the administrator should make sure there is adequate time to look for work.
- The number of hours a person must work is determined by the amount of assistance granted. *The number of hours is determined by dividing the amount of assistance granted by at least the minimum wage rate.* For instance, if a person received $60 for food and rent, he or she would have to work about 12 hours ($60 divided by $5.15—State & Federal Minimum Wage). *No person may be required to work more hours than the value of*

the assistance received. Furthermore, in no event may a person be required to work more than 40 hours.

- Workfare, as well as the work requirement, *cannot interfere with a recipient's existing employment, ability to attend a job interview, or participation in an education program intended to lead to a high school diploma.* Further, it cannot interfere with participation in a training program approved or determined by the Department of Labor to be reasonably expected to help the individual get a job. Workfare must be arranged around people's schedules if they are in an approved training or educational program. However, no special allowances need to be made for college students who are not in a study program operated under the control of the Department of Human Services or Department of Labor.
- *Workfare cannot be used as a way to replace regular municipal employees.* In other words, a town cannot fire employees or reduce their hours simply because it wanted workfare recipients to perform the same work.
- No recipient may be required to perform workfare for a non-profit organization if that *would violate a basic religious belief of the recipient*.

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

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

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

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

Workfare First. Until recently, GA law provided that whenever a GA applicant was assigned workfare, the consequences of failing to successfully perform the workfare assignment affected the applicant's eligibility for *future* GA benefits. In other words, the design of the law provided a "welfare-first" system whereby the assistance for which the applicant was eligible was provided along with the workfare assignment, and if the workfare assignment was not performed, the applicant was disqualified from receiving *future* GA benefits during the period of disqualification.

The law was amended as of July 1, 1993 to authorize municipalities to withhold the issuance of *non-emergency* GA until the successful completion of a workfare assignment. It should be noted at the outset that "workfare first" is not a requirement of law; the administrator may continue to administer the town's workfare program just as it has been administered in the past. Requiring applicants to work before their welfare is issued is a procedure that the administrator may use at his or her discretion. In other words, *a **"workfare-first" system** has been established as an option available to municipal GA administrators.*

To accommodate this change to the law, the MMA model GA ordinance has been amended to include some guidelines governing this procedure and otherwise provide the necessary protections to the workfare participants. Those guidelines cover the following "workfare first" issues.

Workfare First Guidelines—Emergency GA. Under *no circumstance* may the administrator withhold the issuance of *emergency GA while a recipient is performing workfare.* This means that if an applicant is eligible for and in need of immediate assistance to alleviate a life-threatening situation or a situation posing a threat to health or safety, that amount of assistance will be immediately issued. A

workfare assignment can still be created to cover the value of that emergency assistance. It is only the case that the *recipient of that assistance cannot be compelled to perform workfare **prior** to the assistance being issued.*

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

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

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

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

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

Workfare First Guidelines—Agreement to Perform Assignment. It is very important that all workfare participants agree in writing to perform the workfare assignment given them. The successful performance of a workfare assignment is a condition of eligibility, and some applicants may decide that they do not really need the GA they are requesting given the workfare assignment they would have to perform in return. Those applicants should be given an opportunity to withdraw their application for assistance.

The way to determine any applicant's willingness to accept the workfare assignment is by asking that applicant to sign a workfare agreement form. MMA has such a form in its package of GA materials, and a copy of the MMA workfare agreement form is found at Appendix 17 *(page A-17-10)*. If a person is unwilling to sign a workfare agreement form, the administrator should ask the applicant if he or she intends to withdraw the application for assistance. If so, a record of that withdrawal should be placed in the case file. If not, that applicant would be disqualified from receiving GA for 120 days for a refusal to perform a workfare assignment without just cause.

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

claim that the non-performance should be construed as a *de facto* withdrawal of application.

Workfare First Guidelines—Consequences of Failing to Perform Assignment. As just discussed, the other important information that should be conveyed to all workfare participants, including "workfare first" participants, concerns the consequences of failing to perform the workfare assignment.

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

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

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

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

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

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

clearly spells out the value of the GA being issued and the value of the GA being terminated, the reasons for the partial termination, and the workfare participant's appeal rights.

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

After being provided this information, the workfare participant should sign a form that establishes the participant's agreement to perform the assignment under the specified terms and conditions. This type of paperwork should be in place for any type of workfare program, either traditional workfare or "workfare first" assignments. The only practical difference is that under "workfare first," there is a more likely possibility that a participant will successfully perform some part of a workfare assignment and yet not receive the GA benefits to which he or she would then be unconditionally entitled. This potential for claims against a municipality can be greatly reduced with a written record of quality.

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

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

Next, it is important for administrators to attempt to match recipients with "appropriate" work assignments—jobs that match both the physical and mental

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

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

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

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

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

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

Eligibility Regained—Workfare Disqualification. Workfare participants who do not complete their assignment may also regain their eligibility. A 1991 amendment to § 4316-A(4), however, now provides municipalities with the authority to limit the number of opportunities a workfare participant must be given to regain eligibility. The municipality is now required to provide ***only one opportunity*** *to a*

workfare participant to regain eligibility after a workfare failure, but if the participant fails to take advantage of that single opportunity, without just cause, the municipality can refuse to provide subsequent opportunities to regain eligibility for the duration of the 120-day ineligibility period.

In spite of the 1991 amendment that limited participants to one single opportunity to regain eligibility, many welfare directors reported their frustration with some participants who would get disqualified for a workfare violation, regain their eligibility by taking advantage of the single opportunity provided to them, only to subsequently become disqualified shortly thereafter and expect yet another opportunity to regain eligibility.

In response, a 1993 amendment to that same subsection of law was enacted that established a two-strikes-and-you're-out procedure. The 1993 amendment makes it clear that even if a workfare participant successfully regains his or her eligibility by taking advantage of the single opportunity to regain, but then commits yet another workfare violation within the 120-day window of the original ineligibility period, then the administrator shall issue a new 120-day ineligibility for the subsequent failure, from which there is no opportunity to regain eligibility (*second example below*).

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

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

Five weeks later Jimmy applied for GA to cure an eviction notice. The administrator explained to Jimmy that he was disqualified and therefore ineligible to receive any form of GA while disqualified. The administrator further explained that Jimmy had one single opportunity to regain his eligibility. Jimmy said that he

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

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

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

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

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

Because this second violation of workfare fell within the original 120-day disqualification period (October 1 through January 28), the administrator formally disqualified George for a new 120-day period, from December 16 through April

15, and that he would be given no opportunity to regain his eligibility during that period of time. Had George's second workfare violation occurred after the original 120-day period of ineligibility (i.e., sometime after January 28), he would still be disqualified, but a single opportunity to regain eligibility would be available to him.

Workfare & Recovery. In the *Closson* decision cited above, the Maine Supreme Court characterized the essential purpose of workfare as a GA program requirement to secure a recipient's future eligibility for GA rather than an exchange of service for compensation or remuneration. On the other hand, workfare participants do contribute their labor at a rate which is designed by law to at least conform to the prevailing minimum wage. To be in compliance with DHS's record-keeping requirements, a careful record should be kept of all GA which a participant "works off" satisfactorily. In addition, as a matter of fairness, the workfare participant should be informed that the municipality will not be seeking recovery for the portion of the assistance "worked off" (i.e., workfare performed). *(For further discussion on the issue of "Recovery of Expenses," see page 8-1.)*

As a related issue, a municipality, which has issued GA for a mortgage or capital improvement payment, may place a lien on that property *(see "Mortgages," page 7-6).* The municipality must deduct from the lien amount any satisfactorily performed workfare *(at a rate of at least minimum wage)* and formally discharge the lien if and when the entire value of the mortgage assistance has been worked off.

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

NOTE: *Due to two 1998 cases; Coker v. City of Lewiston,* 1998 Me. 93 and *Thompson, et al., v. Commissioner, Department of Human Services and City of Lewiston* (CV-94-509, Me. Super. Ct., Ken., August 28, 1998), *DHS policy*

currently requires that the value (calculated at a rate of at least minimum wage) of any workfare performed by the GA recipient be subtracted or offset from any refund due to the municipality.

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

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

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

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

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

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

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

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

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

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

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

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

Rehabilitation Services. Applicants who have physical or mental disabilities can be ***required*** *to take advantage of any medical or rehabilitative resources* that are

recommended by a physician, psychologist, or other retraining or rehabilitation specialist.

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

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

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

them. In the future, the administrator will continue to consider Joline's lost benefits as available to her *for as long as she does not receive them.*

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

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

Fraud

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

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

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

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

"Knowingly & Willfully" Standard. This standard of "knowingly and willfully" is a very difficult standard to meet as evidenced by an April 1997, Maine Supreme Court decision, *Ranco v. City of Bangor*, 1997 Me. 65. In *Ranco,* GA recipients

who had been disqualified from eligibility for 120 days for violating the GA statute's 'false representation' provision, appealed the determination and the Bangor operations committee (FHA) upheld the disqualification. The FHA's determination was vacated upon appeal to the Superior Court by the recipient's (the Rancos) and the City of Bangor consequently appealed to the Supreme Court.

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

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

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

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

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

However, if a person's request for GA was approved and the administrator later discovered that the recipient had committed fraud, the administrator would be

required to notify the recipient that his assistance would be terminated but that the recipient could appeal the decision prior to the termination (second example below). Remember that *even if a household member is disqualified, eligible dependents **may** receive GA* (third example below).

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

After he left, the administrator called the GA administrator in Holden to find out if Mike had received GA there and to verify the information on the application. The Holden administrator said Mike had left Holden seven months earlier because he said he had been hired to work at the K-Mart in Montville. The administrator contacted K-Mart to determine if Mike was working there. The store manager confirmed that Mike started working there seven months ago. The manager also volunteered that he was a very diligent employee and earned $5.50 an hour.

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

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

The administrator notified Greg that she had learned that he was receiving an income; that he would be disqualified from receiving GA for 120 days; that he would have to repay the assistance he was not entitled to receive; and that he had the right to appeal the decision to the Fair Hearing Authority. The administrator

could not revoke, or terminate any GA which had been issued to Greg, however, until he had the opportunity for a fair hearing. Again, a written decision describing the municipality's decision and Greg's right to appeal was provided to the applicant.

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

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

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

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

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

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

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

b) the day the Fair Hearing Authority renders its decision that the person has committed fraud; or

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

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

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

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

Example: On May 1, Margie Wren and her two children received a month's worth of rent, food, fuel and personal supplies. Ten days after granting the request the

GA administrator discovered that Margie had committed fraud. He notified Margie and informed her of her right to appeal. Margie appealed that day. On May 16 the Fair Hearing Authority rendered its decision that Margie had committed fraud. Because Margie had received assistance for the entire month of May, however, her 120-day disqualification period did not start until June 1, the first day not covered by the month's worth of assistance already issued.

Further Appeal. The claimant may appeal any decision made by the Fair Hearing Authority to the Maine Superior Court, pursuant to Rule 80B of the Maine Rules of Civil Procedure *(§ 4315).*

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