Chapter 4

General Assistance

Dependents

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The GA law imposes eligibility conditions on recipients that they must fulfill if they expect to receive further assistance. However, the law also provides that *dependents who can't care for themselves will be eligible even if a household member is disqualified.* Dependents are members of the household who are not capable of working such as:

- dependent minor children;
- ill, elderly or disabled person;
- a person whose presence is required in order to provide care for a child under six years old, or for an ill or disabled household member *(§ 4309(3)).*

There is a distinction between "failure to comply with the law" and being "ineligible" for assistance because the household has adequate income. If the responsible adults of the household violate the law and are *found "ineligible"* for not fulfilling the work requirement, not attempting to obtain potential resources, or committing fraud, their dependents are eligible if there is insufficient household income to meet the dependents' needs, in accordance with the ordinance maximums. This section does not apply to households that have sufficient income and are ineligible because there is no need. The dependents would not be eligible to receive assistance except in unavoidable emergency situations.

Example: John and Liz York and their three children aged three, five and seven have been receiving assistance off and on during the last several months. Liz has not worked because she had to care for her children; John worked pumping gas at a service station. John decided to quit work because he was frustrated over his "dead-end" job. When he applied for assistance the administrator disqualified John for 120 days because he quit his job without "just cau *(see page 3-2).* The administrator granted assistance to Liz and the three children for one week because they were dependents. Therefore, instead of receiving assistance for a family of five they received it for a family of four (because John was excluded). However, the administrator said that since John wasn't working, he could take care of the children and Liz would have to fulfill the work requirement, including workfare. If John found work he would regain his eligibility.

Although Liz agreed to do workfare, she never showed up to work. The administrator disqualified Liz, in addition to John, because she didn't have just cause for not doing workfare. Even though Liz and John were both disqualified the administrator had to assist the three young children.

In the case of Liz and John the household continued to receive GA even though it was a reduced amount (for a household of three instead of five). Although the

assistance was intended solely for the children, obviously their parents could benefit from it. The intent behind this section of the law, however, is to penalize the parents without making the children suffer for their parents' actions by being deprived of their assistance.

Example: Sandra Mitchell takes care of her 73-year-old mother who has Alzheimer's disease. Sandra is healthy and could work but she has to stay home to care for her mother since Sandra can't afford to pay someone else to care for her. Sandra and her mother are eligible, even though Sandra is able to work, because she is the only person available to care for her mother.

Example: George Lowe and his 17-year-old son, Michael, live in Lincoln. The Lowes have received assistance for about eight months. When classes ended in June for summer vacation the administrator told Michael that he would have to get a summer job or do workfare. Michael refused saying he was on vacation from school and he shouldn't have to work. The administrator disqualified Michael because he was able to work but refused to work without just cause. His father continued to be eligible.

When determining eligibility of the household members who are not disqualified, the administrator should include all household income and apply that income against the overall maximum level of assistance for the number of household members who are not disqualified (to determine the deficit) and against the pro rata expenses of the household members who are not disqualified (to determine the unmet need). If the income is more than the amount allowed for the reduced household number, the dependents are not eligible except in cases of emergency.

For instance, Mary Willis earns $400 from her part-time job. She was disqualified because she didn't report that she was living with a man who had a good income ($1200 a month). Mary requested assistance for her five-year-old son. When the administrator determined the eligibility of the son, he was found ineligible because the household income exceeded by far the maximum amount allowed for one person.

Liability of Relatives

Maine law had long required that relatives be liable for the support of members of their family. Parents and grandparents who were *financially able* were considered a resource and were expected to support their children or grandchildren *regardless of their ages.* In fact, up until 1984, the obligation of relatives to support each other was a two-way street; children and grandchildren were expected to support their elders when necessary. The Legislature eliminated the responsibility of

children and grandchildren to care for their elders in 1984—except with respect to funeral *expenses (P.L. 1983, ch. 701, 22 M.R.S.A. § § 4313, 4319).* And in 1989, the Legislature limited the liability of support to only the parents of children under the age of 21—again, except in the area of burial expenses *(P.L. 1989, chap. 370).*

The most recent development in the evolution of a parent's financial liability for the support of his or her children, as that responsibility coordinates with the GA program, was enacted on June 30, 1993 *(PL 1993, ch. 410)*. In a partial return to pre-1989 parental liability for support, *GA law now establishes a parental liability for support for* ***any*** *applicant applying independently who is less than* ***25 years of age***. *Furthermore, a* ***spouse's liability*** *for support is also clearly established.*

Other relatives—brothers, sisters, aunts, uncles, cousins, parents of applicants over 25 years of age, etc.—are not legally liable for each other's support but should be encouraged to help their relatives to the best of their ability.

There are four sections in the state law which pertain—directly or indirectly—to the liability of relatives:

- § 4309(4) (Eligibility of minors who are parents)
- § 4319 (Liability of relatives)
- § 4317 (Use of potential resources)
- § 4313(2) (Burial and cremation responsibilities of legally liable relatives)

§ 4309(4)

In 1991, the Legislature inserted into both AFDC (now TANF) law and GA law a provision which was intended to address a design of AFDC law which, unintentionally, was providing an incentive for young AFDC mothers or mothers-to-be to leave the homes of their parents in order to receive AFDC benefits. In GA law, that provision is now found at § 4309(4). It provides that *as a general rule minors who don't live with parents or guardians are* ***completely ineligible*** *to receive GA* ***if*** they are:

1) 17 years of age or younger,
2) have never been married, and
3) have dependent children or are pregnant.

As is often the case in GA law, this general rule has a number of exceptions. Those exceptions are:

- when such a minor is living in a foster home, maternity home or other "adult-supervised supportive living arrangement";
- when the minor's parents are not living or their whereabouts are unknown;
- when the minor's parents are unwilling to permit the minor to live in their home;

  when the minor has lived independently of the parents for at least one year prior to the birth of any dependent child;
- when DHS determines that the minor or the minor's children would be jeopardized by living with the minor's parents; or
- when DHS determines, in accordance with DHS regulation, that the general ineligibility for GA should be waived.

Furthermore, the general rule of ineligibility must be waived whenever the minor's parents verify that their child had been living independently from them for a year prior to the birth of the minor's dependent child.

Finally, DHS has the authority to require the town to provide the minor with GA after making a finding that the minor or her child would be jeopardized if found ineligible. The law expressly gives DHS the responsibility of making the determination of jeopardy, therefore the municipal administrator should seek DHS advice or inform the minor applicant that she may seek DHS intervention whenever the issue of jeopardy arises.

§ 4319

This provision of law now requires that *parents provide support to their children* ***under the age of 25****, and that* ***spouses*** *support each other "in proportion to their respective ability."* As an aside, parents remain responsible for their "emancipated: children under GA standards. In certain circumstances, the parental liability to support a minor or young adult applicant can lead to a denial of that applicant's GA request on the grounds that the applicant has "no need."

Generally, however, this section of law merely allows a municipality to recover the cost of assisting a person by suing the parent(s) or spouse in any court of competent jurisdiction, such as Small Claims Court, if the parents or spouse refuse to help their relatives. (Keep in mind that in order for the suit to be successful, the liable relatives must be financially able to contribute and either reside in or own property in Maine.)

If such a suit is brought, the court can summon the relatives and order them to repay the municipality which has expended money for their relatives' support. If the court determines that the relatives who are sued had sufficient financial ability to support their relatives, the court could require them to pay a "reasonable sum"

to reimburse the town. The suit can recover only those expenditures made during the previous 12 months. Therefore, if Albion had granted assistance to Mr. and Mrs. Decker's daughter during the past 18 months, the most the municipality could recover would be expenses made during the prior 12 months, not the entire 18-month period.

The Enforcement of Parental Liability. An administrator cannot assume that parents are providing appropriate support to their children merely because they are required to do so by law. First of all, parents are only obligated to support their children under GA law "in proportion to their respective ability." Therefore, if the parents are impoverished, their support for independent minor or young adult children cannot be required. Furthermore, it may be the case that the parents are financially able to provide the necessary support, but for one reason or another they are not providing it.

§ 4319 does not allow administrators to flatly deny applications made by minors or young adults or otherwise reduce the levels of assistance for which such an applicant may be eligible on the grounds that the parents are legally required to support the minor. As discussed above, the process envisioned by § 4319 is primarily a process of recovery.

With this in mind, when a minor or young adult applies for GA, the administrator should make at least two determinations. First, are the applicant's parents willing and able to provide their children with his/her basic necessities? If this is the case, and the administrator has no reason to suspect that the parental home is a dangerous or unhealthy environment for the child, then the minor's application could be denied on the basis of "no need."

However, if either the minor or the minor's parents are able to contribute sufficient evidence to suggest that the parental home is not available to the minor because of space problems, lack of resources, because the parents threw the child out of the house, or because of suspected emotional or physical child abuse, the administrator should process the minor's application in essentially the same manner as an adult's application.

At this point, the second determination should be made, which is whether the minor's parents *are financially capable* (i.e., are they are employed, do they have adequate discretionary income, do they own significant assets, are they on public assistance, etc.). If a determination is made that the parents are financially capable of providing support, the municipality should notify the parents of their financial responsibility to provide for their child under the GA program. In addition, if necessary parents should be informed that the municipality will seek to collect any

assistance granted to their child through civil action (e.g., small claims court) if the parent does not comply.

Obviously, the financial issue of parental liability is not the only issue regarding GA and minors which concerns administrators. Many GA administrators are reluctant to grant assistance to minors that enable the minors to live in potentially unstable or unhealthy circumstances. In 1989, the Maine Welfare Directors Association and Pine Tree Legal Assistance, Inc., coordinated their efforts in a piece of legislation which would have provided some fundamental case management to minors receiving GA through the Department of Human Services. That legislative initiative was killed because of the price tag attached.

Minors, GA & Municipal Liability. Another major concern shared by administrators is the perception that the municipality or the administrators personally could be held liable in the event their granting of assistance somehow led to or contributed to the minor's injury or death. Actually, this concern is unfounded.

The Maine Tort Claims Act *(14 M.R.S.A. §§ 8101 et seq.)* provides ample protection from such liability. For example, 14 M.R.S.A. § 8111 holds in part that "The absolute immunity (from personal civil liability)...shall be available to all governmental employees, including police officers and governmental employees involved in child welfare cases, who are required to exercise judgment or discretion in performing their official duties."

As a supplement to this provision of immunity in Title 14, in 1991 the Legislature amended § 4318 in Title 22 to read "a municipality that provides general assistance to a minor is absolutely immune from suit on any Tort Claims seeking recovery or damages by or on behalf of the minor recipient in connection with the provision of general assistance."

Rental Payments to Relatives. When in 1989 the Legislature reduced the parental liability of support to minor children only, there was one concession made to GA administrators. The Legislature established in 1989 that a municipality has no legal obligation under GA law to provide a rental payment to an applicant's parents (§ 4319(2)). This authority to deny a request for a rental payment to a parent was expanded in 1991 so that an *administrator may now **choose** not to make a rental payment to the applicant's parents, grandparents, child, grandchild, sibling, parent's sibling or any of those relatives' children.*

Under this section of GA law, the administrator may choose to deny the request for rental assistance to a relative-landlord regardless of the age of the GA

applicant and regardless of whether the relative-landlord lives in the same home as the applicant or lives elsewhere. As is usually the case with GA law, there is an exception to the general rule authorizing the denial of rental assistance paid to relatives.

The exception is if the rental relationship between the applicant and the applicant's relative was ***three months old or older and the relatives can demonstrate eligibility*** *for GA if the applicant's rent were not paid to them.* It is only when ***both*** of these two standards are met that the administrator would have to consider paying the rent to the relatives in accordance with standard eligibility criteria.

§ 4317

While § 4319 applies primarily to liable relatives who refuse to support their dependents,
§ 4317, the section of law making applicants responsible for securing "potential resources," pertains to parents or spouses who are both able and willing to help their relatives. Section 4317 requires applicants to *utilize* ***any resource*** *which would reduce or eliminate their need for GA (see page 3-18).*

Liable relatives are considered "potential resources" for the purpose of this section, and the GA applicant would be required in writing to make a good faith effort to secure the liable relative's direct assistance. At the point in time the liable relative expressed a willingness to provide direct support, that relative would become an "available resource," and the applicant's need for GA would evaporate. *If the relatives are not both able and willing to provide direct assistance, the applicant* ***cannot*** *be penalized for failing to make use of the resource.*

Example: Nineteen-year-old Rebecca Golden was angry at her parents because they complained about the way she smoked and stayed out at night. Although she had been looking for a job for weeks, Rebecca hadn't found one. However, she couldn't stand living with her parents any longer, so Rebecca went to the town office to apply for GA to help her move. The administrator denied her request because Rebecca's parents said they were willing to have her live at home, and Rebecca had no need for shelter.

Example: Twenty-year-old Gary Beaulieu had been employed at a paper mill until two months ago when he was laid-off. He applied for GA for his first time to get help with his rent and light bill. The administrator asked why he couldn't live with his parents, who lived in town, until he got another job. Gary explained that his parents could barely make ends meet now for themselves and four children at

home. In fact, Gary said, he had been giving his parents some money each week until he was laid-off.

After thinking about it, the administrator realized that Gary's family had received GA from time to time. They lived in a mobile home barely large enough to hold them. The administrator granted Gary's request because even though his family would like to help they had neither the space nor the resources.

Burials. As discussed above, in 1984 the Legislature removed all liability of children and grandchildren for the support of their parents and grandparents, in 1989 the liability of parents was limited to the parents of children under 21 years of age, and in 1993 parental liability for support was extended to allow for the recovery of benefits issued to an applicant under the age of 25 years.

None of these changes in the law affected the liability of grandparents, parents, siblings, children and grandchildren to pay for the burial costs of each other, whenever these relatives are financially able. In 2007, however, the Legislature removed "siblings" from the list of surviving liable relatives *(§4313(2)).* When a person dies without having made burial provisions and without resources or sufficient estate to cover basic burial or cremation costs, any surviving liable relatives *(parents, grandparents, children or grandchildren)* of sufficient ability would be responsible for the burial costs *(§ 4313).*

The way this type of financial responsibility to bury relatives is generally enforced by the municipality is to simply deny any request for burial assistance to the extent legally liable relatives have been identified who live or own property in Maine and who appear to have a financial capacity to pay for the burial/cremation, either in lump sum or installment payments. *(For more information on "burials," see page 7-17.)*