Chapter 7

General Assistance

Basic Necessities

Basic Necessities—Maximum Levels of Assistance

Maine law defines "basic necessities" as food, clothing, shelter, fuel, electricity, non-elective medical services as recommended by a physician, non-prescription drugs, telephone services where it is necessary for medical reasons, and any other commodity or service determined essential by the municipality. Municipalities must budget in all of the items defined as basic necessities when determining a person's unmet need. The law also gives municipalities the option of including other items that they consider essential depending on the situation, such as sewer bills, personal supplies, transportation, furniture, and housing repairs.

Municipalities may establish *maximum levels of assistance* for each category of basic necessity to determine if a person is eligible and, if so, how much assistance to grant. Those maximum levels for each category of basic need should be distinguished from the overall maximum level of assistance, which represents the largest GA 30-day grant that can be issued for all the basic necessities put together. Unlike the overall maximums of assistance, which are somewhat arbitrary, the maximum levels established by ordinance for each basic necessity must be reasonable and adequate standards sufficient to maintain health and decency *(§ 4305(3-A)).*

The municipal officers are responsible for establishing the maximum levels of assistance as part of the GA ordinance. *(As a service to municipalities, MMA Legal Services Department generates model figures yearly in the form of Appendixes A-C which are sent out in September to all member municipalities).* Prior to 1985, the state law contained no reference to maximum levels of assistance. Maximum levels of assistance was a concept that developed informally through practice and case law. (*Glidden v. Fairfield*, (1979) Som. County Superior Ct., #CV800-431; *Verrill v. Augusta*, (1982), Kenn. County Superior Ct. #CV 82-262). Because certain advocates for low-income people have persistently challenged municipalities' authority to set maximum levels, the state law was amended to clearly grant this authority.

DHS Rules Regarding Maximum Levels: In 1986, the Department of Human Services promulgated a rule which required municipalities, under a "rebuttable presumption," to adopt as their food maximums the U.S.D.A. Thrifty Food Plan figures. The "presumption" was that if a municipality's figures reflected the Thrifty Food Plan figures, the Department would presume those maximums to be adequate to maintain health and decency.

The "rebuttable" aspect of the rule was that if the municipality could effectively demonstrate that lower standards were adequate to support the nutritional

requirements of a household, than the Department would accept those lower figures.

The authority of the Department to promulgate such a standard was challenged, and Maine's Supreme Court ruled that the Department was within its authority to impose such a requirement (*City of Westbrook v. Commissioner of the Department of Human Services*, 540 A.2d 1118 (Me. 1988)). Since the *Westbrook* case, the Department has promulgated a similar "rebuttable presumption" rule regarding housing maximums, this time requiring that municipal housing maximums conform to the U.S. Department of Housing and Urban Development (HUD) Fair Market Rent statistics.

The MMA model GA ordinance has been in conformance with those statistics since 1987. If the available housing within a municipality or within the region around a municipality costs remarkably less than the HUD figures, as reflected in the MMA model ordinance, that municipality might want to do its own Fair Market Rent survey and establish its own maximums. The Department's guidelines for doing a local rent survey simply require that the municipality conduct a survey of local landlords, and the survey can also make use of classified advertisements in the newspaper. The DHS rules also provide that "The survey may not be limited to only those landlords who provide housing to General Assistance clients. Such a survey may produce distorted rent figures." (*Maine General Assistance Policy Manual*, Section II).

This rule was promulgated in response to an administrative fair hearing, brought by Pine Tree Legal Assistance against DHS and the City of Augusta, in which it was ruled impermissible to load the data used in a local survey with the rental rates supplied by GA recipients. The Hearing Officer's view was that the local rental survey should reflect community-wide housing costs, not just the housing costs facing the low-income population. Despite this restriction, when economic forces create a sharp disparity between the HUD rental statistics as issued by DHS and the actual rental rates in the community, it is entirely possible for a municipality to develop, without inordinate administrative effort, its own fair market survey which substantiates more appropriate rental levels.

Maximums & the GA Budget. The maximum levels of assistance established by ordinance should be reviewed regularly by the administrator to ensure they are adequate for the region, and adjusted when necessary by ordinance amendment. When determining if applicants are eligible by applying the unmet need test, the administrator should budget the applicant's actual 30-day cost for the basic necessity or the ordinance maximum, *whichever is less (see "The Unmet Need Test," page 2-13).*

For example, if the ordinance allows a maximum rental amount of $375 for two people but the applicants only pay $355 for rent, the administrator would budget the lower amount ($355). The amount that is budgeted in by the administrator for a particular basic necessity is the allowed need for that necessity. If, as a result of the application process, it is determined that the applicant is eligible for GA, assistance can be granted up to the "allowed need" for any basic necessity.

In some circumstances the administrator may feel it necessary to consolidate the applicant's unmet need and apply it all toward a single basic necessity. In other words, the administrator can exceed the maximum amount allowed for a basic necessity, provided the administrator does not exceed the client's total eligibility.

For example, Joshua Holbrook has exhausted his income on basic needs, but he has no money left over to pay the light bill. Joshua applies for assistance, and the administrator determines that Joshua is eligible for $100 worth of assistance over the next 30 days. The administrator could elect to issue from Joshua's $100 overall eligibility only $60 for the light bill because $60 represents the ordinance maximum for that basic need, and the applicant is in no emergency situation which could dictate exceeding that amount. If the administrator took that course of action, Joshua would remain eligible for the remaining $40 of his deficit for the other basic necessities, provided that within the next 30 days there was an actual need for them. On the other hand, the administrator could elect to issue the entire amount of Joshua's eligibility to the electric company. In the absence of an emergency need for utility assistance, the administrator could not be forced to consolidate Joshua's unmet need in this manner, but in some cases an administrator may feel such a decision would make more sense.

MMA's model GA ordinance contains some standards governing the practice of consoli-dating an applicant's unmet need/deficit.

The following is a discussion of the various basic necessities.

Food. As discussed above, the ordinance maximums for food are now governed by DHS regulation that essentially requires municipalities to adopt the *U.S.D.A. Thrifty Food Plan.* When budgeting a person's need for food the administrator must automatically budget the maximum amount allowed in the ordinance for food. This is recommended for three specific reasons. First, every one must have food to survive. Second, most GA recipients receive food stamps but food stamps *cannot* be *included* as *income.* By including the full maximum allowed for food the municipality is protected from being accused of including food stamps as income. Many administrators object to being required to disregard food stamps, but this is a federal law. The purpose of the federal Food Stamps Act is to provide eligible households with an opportunity to obtain a more nutritionally adequate

diet. GA *and other welfare benefits cannot be reduced due to the household's receipt of food* stamps *(7 U.S.C. § 2017(b)).* Finally, DHS regulation now requires that administrators budget all applicants at full food allowance levels *(DHS General Assistance Policy Manual, Section 1V*).

Municipalities are permitted to adopt a list of approved food items which people may purchase with their GA vouchers and to restrict the purchase of certain items. The recipient should be given a copy of approved or unacceptable items. In order for this to be effective, the municipality needs the cooperation of the supermarket. Also, municipal food and personal care vouchers, at the present time, are *not* exempt from state sales tax.

Housing. When budgeting for housing, the administrator should use the actual expense for rent or mortgage up to the maximum amount allowed. It is the applicants' responsibility to locate and obtain housing that is *within their ability to pay.*

However, some people can't afford any housing due to the lack or insufficiency of income. In these cases the administrator should inform applicants about the maximum amount allowed for housing and direct them to attempt to find housing within that amount. Notwithstanding the regulatory requirement that the housing minimum reflect the HUD standards, the maximum amounts must also realistically reflect the expenses in the area and if they do not they should be amended.

Municipalities generally provide *current* rental payments rather than grant assistance for "back bills." The administrator should tell this to applicants the first time they apply, and also include it in the written decision, so that the applicants are clearly aware of this practice.

Furthermore, GA rental assistance should be provided so as to secure *prospective* housing. In other words, rent vouchers should not be provided to landlords who are in the process of evicting a client for back rent for example. If a month's worth of rental assistance is provided to a client, the client should receive a month's worth of housing.

If a landlord is in the process of evicting a tenant and the tenant is in fact eligible for housing assistance, prior to issuing the rent voucher to the evicting landlord, it would be in both the client's and municipality's best interest to ensure that the rental payment will stop (or at least delay for 30 days) the eviction—guaranteeing that the basic necessity of housing will be provided to the client. In the event the rental payment will not prevent the eviction, the municipality should direct the client to seek an alternative dwelling, again within their ability to pay. As a side

note, court fees involved in preventing an eviction are allowable expenses under the GA program.

However, municipalities must keep in mind that locating an alternative dwelling may also result in a need for a security deposit. Although the law states that as a general rule security deposits will *not be considered a basic necessity* and thus municipalities are not generally responsible for paying them, should the *security deposit become required for* ***"emergency purposes"*** the municipality may become responsible for paying it. The term "emergency purposes" is then defined as "any situation in which no other permanent lodging is available unless a security deposit is paid." Thus, this very important factor must be considered by the GA Administrator prior to directing a client to re-locate *(see below for further discussion on "Security Deposits").*

Security Deposits. The question of whether a town must pay a rental security deposit has been made somewhat murky by an amendment to the definition of "basic necessity" enacted in 1991. Prior to this change in the law, the municipality had no obligation to pay a security deposit unless the security deposit was needed to avert an emergency situation (i.e. homelessness).

The way it worked was that the administrator would not include the requested security deposit when developing the applicant's budget to determine the unmet need. The administrator would suggest that the applicant attempt to work out an arrangement whereby the landlord would either waive the security deposit or accept the security deposit in affordable installments that would be spread out over several months. If the landlord was unwilling to agree to such an arrangement, no other suitable housing was available, and the security deposit was absolutely necessary, the administrator would issue the security deposit as emergency GA.

With the change to the definition of basic necessities (PL 1991, chap. 9), there is now a new and different test to determine if a security deposit must be paid. As previously mentioned, the law states that as a general rule security deposits will not be considered a basic necessity, *unless a security deposit is required for* ***"emergency purposes."***

At this point in time, therefore, the determination as to whether a security deposit must be paid involves an analysis of whether there is any permanent lodging (i.e., ***not*** hotels, motels or rooming houses) which is available (i.e., vacant and ready for occupancy) and for which no security deposit is being required. If it can be established that virtually all permanent and available housing in the area requires a security deposit of some amount, then the security deposit ***is*** *a basic necessity* and *must* be included in the applicant's budget.

The burden of establishing whether the "emergency purposes" test has been met would appear to initially fall on the applicant. If the applicant can reasonably satisfy the administrator that all landlords in the area are requiring a security deposit, the burden would then fall on the administrator to prove otherwise by directing the applicant to a landlord who was not requiring a security deposit. *For this reason, administrators would be well advised to keep a running list of area landlords who will readily waive a security deposit.*

Under any circumstance, when the municipality does pay a security deposit, the administrator should make it clear to the landlord (in writing) that the security deposit is to be returned to the municipality when the apartment is vacated. The administrator may even want to inspect the property creating a written inventory of pre-existing defects which is then signed by the landlord, prior to occupancy in order to rebut any attempt by the landlord to retain the security deposit after vacancy for reasons of damage allegedly caused by the tenant.

Mortgages. In 1982 the Maine Supreme Court ruled in *Beaulieu v. Lewiston* (440 A.2d 334 (1982)) that municipalities may be required to pay shelter costs for eligible applicants regardless of whether that shelter payment is in the form of rent or mortgage. The *Beaulieu* decision did not go so far as to say the payment of a mortgage payment was obligatory. Instead, the Court established a set of eight criteria which should be evaluated by the administrator in order to determine if the payment of the mortgage is actually necessary.

Those criteria are now part of MMA's model GA ordinance, and they are discussed in some detail below. In response to the *Beaulieu* decision, MMA sought an amendment to the law and in 1983 the Legislature authorized municipalities to place a lien on a GA recipient's real estate if the municipality had paid that recipient's mortgage with GA funds *(§ 4320).* In 1991, the Legislature further amended § 4320 to allow municipalities to place the same type of lien on property when GA is used to pay for a capital improvement to the property (e.g., furnace/chimney repair, water/septic system repair).

*Liens can be imposed on real estate **only** if the municipality has granted assistance for a mortgage payment or capital improvement*. No lien can be imposed for granting assistance for any other basic necessities, such as food, rent, utilities, fuel, etc. Although there are some restrictions on the lien process, it at least serves the purpose of allowing the municipality to recover a portion of the equity in the property it has helped a recipient accumulate by either paying his/her mortgage with GA funds or paying for a capital improvement to his/her property.

Liens. After the GA administrator makes a mortgage or capital improvement payment, the municipal officers or their designee (e.g., the GA administrator,

treasurer, administrative assistant—any municipal official specifically designated by the municipal officers for this purpose) can decide to place a lien on the real estate. Unlike tax liens, however, the lien has no specific term, and it cannot be claimed or enforced except under very restricted conditions.

The lien stays in effect against the real estate until it is enforced, but it can be enforced ***only*** *when the recipient dies or when the property is transferred by sale or gift.* It ***cannot*** be enforced if the recipient is receiving any form of public assistance (TANF, Food Stamps, GA, etc.) or if, by redeeming the lien, the recipient would again become eligible for assistance. These restrictions were imposed on the GA lien process because the purpose of the lien was not to force GA recipients out of their homes but to enable the municipality to recover the funds it contributed which enhanced the equity in the recipient's property, while allowing the recipient to continue to live in the house.

When to Pay. In the *Beaulieu* case the Supreme Court said that Maine law required municipalities to pay shelter costs whether the payment was for rent or mortgage. In explaining its decision, however, the court asserted that municipalities were not required to grant GA for mortgage payments in every situation, and it outlined eight factors that must be taken into consideration when determining payment.

In determining whether an applicant is eligible to receive GA for a mortgage payment, as with any other type of request, the administrator must make an "individual factual determination" of whether the applicant has an *immediate need* for such assistance. In reaching this decision the administrator must consider the extent and liquidity of the applicant's proprietary interest in the house. The court said that the factors to be considered in making this determination include:

1) the *marketability* of the shelter's equity;
2) the amount of *equity*;
3) the *availability of the equity* interest in the shelter to provide the applicant an

   opportunity to secure a short-term loan in order to meet immediate needs;
4) the extent to which *liquidation* may aid the applicant's financial rehabilitation;
5) *comparison* between the amount of *mortgage obligations and anticipated rental*

   charges the applicant would be responsible for if he or she were to be dislocated to rental housing;

6) the *imminence* of the applicant's *dislocation* from owned housing because of his

   or her inability to meet the mortgage payment;

7) the *likelihood* that the provision of GA for housing assistance will *prevent such*

   dislocation; and

8) the *applicant's age, health and social situation.*

All of these factors must be taken into consideration when determining whether to make a mortgage payment for an applicant. Some municipal officials express outrage that public funds are making it possible for a recipient to live in a home that may be more valuable than those homes owned by the people who pay the taxes that make GA possible.

Administrators must not let their personal feelings influence their decision. Often the most compelling reason to make a mortgage payment is that the mortgage may be the least expensive way for a municipality to fulfill its obligation. In addition, the municipality has the opportunity to place a lien against the real estate to recover its costs. It is important to evaluate a request for mortgage payment rationally and determine the most equitable way to handle the request.

Requests for mortgage payments, as illustrated by the court, ***do not*** *have to be granted in all cases; but mortgages should always be considered in the applicant's budget to determine eligibility.*

The MMA model ordinance suggests that mortgages not be paid unless a mortgage foreclosure notice has been issued or the failure to make a mortgage payment will reasonably result in the issuance of a foreclosure notice. At that point there is more of a likelihood that the applicant is in immediate need.

Once a person receives a foreclosure notice, the administrator should tell the applicant that he or she should attempt to renegotiate the mortgage or otherwise work out a more favorable arrangement with the creditor. If the administrator is convinced that the applicant is eligible for housing assistance in the form of a mortgage payment and no alternatives exist, the administrator should grant the request.

NOTE*: Municipalities may direct GA applicants to obtain other housing (e.g., a rental unit) should the client be eligible for an amount of GA that will not stop or at least forestall the foreclosure process (see "Alleviating Emergencies" pages 2-45).*

Process. As could be expected there are strict notice requirements the municipality must follow when placing a GA lien on a recipient's property. When a person requests GA for a mortgage payment or capital improvement, the administrator should inform the applicant that if the request is granted the municipality will place a lien on the property to secure the municipality's right to recover both the amount of that payment plus interest.

Notices/Lien Forms—Three Types. Once the administrator grants the request for the mortgage or capital improvement payment, the municipality has *30 days* to file a notice of the lien with the county Registry of Deeds. If the *municipal officers* have not designated the GA administrator or other person to file lien notices, they must decide if it is appropriate to place a lien on the property. The notice must be filed within *30 days* of granting the mortgage or capital improvement payment. The steps to follow in order to file a GA lien are as follows:

First, at least *ten days* prior to filing the lien notice in the Registry *separate notice must be sent to the recipient, the owner of the real estate if other than the recipient, and any record holder of the mortgage.* This notice, sent by certified mail, return receipt requested, must inform the recipient that the lien is going to be filed at the Registry. This notice must also state the restrictions on the lien (i.e., the lien cannot be enforced except upon the recipient's death or upon the transfer of the property, and it can't be enforced while the recipient is receiving any form of public assistance or if the recipient would in all likelihood again become eligible for GA if the lien were enforced). Finally, this notice must state the name, title, address, and telephone number of the person who granted the assistance.

The second lien form is the actual form filed with the Registry of Deeds which establishes the lien for that first payment *and for all subsequent mortgage or capital improvement payments made on behalf of the recipient* each time an additional mortgage or capital improvement payment is made.

A third notice must be given to the recipient each time an additional mortgage payment is made. This notice must repeat the information on the original notice, relative to the limitations and who to contact to answer questions, and it must inform the recipient of the previous amount secured by the lien and the new total, with the addition of the most current grant of assistance plus interest. In summary, there are three types of notices:

1. **Notice to recipient, owner of the real estate, and any record holder of the mortgage.** This notice must be sent at least ***ten days before filing the lien*** at the Registry of Deeds. This notice must contain the restrictions on the lien and the name, title, address, and phone number of the person who granted the

assistance. This notice must be sent by certified mail, return receipt requested, when the lien is first about to be filed.

2. **Filing the lien with the Registry of Deeds.** This must be filed within 30 days of actually making the mortgage or capital improvement payment. This notice needs to be filed only once since this lien secures all subsequent payments.

3. **Notice each time an additional mortgage or capital improvement is made.** This notice is similar to the first notice above in that contains essentially the same information. As a matter of law, this subsequent notice needs to be given to the recipient only, although MMA recommends issuing this subsequent notice to all the parties to whom the first "10-day" notice was issued, namely, the recipient, the property owner if other than the recipient, and the mortgagee. This subsequent notice must state the total amount secured by the lien with the addition of the most recent mortgage payment and interest. This notice must also be sent by certified mail, return receipt requested.

Sample notice forms for mortgage and capital improvement liens are found at Appendix 8.

Property Taxes. Administrators often ask if property taxes should be considered a "basic necessity" for the purposes of determining an applicant's eligibility for GA. The answer is not entirely straightforward.

Generally, an applicant's annual property tax, *prorated to 30 days*, may be included in the budget as part of the applicant's overall 30-day shelter cost. This would only be done, however, if the combination of the applicant's direct shelter expense (i.e., the mortgage payment) and the 30-day property tax, when combined, did not exceed the ordinance maximum for housing.

For example, if Emma Obrien's property taxes for the year were $800, her 30-day prorated expense would be $67 ($800/12). If the combination of Emma's mortgage obligation and her monthly property tax obligation was less than the ordinance maximum for housing, that combination total could be included in Emma's budget when determining her unmet need. The administrator would not, however, actually pay Emma's monthly property tax from her unmet need. The purpose of budgeting-in the property tax would be to recognize and, in effect, subsidize Emma's monthly property tax obligation. If, on the other hand, Emma's mortgage payment already exceeded the ordinance maximum for the direct housing obligation, Emma's 30-day property tax obligation would not be included.

An exception to this general process would occur when a household is facing a property tax emergency. The procedure to follow is described in MMA's model GA ordinance. A property tax emergency, according to MMA's model ordinance, would occur when the applicant is *facing a property tax foreclosure within 60 days, and the tax lien foreclosure would reasonably result in the applicant's eviction from the property as a matter of municipal policy or practice.* It is only when these standards are met that an administrator could actually pay a person's property tax with GA funds.

DHS regulation also places a limit on the municipal authority to pay an applicant's property taxes with GA funds. That state regulation reads:

> 36 M.R.S.A. § 841 et seq. establishes a poverty tax abatement process. This process is an available/potential resource. The client has a legal entitlement to this process. Municipalities should not use the General Assistance Program to assist with delinquent property taxes unless foreclosure and subsequent eviction is imminent and it is the most cost effective avenue. *(DHS General Assistance Policy Manual,* Section IV).

In accordance with this regulation, MMA's model GA ordinance also directs the administrator to inform all applicants about the poverty abatement process when there is an application made for emergency GA for their property taxes. If an applicant, when informed about the poverty abatement process, chooses to apply for an abatement rather than for GA for property tax relief, that is the applicant's choice. *No one can be forced to apply for one form of local property tax relief instead of the other.*

If the applicant, after being informed of the poverty abatement process, chooses to apply for GA relief, the administrator would proceed to evaluate the property tax emergency just as any other request for emergency assistance would be *evaluated (see "Emergencies," page 2-42).* If the applicant was eligible for emergency GA for his or her property taxes in order to protect the applicant's continued ownership and use of residential property, the necessary amount of GA could be issued to the town for that purpose.

See Appendix 9 for MMA Legal Services' Information Packet on "Poverty

Heating Fuel. Requests for fuel are frequent and often of an emergency nature during the winter. Although most municipal ordinances specify the maximum allotment for fuel consumption per month based upon the time of year, this is one basic necessity where maximum levels are often exceeded. This is due to a number

of factors including poorly insulated housing, temperature fluctuations, fluctuations in the price of heating fuel, etc.

Despite an administrator's frustration over what may very well be an excessive use of fuel, by and large the administrator has few choices in the middle of the winter when a family runs out of fuel and has no cash available to purchase more. Certainly the administrator should advise recipients about conservation measures and should refer them to the proper agency to apply for weatherization and fuel assistance *(see Appendix 11)*. In addition, the administrator can review the degree to which the applicant could have financially averted the heating fuel emergency and limit the issuance of emergency GA for heating fuel according to the pertinent standards in the municipal ordinance *(see "Limitations on Emergency Assistance," page 2-45)*.

However, the plain fact is that in most cases the administrator will feel obligated to fulfill the applicant's request for actual fuel needed because to go without fuel in the winter could be life threatening. Administrators should make it clear to recipients, however, that they are responsible for keeping track of their fuel supply and they should monitor it so they won't have to apply for GA when they are totally out of fuel. This benefits both the recipient, who won't have to go through a cold night, and the administrator, who won't have to get a late-night weekend call and won't have to pay a special delivery service fee to the fuel dealer. Some municipalities solicit bids from area fuel companies and award the contract to the dealer who offers the best price and agrees to make deliveries on call and with no service fee.

Municipalities are sometimes caught in the middle between a tenant who pays for fuel as part of the rent and a landlord who neglects or refuses to supply adequate fuel. There is a state law addressing this situation *(14 M.R.S.A. §§ 6021, 6029(9))*.

The statute, known as the "Implied Warranty and Covenant of Habitability Law," requires all landlords to keep rental dwelling units fit for human habitation (i.e., safe and decent; *14 M.R.S.A. § 6021*). If there is a condition which makes the unit unfit, the tenant can file a court complaint against the landlord and the court can order the landlord to correct any dangerous condition. The law specifically states that landlords who agree to provide heat as part of the lease or rental agreement are violating the law if:

- the landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;

- the dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of three feet from the exterior wall, five feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; or

- the heating facilities are not operated so as to protect the building equipment and system from freezing *(14 M.R.S.A. § 6021(6))*.

If the landlord does not comply with these requirements by allowing a building's heating system to run out of fuel, the tenants can, after giving the landlord notice, purchase heating fuel and deduct the cost of the fuel from the amount of rent they owe. The law goes on to state: "for tenants on General Assistance, municipalities have the same rights of tenants" *(14 M.R.S.A. §6026(9))*. This means that if a tenant applies for GA to receive fuel because the landlord refuses to *provide fuel after being notified by the tenant that fuel is needed and fuel is part of the rental payment*, the municipality can order fuel and deduct the amount of fuel from the tenant's next request for rent.

In 1989, the Legislature expanded a tenant's right to pay for certain services or repairs directly and deduct those payments from his/her rent. 14 M.R.S.A. § 6024-A allows a tenant to pay an outstanding utility service to a rented dwelling unit and deduct that payment from his/her rent. GA administrators should be aware of this provision whenever a tenant in a utilities-included rental is presented with a utility bill or threatened with disconnection.

For more information regarding "The Rights of Tenants in Maine" refer to Appendix 14, A Pine Tree Legal Assistance Handbook on the issue of tenant rights.

Example: Grace and Armand LeMont and their four children live in an apartment where they pay $350 a month, heat included. The landlord is responsible for supplying fuel. The LeMonts are current in their rent because of the GA they receive to supplement their income, but the last two weeks of the month they usually run out of oil. This happened last winter and it's starting again this year. Grace spoke to an advocate who advised her to complain to their landlord in writing. Grace did this but received no response from the landlord. Sunday they totally ran out of fuel; Armand called the landlord, who promptly hung up. Grace applied for and received GA for the fuel. In the written decision which was given to both the LeMonts and the landlord, the administrator explained that the fuel

was supplied pursuant to Title 14 M.R.S.A. § 6026(9) and that the rental payment for the following month would be reduced by the cost of the fuel ($120).

Utilities. In addition to needing utilities for heat, recipients also need electricity or gas for lights, cooking and refrigeration. The administrator should budget for the actual cost up to the maximum level established in the ordinance. It is important to know if the ordinance includes electricity for light, heating, hot water, and cooking in the same or in separate categories.

One of the perennial issues regarding GA for electric utility needs concerns the coordination between the GA program and the Winter Disconnection Rule, as the "Winter Rule" is administered by the Public Utilities Commission. There is a discussion of the Winter Rule in Appendix 11, but in summary, there are two issues associated with Winter Rule/GA coordination; 1) how should the administrator deal with payment arrangements established between the customer and the utility company pursuant to the Winter Rule; and 2) how the administrator should deal with large back bills which sometimes accrue as an inadvertent result of the Winter Rule.

First, as a matter of GA law, the administrator does not have to take into special consideration an applicant's payment arrangement with the utility company. When determining such an applicant's eligibility, the administrator would typically budget for either the applicant's actual 30-day utility cost or the ordinance maximum for utilities, whichever is less *(see "The Unmet Need Test," page 2-13).*

The MMA model GA ordinance, however, *allows* (but does not require) an administrator to budget an applicant's payment arrangement under certain circumstances. The reason for this authority to budget for a payment arrangement was created in the MMA model ordinance is because in some circumstances customers enter into payment arrangements which provide for very small payments during the winter season which balloon into proportionally larger payments during the summer. If the administrator only budgeted for such an applicant's actual 30-day cost up to the ordinance maximum, those applicant's with these balloon-type arrangements would not be eligible *during the course of a year* for the same amount of GA for utility purposes as an applicant who had no special payment arrangements with the utility. For further information about the specific conditions governing this authority to budget for special payment arrangements, consult MMA's model GA ordinance.

Because the Winter Rule can make it more difficult for utility companies to effectively collect unpaid bills during the winter season, another side-effect of the Winter Rule is that some applicants build up large unpaid utility bills which can

lead to utility disconnection when the Winter Rule is lifted in the early Spring, or before the Winter Rule goes into effect in the late Fall. In the past, municipal administrators have been frustrated by the fact that some applicants let their utility bills go unpaid all winter and in the Spring the municipality is expected to pay the entire bill. This frustration should be somewhat alleviated by the municipal authority to limit emergency assistance which is now found at § 4308(2)(B) *(see "Limitations on Emergency Assistance," page 2-45) and* which allows administrators to request from an applicant sufficient documentation to prove that the applicant could not have financially averted the utility disconnection.

Because the Winter Rule has been in effect for over a dozen years and is well established, whereas the municipal authority to limit emergency GA has only recently been enacted, it is very important for the administrator to clearly inform all applicants of their responsibility to document *all* their expenditure of income if they wish to preserve their full eligibility for emergency GA at some later date.

Personal & Household Supplies. This category includes items that are needed to maintain the safety and decency of the household such as cleaning and laundry supplies, paper products, toothpaste, diapers, etc. These are usually supplied in accordance with the maximum established in the ordinance or as the administrator believes reasonably necessary.

Clothing. Clothing must be provided as needed. Except in emergencies (fire, flood, etc.) and when there is an immediate need (such as boots or long underwear in the winter), clothing may be a postponable expense but not indefinitely. Before granting clothing assistance, the administrator should be satisfied that the applicants have attempted in good faith to meet their needs by shopping at discount stores or clothing thrift shops in the area. Applicants can be referred to clothing charities in the area for their needs *providing they are willing to make use of charitable services (see "Available Charities," page 3-19).*

If the applicants are unwilling to make use of available clothing charities themselves, the administrator can either obtain the necessary and suitable clothing from a vendor, charitable or otherwise, and make it available to the applicant, or issue a voucher to any clothing vendor in an amount sufficient to purchase the necessary clothing items. Some administrators take it upon themselves to establish clothing drop-off centers or clothing drives in order to collect clothing which is made available to all applicants as necessary.

Telephone. State law requires municipalities to consider as a necessity basic telephone charges when a telephone is necessary for medical reasons. Prior to granting this assistance, the administrator should require that the applicant present a letter from a physician stating that it is essential that the applicant have telephone

service, except that such verification would not be necessary if the applicant's medical need for a telephone was obvious. The administrator should make it clear to the applicant that the municipality will only pay for costs associated with the basic service and not for unnecessary long distance charges.

Non-Prescription Drugs. In 1989, the Legislature added "non-prescription drugs" to the list of "basic necessities" in GA law. Most, if not all municipalities provided in their ordinance for such a category of assistance. This category would include aspirin, cough syrup and any other over-the-counter medicine, and a maximum amount of assistance available for these items could be established by ordinance.

Medical Services. Certain medical care is a basic necessity that municipalities may be required to pay for from time to time. Municipalities, however, are not required to pay for medical expenses under all circumstances. Municipalities are required to grant reasonable requests for medical supplies such as aspirin, bandages, etc., essential or medically necessary medications prescribed by a physician, and *non-elective* medical care. They may also have to pay doctor or hospital expenses under the following conditions.

Prior Notice. If people need to go to a doctor or hospital and they cannot afford it and want the municipality to pay for it, they must first give the administrator prior notice. Prior notice is necessary so the administrator can verify that the medical services are necessary and can approve the expense. Prior notice also gives the administrator the opportunity to refer the applicant to a low-cost health care provider if there is one in the area.

The administrator should require the applicant to present a letter from the physician stating that the service is medically necessary. If the applicant needs to go to a doctor and doesn't have a letter, the administrator could consult with the applicant and then call the doctor's office to confirm that the applicant has an appointment and that the visit is necessary. *If a person does not give the administrator prior notice, the municipality is* ***not liable*** *for the expense unless it is an emergency.*

Hospital Care. In GA law, the pertinent section dealing with a municipality's responsibility to pay for hospital care is found at 22 M.R.S.A. § 4313(1). This section of law describes two responsibilities of a hospital with regard to the care the hospital must provide to indigent patients.

- **Emergencies.** When people need emergency medical attention, obviously they cannot give the GA administrator notice prior to admission to a hospital. The hospital, however, is required by state law to notify the municipality of the admission if a patient is unable to pay the medical bill (or if the patient will not

be covered by "Free Hospital Care") and the hospital wants the municipality to pay *(§ 4313).*

The hospital must notify the administrator *within five business days* of the patient's admittance to the hospital. If the hospital fails to give the municipality proper notification within the five business days, the municipality has no legal obligation to pay the bill.

- **Charity Care.** The second provision of § 4313 reads: "In no event may hospital services to a person who meets the financial eligibility guidelines, adopted pursuant to section 1716, be billed to the patient or municipality." The section of Title 22 being referenced here, §1716, establishes a regulatory authority in the Department of Human Services to adopt income guidelines to be implemented by hospitals for the provision of health care services to patients determined unable to pay for services.

These charity care requirements act in conformity with the provisions of the Hill Burton Act *(42 USC § 291 et seq.)* implemented by regulation at CFR 42 § 124.506 and more generally the Public Health Services Act *(42 USC § 201 et seq.)*. The state regulations of "Hospital Free Care" guidelines are found in Chapter 150 of the Hospital Finance Rules.

The current rule revises the Department of Human Services guidelines for the free care policies of hospitals, including minimum income guidelines (based on the Federal Poverty Guidelines) to be used in determining whether individuals are unable to pay for hospital services. The patient's annual income is calculated as either the patient's income over the last 12 months or three times the patient's income over the last four months. The rule now also sets forth procedures for patients to request a fair hearing if denied free care.

Income eligibility for General Assistance is structured around 100% of HUD Fair Market Rental values, which yield a GA "standard of need" that runs from 45% to 85% of the federal poverty level. Therefore, in nearly every case, the GA applicant who would be eligible for GA is also eligible for "Hospital Free Care."

In short, the Hospital Free Care regulations and the wording of 22 M.R.S.A. § 4313 ***generally*** *remove a municipality's obligation to pay for an applicant's hospital care. Note however, that individuals are not usually provided with a filled prescription on their release from the hospital, which means a municipality may be asked to assist with medication costs.*

This is not to say, however, that a GA application for hospital care assistance should be automatically denied on the basis of the Hospital Free Care program.

Whenever an applicant does apply for hospital care assistance, the administrator should:

- obtain verification that the applicant has applied for and been denied charity care
  from the hospital;
- verify that the hospital care is medically necessary and non-elective;
- determine that the applicant does not have sufficient income to work out a payment arrangement with the hospital for the hospital bill;
- negotiate a discount rate with the hospital, based on the Medicaid rate guidelines,
  for any amount of the bill to which the municipality might be exposed; and
  provide the necessary financial assistance.

At this point it should be noted that municipalities have the option of paying the hospital bills in their entirety or spreading the payments out over a reasonable length of time. This is strictly a policy decision of the municipality. Some hospitals have an early payment incentive plan which administrators should be aware of.

When reaching its decision the municipality should take into consideration both the financial and physical condition of the applicant and whether his/her job and income prospects are good, thereby eventually enabling the applicant to assume financial responsibility for all or part of the bill. In the alternative, the administrator should determine whether the applicant has no employment prospects or earning capacity. *If the municipality decides to pay the bill in installments, the applicant* ***must apply regularly and qualify*** *for assistance each month.*

Dental & Eye Care. People may apply for GA to enable them to go to the dentist or eye doctor. As with other medical care, the applicant must give prior notice unless it is an emergency.

Requests for assistance with dental and eye care are generally granted if the service is essential and there are no other resources available to provide these services *(see Appendix 11).* Municipalities may receive requests for extensive dental work, dentures, or glasses. Before granting these requests the administrator should be satisfied that the service is "medically necessary." The administrator can request a written statement from the dentist or eye doctor, or can seek a second opinion—provided that the municipality pays for the second opinion.

In some areas there are health clinics that offer services at reduced rates, or charitable organizations that subsidize these services. Both of these resources

should be explored prior to granting a request for these medical services. If none of these resources are available and the doctor has verified that the services are essential, the municipality must grant the necessary assistance.

Burials & Cremations. Municipalities *are responsible for paying the direct burial or cremation expenses,* up to the ordinance maximums, of anyone who dies leaving no money or assets to pay the burial expenses and who has no liable relatives who are financially able to pay the burial or cremation costs (§ 4313). *Relatives who are liable for the burial/cremation costs are parents, grandparents, children and grandchildren.* Note that children and grandchildren are considered liable relatives with respect to burial/cremation expenses **only.**

There are a number of issues to consider when analyzing the municipal obligation to assist with the payment for a burial or cremation.

- **Burial & Residency.** The question often arises as to which municipality is responsible when assistance is being requested to bury or cremate a person from Town A but the deceased person's liable relatives live in Town B, Town C and Town D. The administrator should remember that the *purpose of burial provision of GA law is to provide the funeral director with necessary financial assistance to bury or cremate an indigent person when there is no other resource available for that purpose.*

To put it another way, the "applicant" so to speak — for burial assistance is the deceased person and so it is the ***deceased's GA residence*** *at the time of death that determines which municipality is responsible for burial assistance, not the various residences of the liable family members.* If burial residency was determined by any other criteria, there would be nothing but confusion as to the issue of responsibility when a person from one town needed to be buried and the liable relatives were scattered across the state.

- **Burial & Cremation — Funeral Director's Responsibilities.** State law requires the *funeral director to notify the GA administrator prior to burial or cremation* or by the end of 3 business days following the funeral director's receipt of the body, whichever is earlier. Municipalities may choose to institute a written notification policy—one which would require funeral directors to provide such notice in writing. If a written notice is required, municipalities can ask for the notification to be sent via fax in order to expedite matters.

Therefore, when a funeral director is requesting GA to pay for a burial or cremation and the GA administrator does not receive prior notice and thus has no

opportunity to approve the expenses, the municipality has no legal obligation to pay the bill.

The GA administrator should also expect the funeral director to make an effort to identify the availability of resources to pay for the burial or cremation; including: a description of the deceased's estate to the extent it is known; the names and addresses of the legally liable relatives (grandparents, parents, children and grandchildren of the deceased who live or own property in Maine); the potential eligibility for burial or cremation benefits such as veterans' or Social Security burial benefits; and burial contributions offered from any other sources, such as a local church group or friends of the deceased.

The GA administrator should not expect the funeral director to have all this information at the time of initial contact. Since the *funeral director must make an initial request to the GA administrator within **three business days** after receipt of the body,* the funeral director has an interest in contacting the municipality whenever he or she suspects that there will not be enough money to completely cover burial/cremation costs. From that point on, the GA administrator and the funeral director should work together to collect and share the necessary information to calculate eligibility.

Burial & Cremation—Administrator's Responsibility. When first contacted by the funeral director, the administrator should inform the funeral director of the maximum amount the municipality can authorize for the burial or cremation expense. This puts the funeral director on notice that he or she should not expect to be reimbursed for any amount in excess of the maximum amount allowed in the municipal ordinance.

The administrator should explain that if the relatives, third parties or other programs (e.g., veterans' or Social Security burial benefits) can pay a portion of the expenses, the municipality will reduce its obligation and pay the balance up to the amount allowed in the ordinance.

For instance, if the municipal ordinance allows $1,000 as the maximum amount it will pay, and the relatives pay $500, the municipality will pay up to the $500 balance even if the funeral director's total bill is $1,800. In other words, if the family or others pay any part of the bill, the *municipality will **only** pay the difference between what the family pays and the maximum amount allowed in the ordinance for burial/cremation expenses.*

In addition, the administrator should explain that after the GA application for a burial is received, the GA administrator has ***eight days*** to reach a decision. This gives the administrator an opportunity to verify the information and determine if there are any other

assets, resources or relatives who could contribute toward the burial.

NOTE: The MMA's Legal Services Department cautions GA administrators not to sign documents containing "assumption of risk" clauses for cremations. It was brought to the attention of Legal Services, that certain "orders for cremation" contained language where by the municipality was to assume the risk of damage to the crematorium in the event the deceased had a pacemaker or prosthetic devise. In such cases, *the funeral director should bear the burden of making such a determination prior to cremation—it should not be the municipality's responsibility to accept the risk of damage.* In the event a cremation document contains such language, the GA administrator should negotiate that section out of the document **prior to signing** any agreement.

Burial & Cremation—Calculation of Eligibility. The municipal obligation to financially assist with the burial or cremation of an indigent person is the difference between the ordinance maximum for the burial or cremation and the financial resources that exist for that purpose. Those financial resources are:

- the estate of the deceased;
- the financial capacity of legally liable relatives (grandparents, parents, children, grandchildren who live or own property in Maine);
- burial benefits such as those sometimes available to veterans and Social Security recipients with surviving spouses or immediate relatives;
- any actual financial contribution from virtually any other source, such as friends, community collections, church group donations, etc.

With regard to the deceased person's estate, Maine's Probate Code provides sufficient means for funeral directors to be paid for their services when there is an estate (18-A M.R.S.A. § 3-805).

With regard to the financial *capacity* of legally liable relatives, it should be emphasized that the test to be applied is one of capacity to contribute financially, not the *willingness* to do so. If the administrator is able to identify liable family members who live or own property in Maine and who have sufficient income to pay for the burial or cremation in lump sum payment or by any reasonable installment arrangement, the request for burial or cremation assistance can be denied, even if those liable family members are not willing to contribute. To determine a relative's financial capacity to contribute, the relative should be required to fill out a GA application—not for the purpose of applying themselves for GA, but for the sole purpose of calculating financial capacity.

It is important to remember that municipalities historically have been responsible for providing a decent burial for people who left no money and had no relatives to pay for their burial. However, GA is not intended to be a welfare program for liable relatives who could pay for burial expenses but do not want to, nor is it intended to be a collection agency for funeral directors who find it easier to bill the municipality.

Finally, a note about the type of burial arrangement is in order. Certainly the burial or cremation preparations should be carried out with dignity and respect. The wishes of the family should be fulfilled to the extent possible *within the confines of the* ***maximum assistance allowed*** *in the ordinance.*

With regard to the issue of family wishes, at the reasonable request of the Maine Funeral Directors' Association, the MMA model GA ordinance provides that the wishes of the family will be respected as to whether the deceased is buried or cremated. It is *only when the family members concur that a cremation is appropriate or when there are no known family members* that the administrator may elect to issue a benefit for cremation services that are more cost effective than burial services.

Burials are a very sensitive subject. Relatives applying for GA may be grief stricken and traumatized. They may want a funeral that entails much more than they or the municipality can pay. It is incumbent upon the GA administrator to be as sensitive as possible to the deceased's relatives, while also fulfilling the law.