

Chapter 8

General Assistance

Recovery of Expenses

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Unlike many other public assistance programs, the GA issued on a recipient's behalf is treated more like a loan to the recipient than a no-strings-attached grant. There are five mechanisms designed into GA law that provide a process of recovery whereby municipalities can seek to recoup from a recipient part or all of the GA issued. Those five mechanisms are:

- (1) a general recovery process (i.e., civil action in small claims court)(§ 4318);
- (2) a process to recover assistance from a recipient's legally liable relatives (§ 4319);
- (3) an authority to place a lien on real property when GA has been used to make a mortgage payment or capital improvement (§ 4320);
- (4) an automatic lien on any Workers' Compensation lump sum payment issued to a recipient (§ 4318); and
- (5) a lien on any Supplemental Security Income (SSI) lump sum payment issued to a recipient (§ 4318).

Each of these recovery processes are briefly described as follows:

The General Recovery Process. Section 4318, in its first paragraph, allows a municipality to recover the amount of assistance it has granted to a recipient—by civil action if necessary—if and when the recipient later becomes financially able to repay the municipality. At the time of a person's first application for assistance and at the time of every grant of assistance thereafter, the GA administrator should make the applicant aware of this provision of the law. It is particularly important to remind applicants of their repayment responsibilities when the administrator becomes aware that a recipient may soon be returning to work or receiving a large retroactive lump sum payment, such as a settlement in an accident claim.

When it becomes clear that a recipient's ability to repay the municipality is a distinct possibility, the administrator should first seek voluntary reimbursement from the recipient. If the recipient expresses a willingness to repay the municipality voluntarily, a simple agreement to that effect can be drawn up, dated and signed by recipient, administrator and witness. This type of agreement can be written in straightforward language, with flexible installment payment schedules.

Municipalities are cautioned that such agreements should *only be entered into after granting GA and in no event prior to or as a condition to receiving GA.* (See Appendix 13 for sample "Notice of Lien" in anticipation of a disposition of accident/injury claim.)

If the recipient does not wish to sign such an agreement after receiving GA, and at the time of receiving a lump sum payment or becoming gainfully employed the recipient does not voluntarily repay the municipality, the town can sue the recipient for recovery. If the amount to be recovered does not exceed \$4500 (the current maximum amount), the municipality can take recipients to Small Claims Court (for a filing fee of approximately \$40) where it is not necessary to be represented by an attorney. Because the maximum recovery amount allowed and filing fees for small claims court change from time to time, checking with the court to see what the current amounts are is recommended. The Judicial Branch publishes a very helpful publication called, “*A Guide to Small Claims Proceedings in the Maine District Court*” which is available by contacting:

Administrative Office of the Courts
62 Elm St. (2nd Fl.), P.O. Box 4820
Portland, Maine 04112-4820
Tele. # 822-0792

Or, the publication can be accessed on the Internet at the following address:
<http://www.courts.state.me.us/citizensguide/part1.htm>

There are two factors an administrator should bear in mind when seeking recovery. First, the recipient must be ***financially able*** to repay the municipality, which means—in addition to other reasonable criteria—that the recipient would not become destitute and eligible for GA as a result of the repayment. The other factor to consider is that 1985 legislation added a paragraph to § 4318 to expressly prohibit a municipality from recovering any assistance granted to a workfare recipient *as a result of a workfare injury*.

Relatives. As § 4318 permits a municipality to seek recovery from a recipient, § 4319 permits a municipality to seek recovery from—and take to court, if necessary—a recipient’s *legally liable relatives*.

As has been noted in an earlier section of this manual, § 4319 of GA law provides that parents are financially responsible for the support of their children who apply independently for GA and are *under the age of 25. Spouses*, by that same section of GA law, *are financially responsible for each other*. Under this statute, municipalities may seek recovery from the financially liable individuals provided the responsible parties either live in Maine or own property in this state and have a financial capacity to repay the municipality.

As a first step in this recovery process, the administrator should attempt to have the liable relatives voluntarily assume responsibility for providing the basic needs for their children or spouse (*see “Enforcement of Parental Liability,” page 4-4*). If the parents or spouse are unwilling to provide direct support, but there is

undoubtedly a financial capacity to do so, the municipality should send a bill to the parents or spouse for the amount of GA granted the applicant. If that bill is ignored, the municipality could seek recovery from the relatives in court; Small Claims Court for claims under \$4,500.

Section 4319 limits a municipality's ability to recover from liable relatives only the amount of GA granted to the minor or young adult, or spouse, during the *preceding 12 months*, so if the administrator thinks an aggressive collection action is appropriate, the process should be initiated in a timely manner. Again, before a municipality can pursue any of these steps it must be sure that the relatives are financially able to provide the support or reimbursement. Seeking recovery in court from impoverished and therefore judgment-proof people is a waste of time and money.

In a final note on this issue, GA administrators should exercise good and careful judgment when considering a collection action against a spouse. It is all too often the case that a marriage separation that leaves one spouse impoverished and the other with some financial security is also a separation loaded with personal acrimony that can, in turn, lead to violence and abuse. If there is some indication that a spouse on the receiving end of a collection action might respond in an abusive way toward the target of his hostility, the administrator would be well advised to consider backing away from the collection action. If there are children involved, the administrator may elect, instead, to advise the individual receiving GA to contact the Department of Human Services' Support Enforcement Unit in an effort to secure any child support obligations from the noncontributing spouse.

Mortgage Payment & Capital Improvement Liens. The third mechanism built into the law by which municipalities can recover some specific GA expenditures is described in § 4320. Under this section of law, the municipality can file a lien in the registry of deeds whenever GA is issued on behalf of a recipient towards a mortgage payment or a capital improvement for the housing in which the recipient is residing. This lien filing process is described in detail under "*Housing*," page 7-6.

It should be noted that a GA lien is unlike a municipal tax lien because a GA lien is not a foreclosing lien. The GA lien enjoys no special priority over any other lien that may have previously been filed against the property. Because the GA lien is necessarily lower in priority than a mortgage lien, the municipality will very likely lose its GA lien if the property is foreclosed on by a mortgage holder and conveyed at a mortgage auction.

Other than this circumstance of mortgage foreclosure, the GA lien can be effectively enforced at the time the property is sold. If a subsequent sale of the

property involves bank financing, the bank's title search will quickly identify the lien and either the buyer or seller or both will be obliged to discharge it. If the property is subsequently conveyed without bank financing, conveyed by a quit claim or "release" deed, or transferred as a gift or part of an estate, it is possible that no one will voluntarily come forward to discharge the lien. In that case, the municipality should notify the property owner that the town will be enforcing its lien pursuant to § 4320. If necessary, the town may have to take the new property owner to court to enforce its lien.

Workers' Compensation Lump Sum Liens. In December 1991, § 4318 was amended to give municipalities a statutory lien on Workers' Compensation lump sum benefits for the amount of GA issued by the municipality to the person subsequently receiving the Workers' Compensation lump sum payment. *The language of § 4318 creates the lien automatically:* that is, there are no particular notice or paperwork requirements necessary to perfect the lien.

On the other hand, if the GA recipient's employer or the employer's insurance company do not know about the municipal lien, they will not be sufficiently aware to segregate out the municipal share of any lump sum payment issued to a Workers' Compensation beneficiary. Therefore, it is for the *purpose of actually collecting on the lien*, rather than establishing or perfecting the lien, that the following paperwork requirements are recommended.

- **Definition of "lump sum payment."** For obvious reasons the new language in § 4318 establishes a lien against Workers' Compensation *lump sum benefits*, *not the regular, weekly Workers' Compensation benefits* that a recipient might be receiving. To enforce a lien against weekly benefits would merely create a proportionately greater need for weekly GA.

That being said, there remains some confusion over the issue of exactly what is a Workers' Compensation "lump sum payment." The reason for this confusion is that General Assistance law, at 22 MR.S.A. § 4301(8-A) has one definition of "lump sum payment," and Workers' Compensation law, at 39-A M.R.S.A. § 352, defines and deals with its own version of "lump sum payments."

The Title 39-A definition would seem to limit the consideration of lump sum payments to lump sum *settlements*; that is, the *commutation of all future weekly benefits* to a lump sum. This commutation is potentially available to any on-going recipient of Workers' Compensation benefits. The definition of "lump sum payment" in GA law is more generalized, and expressly includes *"retroactive or settlement portions of workers' compensation payments..."*

A retroactive payment would include a larger-than-weekly Workers' Compensation payment a recipient might receive if there was some delay in processing his or her claim, whether in contested or uncontested cases. In short, it would appear that the way § 4318 is now worded, in light of the § 4301(8-A) definition of "lump sum payment," *the municipal lien is to be applied and may be enforced against either Workers' Compensation lump sum settlements or retroactive Workers' Compensation lump sum payments of any other kind.*

- **Paperwork requirements—the UCC-1 form.** The Workers' compensation liens should be filed with the Office of the Secretary of State, Uniform Commercial Code division, on a UCC-1 form (*see Appendix 17 for sample "UCC-1 form"*). The form itself is a five-sheet, carbon copy form which should be available at major office supply stores for 40¢-50¢ apiece or approximately \$20 per hundred.

- **How to fill in the form.** The form instructions ask that the form be typed.
 - 1) In box #1—labeled "Debtor," the administrator should enter the name of the General Assistance recipient.
 - 2) In box #2—labeled "Secured Party," the administrator should enter the name of the municipality, the name of the General Assistance administrator, and the municipality's mailing address.
 - 3) In box #3—labeled "Maturity date," should be left blank or "NA" should be entered, for Not Applicable.
 - 4) In box #4—there is an instruction to detail what the financing statement covers. Since there is no way to know the precise amount of General Assistance that will be recoverable at the time the Workers' Compensation lump sum payment is issued, the administrator should enter into this box the following:

"Any and all lump sum payment of Workers' Compensation benefits, up to the value of general assistance granted from secured party to debtor from January 1, 1992 forward, including future advances of general assistance to debtor."
 - 5) The administrator should leave blank the Box labeled "Assignee of Secured Party." This would only apply should the town ever wish to sell these liens.
 - 6) The administrator should also leave blank the small check-boxes regarding covered collateral.

- 7) The narrow line labeled “filed with” should be left blank.
 - 8) Finally, the form should be dated and signed under the administrator’s printed name and title.
 - 9) The *recipient must sign the UCC-1 form*. GA applicants potentially receiving a Worker’s Compensation “lump sum” or “retroactive payment” should be informed of such a pre-condition prior to being issued GA—in other words, ***signing the UCC-1 form should be made a condition to receiving GA.***
- **Where should this form be filed?** According to the form instructions, the bottom (orange-yellow) sheet is the debtor’s (GA recipient’s) copy. The next-to-last sheet, which is light green in color, is the municipality’s copy.

The top three sheets must be filed with the:

Secretary of State’s Office
Uniform Commercial Code Division
State House Station #101, Augusta, Maine 04333
Tele.# (207)287-4177

There is a **\$20 filing fee**. *The lien is established for a period of **five years***. For continuing the lien, a *Continuation of Lien* form must be filed six months before the five-year period elapses. This means that a “tickler file” should be established for all filed liens so that somewhere around four and one-half years after any lien is filed, the appropriate official will know to file the continuation form.

Finally, after the UCC-1 form is completely filled out, a few photocopies should be made so that one photocopy can be sent to the “obligor” (the applicable compensation insurance company), and one to the recipient’s Compensation attorney. It is particularly important to put the employer’s insurance company and the injured employee’s Compensation attorney, if any, on the notice with regard to the municipal lien. For that reason, it is advisable to send them a photocopy of this UCC-1 form *by certified mail, return receipt requested*.

- **When should the UCC-1 form be filed?** At \$20 a filing, the administrator will not want to file these liens against all clients on the off chance that a few of them, someday, may receive a lump sum Workers’ Compensation benefit. The administrator will probably want to file these liens only when the recipient (a) is receiving Workers’ Compensation already or (b) has applied for Workers’ Compensation after sustaining a work-related injury.

The way the law is worded, however, it would appear that the municipality can recover any and all GA issued to a recipient after the effective date of the new law (December 23, 1991), even though some of that GA may have been issued before the recipient sustained a work-related injury. In this respect the Workers' Compensation lien should be distinguished from the lien on retroactive Supplemental Security Income (SSI) benefits (discussed below). The SSI lien is expressly intended to capture only the interim GA issued to a person during the time between that person's first SSI application and any subsequent retroactive benefit.

What this lien does not and can not capture is GA issued prior to the effective date of this enabling legislation. Therefore, no GA issued prior to December 23, 1991 can be recovered by this lien. In an effort to reduce confusion, MMA's suggested language on the UCC-1 form starts the window of recovery on January 1, 1992.

- **Monitoring the lien.** After the UCC-1 form has been filed, the administrator's only task will be to keep track of how much GA is issued to the recipient. The way this process is supposed to work, when the employer or the employer's insurance company is getting ready to cut a lump sum check to the recipient, the administrator should be contacted and asked for the precise amount captured by the municipal lien. For this reason, again, a special "tickler file" should be kept on all cases covered by these liens.

Offsetting "Workfare" performed. In April of 1998, the Maine Supreme Court rendered a decision in *Coker v. City of Lewiston*, 1998 Me. 93, which reversed previous statutory interpretation, DHS policy and municipal practice with respect to lump sum Workers' Compensation awards and municipal GA liens relative to workfare performed. Whereas workfare was formerly deemed *solely a condition of eligibility for prospective general assistance*, the *Coker* decision characterized workfare as *discharging* the recipient's municipal reimbursement obligation to the extent of the value of workfare performed (*calculated at a rate of at least minimum wage*). Later that year, *Thompson, et al., v. Commissioner, Department of Human Services and City of Lewiston* (CV-94-509, Me. Super. Ct., Ken., August 28, 1998), another case on point, was decided, albeit at the Superior Court level, which applied the *Coker* analysis to the SSI Interim Assistance Program. As a result, DHS policy was amended to provide that **all workfare performed must be "backed out" or subtracted from the recipient's municipal obligation.**

Liens on SSI Lump Sum Retroactive Payments. Supplemental Security Income (SSI) is a federal entitlement cash benefit that is issued monthly to people who are unable to be employed for extended periods of time for reason of physical or mental disability. For more information about the SSI program, see Appendix 11 and Appendix 12.

It is not unusual for a person applying for Supplemental Security Income (SSI) to be denied benefits initially, only to be granted benefits after a lengthy appeal process. When this occurs, the SSI recipient is issued a retroactive benefit covering a period of time going back to the point in time on or after the date of initial SSI application when the applicant is determined to be disabled. Those retroactive benefits can be for many thousands of dollars.

Federal law, in a general way, prohibits the *recovery by legal process* of any benefits received by a Social Security recipient unless that recovery or repayment is voluntarily allowed by the recipient (*42 USC § 407*). Another more specific section of federal law, however, allows state governments to establish systems whereby the state government and political subdivisions of the state can be reimbursed for interim public assistance payments the state or municipalities must make while individuals are waiting for the SSI applications to be processed (*42 USC § 1383(g)*). In two steps, the Maine Legislature authorized DHS to establish just such a system of interim assistance reimbursement.

In March, 1991, the Legislature amended § 4318 to create a *voluntary* interim assistance reimbursement system. Under the voluntary system, municipalities would ask GA clients who had applied for or were receiving SSI to sign agreements—as prepared by DHS—to pay back the municipality for any GA received while the recipient’s SSI benefits were pending or suspended. The GA recipients could not be required to sign the agreement; it had to be completely voluntary.

In March 1992, the Legislature removed the language of this section of law that made interim assistance reimbursement voluntary. *The way the system is now designed, the municipality and the state will be **reimbursed automatically** for the GA issued to a person while that recipient is waiting for an SSI eligibility determination and subsequently receives a retroactive lump sum SSI payment.*

To obtain this reimbursement, the municipality must first get the GA applicant to sign the reimbursement agreement. Because federal law gives sole authority to establish this reimbursement system with the state, a municipality may not establish a mandatory reimbursement agreement by its own authority, and even an agreement form to be signed by the GA recipient must be the form provided to the municipality by DHS. *Because the reimbursement system is no longer voluntary as a matter of law, any applicant who does not wish to sign the agreement will **not be eligible for GA.***

The Interim Assistance Agreement forms to be used in this process are only available from the Department of Human Services. In addition to the actual

agreement forms, DHS will provide any municipality requesting the forms with a “Vendor Identification Form” and an instructional memo describing how the two forms are to be filled out and maintained.

The “Vendor Identification Form” provides the Department with the necessary information to cut the remainder check to the SSI recipient and mail the remainder check out after the value of the GA is removed from the initial SSI retroactive check. To obtain copies of these forms and the instructional memo, either write to the Department (Department of Human Services, General Assistance Unit, State House Station #11, Augusta, Maine 04333) or call the Department’s toll-free number (1-800-442-6003). *(Also, see Appendix 18.)*

After the recipient has signed the agreement form, the administrator should retain one copy, provide a copy to the recipient, and send a copy to the Department along with the Vendor Identification Form. After that point in time, any retroactive SSI payment will go directly from the Social Security Administration to DHS, where the municipal/state share will be diverted, with the remainder of the retroactive lump sum payment being passed through to the SSI recipient.

DHS will have a limited period of time (ten days) to pass through the SSI retroactive benefit to the recipient after subtracting the municipal/state share. Therefore, as is the case with Workers’ Compensation lien case records, the administrator should keep a tickler file on all clients who have signed the SSI reimbursement agreement so that the municipality can quickly tally the total GA captured by the SSI lien when DHS needs that information. The Department now has model forms for the purpose of keeping track of GA benefits issued to pending SSI recipients.