

GA FAIR HEARINGS “A CHECKLIST”

Applicant requests General Assistance i.e., fills out appropriate application etc.

1st The Written Decision

- GA administrator provides applicant with the written decision (notice of eligibility/ineligibility) either:
- by hand;
 - by certified mail, return receipt requested (legally sufficient and provides proof of receipt by applicant—if applicant accepts the certified packet); or
 - by regular mail (legally sufficient but, difficult to prove actual receipt by applicant)

Note: In difficult cases the GA administrator may decide to mail the applicant/recipient the decision both by regular mail and certified mail, return receipt requested. The GA decision or notification should contain the local hearing procedure for requesting the hearing. (See Exhibits 2 & 3 for sample “Notices of Eligibility/Ineligibility”).

2nd The Request For Appeal

- Applicant provides town with a written request for an appeal within 5 days of receipt of the written notification of eligibility/ineligibility (*see Exhibit 4 for a sample “Request for a Fair Hearing”*).

Note: It is difficult, if not impossible, to assert the timeliness rule if the town does not have proof of receipt of the decision by the applicant. Moreover, the 5-day window provided to the applicant turns into 10-days for “any other act or failure to act” by the GA administrator. For example, this extension would typically apply when the town issues no decision after a GA application has been submitted.

- If “yes” to all of the above, proceed with Fair Hearing request.

- If “no” to the above, does applicant have “just cause” for the delay in requesting the appeal (i.e., given a set of factual circumstances it would be unreasonable to expect the applicant to possess the ability/wherewithal to appeal in a timely manner).

Note: Should “just cause” exist, the town may choose to waive the timeliness issue. However, it is ultimately up to the FHA to decide on the matter or reject the appeal on the grounds of timeliness.

3rd 5-Day Time Frame

- “Just cause” is not found to exist, and the applicant has missed the 5-day time frame. The applicant re-applies for general assistance. Is there new information giving the applicant reason to reapply?
- If yes, proceed with the reapplication.

If not (applicant's situation has not changed), nor is there a need for emergency assistance, then allow the appeal to proceed. During fair hearing assert the time bar issue and the FHA should find the applicant was not timely.

Note: If applicant reapplies due to a change in financial situation, i.e., loss of income, household size changed, expenses changed or, emergency developed etc., then reapplication process should take place. Remember that reapplication comes with a new right to a fair hearing!

4th Proceeding With The Hearing

- It is determined that the fair hearing process should proceed. Has the GA administrator:
- Reviewed the pertinent statutes/DHS policy/ordinance (or, called DHS/MMA) in order to review decision;
- Spoken to the applicant to ascertain that applicant understands the reason for the decision;
- Informed the applicant that he/she will be receiving a "Notice of Fair Hearing" with the date, time, place, of hearing, within a day or two.

5th Contacting the FHA

- Contact FHA and set up a date, place and time for the hearing. If appropriate, inform FHA that you are sending pertinent parts of case record etc.

Note: Absolutely do not discuss the case with the FHA. This sort of communication is considered an ex parte communication and is strictly prohibited!

6th Notification of Fair Hearing

- Send complainant notification of hearing that includes date, place and time of hearing. In addition, notice should also state complainant's rights e.g., right to bring witnesses, cross examine witnesses and be represented by an attorney at their own expense (see Exhibit 5 for a sample "Notice of Fair Hearing").

7th Submitting Case Record

- Send FHA and applicant (now a complainant) pertinent parts of the case file (as necessary and/or appropriate).

Note: Whatever information FHA receives (whether during or, prior to the hearing) the complainant must also receive!

**8th
Prepare For Hearing**

- Prepare for hearing i.e., write memorandum/brief (*see Exhibit 9 for sample “Memorandum”*).

**9th
Holding Hearing**

- FHA holds hearing. (*See Exhibit 7 of this packet for a sample script to follow.*)

**10th
Decision In 5-Days**

- Remind FHA to issue a written decision within 5 working days of the hearing (*see Exhibit 6 for a sample “Notice of Fair Hearing Decision”*).

*Note: Again, **absolutely do not discuss the case with the FHA**. This sort of communication is considered an ex parte communication and is strictly prohibited!*

**11th
Follow FHA’s Decision**

- Upon receipt of FHA’s decision, follow the FHA’s directions exactly regardless of the decision.

**12th
Appeal of FHA’s Decision**

- Does either party want to appeal the FHA decision? Either party can appeal the decision within 30 days of the receipt of the fair hearing decision, in Superior Court, pursuant to Maine Rules of Civil Procedure, Rule 80-B.

Note: This is a costly option and the party considering appeal will require an attorney. Municipal officers may need to approve this expenditure of funds for legal representation. Bottom line-make, certain the issue is worth appealing.