

GA FAIR HEARING PROCEEDING “A SCRIPT”

The participants in the following generic script for appeal process are:

Fair Hearing Authority (FHA)

Claimant

Claimant’s representative

Claimant’s witness

Town

Town’s witness

NOTE: Italicized/highlighted language is not part of the dialogue—it is instructional information.

Pre-Hearing Preliminaries

FHA: *(To all gathered)* Good *(evening/afternoon)*. We are gathered here for the purpose of holding a hearing with regard to a Claimant’s request to appeal the General Assistance decision of the town made on _____ *(date)*.

My name is _____ and I am the Fair Hearing Authority, and am duly authorized to conduct this type of proceeding. The proceeding is going to be taped and that tape will become part of the record of this proceeding. Before I start the tape, does anyone have any preliminary questions? There being none, I am calling this proceeding to order.

The FHA starts the tape.

FHA: Before we go any further, I want to make sure that everyone here is supposed to be here.

Identification of Parties

FHA: First of all, the following proceeding is not a public proceeding under Maine’s Right to Know Law, and so only the direct participants will be allowed to remain in the room when the hearing begins.

The “FHA” then goes around the room and identifies all persons present and determines who are direct participants to the proceeding and who are members of the general public. Since it is not a public proceeding persons who are not direct participants should be asked to leave.

FHA: It is ____ *(a.m./p.m.)* on _____ *(date)* and this is an appeal hearing to consider the request of _____ *(Claimant)* to appeal from a General Assistance decision made by _____ *(Town)* on _____ *(date)*.

Present and participating in this proceeding are—*(identifying each participant by name and function)* FHA, claimant, claimant’s representative, claimant’s witness, town, and town’s witness etc.

FHA's Rules of Procedure

FHA: The purpose of this proceeding is to gather all the information that is available to reach a fair and impartial decision regarding the Claimant's request. Because this proceeding is not governed by the Maine Rules of Civil or Criminal Procedure, this hearing will not be conducted in as formal a manner as would be the case in court, but there are some rules that must be obeyed.

To begin with, this proceeding is being taped, and I would therefore ask all witnesses who may be asked questions, to answer the questions clearly, because the tape cannot pick up gestures or late comments.

Decorum, Objections & Hearsay Rule

FHA: Participants will not be allowed to interrupt or talk over a person who is making a presentation. The only exception to this is if you have an objection to make to the testimony. If you have an objection, simply indicate to me that you have an objection and I will stop the testimony and we can talk about the objection.

**Optional language—contingent on audience—(Profanity, vulgarity or otherwise inappropriate language will not be tolerated.)*

For your information, the rule I follow on hearsay evidence is the rule in the Administrative Procedures Act, in that I will accept all evidence upon which *reasonable persons are accustomed to rely in the conduct of serious affairs*—this is the standard. I will therefore generally accept testimony, even hearsay testimony, unless it is clearly inappropriate or otherwise not material to this proceeding, but in my deliberations I will consider hearsay testimony as the relatively unsubstantiated evidence that it is, and weigh it accordingly.

Rights of Parties

FHA: Both parties to this proceeding have the right to legal representation at their cost. In addition, both parties to this proceeding have the right to:

- present oral, written testimony and documentary evidence
- offer rebuttal
- examine all evidence presented at the hearing
- present witnesses in their behalf and,
- cross-examine witnesses provided by the other side

Do all parties to this proceeding understand these rights, and acknowledging these rights are you now prepared to proceed?

Claimant and Town: We do and we are.

De Novo Hearing: Explanation

FHA: Good. The next point I'd like to make is that this is a "de novo" proceeding, which means that I will not be influenced by the decision made by the town which is now being appealed. Instead, I will be determining the merits of the applicant's eligibility as though the initial application was being presented to me for the first time, and the information that I am going to use to make my decision will be limited to the spoken and written information that is provided to me throughout this proceeding. Is that understood by both parties?

Claimant and Town: It is.

Challenge to the FHA

FHA: Fine. On another matter and before we begin, I would like to ask both parties whether there is any objection to me (*or, if appropriate—any member of this Authority*) acting as the hearing officer in this matter.

Claimant and Town: No objection.

(Note: If there is an objection on the grounds of either conflict or bias, the "FHA" or Board should consider the objection for the record and on its merits and decide whether recusal is warranted. If recusal is warranted, the "FHA" should agree to step down and, if necessary, the hearing should be continued until a new "FHA" can be-designated. If the "FHA" feels recusal is not necessary, he or she should note the party's objection for the record and continue with the hearing.)

Swearing in Witnesses

FHA: O.K. Finally, before we begin, I'd like to swear in any witnesses that are present and prepared to testify. Could all witnesses please stand, face me, and raise their right hands? Do you swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth and nothing but the truth?

Witnesses: I do.

Presentation of Evidence

(Note: As a general rule, the party to a proceeding who is trying to get something done—the 'moving' party—has the burden of providing the elements of his or her case, so the moving party starts first. In appeal procedure, therefore, the Claimant gets the first opportunity to present his or her position. As will be noted with regard to non-appeal quasi-judicial process, where there is typically just the town seeking to do something and a party who will be affected by that action, the opening presentation can shift to the town.)

FHA: Claimant's Representative. Do you or your client wish to make an opening statement explaining your case?

Claimant's Representative: We do. *(Claimant's representative makes an opening statement explaining the events that lead up to the request for appeal, the issues at appeal, and the Claimant's general arguments supporting an overturning or modification of the underlying decision. The Claimant's Representative enters a number of documents into the record, including the decision itself and the pertinent sections of the local ordinance.)*

FHA: Thank you. I am going to mark the material just given to me as Claimant's exhibits #1 and #2. Town, would you like to review this material?

(Note: Each document should be given a different letter or number, the documents should not be lumped together. The "FHA" should orally identify each one as it is marked; e.g., #1 is the Town's decision dated October 4, 2000, #2 is the local ordinance dated September 28, 2000 etc.)

Town: The town is familiar with those documents.

FHA: All right. Town, would you now like to make an opening statement?

Town: Yes, the town would. *(The town administrator makes an opening statement that reiterates the pertinent facts of the case, with emphasis on those facts that were not mentioned in the Claimant's opening and those facts that appear to be in dispute. The town also identifies the issues that are at appeal and enters into the record, with a complete photocopied set for the Claimant, some additional documentation, including a mini-brief that the town prepared for the hearing.*

FHA: I am going to mark this material town's exhibits #'s 1-5. Claimant's representative, have you had a chance to review this material.

Claimant's Representative: No, we have not. *(Claimant's representative reviews the material.)* I would like to be provided the opportunity to reply to the written brief supplied by the town in writing.

FHA: I will note that request and further note that you had every opportunity as did the town to prepare a written memorandum. I will rule on the expanded procedural time frame for the submission of additional written argument before the close of this proceeding. Now, Claimant's Representative, do you wish to call any witnesses?

Claimant's Representative: Yes we do. I call _____ *(Claimant's Witness). (The Claimant's Witness is recognized and reminded of the oath just taken.)* Please state your full name, address, and occupation. *(Claimant's Witness provides that information and Claimant's Representative then proceeds to question the witness until there are no more questions.)*

FHA: Thank you. Now Town, do you have any questions for this witness?

Town: Yes I do. *(Town proceeds to ask questions of the witness. At various times, the FHA has some questions for the witness which are asked and answered.)*

FHA: If there are no more questions for this witness and if the Claimant's representative has no more witnesses to call, I will ask the Town if it wishes to call any witnesses.

Town: Yes we do. *(Town calls its witness, asks the witness for his or her name, address, and occupation, and then follows the above procedure that was applied to the Claimant's Witness.)*

FHA: If there are no more witnesses, I will now ask the Claimant's representative if there are any further arguments that she wishes to make, and if she would like to provide a closing statement.

Claimant's Representative: Thank you. I would like to summarize my client's case. *(Claimant's Representative proceeds to reiterate the Claimant's case and point out the various flaws in the town's case.)*

FHA: Thank you. Town, would you like to make any additional arguments or provide a closing statement?

Town: Yes, I would. *(Town proceeds to summarize the case and refers to the brief it originally supplied. Town points out what it sees as the weakness of the Claimant's case, and further points out that the town's brief includes a proposed "order" in the form of the written decision the town would like to see the FHA issue.)*

FHA: Thank you. I will now ask if anyone has anything else to add to this hearing. If not, I am prepared to close the hearing but I will allow three additional days for either party to submit any written material pertinent to the issues of law that have been raised at this hearing. I will not accept or consider additional or new facts or evidence, however. In order to consider that material related to issues of law, this office must receive it no later than ____ *(a.m./p.m)* on _____ *(date)**.

**(Note: If a party does introduce new material, the FHA should allow the opposing side a reasonable amount of time in which to review the material and rebut/counter it provided no new facts/evidence are introduced. The 5-day time frame in which the FHA must render a decision must nonetheless be taken into account.)*

Claimant's Representative and Town: It is.

FHA: O.K. There being nothing else, I am now going to close this hearing. On the basis of the evidence presented during this proceeding I will be determining the Claimant's eligibility for the relief the Claimant is seeking. Where facts are in dispute, I will establish findings of fact based on the preponderance of all the evidence. My written decision will be issued by regular mail to both parties no later than _____ *(date)*.

I want to thank both parties and all witnesses for their excellent presentations. This hearing is closed. *(FHA turns off the tape and refrains from any substantive discussion of the case with anyone while packing up and leaving the hearing room.)*