

CHAPTER 2 – Eligibility Criteria

Residency

One issue that has been a source of confusion over the years is residency. While a GA applicant's residency is something to take into consideration when taking an application, *it is not a condition of eligibility*. In fact, the *only purpose of discussing residency is to determine which municipality is ultimately responsible for providing GA to applicants*.

Residency is no longer the applicant's problem, as it was under the pauper settlement laws when indigent people could be shuttled between communities and sent back to the municipality where the applicants had their "settlement"—often their birthplace. The apparent reasoning behind settlement was that poor towns should only be required to provide support to their "own people." Under settlement, if people left one town and moved to another town they weren't considered settled until they had lived in the new town for five consecutive years without receiving assistance. If people needed assistance during the time they were trying to gain settlement in the new town, they had to receive it from the town where they were settled and they could be "removed" by their new town to their place of settlement for support. If people needed "immediate relief," the municipality where they were present had to provide it but could seek repayment from the town of settlement.

Maine courts were full of municipalities suing each other and squabbling over such arcane matters as whether people had been temporarily absent, people's personal habits, and whether "pauper supplies" had been given in good faith. Although Maine repealed settlement in 1973, it continued to have a durational residency requirement until 1976, when durational residency was also repealed.

Residency requirements in welfare laws rose to constitutional proportion in 1969 when the United States Supreme Court ruled that certain durational residency requirements were an *unconstitutional infringement on a person's right to travel* as guaranteed by the equal protection clause of the Fourteenth Amendment, and the due process clause of the Fifth Amendment. *Shapiro v. Thompson* (1969), 394 U.S. 618, 89 S.Ct. 1322. The *Shapiro* case concerned a challenge to the requirement adopted by most states that people be residents of a state for one year before being eligible to receive AFDC. The Supreme Court ruled that the one-year residency requirement was unconstitutional because it did not promote a "compelling governmental interest" and that there was no rational basis for making a distinction between longtime and new residents.

Durational residency requirements, which unreasonably restrict people from moving to or from a state by limiting their access to public benefits, are unconstitutional. Although the constitutionality of durational residency requirements which would act to restrict *intrastate* travel was never fully reached in the most pertinent Maine case. *Wyman v. Skowhegan*, 464 A.2d 181 (Me. 1983), it is probable that durational residency requirements would be found equally suspect, from a legal perspective, if people could be denied public assistance by various municipalities within Maine solely on the grounds of the applicants' length of residency. The issue of "right to travel" is no longer particularly relevant, however, because there is an express prohibition on durational residency requirements in the law (§ 4307(3)), and along with that prohibition there is the concept of "municipality of responsibility."

Municipality of Responsibility

Generally, Maine law states that municipalities have the responsibility to provide GA to all eligible persons who are:

- residents—people who are **physically present** in a municipality with the **intention of remaining there** and establishing a household; or
- non-residents—people (including transients) who apply for assistance who are not residents of that municipality or any other.

In short, there is *no durational residency requirement*. If a person is applying for assistance in a municipality and he or she does not live there but isn't a resident anywhere else, that person is considered a resident of the municipality where the application is made and that municipality must grant GA if the person is eligible. Municipalities cannot refuse to grant aid to people merely because they are not residents. **Residency is not an eligibility condition!** 22 M.R.S.A. § 4307.

Example: Laura Green has lived in Litchfield all her life, where many members of the Green family live. One day Laura packed up and left Litchfield and moved to Shapleigh, where she applied for GA. Shapleigh felt certain that Laura was Litchfield's responsibility and told her she would have to apply in Litchfield. Shapleigh's decision was wrong because Laura was 1) physically present in Shapleigh, 2) intended to remain there to maintain or establish a home and 3) had no other residence...therefore, for the purpose of GA, Laura was a resident of Shapleigh.

Example: Alvin Eliot has been a transient most of his life. One summer he drifted through Maine, moving from town to town and working odd jobs. One week he received some assistance from Augusta, and a month later he was in Castine, where he applied for more

food assistance. Castine called MMA to find out if Alvin was the responsibility of Augusta or of Castine. MMA said that Alvin was the responsibility of Castine because he was applying in Castine and he was a resident of *no* municipality, and his case contained none of the *relocation* or *institutional* complications that make exceptions to the general residency rule (*see below*).

Example: Dawna Jones applied for GA in Presque Isle, even though she lived in New Sweden, because she was told that New Sweden didn't appropriate any funds for GA and because the administrator did not believe she was a resident. The Presque Isle administrator contacted the New Sweden administrator and told him each town had to have a GA program to help eligible people and diplomatically attempted to convince him to accept an application from Dawna Jones. Luckily, the New Sweden administrator agreed to take the application. If he had disagreed, Presque Isle could have suggested that New Sweden call the Department of Health and Human Services or MMA for advice. However, if New Sweden refused to take the application, Presque Isle would have been required to take the application and issue the assistance for which Ms. Jones was eligible because there was a *dispute between the municipalities*.

Disputes & Inter-municipal Cooperation

The only way the complexities of residency determinations can be dealt with efficiently is if the various municipalities within a residency issue communicate and cooperate with each other. The whole point of eliminating a durational residency requirement was to prevent applicants from being treated as volleyballs and being caught in the middle of a dispute between municipalities. State law is clear: "*nothing (in the law) may...permit a municipality to deny assistance to an otherwise eligible applicant when there is a dispute regarding residency.*" 22 M.R.S.A. § 4307(5).

In other words, if two municipalities disagree about which town is financially responsible to issue GA to a person, one of the municipalities is required to assist the applicant if he or she is eligible. The eligible applicant must receive assistance; the municipalities can argue about who is responsible for paying the bill later. Ultimately, it is DHHS who resolves these disputes. 22 M.R.S.A. § 4307(5).

When there is a dispute regarding which municipality is required to provide the assistance sought, the municipalities involved should first seek guidance from MMA or DHHS.* If a resolution cannot be reached, the municipality in which the application is filed must provide the assistance and then seek a final determination from DHHS. DHHS must reach a decision regarding such a dispute within 30 working days; if the municipality that did not pay is

deemed to be responsible; then it has 30 working days from the decision to reimburse the municipality that did pay. If reimbursement is not made within those 30 days, DHHS will seek reimbursement from state funds (such as revenue sharing) that are due to the responsible municipality.

* *NOTE: Due to potential conflicts of interest, MMA Legal Services can involve itself or facilitate communications on such issues only if all municipalities involved agree to MMA's involvement.*

It should also be pointed out that § 4307(1) provides that “any municipality which... illegally denies assistance to a person which results in his relocation...shall reimburse twice the amount of assistance to the municipality which provided the assistance to that person.” Obviously, it is hoped that this type of financial penalty would not be necessary, but to the extent municipalities can self-police each other's actions and otherwise work cooperatively so that all eligible applicants get their assistance in an efficient manner, the less likely it will be that the Legislature will step in and place even stiffer penalties in the law.

Complications to Residency

Moving/Relocating

From time to time applicants may request assistance to help them move to another town. *Municipalities may help people relocate upon the applicant's request under certain circumstances.* It is illegal under Maine law, however, to send a person out of town solely to avoid granting assistance. For instance, it would be illegal for an administrator to tell applicants that there are not any jobs in town, that the town has no intention of supporting them for the rest of their lives, and that they should leave town, and then force them on a bus to another town or state!

It is legal, however, to help an applicant relocate to another town if he or she requests that type of assistance and if such assistance makes sense (i.e., relocating the applicant is the only way to provide him or her with shelter). Examples of when relocation would be reasonable include when the applicant is hired for a new job in another town and needs help to move, or when a family is evicted and there are no other suitable places to live in town. It is important to note the difference between the **authority** of a town to help an applicant relocate and an **obligation** of a town to relocate an applicant on demand. Under Maine GA law a municipality is not obligated to relocate an applicant, provided the basic necessities are available within the municipality.

It is also important that municipalities communicate with one another when GA is used for the purpose of relocation. A sample form which can be used by a “sending municipality” to notify a “receiving municipality” that a GA recipient has been relocated is found in Appendix 3.

If a municipality helps applicants move to another municipality, the municipality which provides the relocation assistance continues to be responsible for those applicants for the first **30 days** after relocation. The law extends this obligation **from 30 days to 6 months** if the relocation is to a hotel, motel or other place of temporary lodging in the other municipality (see “Complications to Residency—Institutional Residents” below). It is for this reason that municipalities should always avoid placing GA recipients (even temporarily) in temporary lodgings. In the event no permanent housing arrangement can be found, always call DHHS to see if other alternatives exist before placing a GA recipient in a temporary dwelling.

In other words, if Milbridge paid a family’s first month’s rent to help them move to Cherryfield, Milbridge would be responsible for assisting the family with other basic necessities for which the family was eligible (food, electricity, fuel, etc.) during the first month. Once recipients relocate to the new town they can apply for assistance in the new town, or if the town of former residence is not far and they have adequate transportation they can apply directly to the municipality of responsibility during the first 30 days. If it is impractical to apply in the town where they previously lived, the administrator in the new town must take the application, notify the municipality of responsibility and upon its approval grant assistance according to that town’s ordinance or have that town provide the assistance directly.

The most important factors to keep in mind regarding people who have received relocation assistance are:

- If applicants are applying for the *first time* in your town, ask them if the municipality where they lived previously helped them move, so you can determine if the other municipality is still responsible. Ask all applicants where they lived previously and whether they received GA.
- If applicants received GA to help them move, notify the other municipality **prior** to granting assistance; if you fail to provide such prior notice the responsible municipality does not have to reimburse you. 22 M.R.S.A. § 4313.

- If the municipality which is legally liable for the applicants' support refuses to reimburse your municipality without a good reason, you *must* assist the applicants and attempt to recover the expense from the other municipality another way, including court. (*In situations like this you can encourage the uncooperative town to call DHHS or MMA for clarification of the issue, or if negotiations are futile you can report the situation to DHHS.*)

It is important to emphasize that the **30-day** responsibility falling on the “sending town” **only** applies when the sending municipality has provided relocation assistance; there is no continuing responsibility if the applicant relocated without municipal assistance, except when the relocation was to an institutional setting (*see below*).

Institutional Residents

In 1983 the Legislature attempted to address the problem faced by municipalities that have one or more institutions in their communities to which people from surrounding areas come and later often need assistance. People who are in an *institution six months or less* are considered to be the responsibility of the municipality where they were residents immediately prior to entering the facility (*Example 1 below*); if they are there *more than six months* they are the responsibility of the municipality where the institution is located (*Example 2 below*). The only exception to this is if an applicant has been in an institution more than six months but has a residence in another town that the applicant has maintained and to which he or she intends to return. In that very rare circumstance, the applicant continues to be the responsibility of the municipality where that residence is located (*Example 3 below*), 22 M.R.S.A. § 4307(4)(B).

Example 1: Dan Gordon from Limerick entered a halfway house for substance abusers in Eliot. He had been there four months when he was told he could stay as long as he wanted but he would have to pay for his food. Mr. Gordon applied to Limerick for food assistance because that was where he lived prior to entering the rehabilitation program and he had been in the institution less than six months.

Example 2: Beverly Fogg and her two children had been in a shelter for abused families in Oakland for eight months. She felt strong enough to go out on her own, and started looking for apartments in Oakland and also Waterville, where she lived prior to entering the shelter. She found a place in Waterville and applied for GA there. Waterville told her that Oakland was responsible because she had been at the shelter longer than six months. The GA administrator called Oakland and discussed the situation. Oakland agreed that Ms. Fogg was the responsibility of Oakland.

Example 3: Joan Kaplan's mother had been in a nursing home in Skowhegan for eight months. She was in the nursing home recovering from an operation because Joan could not give her the care she needed at the family's home in Bingham. However, as soon as she recuperated, Joan's mother was going to return to Joan's home in Bingham where she had lived prior to going into the hospital. Unexpectedly, Joan's mother developed pneumonia and died at the nursing home.

Joan did not have any money for the funeral so she applied for GA in Bingham. The Bingham GA administrator noted that Joan's mother had been out of town in an institution for more than six months and therefore felt that Skowhegan should be responsible. Skowhegan felt that Bingham should be responsible because according to the doctor, Joan's mother intended to return home and she would have returned if the pneumonia had not developed unexpectedly. As a result, Bingham should have assisted Joan because that was where her mother lived prior to her death and her home, to which she intended to return, was located there. This should be distinguished from a case where people enter a nursing home but have no home to return to despite their desire to "go home."

Shelters for the Homeless

Shelters of various kinds are generally recognized as institutions (§ 4307(4)(B)). Individuals in those shelters who are applying for GA could be the responsibility—for up to six months—of the municipality where they resided immediately prior to entering the shelter if the conditions found at § 4307 are met (e.g., the municipality moves an applicant into another municipality to relieve itself of the responsibility for the GA recipient at issue). In addition, § 4313's notification of the municipality of responsibility requirement must also be met.

The municipality of responsibility is a fairly straightforward determination for *domestic violence* and *substance abuse shelters* because the people in those shelters often had a clearly established residency immediately prior to entering the shelter.

Shelters for the homeless, however, present a unique challenge to municipal administrators with regard to the determination of municipality of responsibility. A resident of a homeless shelter often has a complicated residential history, and it is difficult to determine if the last town in which the shelter client was physically present was, in fact, that client's "residence" as residency is defined in GA law.

As discussed above, there are two factors that determine whether a person is (or was) a GA "resident" of a town. First, the person must be (or must have been) **physically present** in the

municipality. Second, the person must have demonstrated some sort of **intention** to remain in that municipality.

For the purposes of determining residency in institutional circumstances, it is not enough merely to determine that the shelter client was physically present in Town X before entering the shelter. The shelter client's intention to remain in Town X must also be established. "Intention to remain" might be determined by evaluating how long the person resided in Town X; whether the person made any attempt to secure housing in Town X; whether there were reasons beyond the person's control, such as eviction or domestic violence, which caused him or her to leave Town X and ultimately end up in the homeless shelter, etc.

*It is important to note that transients are the responsibility of the municipality where they are **physically** present. Therefore, it is fair to say that **most** applicants applying for GA from a homeless shelter are the responsibility of the municipality where the shelter is located.*

Shelters for the homeless, like any institution, do not want to be perceived as a burden to their host municipality. One way to protect the host municipality is to make sure the GA requests coming out of the shelter are targeted to the responsible municipality so that the host municipality does not have to deal with GA applicants for whom there is no local responsibility.

Therefore, it is not unusual for shelter operators to assist shelter clients in filling out GA applications and sending those applications to the town the shelter operator feels is the municipality of responsibility. Administrators should carefully evaluate the issue of residency when receiving such applications, because it is possible that the shelter's interpretation of residency law conflicts with the interpretation given here. As is the case with any residency issue, DHHS is the ultimate arbiter.

Hotels, Motels & Places of Transient Lodging

In addition to what would commonly be understood as an "institution" (such as a hospital, nursing home, emergency shelter, etc.), § 4307(4)(B) defines a "hotel, motel or similar place of temporary lodging" as an "institution" when the municipality has provided assistance or otherwise arranged for a person to stay in such temporary lodging facilities. Therefore, if the municipality has provided assistance for an applicant to stay in a place of temporary lodging in another municipality, the "sending" municipality would become the "municipality of responsibility" for the first six months of the applicant's stay in those temporary facilities.

As a matter of DHHS General Assistance regulation, temporary housing is further defined as any facility that is licensed as an “eating and lodging place or lodging place as defined at 22 M.R.S.A. § 2491.” Therefore, if a municipality provides assistance for a recipient to move to a licensed rooming house in another municipality, the “sending” municipality would be responsible for that recipient’s GA needs for up to six months from the date of relocation, unless the recipient subsequently relocated to permanent housing, in which case the responsibility would drop to 30 days from the date of that second relocation. In any circumstance, a municipality that is providing out-of-town relocation assistance to any recipient would be well advised to make sure that the relocation is to permanent housing.

Example: Lilian Gould and her family applied for shelter assistance in Kenduskeag. There were no rental units immediately available in Kenduskeag, and so while Lilian was looking for an apartment, Kenduskeag met her short-term shelter needs by putting the family up in a motel in Bangor. A Kenduskeag selectperson received a call six weeks later from the Bangor General Assistance office informing him that the Gould family was seeking assistance to relocate from the motel into an apartment in Bangor. Kenduskeag carefully read § 4307, and correctly reasoned that Kenduskeag was the municipality of responsibility for the relocation because it had provided assistance for the family to live in an out-of-town motel. Kenduskeag also would remain responsible for 30 days after the relocation to the new apartment at which time Bangor would become responsible.

Initial vs. Repeat Applications

Before going into detail about the eligibility determination process, it will be helpful to review the differences between “initial” and “repeat” applicants insofar as the determination of a person’s eligibility is concerned.

Initial Application/Repeat Application

The underlying purpose of drawing a distinction between an initial applicant and a repeat applicant is to provide a person applying for GA the opportunity to learn about the rules of the program before those rules are applied. For example, most adult GA recipients who are unemployed and are physically and mentally capable of being employed are required to diligently look for work as long as they are receiving GA. If a repeat GA applicant is unwilling to make a good faith search for employment, that applicant can be disqualified from the program for 120 days. A person who never applied for GA before, however, would presumably not be aware of this rule and it would be unfair to apply a 120-day ineligibility status to an initial applicant for the reason that he or she had not been diligently seeking employment prior to seeking help from the town.

As another example, § 4315-A places a responsibility on all GA recipients to use their income on basic necessities, and establishes a procedure whereby income received into the recipient's household over the 30-day period prior to an application for assistance *and not spent on basic necessities* is still counted as income available to the household. This procedure, however, only applies to repeat applicants. The law presumes that the initial applicant was not aware of such a requirement.

Having some foreknowledge of the rules of the program is the premise underlying the concept of "initial applicant." While retaining that underlying premise, the law was changed with regard to the definition of "*initial applicant*." Since July 1, 1993, an "initial applicant" is very simply a person who has *never before* applied for GA in any municipality in Maine. *Any person who has applied for GA before, even though it might have been two, three, four or more years ago, is a "repeat applicant."*

Prior to this change in the law, an initial applicant was any person who had not applied for GA within the last 12 months. Because of this change, a significantly greater number of applicants will be "repeat" rather than "initial" applicants because they have a history of applying for GA. The result of this change in definition will be a larger pool of "repeat applicants" applying for assistance, and GA administrators can expect these repeat applicants to possess a general understanding of GA program requirements.

The primary effect of this law is that it requires all repeat applicants to report their use of income over the last 30 days, and in response to the information provided by the applicant, administrators are authorized to consider any "misspent" income as "available" income. For a more in-depth discussion of this procedure, please refer to the section of this chapter entitled "*The Availability of Misspent Income*." Furthermore, municipalities are authorized under this definition of "initial applicant" to withhold the issuance of emergency General Assistance to "repeat" applicants when those applicants could have averted the emergency with the appropriate use of their own income and resources. For a more in-depth discussion of limiting emergency assistance, please refer to the section of this manual dealing with emergency GA, particularly the section entitled *Misuse of Income* in this chapter.

In summary, *under current GA law, initial applicants are all people who have never before applied for General Assistance in any municipality in Maine. Repeat applicants are people who have, at some time in the past, applied for General Assistance to any town or city in Maine.*

Having laid out the current status of the law, it should be noted that there are a couple of irrational results stemming from an overly literal application of this change that should be avoided.

As has been mentioned, the primary effect of this change is to *hold all repeat applicants accountable for their spending decisions over the last 30 days*. Another common expectation of all repeat applicants is that they have adequately performed any work search obligations that were placed on them at the time of their last application. Typically, *any unemployed but otherwise employable recipient is required to make a good faith effort to look for a job a certain number of times per week between applications for GA*.

Because a “repeat” applicant is now defined as a person who has applied for GA at some time in the past, it is now the case that a person applying for assistance after being off the program for a number of years is a repeat applicant. As a repeat applicant, that person could be held responsible in a technical sense for documenting a work search effort spanning the several years since his or her last application. While it would clearly be appropriate to inquire about such an applicant’s actual work history during an extended period of time, and while it would also be entirely appropriate to inquire about such an applicant’s work search efforts over the last month, it would be neither reasonable nor appropriate to disqualify such an individual for failing to produce a documented work search effort spanning an extended period of time during which the individual was neither applying for nor receiving GA. This is an area of GA administrative practice that requires the application of good common sense and reasonableness.

Another irrational result that could occur from too zealously applying the concept of “initial applicant” concerns the definition of “applicant.” In MMA’s model General Assistance Ordinance, the definition of “applicant” clarifies that *a person is an applicant for General Assistance when the individual applies for GA or when an application is submitted to the administrator on an individual’s behalf*. A typical example of such a circumstance would be the husband or boyfriend who never comes into the office when his wife or girlfriend applies for assistance. Because the definition of an “initial” or “repeat” applicant has been amended by law, it is important to formally recognize that *people are still “applicants” even though they get other people to apply for GA on their behalf*.

Given that definition of an “applicant,” the MMA model ordinance goes on to clarify that a person will not be considered to be a repeat applicant if the last time that person applied for General Assistance was as a dependent minor in a household. This model ordinance language is designed to flush out the statutory standards in accordance with some semblance

of reasonableness. Adults who make an effort to avoid the face-to-face application process but still obtain and enjoy the GA benefits should be subject to the rules that govern all GA recipients. On the other hand, dependent children in a household could very well be unaware of the fact that the household is receiving GA, not to mention the various rules and responsibilities to which the adults in the household are subject. MMA's model GA ordinance, therefore, considers an *individual an initial applicant if he or she has never applied for GA before or if the only time he or she applied for GA was as a dependent child within an adult-supervised household.*

Eligibility–Need

If knowing who may apply for assistance is the easiest part of administering GA, knowing who is *eligible* is the most difficult. In order to determine an applicant's eligibility the administrator must have a thorough knowledge of the state law, DHHS policy and local ordinance. There are many variables that must be considered when determining a person's eligibility. *The first eligibility test is need.*

Need

The purpose of GA is to help people who are in need. "Need" is defined in the law as "the condition whereby a person's income, money, property, credit, assets or other resources available to provide basic necessities for the individual and the individual's family are *less than the maximum levels of assistance established by the municipality.*"

An applicant's "need," therefore, is a function of the maximum levels of assistance established in the municipal ordinance, and there are *two types* of maximum levels of assistance by which this analysis of need is calculated:

- an overall maximum level of assistance which is determined by law, and
- maximum levels of assistance for the specific basic necessities, which are determined by local ordinance.

Therefore, there are two tests of eligibility that must be calculated before a household's exact eligibility is known with certainty.

As a general matter of GA practice and for the purposes of this manual, these two tests of eligibility are respectively known as the "*deficit*" test and the "*unmet need*" test. *The deficit test is the difference between the applicant's household income and the appropriate overall maximum level of assistance. The unmet need test is the difference between the applicant's household income and the household's 30-day need, as guided by the ordinance maximum*

levels for the specific basic needs. Both of these tests rely on a determination of the applicant's household income.

A comprehensive discussion concerning the determination of income, types of income and other income issues can be found below in this chapter. For now, and for the purposes of determining an applicant's eligibility, it will be assumed that the precise household income has been calculated.

The Deficit Test

In an effort to control the overall cost of the GA program to the state and municipalities, the Legislature in 1991 enacted a provision of GA law § 4305(3-B) that created an "aggregate" or overall maximum level of assistance for every applicant/household; that is, the maximum amount of GA available to a household for a 30-day period if the household has zero income.

The law sets that overall maximum at the greater of: (a) 110% of Fair Market Rent (FMR) levels established by the federal Department of Housing and Urban Development (HUD); or (b) the prior year's calculated overall maximum as increased by the percentage change in the federal poverty levels over the past year. **Note**, however, that the Legislature changed the formula for calculating the overall maximum for the period July 1, 2012 to June 30, 2013 (see § 4305(3-C) and again changed this formula for fiscal years 2013-2014 *and* 2014-2015 (see § 4305(3-D)). Please refer to state statute to ensure you are using the most recent formula established for calculating the overall maximum level of assistance.

The **FMRs** are calculated by HUD based on accumulated market data concerning the average rent-plus-energy costs for housing in the state's 16 counties.

Although the overall maximums established by this law are based on federal fair market rent surveys, the GA administrator should not confuse these overall maximum levels of assistance with the maximum levels of assistance in the ordinance for housing. *The overall maximum level of assistance is a hard number that applies to the total GA grant for a 30-day period.*

As a result of the current law that establishes two tests of eligibility for GA, MMA has suggested two distinct names for the purposes of distinguishing these two tests of eligibility: the "deficit" test, and the "unmet need" test. The first screen or test of GA eligibility is accomplished by determining the applicant's deficit. *The deficit is a strictly **mathematical***

subtraction of the applicant's income from the applicable overall maximum for that household size for the appropriate county as designated in the municipal ordinance.

It should be noted that an applicant is not automatically eligible for his or her deficit. It is possible (although not typical) for an applicant to have a deficit of a certain amount but have no real need for that amount of assistance when the applicant's actual expenses are taken into account. For this reason, the deficit test should always be supplemented with the unmet need test, as described below. *The way GA law works, an applicant is eligible over the course of a 30-day period for the household deficit or the unmet need, whichever is less.*

The only circumstance by which an applicant can be found eligible for more than his or her deficit is when the administrator makes a finding that the applicant is facing an “**emergency situation**.” The determination of eligibility for emergency GA and issues surrounding emergency assistance are discussed below in this chapter. It should be noted here that the analysis of eligibility for emergency GA will necessarily involve more than a determination of the applicant's deficit. *The emergency analysis will require an analysis of the applicant's unmet need.*

The point to remember is that the overall maximum level of assistance upon which the deficit is based is a somewhat arbitrary number that may or may not reflect the amount of money a household needs to get by for 30 days. *The unmet need, on the other hand, more accurately reflects the household's actual requirements.*

The Unmet Need Test

The determination of need, whether it is an initial or subsequent application, is achieved by reviewing the *household budget*.

The household budget is simply an analysis of the household's **prospective 30-day financial need for basic necessities**. It is important to remember that the analysis of need is prospective; that is, the “needs analysis” looks forward over the next 30 days and does not, generally, include expenses or debts which have already been incurred.

The GA program is designed to pay **current bills** for **basic necessities**. Debts incurred by the applicant **prior to applying for GA** or debts incurred by the applicant for **non-essentials are not considered in the 30-day budget**. While it is possible the applicant is eligible for emergency GA to alleviate a legitimate emergency situation which results as a consequence of past debts, the need for an emergency GA grant would be an independent

analysis, calculated separately from the 30-day budget analysis (see the section entitled “Emergencies,” below in this chapter).

MMA’s GA application form takes the administrator and the applicant through the budget process under the application section entitled “Expenses.” Under that section, for each of the various identified basic necessities, there are two columns in which to report information. Under the column heading “Actual Cost for Next 30 Days,” the applicant should enter the actual 30-day cost for the household’s basic necessities, such as food, rent, utilities, fuel, etc.

It is the responsibility of the applicant to supply documentation sufficient to verify the household’s actual expenses. Under the column heading “Allowed Amount,” the administrator should enter either the actual amount as indicated by the applicant or the maximum amount for that basic necessity as fixed in the municipal ordinance, *whichever is less*.

There is one glaring exception to the general rule that the administrator enter as an “allowed amount” either the actual 30-day cost or the ordinance maximum, whichever is less. The exception applies to the food category.

Federal law, at 7 U.S.C. § 2017(b), reads as follows:

“The value of benefits that may be provided (under the Food Stamp program) shall not be considered income or resources for any purpose under any Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of benefits under the chapter.”

Because of this federal law, the GA administrator **cannot consider the value of an applicant’s food supplement benefit** when considering how much food assistance should be budgeted for the applicant. State regulation now parallels the federal law by requiring the administrator to budget the full food maximum that is a part of the municipal GA ordinance (DHHS General Assistance Policy Manual, Section IV, “Food”).

The theory behind the federal law is that the food supplement benefit was intended to supplement and not replace all other existing food programs, and the federal Congress wanted to avoid the food supplement benefit from becoming the overall food assistance

maximum. In any event, to stay on the right side of the federal law and the state regulation, the administrator must budget the maximum food allowance for all applicants.

Another important exception to the general rule that the applicant is allowed only the lesser amount between the actual 30-day cost of the basic necessity and the ordinance maximum applies to applicants receiving federal fuel assistance benefits (HEAP/ECIP). 42 U.S.C. § 8624(f) provides that HEAP benefits *cannot be considered as “income or resources,”* but case law has interpreted the restriction to mean that eligibility for local assistance must be determined as though the recipient paid for the HEAP supplied energy.

Accordingly, under the MMA model ordinance, the administrator should enter into the “allowed amount” column the actual heating fuel costs up to the ordinance maximum for applicants who just received or are about to receive a HEAP benefit. The administrator can then reserve the issuance of that amount of assistance until the recipient can demonstrate an actual need for heating energy assistance.

It is important to note that in addition to the basic application, there is room in the budget analysis for the administrator to include other expenses to be incurred by the household which the administrator determines to be essential. *For example, some medical expenses, essential prescription drugs, non-prescription drugs, essential clothing and portions of a telephone cost (if a telephone is medically necessary) are basic necessities* that may be incurred by the household.

It might also be the case that a household is facing a special expense for goods or services which are not specifically identified as “basic necessities” in GA law. The GA program is flexible enough to allow the administrator to consider such an expense a basic necessity, and budget that expense into the household’s 30-day budget.

The result of the budget process is a “bottom line” calculation of the household “need” over the next 30-day period. By subtracting from that “need” the household’s income, the administrator reaches the determination of the household’s *unmet need*. The unmet need, if it is less than the applicant’s deficit, is the amount of “regular” or “non-emergency” GA that can be made available to the household over the 30-day period, in accordance with the household’s request for assistance.

Example: The following is an example of a budget work up for the hypothetical applicant, Patricia Flannagan. Pat was divorced recently and lives in Sorrento with her two children, ages three and five. The only household income is the monthly TANF check of \$526. The

date of the application is August 15. Pat is able to present adequate documentation to verify all her claims, and she is not presently in an emergency situation of any kind. Pat is a first time applicant so the administrator did not require proof of how Pat spent her last month's income. The overall maximum level of assistance for a household of three in Hancock County is \$913, and so after subtracting Pat's income of \$493 the administrator determined Pat's deficit to be \$387.

Pat was instructed to fill out the first column of the application, "Actual Cost for Next 30 Days." She was asked to put a figure beside each category which represents her actual cost of the particular basic necessity over the next 30 days. After Pat was finished with this section of the application, the administrator went over it with her, explaining the reason for the figures he was entering in the column "Allowed Amount."

Miscellaneous "Household Composition" Issues

Determining household composition (who is a member of the household for purposes of GA) is an essential step in calculating eligibility. Although it is one of the easier steps involved in the GA eligibility calculation process, complications sometimes arise—especially in an age where the "traditional" family composition is continuously changing.

- **Incarceration.** Although it may seem obvious, it is worth mentioning that incarcerated individuals should not be counted as members of a household for purposes of GA. *While in prison they receive all the basic necessities*—thus incarcerated family members have no "needs" relative to GA.

Furthermore, while incarcerated, they are not "shar[ing] a dwelling" with family which is key to the definition of "household" (§ 4301 (6)) and thus they are not members of the "household" for the duration of their incarceration.

- **Child Custody.** Another issue concerns the provision of GA to divorced (or separated) parents sharing legal custody of a child. In order to determine within which household the child belongs (for GA household composition purposes), *residency is a key factor.*

First, should a GA administrator receive information that a child may be living in more than one home, due for example to a divorce, the administrator should inquire as to where the child is registered to attend school. Although this may not in every situation reveal the actual residency of a child, it should generally provide the administrator with pertinent information.

Second, court documents such as “child custody orders” and “custody agreements” should also provide information as to who has custody of a child and for how many days a week, etc. If a parent has been given “sole” custody, and the child actually spends most or all of his/her time with that parent, that custodial parent would be entitled to receive the entire amount of GA designated for that child.

Note: In such a case, there exists a corresponding presumption that the other parent should be (or is) contributing child support for the child. If child support is not being received, the GA applicant as a condition of future eligibility should be made to contact DHHS’s unit of Child Support Enforcement. Because child support is considered a resource, parents are obligated to pursue its receipt as a condition of GA eligibility.

Example. Johnny’s parents are divorced. He spends half of the week with mom and half of the week with dad. Both parents reside in Wayne and he is registered for school in Wayne. Mom applies for GA and reveals that he lives with his father half of the week. The GA administrator should provide mom with only half of whatever amount she would otherwise be entitled to if Johnny were with her full time (i.e., the prorated amount).

Furthermore, since Johnny is under 25 years of age he remains the legal responsibility of both parents for support, which means the municipality could attempt to collect whatever funds are expended for Johnny from his father. The administrator should ask the mother whether she is receiving the child support Johnny’s father has been ordered to pay. If she is not, she should be required to contact the Department of Health and Human Services Support Enforcement Unit in order to seek enforcement of the father’s child support obligation.

Example. Sue’s parents are separated. She spends most of the time at her father’s home in Augusta and also attends school in Augusta. Sue’s mother lives in Old Orchard Beach. Sue’s mother applies for GA in Old Orchard Beach. Sue will be visiting her for a weekend sometime this month. Sue’s mother requests rental assistance because she lives in a one-bedroom apartment and wants to move into a two-bedroom apartment so she can accommodate her daughter with a bedroom of her own whenever she comes to visit. The GA administrator is told about the situation and performs the eligibility review based on a household of one—leaving Sue out of the household composition.

Needless to say, child custody issues relative to GA eligibility must be handled on a case by case basis. Chances are they will never be as clear cut as the previous examples. However much living arrangements may seem “untraditional” to administrators, information will

have to be objectively analyzed and DHHS or MMA should be called when dealing with situations which are unclear.

Income

If one half of the “need” analysis concerns the applicant’s overall eligibility as *though the household had access to zero income*, the other half concerns the household income calculation. Since need is determined by considering the applicant’s income, it is important to understand what is meant by *income*. The state law defines income as “any form of income in cash or in kind received by the household.” 22 M.R.S.A. § 4301(7). This definition refers to the net amount of earned income as well as retirement benefits, TANF, disability insurance, workers compensation benefits, social security income, alimony, support payments, or other forms of discretionary cash or in-kind contributions that may come into the household from friends, relatives or any other source.

Excluded Income

There are some forms of income that Congress has expressly prohibited from being considered as income. These include the food supplement benefit and fuel assistance benefits (HEAP). Also excluded by federal law is income earned under the Americorp program and VISTA job-training program. In addition, state law excludes from income property tax rebates issued under the Maine Residents Property Tax Program (so-called “Circuit Breaker” program). 36 M.R.S.A. § 6216. Effective August 1, 2013, however, the Circuit Breaker program was repealed and replaced with the “Property Tax Fairness Credit” program. Benefits obtained under the new program are counted as income unless used to provide for basic necessities. 22 M.R.S.A. § 4301(7).

Also excluded are funds from “Family Development Accounts” (known as FDAs). FDAs are accounts which can hold savings of up to \$10,000, and the family can still remain eligible for GA (in addition to other benefit programs e.g., the food supplement benefit) provided the funds in FDAs are used only for specific designated purposes such as: purchasing a car or home, or paying for education, health care, or other things approved by the Department of Health and Human Services. 10 M.R.S.A. § 1078. The earned income of any children *under 18 years old who are full-time students* and are working part-time also **cannot** be included as part of the household income. Finally, a person’s tools, such as a tractor or skidder used to earn a living, cannot be considered assets. 22 M.R.S.A. § 4301(7).

GA law also excludes work-related expenses such as withholding taxes, union dues, retirement funds, contributions, and reasonable work-related travel expenses and childcare costs from income. As a result, these items are subtracted from a household’s total income