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# THE ART OF WELFARE

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2022

NEW HAMPSHIRE MUNICIPAL ASSOCIATION  
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# Introduction: The *Art* of Welfare Administration

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The basic premise of municipal welfare is that the municipality must provide for those who are unable to provide for themselves:

Whenever a person in any town is poor and unable to support himself, he shall be relieved and maintained by the overseers of public welfare of such town, whether or not he has a residence there.

RSA 165:1.

The often formidable task is to determine whether the person is indeed poor and unable to support himself or herself, or, instead, if it is a case of poor choices in spending or an unwillingness to support himself or herself. If the person does meet the statutory requirements and is eligible for assistance from the municipality, in what form will that assistance be provided? Certainly, the city or town is not required to provide *whatever* assistance the applicant requests. There is room for discretion and creativity; the local welfare statute sets forth the minimum that must be done to assist applicants, but the law does not prohibit doing *more* than the minimum. The task of resolving these many and varied issues is why New Hampshire Municipal Association (NHMA) attorneys refer to this process as “the *art* of welfare.”

Welfare administrators work in an atmosphere that is challenging and emotional. Applicants are often experiencing extremely stressful situations: loss of a job, loss of housing, threat of utility disconnection, to name a few. The welfare administrator must work with applicants in a humane and respectful manner while at the same time (1) verifying the information given in the application; (2) determining whether the person is eligible for assistance; (3) deciding what assistance will be offered by the municipality; and (4) establishing conditions for continued eligibility for assistance and monitoring to ensure compliance. These decisions must be made fairly and without regard to the balance remaining in the welfare budget. If a person is eligible for assistance because he or she has been found to be “poor and unable to support himself [or herself],” then he or she must be assisted by the municipality.

Municipal welfare is a complex and often difficult area for local officials to understand and to administer. Welfare administrators are encouraged to seek advice when unsure how to deal with an application. Assistance is available from the staff attorneys at NHMA, from membership in the New Hampshire Local Welfare Administrators Association and from local legal counsel.

The information presented is not intended as legal advice and is not a substitute for consulting your municipal attorney or calling on NHMA’s Legal Services attorneys. NHMA Legal Services attorneys are available to answer inquiries and provide general legal assistance to elected and appointed officials from NHMA member towns and cities. Attorneys are generally available Monday through Friday from 8:30 a.m. to 4:30 p.m. and can be reached by phone at 603-224-7447, by e-mail at [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org). Please refer to the Legal Services section of the NHMA website for more details about submitting legal inquiries.

NHMA attorneys also provide a variety of educational workshops and training materials for local officials. Periodically, NHMA staff attorneys write articles covering welfare topics for publication in *New Hampshire Town and City* magazine; these articles are available online at [www.nhmunicipal.org](http://www.nhmunicipal.org). These articles are designed to assist local welfare officials by taking some of the mystery and uncertainty out of the laws related to welfare.

In addition, the New Hampshire Municipal Association, in coordination with the New Hampshire Local Welfare Administrators Association, has published *Model Local Welfare Guidelines*. Although this resource provides a good start, it cannot be adopted by any community without change. Why not?

- The guidelines are not complete—on purpose. The dollar amount “need” allowances are not there. The amounts must be set individually for each municipality and updated—at least annually—to amounts that are realistic in light of inflation and changing costs in that municipality.
- The guidelines are broad and may be too vague in a specific situation. Many sections of the model must be adapted to reflect each municipality’s special characteristics.

The *Model Local Welfare Guidelines* includes a collection of sample forms. Use of the forms will help to ensure consistent application of local welfare rules and state laws.

All of these resources are here to help guide you but remember that successful management of municipal welfare programs requires preparation, knowledge, flexibility, patience, and kindness. Both taxpayers and welfare recipients are best served when these elements are present in the municipality’s welfare program.

# Common Abbreviations

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**ABAWD:** Able-Bodied Adults without Dependents (a-bod)  
**ACLU:** American Civil Liberties Union  
**ANB:** Aid to the Needy Blind  
**APS:** Adult Protective Services  
**APTD:** Aid to the Permanently and Totally Disabled  
**ARC:** American Red Cross  
**ARoA:** Assignment Right of Action  
**BDAS:** Bureau of Drug and Alcohol Services (b-das)  
**BEAS:** Bureau of Elderly and Adult Services  
**BHHS:** Bureau of Housing and Homeless Services  
**CC:** Catholic Charities  
**CCC:** Consumer Credit Counseling  
**CFI:** Choices for Independence (was also HCBC: Home and Community Based Care (hic-bic)  
**CFS:** Child and Family Services  
**CSFP:** Commodity Supplemental Foods Program  
**DCYF:** Division for Children, Youth, and Families  
**DHHS:** Department of Health and Human Services  
**DHHS CSS:** Department of Health and Human Services-Child Support Service  
**DHHS DFA:** Department of Health and Human Services- Family Assistance  
**DOL:** Department of Labor  
**DV:** Domestic Violence  
**EA:** Emergency Assistance  
**EAP:** Electric Assistance Program (eep)  
**EBT:** Electronic Benefits Transfer  
**EFT:** Electronic Funds Transfer  
**ESG:** Emergency Shelter Grant  
**ESG:** Emergency Solutions Grant  
**FA:** Fuel Assistance  
**FANF:** Financial Assistance to Needy Families (fan-if)  
**FAP:** Family Assistance Program (f-ap)  
**FMR:** first month's rent  
**FS:** Food Stamps (also SNAP)  
**GSIL:** Granite State Independent Living  
**GUW:** Granite United Way  
**HCS:** Home Healthcare and Community Services  
**HHHCS:** Home Healthcare, Hospice and Community Services  
**HIPP:** Health Insurance Premium Payment Program  
**HPF:** Homeless Prevention funding  
**IDP:** Interim Disabled Parent Program  
**LARC:** Legal Advice and Referral Center (lark)  
**LIHEAP:** Low-Income Heating and Energy Assistance Program (lie-heap)  
**MA:** Medical Assistance (Medicaid)  
**MAGI:** Modified Adjusted Gross Income  
**MCVP:** Monadnock Center for Violence Prevention  
**MEAD:** Medicaid for Employed Adults with Disabilities (mead)  
**MUW:** Monadnock United Way  
**NHEP:** New Hampshire Employment Program  
**NHES:** New Hampshire Employment Security

**NHHFA:** New Hampshire Housing Finance Authority  
**NHHPP:** New Hampshire Health Protection Program  
**NHLA:** New Hampshire Legal Assistance  
**NOD:** Notice of Decision (nod)  
**NSWF:** Nutritional Supplement for Working Families  
**OAA:** Old Age Assistance  
**OPG:** Office of Public Guardian  
**PC:** Parent Caretaker  
**PNA:** Personal Needs Allowance Supplemental Payment  
**PPNE:** Planned Parenthood of Northern New England  
**PUC:** Public Utilities Commission  
**QDWI:** Qualified Disabled and Working Individuals  
**QMB:** Qualified Medicare Beneficiary (quimby)  
**RCA:** Refugee Cash Assistance  
**RSVP:** Retired and Senior Volunteer Program  
**SA:** Salvation Army  
**SA:** Sexual Assault  
**SCS:** Southwestern Community Services  
**SDLGP:** Security Deposit Loan Guarantee Program  
**SLMB:** Specified Low Income Medicare Beneficiary (slim-b)  
**SNAP:** Supplemental Nutrition Assistance Program (also Food Stamps)  
**SS:** Social Security  
**SSA:** Social Security Administration  
**SSDI:** Social Security Disability Income  
**SSI:** Supplemental Security Income  
**SSVF:** Supportive Services for Veteran Families  
**St.V:** St. Vincent dePaul Society food pantry  
**TANF:** Temporary Assistance to Needy Families (tan-if)  
**VA:** Veterans Administration  
**VFW:** Veterans of Foreign Wars  
**VR:** Vocational Rehabilitation (Also may be called Voc-rehab)  
**WIC:** Women, Infant, Children (wick)

# Chapter 1: General Assistance Overview

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## *I. The Basic Legal Duty*

The basic legal duty is described in RSA 165:1, I, which says:

Whenever a person in any town is poor and unable to support himself, he shall be relieved and maintained by the overseers of public welfare of such town, whether or not he has a residence there.

This simple statement imposes substantial responsibilities. The word “whenever” means there is no time limit to the duty to assist. The word “shall” means that no municipality may treat the program as optional, even when the local budget for the task has been fully expended. The duty includes all persons, not just those who are “residents.” The local welfare program truly constitutes the “safety net” for all persons in the state of New Hampshire. However, although the duties imposed by the statute are broad, they are not unlimited. A person is not entitled to assistance simply because he or she has filled out an application.

Administering local welfare is a challenging endeavor, even for the most experienced welfare officials. Applicants arrive in the office seeking financial help to stop an eviction, to keep the lights and heat on, to put food on the table, and for many other basic needs. They are often understandably emotional and, unfortunately, sometimes quite demanding. The welfare administrator’s task is to work with applicants to ensure that all necessary information is submitted so that a determination of eligibility can be made that is consistent with the municipality’s welfare guidelines. In this way, those in need are assisted according to the law and the municipality’s welfare budget is prudently managed.

The following outline represents an overview of local welfare administration. Anyone who will become actively involved in administering welfare should obtain more information than is provided in this brief overview. The needs of specific people will vary significantly based upon their age, employment status, physical or mental disability, illness, housing needs, and marital status, which may include pending divorce or domestic violence proceedings. The financial records provided by applicants will present issues of banking law, consumer law, federal and state tax law, and property law. The issues presented by individuals and families in need are complex, and the welfare official has a duty to administer this program fairly, confidentially, and with impartiality to all applicants.

## ***II. Humanitarian Purpose***

Applicants may be embarrassed or may be operating with diminished capacities due to mental or physical illness or disability. There may be a language barrier. Individuals may not always make their needs clear; it may not be clear that they are applying for local assistance. The local welfare administrator must learn to recognize a call for help and assist an applicant to access the various programs available in that municipality.

## ***III. Who Makes Local Welfare Decisions***

A town may choose to have an elected “overseer of public welfare” administer local welfare. RSA 41:2. If there is no elected welfare administrator, the duty falls to the select board (RSA 41:56) or, if there is one, the town manager (RSA 37:6, VIII). In many towns, the select board appoints a welfare administrator to carry out the town’s local welfare responsibilities. In cities, the position of welfare director is usually determined by the city’s charter. It is also possible for municipalities to share a welfare administrator through an intergovernmental agreement pursuant to RSA Chapter 53-A.

Questions occasionally arise concerning the degree to which other town officials can participate in, second-guess, or review in detail the decisions of the welfare official. In towns with an elected overseer of public welfare, that official is directly responsible to the voters and has the ultimate decision-making authority. The select board in those towns has no legal authority to refuse to authorize payments in accordance with the elected overseer’s decisions. However, this is not to say that the elected overseer may disregard the financial policies the select board may adopt under RSA 41:9. In towns without an elected overseer of public welfare, the select board (or town manager) has the ultimate authority over assistance decisions. Any welfare official the board appoints is subject to board supervision. In those towns, the select board and appointed administrators should be very careful to come to an understanding of the division of duties.

## ***IV. Personal Liability of Welfare Administrators***

Under state law, a welfare official has immunity from liability for the decisions made in his or her official capacity so long as the official is acting in good faith and within the scope of his or her authority. RSA 31:104.

Under federal civil rights laws, it does not matter whether the official was personally acting in good faith. It is whether a ***reasonable person*** would have known that actions taken would violate constitutional rights. Thus, under federal law, there is a presumption that the welfare

administrator knows what the client's constitutional rights are—including all the rights covered in these materials. In short, good faith is the bottom line.

## ***V. Availability***

The welfare administrator must be available, or there must be access to the welfare program, including applications, during business hours, five days per week. Welfare administrators without full-time office hours should post telephone numbers where the administrator or an alternate official may be reached. In an emergency, a person must receive aid for which he or she is eligible within 72 hours of making an application. If you can provide emergency aid in less than 72 hours, you should do so. Thus, a municipality cannot make an applicant with emergency needs wait until the next meeting of the governing body.

Most cities have full-time welfare directors and may have one or more caseworkers, as well. In towns, the governing body should delegate the dual responsibilities of receiving an application and making an emergency aid decision to someone who is available during business hours, such as a single select board member, the administrative assistant, or an appointed welfare administrator. The persons who staff the town office during business hours should have a written procedure available to them regarding who is responsible for the welfare function and how that person may be contacted during business hours. Otherwise, the town or city could be sued for violating the applicant's due process rights guaranteed by the federal constitution.

While the local police department can provide valuable assistance to both the welfare administrator and the applicant, as a general rule, applicants should not be required to go to the local police department to pick up forms. After all, it is not a crime to be in need, and some applicants simply fear the police.

## ***VI. The Welfare Budget***

The municipality's obligation to provide local welfare assistance does not end because the welfare budget has been exhausted. Thus, it is important for the welfare administrator to keep the governing body informed when it appears that the budget as appropriated will not be sufficient to meet caseload of eligible assisted persons. The governing body must then make a decision to transfer money into the welfare budget under RSA 32:10; request permission from the DRA to over-expend the budget under RSA 32:11; or hold a special town meeting to appropriate the funds needed under RSA 31:5.

## ***VII. Duty To Report Abuse and Neglect***

The welfare official has a duty to report suspected abuse or neglect of a child or an adult to the New Hampshire Department of Health and Human Services. This obligation for reporting abuse or neglect of a child is found in RSA 169-C:29 - :31. The obligation for reporting abuse or neglect of an adult is found RSA 161-F:46.

# **Chapter 2: Guidelines**

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## ***I. A Constitutional and Statutory Requirement***

Written welfare guidelines adopted by the governing body are not only a requirement of the law (RSA 165:1, II); guidelines also provide the welfare administrator with a plan of how to work through each request for assistance. Aided by guidelines, the welfare director will be able to approach each application for assistance in an organized, consistent, and fair manner that will allow for verification of the information given by the applicant before assistance is provided. The guidelines set out the rules that all applicants must follow in order to receive assistance.

The Federal District Court of New Hampshire said written guidelines are a constitutional requirement. In *Baker-Chaput v. Cammet*, 406 F.Supp. 1134 (1976), a 31-year-old expectant mother who earned only \$20 per week was told (two weeks after asking for help) that she would be aided only if she moved to the center of town and only if she agreed to an attachment on her furniture. The Court said the complete arbitrariness of the decision, without any guidelines, violated her due process rights. In addition, because New Hampshire RSA chapter 165 provides that all towns and cities are required to have written welfare guidelines, a lack of written welfare guidelines is both a constitutional and a statutory violation.

## ***II. Guideline Contents***

The local governing body—the select board or the city council—is responsible for adopting the welfare guidelines. The statutory requirement for guidelines is contained in RSA 165:1, II, which says:

The local governing body, as defined in RSA 21:48, of every town and city in the state shall adopt written guidelines relative to general assistance. The guidelines shall include, but not be limited to, the following:

- (a) The process for application for general assistance;

- (b) The criteria for determining eligibility;
- (c) The process for appealing a decision relative to the granting of general assistance;
- (d) The process for the application of rents under RSA 165:4-b, if the municipality uses the offset provisions of RSA 165:4-a; and
- (e) A statement that qualified state assistance reductions under RSA 167:82, VIII may be deemed as income, if the local governing body has permitted the welfare administrator to treat a qualified state assistance reduction as deemed income under RSA 165:1-e.

If the municipality does not have updated guidelines, the statute is violated. Any applicant may sue a municipality following a denial of a request for assistance, and a lack of guidelines makes an award of money damages against the municipality more likely. If a community lacks guidelines, it is likely that applicants are not being treated equally when they ask for help. Moreover, guidelines will serve as a roadmap for the welfare administrator to process applications in an orderly and complete manner and lessen the chance that decisions are made without consideration of all applicable criteria. For all these reasons, the failure to adopt updated guidelines is a situation that must be corrected.

It is also critical for the guidelines to conform to the provisions of RSA chapter 165 and not conflict with any of the specific sections of the law. For example, RSA 165:1-b sets forth the only situations in which assistance can be suspended or terminated, the process required, and the length of time a suspension may last. Local welfare guidelines conflicting with the provisions of RSA 165:1-b were invalidated by the New Hampshire Supreme Court in *Bond v. Martineau*, 164 N.H. 210 (2012). In that case, a city suspended assistance for six months after the applicants misrepresented certain information about their assets. The Court determined that towns and cities are preempted by state law from adopting or enforcing guidelines that violate RSA chapter 165.

### ***III. Adoption and Amendments***

The governing body may adopt the guidelines and any amendments at any public meeting. Once guidelines are adopted, they are not meant to be a secret. The guidelines are not confidential. A copy should be provided to every member of the governing body, and made available to the public along with other local codes, ordinances or bylaws. The guidelines should be reviewed periodically by the welfare administrator, especially with regard to allowed amounts for rent, food, clothing, etc., to ensure the amounts within the guidelines represent the current level of costs for the area. When necessary, the welfare administrator should make suggestions for

amendments to the governing body for their consideration. The best practice is to review the guideline amounts annually.

# Chapter 3: The Application

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The first thing a welfare administrator should do when someone indicates they need assistance is to provide an application and help the person to fill out the form, even if the applicant's eligibility seems questionable. Standardized, consistent, non-arbitrary procedures are required to meet constitutional guarantees. The welfare administrator cannot determine if someone is eligible unless the correct information has been sought. The information on the application form provides the basis for each eligibility decision.

Do not assume that the applicant is able to read. It is important to discuss the application and the list of rights and procedures orally with the applicant, instead of simply providing various written forms to the person. The goal is to make sure the applicant fully understands the process.

## ***I. Welfare Administrator's Responsibilities at Time of Application***

When an application is made for assistance, the welfare administrator should inform the applicant of the following:

- The requirement of submitting an application. The welfare official should provide assistance to the applicant in completing the application, if necessary (e.g., applicant is physically or mentally unable, or has a language barrier);
  - In municipalities which have a significant number of foreign-born persons it may be useful to set up an account with Language Line (<https://www.languageline.com/or> 1-800-752-6096), which can provide translation services without making an appointment.
- Eligibility requirements, including a general description of the guideline amounts and the eligibility formula;
- The applicant's right to submit a written application, to receive a written decision, to appeal the welfare official's decision and have a fair hearing on that appeal, and the manner in which a review may be obtained (See Appendix B for fair hearing information that may be given to applicants);
- The applicant's right to continue receiving assistance while the appeal and hearing are pending;

- The applicant's responsibility for fully and truthfully reporting all facts necessary to determine eligibility, and for presenting records and documents as requested and as reasonably available to support statements;
- The joint responsibility of the welfare official and applicant for exploring facts concerning eligibility, needs, and resources;
- The types of verification needed;
- The fact that an investigation will be conducted in order to verify facts and statements presented by the applicant;
- The applicant's responsibility to notify the welfare official of any change in circumstances that may affect eligibility;
- Other forms of assistance for which the applicant may be eligible;
- The availability of the welfare official to make home visits by mutually-agreed appointment to take applications and conduct ongoing case management for applicants who cannot leave their homes;
- The requirement of placing a lien on any real property owned by the recipient, or any civil judgments or property settlements, for any assistance given, except for good cause;
- The fact that reimbursement from the recipient will be sought if he/she becomes able to repay the amount of assistance given;
- The applicant's right to review the guidelines;
- The applicant's right to review his/her file; and
- The fact that the applicant's welfare records are confidential.

## ***II. Responsibility of Each Applicant and Recipient***

At the time of initial application and at all times thereafter the applicant/recipient has the following responsibilities:

- To provide accurate, complete and current information concerning needs and resources and the whereabouts and circumstances of relatives who may be responsible under RSA 165:19;

- To notify the welfare official promptly when there is a change in needs, resources, address, or household size;
- To apply for (by the deadline set by the welfare administrator) and accept any benefits or resources, public or private, that will reduce or eliminate the need for general assistance. RSA 165:1-b, I(d);
- To keep all appointments as scheduled;
- To provide records and other pertinent information and access to said records and information when requested;
- To provide a doctor's statement if claiming an inability to work due to medical problems;
- Following a determination of eligibility for assistance, to diligently search for employment and provide verification of work search (with the number of reasonable work search contacts to be determined by the welfare official), to accept employment when offered (except for documented reasons of good cause (RSA 165:1-d)), and to maintain such employment. ;
- Following a determination of eligibility for assistance, to participate in the work program, if work is available and if physically and mentally able to perform work, and if appropriate under the circumstances considering the limitations in RSA 165:31 that single parents with children under the age of 5 and persons with mental and physical disabilities are exempt from any municipal work program requirement. RSA 165:1-b, I(b), RSA 165:31, III.
- To reimburse assistance granted if returned to an income status and if such reimbursement can be made without financial hardship. RSA 165:20-b.

### ***III. Continuity***

If the person has applied for assistance in the past, there is no reason to start from scratch for future applications. Each application should be treated as part of an ongoing process. Why?

- Verifying old information again can waste valuable time. Additionally, knowing that each stage will become part of a permanent record will be an incentive to do it right the first time.
- Subsequent meetings with the person can focus on what has changed.

- Building a history helps monitor what works and what does not work to help rehabilitate the applicant to income status.
- A properly imposed condition of approval that was never complied with may make the person ineligible.

#### ***IV. Withdrawn Applications***

Guidelines may contain provisions to address the issue of when an application will be considered withdrawn. An application will be considered withdrawn if:

- The applicant has refused to complete an application or has refused to make a good faith effort to provide required verifications and sufficient information for the completion of an application. If an application is deemed withdrawn for these reasons, the welfare official shall so notify the applicant in a written notice of decision;
- The applicant dies before assistance is rendered;
- The applicant avails him/herself of other resources to meet the need in place of assistance;
- The applicant requests that the application be withdrawn (preferably in writing); or
- The applicant does not contact the welfare official after the initial interview after being requested to do so.

#### ***V. Confidentiality***

RSA 165:2-c says:

Notwithstanding any other provision of law to the contrary, no town, city or county official shall publish or disclose or allow to be published or disclosed in the annual report of the town, city or county, or in any other document or letter, except as is necessary for and connected with the administration of this chapter, the name, address or any other identifying information of the recipient who is receiving assistance or aid; provided, however, that any taxpayer shall be allowed to see the itemized account of such aid furnished. Any person violating any provision of this section shall be guilty of a violation.

This means discussions about welfare cases at select board meetings can and should take place in a nonpublic session, even though RSA Chapter 91-A (the Right-to-Know Law) does not specifically provide an exemption for local welfare.

What does “except as is necessary for . . . the administration of this chapter” mean? While the law is not clear, it would be wise to obtain signed authorizations from the applicant before speaking with the applicant’s doctor, banker<sup>1</sup>, employer, etc. When working with local vendors to provide needed assistance to an applicant (stores, gas stations, motels, fuel oil companies), keep in mind your obligation to respect the privacy and confidentiality of the individual involved. While the vendor may surmise that the person in question is receiving municipal welfare because the town is paying the bill, further conversation about the circumstances of the person or family beyond what is necessary to arrange for the goods or services is not appropriate.

## ***VI. Minors Applying for Assistance***

The municipality’s legal duty to juveniles is the same as for adults. Always contact the parents or guardians first and attempt to resolve the situation, but do not delay needed assistance while attempting a resolution. It is important to make sure the parents understand the consequences of a petition for abuse or neglect.

If the parents cannot be located, contact the DHHS Division of Children, Youth and Families. A decision will be made as to whether the local Circuit Court – District Division must be informed, and a Child in Need of Services (CHINS) Petition filed to protect the health and safety of the minor.

The residence of a minor is presumed to be the same as that of the parents or guardians. A minor’s intent is irrelevant. These presumptions do not change merely because the juvenile has children.

## ***VII. Application for Assistance Flow Chart***

The following outline provides a visual representation of how an application for assistance should be processed:

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<sup>1</sup> RSA 165:4 provides the following: “A cashier of a national bank and a treasurer of a savings bank and a trust company may, when requested by an overseer of public welfare of a town or city in the state, furnish to said overseer any information asked relative to the deposit of a person receiving or applying for public support.” Although this statute would seem to require disclosure even without a release, the N.H. Right to Privacy law, RSA Chapter 359-C would dictate that a signed release must be provided..

**Emergency Needs?**

Meet any emergency needs while application is being reviewed

**Basic Aid Eligibility**

Need (as represented by allowable expenses within guidelines)

- less Income and Available Assets

= equals Basic Aid Eligibility

**Special Circumstances**

Conditions that justify variation from guidelines

**Impose Conditions for Continued Eligibility for Assistance**

Work search, seeking other assistance, etc.

**Issue Written Decision**

Clearly detail assistance to be given, conditions and appeal rights

**Seek Offset and Recovery**

Investigate possibility of recovering from legally liable relatives, applicant, the state or another town, liens

# Chapter 4: Determination of Eligibility

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As noted previously, any person who is poor and unable to support himself or herself is eligible to receive assistance from the municipality. The person's age, race, religion, national origin, criminal record or moral character is not legally relevant. However, even if a person is apparently eligible for assistance, the facts must be verified and, even if completely accurate, the person may be disqualified for various reasons that are described in the statute.

## ***I. Verification***

The application provides baseline information about the applicant. The welfare administrator reviews the application with the applicant and assures it is filled out completely. The application shows what information must be verified and who possesses the information to be confirmed. Verification is important because it reduces the chance that the municipality will be the victim of fraud.

What types of conduct could result in fraud? One example is "double-dipping" (a person applying to more than one town for assistance). This is not a residency problem, but a problem of accurately reporting income and expense.

### **A. Flexibility**

There is no single document that is absolutely indispensable for verification. Inflexible guidelines, such as "no assistance without last year's tax return" could raise constitutional due process issues for an applicant who had no duty to file an income tax return for last year. The information and confirmation requested should fit the facts of each case. Work with the applicant to request information they can obtain within a reasonable time.

### **B. Written Permission**

Applicants have a right to privacy that is protected in the statute. Therefore, welfare administrators must obtain written authority from the applicant to contact someone who has information about the applicant. Otherwise, it is likely that contact will violate confidentiality. A separate signed release should be obtained for each person or organization to be contacted about the applicant, such as the applicant's landlord, employer, doctor, banker, etc. Many organizations will not release information unless clear and straightforward release forms are provided.

### **C. Required Verifications**

Verification will normally be required of the following:

- Applicant's address;
- Names of persons in applicant's residential unit;
- Applicant's and household's income and assets;
- Applicant's and household's financial obligations;
- The physical and mental condition of household members, only where relevant to their receipt of assistance, such as ability to work, determination of needs, or referrals to other forms of assistance;
- Any special circumstances claimed by applicant;
- Applicant's employment status and availability in the labor market;
- Names and addresses of employers, and employment status;
- Utility costs, housing costs, prescription costs; and any other costs that the applicant wishes to claim as a necessity;
- Facts relevant to the applicant's residence; and
- Names and addresses of potentially legally liable relatives.

### **D. Detailed Records**

RSA 41:46 requires the welfare official to "keep full and accurate records of the assisted persons fully supported." Detailed records help to keep track of cases and support any decision that is challenged. At a minimum, the welfare administrator should keep a file on each applicant containing:

- The signed application;
- Written notices and decision(s) and grounds of decision(s);
- Narrative notes made during interviews, verification, etc.;
- Tally sheet with date(s) and amount(s) of all aid given; and
- Written authorizations for verification.

This file is confidential and is not subject to disclosure to the public under the Right to Know Law, RSA chapter 91-A. However, the applicant has the right to review it, for any purpose, including to decide whether to ask for, or to prepare for, a fair hearing. It is important to make sure the applicant is aware of this right.

The statute relative to the retention of municipal records does set forth requirements for welfare record retention: applications, active plus seven years, RSA 33-A:3-a, LII; welfare department vouchers, four years, RSA 33-A:3-a, CL; and work program files, current plus six years, RSA 33-A:3-a, CLI.

## **E. The Goal is Complete Verification**

The emergency needs of an applicant do not require the municipality to change its standards for the verification of information. The welfare administrator should make an initial determination that the person is probably eligible for assistance, verify the facts that constitute the emergency, and then grant small amounts of aid to meet immediate needs. The final decision regarding on-going eligibility can await completion of the full application/verification/decision process. If the applicant has trouble obtaining the requested verification, continue to use the small amount of aid approach, and take the time to develop a reasoned, verified decision. Officials should try to look beyond the immediate request and view the big picture presented by all the facts of the case. (See Emergency Assistance, p. 33, for more information.)

## ***II. Determine Need as a Whole***

The local welfare official should take a complete written application and determine an applicant's entire financial picture, rather than focusing solely on what the applicant requests. The municipality then has the right and the responsibility to verify the accuracy of this information. The applicant may have verifying documentation, but sometimes other persons must be contacted. For example, the welfare administrator may be able to verify the rent amount by looking at a copy of the lease or rental agreement, however sometimes the rent obligation can only be verified by talking with the landlord. Written permission (in the form of a release) from the applicant should be obtained before talking to others, to avoid a claim that confidentiality has been illegally breached. The municipal police should not conduct an investigation or be involved in this decision process. The municipality should provide assistance in an amount that represents the person's overall eligibility, but the assistance need not necessarily take the form or the amount requested by the applicant.

## ***III. The Basic Formula***

Local welfare decisions are made using this formula:

NEED less INCOME/AVAILABLE ASSETS equals AMOUNT of Assistance.

What constitutes need? There are two types of need to be considered in using the formula: the standard of need contained within the local guidelines and the need of the individual.

### **A. Standard of Need**

Local guidelines must contain a "standard of need." The standard of need is a calculation of what the municipality determines is the actual cost of the basic necessities of life (food, clothing, shelter, etc.) in that community. For example, the standard of need for housing in the northern

part of the state will be quite different from the standard of need on the Seacoast—reflecting the higher cost of living in different parts of the state.

### *1. Actual Cost*

In *Hall v. County of Hillsborough*, 122 N.H. 448 (1982), the county had established nursing home care amounts at \$714 per month. Evidence showed the actual cost of care was \$1,200 per month. The Court said guideline amounts must be set so as to make it possible to fulfill the “humanitarian purpose” of the statute—so as to actually meet the need. A municipality will be subject to challenge if it keeps its guideline amounts artificially low, such that the amount of assistance that could be granted will not actually meet the need.

### *2. Car Payments*

Generally, these do not count as “need.” However, there will be cases in which the person has no other means to obtain food or necessary medical care. Also, unless the applicant both lives and works on the route of one of the few public transportation systems available in the state, some transportation is required to travel to and from work. While assistance with a car may be good case management, it is not necessary to make payments on a new or luxury automobile. Work with the recipient to obtain a less costly vehicle or other transportation means that will serve the need (but note that the welfare official cannot require an applicant to obtain a different, less expensive vehicle as a condition of continued assistance).

### *3. Health Insurance*

Health insurance is most likely not a “need.” The town is the applicant’s “insurance.” But look at the big financial picture—if the household has major medical expenses that are covered by insurance and for which the town would have to pay if there was no insurance coverage, it probably makes sense to pay the premium. Special medical needs that are not covered under some other helping program are clearly “need.”

### *4. Unpaid Bills and Debt*

Usually, an applicant’s debts or back bills do not count as “need.” There are exceptions to the rule. The issue of back payments often arises in eviction cases. For example, if an applicant has received an eviction notice for non-payment of rent, the welfare administrator must consider whether paying back rent to halt an eviction is better than having an applicant with no housing, not to mention the time and expense necessary to find alternate housing. However, once the municipality has made a written promise to pay the rent due in arrears, this will prevent an eviction. See, RSA 540:9-a.

## **B. Individual Needs**

Welfare guidelines are not inflexible rules. Guidelines promote fair case processing, and prevent arbitrary decision making, but they must be interpreted with flexibility if special needs exist. If the welfare administrator determines that the strict application of the standard of need

criteria will result in unnecessary or undue hardship, the administrator can and should make adjustments in the criteria.

Consider housing, for example. Welfare guideline amounts must reflect the actual cost of available housing in the local area. What if the cost to keep a person in his or her present housing exceeds local guidelines? The municipality is not compelled to pay more than its standard of need, but it might be a prudent expenditure to allow a working parent to maintain employment or to maintain after school care for the children in an effort to prevent a further downward slide for the family. The municipality might incur lower overall costs by avoiding moving costs, security deposits for apartments and connection costs for utilities. If the applicant owns the housing, the town may be able to recoup the aid provided when the home is later sold.

Note that a welfare program cannot actually force someone to move, even if the welfare administrator finds that the applicant could access decent and safe housing at another location at a lower cost. The administrator may facilitate the process by providing information to the applicant about more affordable housing but moving cannot be a requirement of continued assistance.

#### ***IV. What Counts as Income and Assets?***

Income includes all amounts actually being received that are immediately available to purchase the basic necessities of life. (However, see “Qualified State Assistance Reductions,” below.) It is not the same as “income” for tax purposes—it does not include benefits not convertible to cash.

##### **A. Income**

###### *1. Earned Income*

Income in cash or in-kind earned by the applicant or any member of the household through wages, salary, commissions or profit, whether self-employed or as an employee.

###### *2. Income or Support from Other Persons*

Contributions from relatives or other household members shall be considered only if actually available and received by the applicant.

###### *3. Income from Other Assistance or Social Insurance Programs*

State categorical assistance benefits, Social Security payments, Veterans’ Administration (VA) benefits, unemployment benefits and payments from other governmental sources are considered income. Foods stamps and fuel assistance are *not* counted as income.

###### *4. Court Ordered Support Payments*

Alimony and child support payments are considered income only if actually received.

### *5. Income from Other Sources*

Income includes payment from pension, trust funds, and other similar programs.

### *6. Qualified State Assistance Reduction (QSAR) Assistance as Deemed Income*

RSA 165:1-e, adopted in 1996 in the early stages of welfare reform, was designed to help municipalities avoid increased welfare costs from certain “penalty” provisions in the state’s welfare program. When a state welfare recipient’s aid is reduced or eliminated for failure to comply with state work program requirements, the amount of that reduction is considered a “qualified state assistance reduction” (QSAR), which may be “deemed” as available income for local welfare purposes. That is, the amount of any state reduction can be treated as if it were income actually received by the applicant. But this may be done only if authorized by the governing body through the adoption of a guideline, and that portion of a QSAR necessary to prevent an immediate threat to the health or safety of children in the household must be waived. The statute provides a detailed process to follow to use the QSAR provision, which includes obtaining confirmation from the state Department of Health and Human Services (DHHS) and providing a written decision. If a situation such as this arises, it is advisable to read the statute carefully in order to evaluate whether the municipality may deem some or all QSAR amounts as income, and call NHMA or another welfare administrator for advice.

## **B. Available Assets**

Anything “liquid”—or immediately convertible to cash—which clients possess, and which could be used for support is considered an available asset. As with housing, the municipality cannot force an applicant to sell assets. The value of the assets is part of the calculation and management of the case. The New Hampshire Supreme Court explained it best:

When a man, with a house and a little real estate, is by sickness or other accident, reduced to want, he is not to be compelled to sell his house and clothing and turn himself and his family out of doors, sick and naked, in order to entitle him and his family to relief. It is not in the interest of those who may be chargeable with his support that he should be compelled to do this.

*Town of Poplin (Fremont) v. Town of Hawke (Danville)*, 8 N.H. 305 (1836).

Available assets may include:

### *1. Available Liquid Assets*

Cash on hand, bank deposits, credit union accounts, securities and retirement plans (such as IRAs, deferred compensation, etc.) are available liquid assets. Insurance policies with a loan value and non-essential personal property may be considered as available liquid assets when they have been converted into cash. The welfare official shall allow a reasonable time for such conversion. However, tools of a trade, livestock and farm equipment, and necessary and ordinary household goods are essential items of personal property which shall not be considered as available assets.

### *2. Automobile Ownership*

The ownership of one automobile by an applicant/recipient or his/her dependent does not affect eligibility if it is essential for transportation to seek or maintain employment, to procure medical services or rehabilitation services, or if its use is essential to the maintenance of the individual or the family.

### *3. Insurance*

The ownership of insurance policies does not affect eligibility. However, when a policy has cash or loan value, the recipient will be required to obtain and/or borrow all available funds, which shall then be considered available liquid assets.

### *4. Real Estate*

The type and amount of real estate owned by an applicant does not affect eligibility, although rent or other such income from property shall be considered as available to meet need. Applicants owning real estate property, other than that occupied as their primary residence, shall be expected to make reasonable efforts to dispose of it at fair market value. Applicants shall be informed that a lien covering the amount of any general assistance they receive shall be placed against any real estate they own. RSA 165:28.

## ***V. Effects of Other Assistance***

If an applicant for assistance is receiving other forms of aid, normally that aid will be considered as income and will, therefore, reduce the amount that the municipality must provide. However, there are some exceptions to this basic rule.

### **A. Supplemental Nutrition Assistance Program – SNAP (Food Stamps)**

Federal law prohibits the receipt of food stamps from being counted as “income” of the applicant or used to reduce the amount that the municipality would otherwise pay for food. 7 U.S.C. § 2017(b). The legislative history of the food stamp program reveals that Congress intended that result when it passed the law. By requiring local welfare officials to ignore receipt of food stamps when determining how much food assistance a person might be eligible to receive locally, Congress intended to raise the nutritional level of poor people and to stimulate the agricultural economy.

### **B. OAA and APTD**

A January 1, 2014 change in the law resulted in a significant shift in the approach to cases involving a recipient of either old age assistance (OAA) or aid to the permanently and totally disabled (APTD). **Current advice** is that municipalities should treat APTD and OAA recipients exactly like all other applicants for local welfare, and simply include the assistance received as

income in the eligibility formula. Don't be misled by the new language of RSA 167:27, because it may run afoul of federal law, as explained below.

Previously, RSA 167:27 had been interpreted to mean that local welfare programs were not required to assist those receiving OAA or APTD, and in 1990 the United States Court of Appeals for the First Circuit upheld a municipality's ability to deny assistance to OAA and APTD recipients (see *Baker v. City of Concord*, 916 F.2d 744 (1<sup>st</sup> Cir. 1990)). But the limitations on the receipt of local welfare by OAA and APTD recipients have been easing over the past few years. In 2010 the NH Supreme Court in *Smith v. City of Franklin*, 159 N.H. 585 (2010), said only those who received OAA or APTD financial assistance were ineligible to receive local welfare. Those who received only medical assistance were eligible for local welfare.

Then in 2013, the legislature passed SB 146, which amended RSA 167:27 to give municipalities the option of providing assistance to OAA and APTD cash recipients. Some municipalities were already assisting in these cases, and some wanted to but were afraid they couldn't, while others wanted to leave the firm prohibition language in place. In the face of an attempt to do away with the limitation, a compromise "local option" provision seemed to be the way to go.

Before the January 1, 2014 effective date of the local option authority, however, towns and cities (and NHMA) received a letter from the Disabilities Rights Center suggesting that under the Americans with Disabilities Act (ADA) local welfare programs could not deny assistance to APTD recipients, because the federal law prohibits governmental entities from denying the benefits of their services or programs to otherwise qualified individuals with disabilities. They argued that APTD recipients are, by definition, individuals with disabilities, and thus to select the new statute's option of denying local welfare to APTD recipients would be a violation of the ADA.

There are no clear court cases on this issue, but on its face, it seems like a risky strategy under the ADA to deny local welfare assistance to APTD recipients. Thus, the conservative advice is that municipalities either ignore, or better yet change, any language in their guidelines that disqualifies OAA and APTD recipients from receipt of local welfare. Process applicants with OAA or APTD income as any other applicant following your guidelines. While an argument might be made that municipalities can still exercise the local option relative to assisting OAA recipients, that path should be reviewed carefully with local counsel.

### **C. Fuel Assistance**

Federal law also prohibits fuel assistance from being counted as income.

## ***VI. Related and Non-Related Households***

### **A. Related Households**

The need formula should be applied to the household as a whole. If it were otherwise,

non-working family members would always be eligible if calculated separately.

### **B. Non-Related People Living Together**

Unless there is a legal duty for the household members to support each other, they cannot be required to apply together. The applicant group has the following choices:

- If all agree to apply together, calculate them as a household. That means each person should be counted along with his or her income and assets to determine the level of need. All adults should sign the application, so all will be held to understand their responsibilities.
- If the applicants do not agree to be treated as one household, treat them separately as to income/assets and determine their individual need proportionately. If only one person applies, the fact that the applicant is living with others is still considered in determining “need.” For example, if an applicant has one roommate, to determine the applicant’s shelter need, use one-half the shelter allowance for a two-person household, rather than the full shelter allowance for one person. If the other (non-applying) person is actually paying more than half the costs (or more than his or her pro rata share), the excess counts as “income.”

## ***VII. Applying Welfare Rental Payments to a Landlord’s Delinquent Accounts***

When the landlord of a recipient owes the city or town money for taxes or municipal utilities, any rent to be paid on behalf of the recipient can be applied to the landlord’s delinquent accounts. There must be a guideline that provides for this, and the landlord must be in arrears. The arrearage can be on any property the landlord owns, not just the one where the recipient resides. See RSA 165:4-a and :4-b.

## ***VII. Residency***

Most applicants who seek assistance will probably be residents, either because they actually live in the town or because they have no other place of residence. Occasionally, a true nonresident may seek assistance. In this case, the application procedures and eligibility guidelines should be the same as those for residents. Nonresidents and residents are equally eligible for assistance.

## **A. Determining “Residence”**

“Residence” is the place where the applicant intends to remain physically present for the indefinite future, without any intent to return to a former place of residence. *Residence can be formed instantaneously.*

Welfare administrators should take the applicant’s word on residence unless there exists very strong evidence to the contrary. However, the statute says that a temporary absence from such residency (for example, while residing in an emergency shelter) shall not cause a person to lose residency so long as there is an intent to return. RSA 21:6 and 21:6-a.

It is possible to return some applicants to the municipality where they truly reside. RSA 165:1-c states:

Any person, poor and unable to support himself, who is temporarily in a town or city which is not his residence, and who does not intend to make it his residence, shall be provided such temporary assistance as is reasonable and necessary by such town or city. Such town or city may, *if requested*, cause such person to be returned to his residence. *(emphasis added)*

However, this statute does not excuse any municipality from accepting an application or meeting the emergency needs of an applicant. It does allow the welfare administrator to speak with the city or town where the applicant truly resides in order to develop a plan to meet the immediate needs of the person and tailor the assistance that is granted to the true needs of the person.

## **B. ‘Dumping’**

What is “dumping,” besides a terrible concept? It occurs when a local welfare official obtains housing or refers an applicant to housing in another municipality in order to avoid providing assistance now or in the future. The toughest residency question is not when a person voluntarily moves from one town to another, but when a person moves *solely as a result* of applying for welfare. The New Hampshire Supreme Court has not issued an opinion in a case where this has occurred, so we do not have any clear law on the matter, however:

- A receiving town could argue that this movement does not constitute a change of residence, and that the “sending” town remains liable for the applicant.
- It is possible a court could find “dumping” to be an illegal practice, and that RSA 165:1 requires “maintaining” a person in the same town.

The members of the New Hampshire Local Welfare Administrators Association have agreed upon a guideline that the “sending” town should pay 30-days’ assistance to the “receiving”

town. This is not a law and is not binding on municipalities, but it is a policy worth considering, since it treats applicants humanely and may avoid a lawsuit over this issue.

The issue of affordable housing is a difficult issue in every municipality. There are some locations where low-income housing, housing for families, and housing for persons with special needs does not exist at any price. It is a good idea to have an understanding with surrounding communities as to how housing issues will be handled, so that the needs of the applicants may be met at the lowest overall cost.

## ***VIII. Making the Decision***

### **A. Timing**

Nothing in the RSAs provides a maximum time limit for making a decision. Under federal case law, aid decisions must be made within 72 hours in emergency cases, in order to comply with the “humanitarian purpose” of the statute. The welfare administrator must be given enough authority to meet the town’s initial responsibilities, that is, to take an application, make an initial decision and give any immediate assistance that may be needed. The basic legal duty includes the requirement to provide immediate assistance in an emergency. It is not acceptable to require an applicant to wait until the next meeting of the select board before providing basic emergency assistance. As discussed previously, updated welfare guidelines enable the welfare administrator to process applications in a timely and organized fashion—complying with both federal and state laws.

### **B. Written Notice of Decision**

The decision to deny or grant the request for assistance should always be provided to the applicant in the form of a written notice of the decision, including any conditions imposed on receipt of assistance, and also should include information about the applicant’s right to appeal the decision. This notice also serves as the applicant’s seven-day notice that if the stated conditions are not fulfilled, he or she may be disqualified from continued assistance until the conditions are met. RSA 165:1-b. (See Ch. 7, Disqualification) If the applicant is not eligible for assistance, the case is concluded unless the applicant seeks an appeal through a request for “fair hearing.” (See Ch. 8, Fair Hearing). Any decision that grants only part of the assistance requested by the applicant is a partial denial. In such cases the applicant should be informed of his right to a fair hearing.

# Chapter 5: Level of Assistance

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An initial welfare calculation should be purely mathematical: add the person's income and liquid assets, and if the total is less than the "need" amounts established in the municipality's guidelines, the difference is granted as assistance. Even if the amounts are later varied due to special circumstances, the analysis should start with this formula and then the variation should be justified in writing. Otherwise, the decision could be seen as an arbitrary violation of the applicant's due process rights. One basic mistake that even experienced officials often make is to focus on only what the applicant requests. The municipality may provide assistance in an amount that represents the person's overall eligibility, but the assistance need not necessarily take the form or amount requested by the applicant.

The local welfare obligation has no limit in time or amount. This means that if a person is eligible for assistance because he or she is found to be "poor and unable to support himself [or herself]" then the person must be assisted by the municipality, even if the budget for welfare has been exhausted. The governing body should be kept aware of the balance in the welfare budget, so they can take timely action to transfer additional appropriations into the welfare budget to avoid overspending.

## *I. Form of Assistance*

The law requires towns and cities to pay assistance in the form of vouchers. RSA 165:1, III. Municipalities should not give cash to recipients, since doing so would create a number of problems, such as possibly giving a recipient who works in your work program "employee" status, with liability for unemployment compensation benefits and federal income tax withholding.

A decision should be framed in terms of dollars/week or dollars/month, and not a lump sum amount. Also, the welfare administrator can agree to pay a particular expense, provided the client (with some income) pays certain other expenses. Eligibility continues until the facts change. Facts should be monitored periodically. Weekly is best (except sometimes with rent), as seven days is the period for enforcement of conditions under RSA 165:1-b. This affords more control to ensure the client remains financially eligible and meets any conditions that have been imposed, rather than providing a month's worth of assistance only to discover that the client refuses to search for work.

## ***II. Emergency Assistance***

If the applicant has an immediate need and persuades you that he or she will suffer irreparably if aid is delayed until a decision is made on the application (for example, lack of food or heating fuel, medical emergency, etc.), then that need should be addressed immediately. Emergency amounts of aid will be small, such as a food voucher for three days (rather than a whole month) or 100 gallons of oil (rather than a full tank). This does not mean, however, that the need should not be verified. Common sense judgment should determine what type of verification is sufficient. The more urgent the need, the scantier the verification you may have to be satisfied with. For example, a phone call to a doctor may suffice in the case of medical need. Clearly, you should not require a verification that takes so long that the person's health or safety is put in jeopardy.

When making a decision to grant emergency aid, you are not modifying or departing from your eligibility standards. Eligibility standards should remain the same, and your guidelines should contain standards for determining whether extraordinary needs are counted as allowable expenses for which aid will be given. Instead, it is the procedure for determining eligibility which may have to be cut short to address an immediate need. There are no simple rules. Use your best judgment with the types of verification that are immediately available and give a voucher for enough aid to meet the applicant's immediate need until a decision can be made on the application using the full verification procedure set forth in your guidelines.

## ***III. On-going Assistance***

The local welfare obligation has no limit in time or amount. If an applicant remains eligible and complies with properly imposed conditions, the duty to assist is indefinite. If an applicant is receiving on-going assistance, an emergency situation may temporarily change the assistance provided. In these instances, it is important to document the change in assistance provided.

## ***IV. Special Rules for Utility Payments***

When dealing with applicants who have had their utility service disconnected, or where disconnection has been threatened, there are special rules issued by the New Hampshire Public Utilities Commission that govern deposits and payment of arrearages:

- In lieu of a deposit, a utility must accept the written guarantee of a municipal welfare agency. N.H. Admin Code Puc 1203.03 (i)(1).
- A utility cannot disconnect a residential customer's service, and a notice of disconnection shall not be sent, to a residential customer if a municipal welfare office

has guaranteed payment of current bills on behalf of the customer and the customer agrees to enter into a reasonable arrangement for repayment of the amount in arrears. A municipality is obligated to pay the current bill only and is not required to pay any arrearages in order to maintain utility service. N.H. Admin Code Puc 1203.11 (h) (3).

- When a utility customer has sought assistance from the welfare office and the utility is made aware of that fact, the utility must continue to provide service for 4 business days while the welfare office processes the application and confirms payment will be forthcoming from the municipality. N.H. Admin Code Puc 1203.14.

These rules apply to any public utility providing electric, gas, sewer, steam, telephone, or water service to the public in the state of New Hampshire, excluding limited electrical energy producers as defined in RSA Chapter 362-A. N.H. Admin Code Puc 1201.02.

## ***V. Burials***

RSA 165:3, I states: “If an assisted person shall die in any town or city, the overseers of public welfare shall cause him to be decently buried or cremated at the expense of the town or city.” The welfare official shall provide for required burial or cremation, at municipal expense, of persons found in the municipality at time of death, regardless of whether the deceased person ever applied for or received general assistance from any municipality. In such cases, assistance may be applied for on behalf of the deceased person. Even if the deceased was not an assisted person at the time of death if a dead body is unidentified or unclaimed after 48 hours the medical examiner shall release the body to the local welfare administrator and the town or city where the person died is obligated to pay for a decent burial or cremation. RSA 611-B:25.

To meet this requirement, some communities make arrangements with one or more local funeral directors to provide funeral and burial/cremation services for local welfare recipients for a minimal fee. These services require pre-authorization; the municipality does not have to pay funeral directors for any funerals or costs that were not pre-authorized.

The family does not have the right to insist on something other than the least expensive decent funeral available. The Constitution does not require special religious rites or services to be paid for at public expense.

- *County Deaths:* RSA 165:3 was amended in 1993 to provide that if a person dies in a county nursing home, the costs of burial/cremation are the responsibility of the city or town in which the person was a resident when they entered the county home. That way, the host communities to the county homes do not end up with unusually high expenses for burials.

- *Veterans:* A municipality in which a veteran dies shall pay for the decedent's burial when (a) the decedent was a New Hampshire resident; (b) who served in the military; (c) during an armed conflict as set forth in RSA 165:17; (d) for a total of 90 days (unless discharged earlier because of a service related disability); (e) who was not dishonorably discharged; and (f) did not have a sufficient estate to pay for his or her funeral, or was on public assistance. Under the statute, a municipality may retain funds for burial expenses received from the Department of Veterans Affairs (DVA) and request that the DVA provide a suitable monument. RSA 165:16.
- *Assignment for Funeral Expenses:* RSA 165:27-a provides for an automatic assignment to the funeral director or person who paid for a burial up to \$2,000.

# Chapter 6: Conditions

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If the administrator finds the applicant to be eligible for assistance, the notice of decision can—and *should*—impose conditions on a recipient’s *continued* eligibility for assistance. The goal of the local assistance program is to provide for immediate needs and assist the person or family to take the steps needed to return to a status where local assistance is no longer necessary. In other words, once the administrator determines the applicant is eligible for assistance, the administrator becomes a *case manager* until such time as the case is concluded.

Why are these conditions important? Because a failure to comply allows the administrator to *disqualify* an applicant who is *eligible* for assistance from receiving that assistance either for a limited period of time or until the condition is satisfied. RSA 165:1-b. If a person is disqualified, then his or her needs will not be met. This can be devastating to the person, so the statute requires the municipality to provide a reasonable opportunity for the problem to be corrected before the right to assistance is lost. The conditions to be followed, and when the recipient is required to take action, must be contained in a written notice of decision. A person can only be disqualified when he or she both *knows* of the condition and *willfully fails* to comply.

There will be some recipients who, in fairness, cannot be expected to make significant changes in their situation. These include minor children, persons with physical or mental illnesses or disabilities or limitations that prevent them from seeking or maintaining employment, and the elderly.

All recipients, including those with limitations, may be required to:

- Disclose relevant financial data. This is required by RSA 165:1-b, and is used to (a) assure that the person has not transferred property in order to qualify for assistance (these transfers are a violation of RSA 165:2-b, and are grounds for disqualification); and (b) assure that the person has not received unexpected or undeclared income, and thus continues to demonstrate a need for assistance under the local guidelines.
- Apply to all available state and federal assistance programs for assistance as required by RSA 165:1-b. An applicant’s or recipient’s eligibility for another program does not affect eligibility for local assistance, except to the extent that other assistance is *actually being received as income*, in which case it will affect the amount of need calculated under the local guidelines.

In addition to the above requirements, able-bodied recipients may be required to:

- Look for work. RSA 165:1-b, I(c) provides that municipalities may require clients to comply with “reasonable” work search requirements. This means to make a diligent effort to find employment of a type that the person is qualified to perform. This is often easier said than done if the applicant lacks marketable skills, or has a poor work history, limited education or vocational training, has problems with substance abuse, or lacks reliable transportation to attend the workplace. Each municipality must have guidelines for work search requirements, and the key word to keep in mind when creating or updating those guidelines is “reasonable.” The *Model Local Welfare Guidelines* recommend that municipalities follow the same or similar conditions set forth in RSA 165:31 for the municipal work program, such as not requiring any single parent caring for a child under age 5 to participate in a work search. However, RSA 165:1-b, I(c) does not strictly prohibit municipalities from imposing reasonable work search requirements upon people with children younger than 5 years of age.
- Participate in a municipal work program, if one is available (see more information about municipal work programs in Chapter 9).

# Chapter 7: Disqualification

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Even if an applicant has provided verifiable information to show that he or she is eligible for assistance, there may be a valid and lawful reason to disqualify that applicant from the receipt of assistance under the local assistance law. Each of these situations can be factually complex, and the welfare administrator should read the statute carefully and be sure that all required documentation is present before making a decision to disqualify an applicant. Often the disqualification is temporary, so that a person who may be correctly refused assistance today may qualify for that assistance in the near future.

## ***I. Failure to Comply with Guidelines***

RSA 165:1-b disqualifies an applicant who “willfully fails to comply with written guidelines adopted by the governing body” relating to disclosure of financial information, participation in a work program, searching for work or making application with other public assistance agencies.

The following procedure has been developed by NHMA in an effort to set forth a clear process for suspension of assistance for willful noncompliance with guidelines, under RSA 165:1-b. There are differing opinions as to the intent and interpretation of the statute, and there are differing opinions as to the specific procedures required by the statute. The procedures outlined in this section are not specifically mandated by RSA 165:1-b, but represent NHMA’s attempt to create a legally sound compromise.

### **A. Due Process**

Recipients must comply with the guidelines and the reasonable requests of welfare officials. Welfare officials must enforce the guidelines while ensuring that all recipients and applicants receive due process. Recipients should be given reasonable notice of the conditions and requirements of eligibility and continuing eligibility, and notice that noncompliance may result in termination or suspension of assistance.

### **B. Conditions**

Any applicant/recipient otherwise eligible for assistance shall become ineligible under RSA 165:1-b if he/she willfully and without good cause fails to comply with the requirements of the guidelines relating to the obligation to:

- Disclose and provide verification of income, resources or other material financial data, as set out in the local guidelines, including any changes in this information;
- Participate in the work program, to the extent assigned by the welfare official;
- Comply with the work search requirements imposed by the welfare official; and

- Apply for other public assistance, as required by the welfare official.

### **C. Seven-Day Notice**

Before assistance may be suspended, the welfare official must give the recipient notice and an opportunity to come into compliance. RSA 165:1-b, II provides:

No recipient otherwise eligible shall be suspended for noncompliance with conditions unless he/she has been given a written notice of the actions required in order to remain eligible and a seven-day period within which to comply. The first notice should be given at the time of the notice of decision and thereafter as conditions change. Additional notice of actions required should also be given as eligibility is re-determined, but without an additional seven-day period unless new actions are required.

### **D. Suspension Notice**

If the recipient does not comply within the seven days, the assistance may be suspended, in which case the welfare official must send the recipient written notice of the suspension. The written notice of suspension due to failure to comply with the conditions in a first notice shall include:

- A list of the guidelines with which the recipient is not in compliance and a description of those actions necessary for compliance;
- The period of suspension (see section E);
- Notice of the right to a fair hearing on the issue of willful noncompliance and that such request must be made in writing within five days of receipt of the suspension notice;
- A statement that assistance may continue in accordance with the prior eligibility determination until the fair hearing decision is made if the recipient so requests on the request form for the fair hearing; however, if the recipient fails to prevail at the hearing:
  - 1) the suspension will start after the decision and
  - 2) such aid must be repaid by the recipient; and
- A form on which the individual may request a fair hearing and the continuance of assistance pending the outcome.

### **E. Suspension Period**

The suspension period for failure to comply with the guidelines shall last:

- Seven days, or 14 days if the recipient has had a prior suspension which ended within the past six months, and

- Until the recipient complies with the guidelines if the recipient, upon the expiration of the seven or 14-day suspension period, continues to fail to carry out the specific actions set forth in the notice.
- The administrator must however be careful not to continue the suspension when the recipient has no ability to do what is necessary to come into compliance.

Notwithstanding the suspension periods described above, a recipient who has been suspended for noncompliance for at least six months may file a new application for assistance without coming back into compliance.

Local welfare guidelines may not alter these statutory requirements regarding suspension periods. For example, a blanket six-month suspension for violation of the conditions of assistance was found to be illegal because it conflicted with the statute's very specific provisions regarding suspension periods. *Bond v. Martineau*, 164 N.H. 210 (2012).

#### **F. Fair Hearing on Continuing Noncompliance**

A recipient who has been suspended until he/she complies with the guidelines may request a fair hearing to resolve a dispute over whether or not he/she has satisfactorily complied with the required guidelines; however, no assistance shall be available under section E above.

#### **G. Compliance After Suspension**

A recipient who has been subject to a suspension and who has come back into compliance shall have his/her assistance resumed, provided he/she is still otherwise eligible. The notice of decision stating that assistance has been resumed should again set forth the actions required to remain eligible for assistance but need not provide a seven-day period for compliance unless new conditions have been imposed.

## ***II. Voluntary Quit Without Good Cause***

An additional limited ground exists to disqualify certain applicants who have voluntarily quit jobs without good cause.

#### **A. The Statute**

RSA 165:1-d, passed in 1995, is a complex section. It renders an individual ineligible for assistance only if the following conditions are met:

- The applicant must have received local welfare assistance within the last 365 days and have received prior written notice that a voluntary quit could lead to disqualification.
- There must be no minor children in the household supported by the applicant.
- The applicant must not have a mental or physical impairment that causes him or her to be unable to work.

- The job must have provided at least 20 hours of work time per week.
- The quit must have been without *good cause*, as defined in the statute, and must have been within 60 days of applying for assistance.

## **B. Good Cause**

The statute defines “good cause” as follows:

- Discrimination by an employer based on age, race, sex, physical or mental disability, religion, or national origin.
- Work demands or conditions that render continued employment unreasonable.
- Retirement by a person 62 years of age or over or resignation by a person under 62 years of age which is recognized by the employer as retirement.
- Employment which becomes unsuitable following the applicant's acceptance of such employment.
- Leaving a job in order to accept a *bonafide* job offer which, because of circumstances beyond the control of the applicant, subsequently either does not materialize or results in employment of fewer than 20 hours per week or weekly earnings of less than the state or federal hourly minimum wage multiplied by 20 hours.
- Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm labor or construction work, even though employment at the new site has not actually begun.
- Leaving a job because of circumstances, such as lack of transportation or a household emergency, which are beyond the control of the applicant to remedy as determined by the overseer of public welfare and which make continued employment impracticable.
- Termination of employment for other good cause.

Disqualification requires a written application, and a written decision explaining the reasons for denial, the actions needed to become eligible and the right to appeal. Even if all of the above is present, the period of disqualification is 90 days *from the date of the quit*. And, if the person applies for assistance more than 60 days after the quit, it makes no difference how the applicant lost the job.

## **III. Qualified State Assistance Reduction**

RSA 165:1-e allows a local welfare administrator to treat as income an amount called the

“qualified state assistance reduction” (QSAR), imposed pursuant to RSA 167:82, VIII. This means that if a person is penalized by state welfare officials for failure to participate in required work programs, that loss of state assistance will not permit the same applicant to qualify for local assistance. This may be done only if the local governing body has authorized it in the written guidelines, and the municipality must waive any or all of a QSAR if necessary to prevent an immediate threat to children in the household.

#### ***IV. Transfer of Property***

RSA 165:2-b disqualifies an applicant who has transferred ownership of property out of his or her name at any time in the past three years for the purpose of qualifying for local assistance.

# Chapter 8: Fair Hearings

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A fair hearing is the adjudicatory proceeding held at the request of an applicant for local welfare whenever a decision is made denying or changing the amount or form of assistance. An applicant also may file a request for fair hearing because he or she feels that the conditions placed on continued assistance are unreasonable or impossible to comply with. It is, in essence, an appeal from the welfare administrator's decision. The review is conducted by a neutral hearing officer (not the welfare administrator), who will decide whether the welfare administrator's decision was made in accordance with the local welfare guidelines and state and federal laws. Because the review will depend, in large part, on the local welfare guidelines, it is extremely important that local guidelines regarding fair hearings are complete and followed consistently in all cases.

## *I. Request for Hearing*

The constitutional right to notice and an opportunity to request a fair hearing is triggered whenever a decision is made granting or changing amount or form of assistance. Therefore, notice of the applicant's right to a hearing must be included in every written decision. Where the appeal is from a disqualification under RSA 165:1-b, the applicant must present a request for a fair hearing to the welfare administrator within five working days of receipt of the notice of decision at issue. RSA 165:1-b, III. If the applicant is appealing an initial eligibility determination—that is, the welfare official determined that the applicant is ineligible for benefits based on the welfare guidelines—the applicant should follow whatever appeal procedure is outlined in the municipality's guidelines. The municipal guidelines could follow the same five-day period set forth in RSA 165:1-b, III, or could provide a longer appeal period, but should not provide a shorter period for requesting the hearing. While local guidelines may contain a requirement that the request be submitted in writing, in extraordinary circumstances when it is impossible for the applicant to submit the written request within the deadline, but the applicant has called and requested the appeal verbally, it may be advisable to accept that verbal request and schedule the hearing.

## *II. Scheduling the Hearing*

Hearings requested by claimants must be held within seven working days of the receipt of the request unless the person requesting the hearing, for good cause, asks for additional time (such as to obtain legal representation). The welfare administrator must give notice to the claimant setting the time and location of the hearing. This notice must be given to the claimant at least 48 hours in advance of the hearing or mailed to the claimant at least 72 hours in advance of the hearing. The claimant should be provided with a copy of the procedures that will be followed at the fair hearing and informed that they have a right to be represented. The welfare

administrator may have the assistance of legal counsel. (See Appendix B for a handout that may be given to applicants to help them understand the fair hearing process.)

### ***III. Continuing Assistance***

The claimant may elect to continue assistance during the appeal process. If so, the municipality must allow the assistance to continue in accordance with any prior eligibility determination. RSA 165:1-b, IV. If the person was found ineligible for assistance, and thus was not receiving any assistance, the municipality does not have to provide assistance during the appeal process. If the claimant elects to continue receiving assistance and fails to prevail at the hearing, the suspension will start after the decision, and the aid rendered during the appeal process must be repaid by the recipient.

### ***IV. Conducting the Hearing***

The hearing is conducted by a hearing officer appointed by the governing body. The person selected to serve as hearing officer must be someone who has not had any contact with the case being appealed. Therefore, neither the welfare administrator nor the governing body can serve as the hearing officer. This ensures that the person selected to hear the matter has not prejudged the case. The hearing officer should be a person who is familiar with the welfare laws, fair-minded, skilled at interviewing to obtain evidence and facts necessary for a fair determination, and capable of conducting the proceeding in a fair and orderly fashion. Often a welfare administrator from another town serves as the hearing officer. This practice is acceptable so long as the person did not participate in the case under appeal. For example, if the welfare administrator contacted this person for advice on the case, then it would be inappropriate to allow the person to serve as the hearing officer.

It is important that no one connected with the case discuss the case with the fair hearing officer in advance of the hearing. This also includes the case record or other materials; these should *not* be forwarded to the hearing officer in advance of the hearing. The fair hearing will not be particularly fair if the hearing officer receives information (evidence) from one side of the case in advance, without providing the other side an opportunity to respond or know what is being said. Although not as formal as a court proceeding, the fair hearing must be conducted in such a manner as to ensure due process of law. The burden of proof is on the claimant, which means the applicant must establish his or her case by a preponderance of the evidence, i.e., that what the applicant is saying is *more likely than not* true.

At the hearing, both sides present their case to the hearing officer. The welfare administrator should present a copy of the claimant's file to the hearing officer at this time. It is recommended that only relevant parts of the claimant's file be given to the hearing officer. If the claimant has not already requested a copy of the file, he or she should be given the same documents provided to the hearing officer. If the claimant comes to the hearing with new evidence, copies should be

made for the hearing officer and welfare administrator. In short, all parties to the fair hearing should have exactly the same information available to them. The hearing officer also should have a copy of the local welfare guidelines and the applicable state statutes. (See Appendix A for model fair hearing rules of procedures that may be used by the hearing officer.)

## ***V. Fair Hearing Decision***

The hearing officer must render a written decision within seven working days of the hearing, setting forth the reasons for the decision and the facts on which the fair hearing officer relied in reaching the decision. If the fair hearing decision does not affirm the welfare administrator's original decision, it shall set forth the appropriate relief. In this case, the relief granted by the hearing officer is retroactive to the date of the action being appealed. This means that the municipality must render the assistance as ordered by the hearing officer starting from the time the assistance would have been given had it not been originally denied. A copy of the decision shall be mailed or delivered to the claimant and to the welfare administrator.

If the applicant is unsatisfied with the result of the fair hearing, he or she generally has the option of filing a petition with the superior court for a review and should be advised of such in the fair hearing decision.

# Chapter 9: Recovery

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The courts say our law dictates a “render-aid-first/ask-questions-later” approach. Local welfare applications should contain questions relevant to recovery (for example, are there any legally liable relatives?), but for the most part, welfare officials should not consider recovery until a determination of eligibility has been made and assistance has been provided.

## ***I. Liens on Property***

Under RSA 165:28, the city or town can put a lien on any real estate owned by the assisted person. The lien is filed at the Registry of Deeds in the county where the real estate is located. The register is required to record this lien at no charge to the municipality. When the assisted person dies or sells the property, the city or town will usually be paid back, if the successor wants clear title. The lien cannot be enforced so long as the assisted person or the person’s family is still living in the house. Interest accrues at 6 percent per year beginning one year after the lien is filed.

### **A. Acknowledgement**

The welfare administrator should ask the applicant to sign an acknowledgement that he or she has been informed of the municipality’s right to a lien. However, a recipient’s acknowledgement or permission is not necessary in order to place the lien.

### **B. No Amounts**

The lien form should be recorded only once, with no amounts listed. The tally sheet should be kept carefully in the municipality’s file. When it comes time for the property to be sold, the welfare administrator then will be able to give an accurate total of assistance provided.

### **C. Tell the Tax Collector**

It is a good idea to set up some sort of system so that the tax collector will know that a welfare lien exists. People check with the tax collector about back taxes when buying property, but most do not think to check for welfare liens.

### **D. Priority**

Unlike a tax lien, the welfare lien is *not* superior to prior mortgages and liens. If the property is foreclosed upon, the town will likely not receive any money.

## ***II. Legally Liable Relatives***

RSA 165:19 says:

The relation of any poor person in the line of father, mother, stepfather, stepmother, son, daughter, husband, or wife shall assist or maintain such person when in need of relief. Said relation shall be deemed able to assist such person if his weekly income is more than sufficient to provide a reasonable subsistence compatible with decency and health.

Many relatives—such as parents of adult children—are very surprised to learn of this duty. Again, assistance should not be delayed merely because of failure to locate or notify possible recovery sources. However, the welfare administrator should not hesitate to contact a legally liable relative if it is discovered that such person exists and has means. There is no right of lien on the relative's property, as there is on the assisted person's property, but the city or town can seek cash reimbursement. It is important to note that the municipality has no authority to force a legally liable relative to support the applicant in the first instance; the municipality's obligation is to assist the applicant as appropriate and then seek reimbursement from relatives for the amounts of assistance that have been given.

The statute also says this duty is enforceable by a complaint and summons to appear in court. It does not say which court, although it is probably the circuit court – district division (formerly the district court) so long as the amount is within the circuit court's civil jurisdiction amount (less than \$25,000). See, RSA 502-A:14.

### ***III. Repayment by Assisted Person***

RSA 165:20-b allows the town to recover from the assisted person, if the individual "is returned to an income status" and can pay it back "without financial hardship." Most towns believe that attempts to do this are not worth the effort and expense. The likelihood of success at this recovery option is probably limited; however, it is an option worth considering. Making applicants aware of their responsibility to repay the city or town if they are financially able may be the most effective way for the municipality to recover assistance rendered.

### ***IV. Recovery from Town of Residence***

Residency does make a difference if recovery of assistance is sought from another New Hampshire municipality, but that is an issue between the two municipalities; the applicant is not required to participate in the resolution of these disputes. If a welfare administrator assists someone who actually does have a residence in another city or town, reimbursement can be sought from that municipality. RSA 165:20. Because residency can be formed instantaneously, the person will often be the responsibility of the last city or town to receive an application, but

that does not prevent the officials of both municipalities from speaking, or from developing a plan that meets the needs of the applicant at the lowest overall cost.

If a dispute does arise between communities regarding who is responsible for assistance provided, RSA 165:20-a provides a voluntary arbitration system, administered by the state Department of Health and Human Services (DHHS), to resolve the issue.

## ***V. Recovery Against Judgments and Settlements***

If the client has an outstanding claim or lawsuit that he or she expects to win, or an expectancy under a will or estate being probated, RSA 165:28-a says the town has a lien for assistance it rendered up to six years before the receipt of the award or inheritance. This is not automatic—it must be pursued. Contact your municipal attorney for assistance. Also note that the town cannot recover assistance paid from a workers' compensation settlement. RSA 281-A:52.

## ***VI. Work Programs as Offsets***

Work programs are authorized by RSA 165:31. A work program can provide a way for a municipality to recoup some of the dollars spent on assistance, but the city or town must have the work available and the participants must be adequately supervised. It is important to remember that workers must be “credited” against assistance already provided for the work they do; they don't get paid in cash. For the welfare recipient, this is a way to reduce any sum they may be required to repay the city or town (if able) or to reduce the value of a welfare lien on their property. For some, this offers a way to acquire some job experience at the same time.

While able-bodied recipients can be required to work if they are not solely responsible for the care of children under age five, the individual should be allowed sufficient time to look for work. In addition, the recipient is only required to work for current assistance and may not be required to work to pay off assistance granted in the past.

### **A. Minimum/Prevailing Wage**

Not only does the minimum wage law apply to the rate at which aid is “worked off,” but, in fact, the welfare recipient must be credited at the prevailing rate paid to other workers hired to do that same job. For example, if the worker builds a stone wall, the individual should be credited at stonemason rates.

### **B. Workers' Compensation**

It is up to the governing body to decide whether work program participants are covered by workers' compensation. RSA 281-A:2, VII(b). Both the advantages and disadvantages of providing workers' compensation coverage should be carefully considered before deciding not to provide it.

# Appendices

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## APPENDIX A: Model Fair Hearing Rules of Procedure

- The hearing [may] [shall] be tape-recorded.
- Any party may make a recording.
- Parties may, but need not, be represented by counsel.
- The Applicant has the burden of proof by a preponderance of the evidence.
- Strict rules of evidence shall not apply, but the Hearing Officer may exclude hearsay and irrelevant, immaterial or unduly repetitious evidence.
- Testimony shall [not] be under oath.
- Parties may cross-examine witnesses, and the party who called the witness may re-examine the witness concerning matters raised in cross-examination.
- The Hearing Officer may question witnesses.
- Documentary evidence will be received when properly authenticated.
- Each party may give a brief opening statement prior to the submission of evidence.
- Evidence shall be offered in the following order:
  1. Welfare Officer's witnesses and documentary evidence
  2. Applicant's witnesses and documentary evidence
  3. Rebuttal by Welfare Officer
  4. Rebuttal by Applicant
- The Record shall be closed at the conclusion of the hearing unless there is good cause to keep the record open for a specified time for the claimant to submit additional information.
- A written decision will be rendered within seven working days.

# APPENDIX B: Fair Hearings Information for the Applicant

## FAIR HEARINGS BASICS

### Introduction

An individual or household that applies for or receives general assistance from a municipal welfare program has the right to request a fair hearing when the welfare administrator:

- Denies, or partially denies, an application, or
- Refuses to grant the full amount of assistance requested, or
- Reduces amount of assistance or modifies conditions for eligibility, or
- Terminates assistance.

### Purpose of Fair Hearing

- Opportunity to challenge welfare administrator's decision.
- Opportunity to be heard by an impartial person who was not involved with the decision.

### Who is the Hearing Officer?

- An *impartial* decision maker who *was not* involved in the decision.
- Impartial means the Hearing Officer does not represent either side.
- The Hearing Officer conducts the hearing and makes the decision.
- The Hearing Officer does not offer legal advice.

### What Does the Hearing Officer Know About My Case?

- The Hearing Officer considers only the hearing record, which is admitted documents and the recorded hearing.
- The Hearing Officer does not have access to the records from the welfare program or state agencies.
- The Hearing Officer listens to both sides, yours and the municipality's.
- The Hearing Officer considers testimony, documents submitted by the parties, laws, regulations and policies when making his or her decision.
- The Hearing Officer does not investigate facts outside of what is presented by the parties.

### Your Rights at a Fair Hearing

- You can present your side of the case.
- You can appoint anyone to represent you, including an attorney.
- You can present documents.
- You can call witnesses or question the municipality's witness.

- You can challenge documents presented by the agency.
- You can request one postponement prior to the hearing.

## **What Usually Happens at a Fair Hearing?**

Usually the people at the hearing include: you, the Hearing Officer, the welfare administrator, and any witnesses. The hearing may be recorded.

- **Preliminary Matters**

At the beginning of the hearing, the Hearing Officer:

- Identifies everyone present
- Reviews hearing rights
- Reviews hearing procedures

- **Municipality's Presentation**

- After completion of preliminary matters, usually the municipality will present its side, including witnesses.
- Listen carefully and write down anything said that you want to question.
- You may object to evidence offered by the municipality. A reason will have to be given for objection. Examples for objections are not seeing the evidence before the hearing; not knowing that it would be used; evidence is not related to the issue in dispute; etc.
- After the welfare administrator has finished presenting the case for the municipality, it will be your turn to ask the agency representative or its witnesses questions.

- **Your Presentation**

- You should explain what you think happened, step by step, so that the Hearing Officer understands your position.
- In presenting your argument, you will be allowed to present witnesses and admit documents relevant to the issue in dispute.
- You may wish to testify and/or call witnesses.
- You should also identify all documents you have offered as evidence and explain why you think they are important to the issue.

## **Important Points to Remember When You Testify at a Fair Hearing**

- Be completely honest.
- Be courteous.
- Answer only the questions asked.
- Keep answers simple and on point.
- Before answering a question, make sure you understand the meaning of the question.
- Do not guess. If you do not know the answer to a question, say so.

- If you don't remember something, simply say, "I do not remember."
- If asked to make an estimate, make sure everyone understands that it is ONLY an estimate.
- Usually, you can explain your answer to make sure the Hearing Officer understands you.
- Look at the Hearing Officer when answering questions.
- If there is an objection by either side, stop talking immediately.
- Remain calm.

## **Important Points to Remember Throughout the Fair Hearing**

- If you are taken by surprise or confused about what to do next, ask the Hearing Officer for direction.
- The Hearing Officer will control the hearing to prevent intimidation or discourtesy.
- During breaks or after the hearing has adjourned, do not talk to the Hearing Officer about the issue.

## **Ways to Prepare for a Fair Hearing**

- Review the municipality's guidelines that were relied upon to make the decision and the applicable state statutes and witness list. The welfare administrator will provide you with this information upon request.
- Review your file a reasonable time prior to the hearing.
- Prepare a list of points you intend to make at the hearing.
- Collect all the documents relevant to the issue in dispute and submit copies as soon as possible to the welfare office for presentation at the hearing.
- Ask anyone you think could provide information relevant to the issue in dispute to appear as a witness and testify on your behalf at the hearing. You must make these arrangements.
- Review with your witnesses the hearing the questions you will ask at the hearing.
- Prepare a list of questions to ask the welfare administrator, the municipality's witnesses, and your witnesses.
- Prepare an opening statement, which is a short presentation given to the Hearing Officer regarding what you believe are the relevant facts and issues in the case. Keep in mind this is just an introduction; your statement should be brief.

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