

# MAINE STATE LEGISLATURE

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Rent Refunds; Boarding Home Residents  
Boarding Homes; Rent Refunds  
36 MRSA §§ 6101-6121

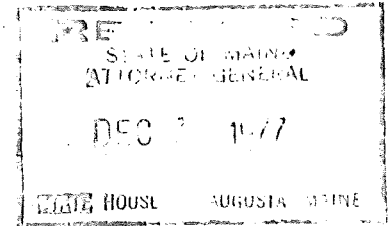
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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

December 6, 1977



The Honorable Mary Najarian  
173 Pleasant Avenue  
Portland, Maine

Dear Representative Najarian:

With your kind permission, I have limited the opinion request contained in your October 2, 1977 letter addressed to Attorney General Joseph Brennan to two questions.

QUESTION I:

Are residents of The Park-Danforth boarding care facility eligible for rent refunds under the provisions of The Elderly Householders Tax and Rent Refund Act, 36 MRSA §§ 6101-6121, as amended?

QUESTION II:

If certain elderly persons, such as residents of The Park-Danforth boarding care facility, are not eligible for rent relief under the provisions of The Elderly Householders Tax and Rent Refund Act, 36 MRSA §§ 6101-6121, what recourse is available for those elderly persons to obtain prescription drug benefits when the prescription drug program for the elderly makes eligibility identical to that of The Elderly Householders Tax and Rent Refund Act?

ANSWER I:

No, residents of The Park-Danforth boarding care facility are not eligible for rent refunds under the provisions of The Elderly Householders Tax and Rent Refund Act.

ANSWER II:

See Reasons II for recourse available.

REASONS I:

The concept behind The Elderly Householders Tax and Rent Refund Act is based on relieving elderly persons on fixed incomes from the burden of property taxes.

In tracing the legislative history of The Elderly Householders Tax and Rent Refund Act, we discover that L.D. 1272 of the 105th Legislature titled "An Act Providing for Property Tax Relief for the Elderly" was the forerunner of L.D. 1817 titled "An Act to Relieve Certain Householders from the Extraordinary Impact of Property Taxes". L.D. 1272 was limited to granting relief to certain elderly persons who were owners of homesteads. The stated purpose of L.D. 1272 was, in pertinent part, to "... grant people retired on fixed income some relief from property taxes." The purpose was broadened by L.D. 1817 to also include elderly persons who rent their homestead. L.D. 1817 was enacted into Law by the 105th Maine Legislature as Chapter 503 of the P.L. Me. 1971, which chapter was cited as the "Elderly Householders Tax Relief Act.

Chapter 634 of P.L. Me. 1973 amended Chapter 503 of P.L. Me. 1971 and the name of the Elderly Householders Tax Relief Act was changed to The Elderly Householders Tax and Rent Refund Act. Among the amendments in Chapter 634 of P.L. Me. 1973 was a section which defined "Rent constituting property taxes accrued". This amendment was consistent with the broadened purpose to provide elderly persons who rented their homesteads with relief from property taxes.

Further technical changes to The Elderly Householders Tax and Rent Refund Act were also made by Chapter 771 of P.L. Me. 1973 and by Section S of Chapter 90 of the 1975 Private and Special Laws of Maine.

Pursuant to The Elderly Householders Tax and Rent Refund Act, 36 MRSA §§ 6101-6121 as amended, if household income of an eligible claimant is not over \$3,000, the payment made to the claimant up to a limit of \$400 is equal to the property tax paid by the claimant on his homestead for the calendar year preceeding that in which the claim was filed or in the alternative, if the claimant is renting his homestead, the claimant is entitled to a payment equal to 25% of his homestead rent which our Legislature defined as "Rent constituting property taxes accrued". Thus, it is clear that the amount refunded to the claimant is correlated to the amount of taxes paid by the claimant or a percentage of the rent paid by the claimant which constituted property taxes accrued.

On the last page of a brochure describing The Park-Danforth, which brochure I am enclosing with this letter, the ownership and operation of The Park-Danforth is set forth, in pertinent part, as follows:

"It is a non-profit, non-sectarian residence owned and operated by a privately endowed cor-

poration known as the Home for the Aged. . . ."

The Home for the Aged does not pay taxes to the City of Portland on The Park-Danforth property at 125 Danforth Street. There is enclosed a letter from the office of the Assessor of Taxes for the City of Portland which clearly indicates that property at 115-141 Danforth Street, Portland, Maine is tax exempt property. Since there is no property tax paid by the Home for the Aged, the residents of The Park-Danforth do not have a property tax factor in the rent they pay to the Home for the Aged. Hence, even though otherwise meeting the criteria for relief, these residents cannot obtain property tax relief when no property tax is paid.

Under these circumstances, legislation appears to be an appropriate method to obtain relief for the residents of The Park-Danforth and residents of other boarding care facilities licensed by the Department of Human Services of the State of Maine.

The following is suggested language for an additional section to The Elderly Householders Tax and Rent Refund Act:

36 MRSA § 6104-A is enacted to read:

§ 6104-A. Claims by residents of boarding care facilities.

The State Tax Assessor shall allow a claim, otherwise allowable under this chapter, filed by a resident of a boarding care facility licensed as such by the Department of Human Services under Section 7802 of Title 22, whether or not the licensed boarding care facility is subject to property tax.

I trust the foregoing statutory language will assist you in accomplishing what you desire.

REASONS II:

There appear to be two basic approaches to seeking prescription drug benefit relief for elderly persons who are residents of boarding care facilities and who do not qualify for rent relief under the provisions of The Elderly Householders Tax and Rent Refund Act.

The first approach is to seek administrative relief through the Commissioner of Human Services. The statutory authority for the establishment of a free prescription and nonprescription drug and medication program to disadvantaged elderly individuals is Chapter 619, of P.L. Me. 1975. This statute explicitly provides that

"The extent and the magnitude of this program will be determined by the Commissioner of Health and Welfare (now Commissioner of Human Services)

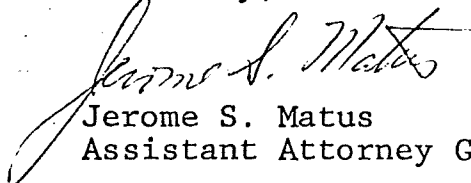
and will be determined on the basis of the calculated need of the recipient population and the available funds. The department is not authorized to spend more on the conduct of this program than is available either through appropriations from the General Fund, dedicated revenue, federal or other grants and other established and committed funding sources." [Emphasis supplied] 22 MRSA § 254 as enacted by 1975 P.L. Me., c. 619

It is clear that the Commissioner has been given legislative authority to make the judgment as to what group of individuals will participate in the drug program. The Commissioner's judgment has as its parameters the calculated need of the recipient population and available funds. In making his judgment as to who is entitled to benefits, the Commissioner undoubtedly has recognized substantial administrative savings to the state in making eligibility identical to that of The Elderly Householders Tax and Rent Refund Act. Even without the limitation of available funds, this is of merit. However, the Commissioner has the authority, should he be convinced he can do so within fund limitations, to extend the program to residents of boarding care facilities who do not qualify for The Elderly Householders Tax and Rent Refund Act.

The second approach is for the Legislature to provide the Commissioner of Human Services with additional funds to extend the drug program to residents of licensed boarding care facilities who do not qualify for The Elderly Householders Tax and Rent Refund Act. Should the Legislature desire, it can, with the appropriation of additional funds, make it a specific requirement of the drug program that residents of boarding care facilities licensed by the Department of Human Services, or for that matter, any other group as determined by the Legislature, will be included within the program.

I wish to apologize for not replying sooner to your request for this opinion.

Sincerely,

  
Jerome S. Matus  
Assistant Attorney General

JSM:spa  
Enc.