

# MAINE STATE LEGISLATURE

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February 21, 1978

The Honorable Mary Najarian  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Najarian:

At the request of the Bureau of Taxation I have reconsidered the answers contained in my December 6, 1977 letter to you.

QUESTION I:

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

ANSWER I:

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

REASONS I:

The Elderly Householders Tax and Rent Refund Act, 36 MRSA §§ 6101-6121, as amended, defines a claimant under the Act in pertinent part as follows:

"'Claimant' means a person who has filed a claim under this Part and was domiciled in this State and owned or rented a homestead in this State during the entire calendar year preceding the year in which he filed claim for relief under this Part. . . ." 36 MRSA § 6103 sub-§ 1

Thus, elderly persons who are residents of The Park-Danforth in

order to be claimants entitled to payment of a claim must either own or rent a homestead at The Park-Danforth. There should be no dispute that these elderly persons are not owners of a homestead at The Park-Danforth. I have concluded, however, that elderly residents of The Park-Danforth, if they meet other limitations such as age and income set forth in the Act and otherwise comply with the Act, can file a valid claim under the Act as a person who has rented a homestead in this State. It follows that they would be entitled to relief under the Act.

In reaching this conclusion I had to determine that the residents of The Park-Danforth were residing in a "homestead". A homestead is defined in pertinent part under the Act as follows:

"'Homestead' means the dwelling, owned or rented by the claimant, and occupied by the claimant and his dependents as a home, and may consist of a part of a multi-dwelling or multi-purpose building and a part of the land upon which it is built. . . ." 36 MRSA § 6103 sub-§ 2

This definition provides in other than ownership situations that

1. There must be a dwelling rented by the claimant
2. The dwelling must be also occupied by the claimant as a home.
3. The dwelling may consist of a part of a multi-dwelling of multi-purpose building or a part of the land upon which it is built.

A brochure was obtained from The Park-Danforth a copy of which is attached to this opinion. This brochure clearly establishes that residents have designated living units. The brochure states on page 2 in part

"Living units include apartments for married couples, single rooms for men, and a limited number of efficiency apartments and rooms for single women. Apartments for couples consist of a living room, bedroom, kitchenette and bath."

The brochure then explains that some of the units are furnished by the facility and others are furnished by residents. In some instances meals are served to residents in a main dining room and in other instances residents can prepare and have their meals, with the exception of the noon meal, in their living units if they have kitchen facilities. The brochure sets forth sufficient facts to establish that these living units are part of multi-dwelling buildings and that these units are occupied by residents as the residents 'home'. The sole remaining determination to establish

that a 'homestead' exists for residents of The Park-Danforth is whether they pay 'rent' within the meaning of The Elderly Householders Tax and Rent Refund Act.

The Act provides that

"'Gross rent' means retail paid at arms-length solely for the right of occupancy of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement. If the landlord and tenant have not dealt with each other at arms-length, and the State Tax Assessor is satisfied that the gross rent charged was excessive, he may adjust the gross rent to a reasonable amount for purposes of this subchapter. 36 MRSA § 6103 sub-§ 1-A

There is in the definition a reference to landlord and tenant. Thus, it is clear that the Act contemplates a landlord-tenant relationship must exist for payments to be considered gross rent within the meaning of the Act. This relationship of landlord and tenant does not exist in many boarding care situations, however, in the instance of The Park-Danforth, on the basis of information provided in the brochure, I am satisfied that residents of The Park-Danforth are tenants and The Home for the Aged, the owner and operator of The Park Danforth, is the landlord. Hence, a tenant-landlord relationship exists between them.

It should be noted that the brochure does provide that

"The Park-Danforth operates on the lowest possible monthly rental basis. Rates are moderate and include heat, electricity, hot water, and the use of group facilities."

The rental charges thus include some items which are not considered "gross rent" as they are not charges based solely for the right of occupancy of a homestead and hence charges for these items must be eliminated from the rental base for purposes of making a claim for relief under the Act.

#### QUESTION II:

If certain elderly persons, who reside in boarding care facilities or in so-called boarding homes, 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 II:

See Reasons II for recourse available.

REASONS II:

The residents of The Park-Danforth are eligible for rent relief under the provisions of The Elderly Householders Tax and Rent Refund Act, 36 MRSA §§ 6101-6121, and thus would be eligible to obtain prescription drug benefits as the prescription drug program for the elderly makes eligibility identical to that of The Elderly Householders Tax and Rent Refund Act. There are, however, residents of certain boarding care facilities and so-called boarding homes where a tenant-landlord relationship does not exist and thus those residents would not qualify for rent relief under the provisions of The Elderly Householders Tax and Rent Refund Act. It would follow that those residents would not be able to obtain prescription drug benefits as the present drug program for the elderly makes eligibility identical to that of The Elderly Householders Tax and Rent Refund Act. There appear to be two basic approaches to seeking prescription drug benefit relief for those elderly persons who do not qualify for rent relief under the 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

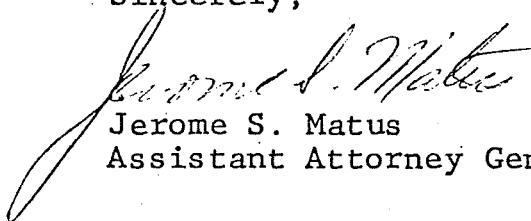
"The extent and the magnitude of this program will be determined by the Commissioner of Health and Welfare (now Commissioner of Human Services) and will be determined on the basis of the calculated need of the recipient population and the available funds. The department is not authorized to spend more 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 those residents 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 or so-called boarding homes where the tenant-landlord relationship does not exist. Should the Legislature desire, it can, with the appropriation of additional funds, make it a specific requirement of the drug program that residents of those boarding care facilities or so-called boarding homes, or for that matter, any other group as determined by the Legislature, will be included within the program.

Sincerely,



Jerome S. Matus  
Assistant Attorney General

JSM:spa  
Enc.