

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

April 14, 1981

Michael R. Petit  
Commissioner  
Department of Human Services  
221 State Street  
Augusta, Maine 04333

Re: Recovery of General Assistance Payments

Dear Commissioner Petit:

You have raised several questions about the municipal administration of 22 M.R.S.A. § 4500-A, the recovery provision of Maine's General Assistance Statutes which reads in total as follows:

§ 4500-A Recovery of expense

A municipality or the State which has incurred net general assistance costs for the support of any eligible person may recover the full amount expended for such support either from the person so relieved or from any person liable for his support, their executors or administrators, in a civil action. In no case shall a municipality or the State be authorized to recover, through a civil action, the full or part of the amount expended for the support of a previously eligible person.

1. Repayment. If as a result of the repayment of such amount this person would, in all probability, again become eligible for general assistance; or

2. Public assistance. If this person is presently receiving any form of public assistance.

This statute makes it clear that a municipality or the State may sue (in either Superior, District, or Small Claims Court) any individual who has received general assistance, providing that the individual is not presently receiving any form of public assistance or "would, in all probability, again become eligible for general assistance." The municipality or the State may

also bring action in like manner against the parents, grandparents, children, and grandchildren for recovery "in proportion to their respective ability" 22 M.R.S.A. 4467. Indeed, this vicarious liability was extended by 22 M.R.S.A. § 4500-A to "any person liable for" the support of the general assistance recipient.

Your concerns relate to conditions a municipality must fulfill in order to recover the amount expended by the municipality for the support of a recipient of general assistance. I will address these questions in the order in which they were asked.

1) May a municipality require repayment of general assistance received by an individual or family if that municipality has not enacted this condition in the form of an ordinance with detailed criteria for repayment?

Yes. Every town is mandated in 22 M.R.S.A. § 4504 to operate and administer a general assistance program in accordance with an ordinance that sets forth eligibility requirements. Section 4450 (2) defines a general assistance program as "a service...for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families." Neither § 4504 nor § 4450 (2) implies that standards related to anything other than determining entitlement need be included in the ordinance. Also, the legislative history of the 1977 revision of the general assistance laws gives no indication that any other interpretation is required. Indeed, the Legislature obviously intended that sections 4500-A and 4467 would suffice to allow municipalities to seek recovery of their expenses in State court in accordance with the standards set forth in those sections. However, nothing prohibits a municipality from including a recovery provision in its general assistance ordinance, as long as the provision does not conflict with State law.

2) May a municipality require repayment of general assistance received by an individual or family if that municipality has not informed the specific individual of this condition at the time of the application?

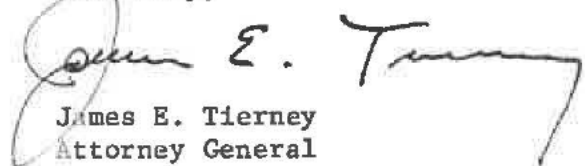
Yes. The recovery statute explicitly confers on a municipality the right to recover general assistance costs. It creates an implied promise on the part of the eligible recipient to reimburse. Auburn v. Farmingdale, 133 Me. (1934); see also Matter of Lainez, 422 NYS2d 849 (NYSur. 1979). Similarly, a municipality may recover expenditures made on behalf of an eligible person from responsible relatives under 22 M.R.S.A. § 4467. In either case, the right is created by state statute and need not be spelled out to general assistance applicants. Again, nothing prohibits a municipality from enacting an ordinance on this subject, as long as the ordinance is consistent with State law, or from informing potential applicants of the repayment procedure as a matter of policy. Indeed, it would appear to be wise public policy to put applicants and perhaps their families on notice that there could be subsequent litigation instituted on behalf of the municipality or the State to secure repayment.

3) May a municipality require repayment of general assistance received by an individual or family if that municipality has not given that individual a right to a hearing to ascertain at least that the circumstances listed under § 4500 do not exist if recoupment occurred?

Yes. The language of 22 M.R.S.A. §4507 limits the right to a fair hearing to the application stage and to efforts of revocation during the period of entitlement. The statute does not extend the right for hearing beyond those circumstances. The statute as drafted is consistent with Goldberg v. Kelly, 397 U.S. 254, (1970), and ensuing welfare due process cases. The rationale behind those cases is that due process protections require that a claimant or recipient can be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319 at 333 (1976). When a municipality is seeking recovery of general assistance funds already expended, the recipient or his liable relative faces no deprivation during the pendency of a court action and has the defenses described in the recovery statute available to him in court. The hearing offered in court appears to provide appropriate protection to the party sued.

These three answers indicate that municipalities have no special duties to general assistance recipients from whom they seek recovery under § 4500-A. The law does not bar municipalities from providing notice of the recovery provision to an applicant and offering a hearing to determine whether, under the exceptions to §4500-A, a recipient is immune from recovery. Municipalities may certainly choose to screen cases by offering such a hearing. The law, however, does not require that they do so.

Sincerely,

  
James E. Tierney  
Attorney General

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