

ARTICLE 7 THE FAIR HEARING

Sec. 7-701 Right to a Fair Hearing

Within 5 working days of receiving a written notice of denial, reduction or termination of assistance, or within 10 working days after any other act or failure to act, the applicant or his/her authorized representative has the right to request a fair hearing (22 M.R.S.A. § 4322). The right to review a decision of the general assistance administrator is a basic right of the applicant to a full evidentiary hearing and is not limited solely to a review of the decision [Carson v. Oakland, 42 A.2d 170 (Me. 1982); Thibodeau v. Lewiston, Andro. Sup. Ct. # CV-78-388].

Sec. 7-702 Method of Obtaining a Fair Hearing

Upon receiving notification of the decision of the general assistance administrator, all claimants will be informed of the method of obtaining a fair hearing. All complaints that are not clear requests for a fair hearing will be answered by a personal interview or in writing by the general assistance administrator. If the client is satisfied with the adjustment or explanation, the administrator will make an entry in the case record and file any correspondence involved.

1. Written request. To obtain a fair hearing, the claimant, or his/her authorized representative, must make a written request within 5 working days of receiving the administrator's decision to grant, deny, reduce or terminate assistance, or within 10 working days after any other act or failure to act. The administrator will make available a printed form for requesting a fair hearing and will assist the claimant in completing it if necessary. On the printed form, the claimant will give the following information:
 - A. The decision on which review is sought;
 - B. The reason(s) for the claimant's dissatisfaction and why the claimant believes he/she is eligible to receive assistance; and
 - C. The relief sought by the claimant.
 - D. The administrator cannot deny or dismiss a request for a hearing unless it has been withdrawn by the claimant.
2. Scheduling the fair hearing. Upon receipt of the completed written request the fair hearing authority must meet and hold the hearing within 5 working days. The administrator will notify the claimant in writing when and where the hearing will be held (22 M.R.S.A. § 4322). In addition to the date, time and place of the hearing, the notice of fair hearing sent to the claimant shall include, at a minimum, the claimant's rights to:
 - A. Be his or her own spokesperson at the fair hearing, or be represented by legal counsel or other spokesperson at the hearing, at the claimant's own expense;
 - B. Confront and cross-examine any witnesses presented at the hearing against the claimant; and
 - C. Present witnesses on his or her own behalf.
 - D. Arrangements for the date, time, and place of the hearing will take into consideration the convenience of the claimant and hearing authority. The claimant will be given timely notice to allow for preparation and will also be given adequate preliminary information about the hearing procedure to allow for effective preparation of his/her case.

Sec. 7-703 The Fair Hearing Authority

GENERAL ASSISTANCE

The municipal officers will appoint a fair hearing authority that will review decisions of the general assistance administrator when requested by any claimant or the claimant's authorized representative. The authority is charged with the responsibility of ensuring that general assistance is administered in accordance with the state law and local ordinance. The fair hearing authority shall be the board of appeals created under 30-A M.R.S.A. § 2691 and Section 2-106 of this Code. (22 M.R.S.A. § 4322). In determining the organization of the fair hearing authority, the municipal officers will use the following criteria. The person(s) serving as fair hearing authority must:

1. Not have participated in the decision which is the subject of the appeal;
2. Be impartial;
3. Be sufficiently skilled in interviewing techniques to be able to obtain evidence and the facts necessary to make a fair determination; and
4. Be capable of evaluating all evidence fairly and realistically, explaining to the claimant the laws and regulations under which the administrator operated, and interpreting to the administrator any evidence of unsound, unclear, or inadequate policies, practices or actions.

Sec. 7-704 Fair Hearing Procedure

When a claimant requesting a fair hearing is notified of the date, time, and place of the hearing in writing, he/she will also be given adequate preliminary information about the hearing procedure to allow for effective preparation of his/her case. The claimant shall be permitted to review his/her file prior to the hearing. At a minimum, the claimant will be told the following information, which will govern all fair hearings. All fair hearings will:

1. Be conducted privately, and will be open only to the claimant, witnesses, legal counsel, or others whom the claimant wants present, and the general assistance administrator, his/her agents, counsel and witnesses;
2. Be opened with a presentation of the issue by the fair hearing authority;
3. Be conducted informally, without technical rules of evidence, but subject to the requirements of due process;
4. Allow the claimant and the administrator the option to present their positions for themselves or with the aid of others, including legal counsel;
5. Give all participants an opportunity to present oral or written testimony or documentary evidence, offer rebuttal; question witnesses presented at the hearing; and examine all evidence presented at the hearing;
6. Result in a decision, based exclusively on evidence or testimony presented at the hearing; and
7. Be tape recorded, and result in a written decision that is given to the claimant and filed with evidence introduced at the hearing. The fair hearing authority will allow the claimant to establish all pertinent facts and circumstances, and to advance any arguments without undue interference. Information that the claimant does not have an opportunity to hear or see will not be used in the fair hearing decision or made part of the hearing record. Any material reviewed by the fair hearing authority must be made available to the claimant or his/her representative. The claimant will be responsible for preparing a written transcript if he/she wishes to pursue court action.

The fair hearing authority shall admit all evidence if it is the kind of evidence upon

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which reasonable persons are accustomed to rely in the conduct of serious affairs. (22 M.R.S.A. §4322).

Sec. 7-705 The Fair Hearing Decision

1. Notice. The decision of the fair hearing authority will be binding on the general assistance administrator, and will be communicated in writing to the claimant within 5 working days after completion of the hearing. A copy of the notice of the decision will be given to the claimant. The hearing record and the case record will be maintained by the general assistance administrator.
2. Content of notice. Written notice of the decision will contain the following:
 - A. A statement of the issue;
 - B. Relevant facts brought out at the hearing;
 - C. Pertinent provisions in the law or of this Chapter (General Assistance) related to the decision; and
 - D. The decision and the reasons for it.
 - E. The written notice of the decision will state that if the claimant is dissatisfied with the fair hearing decision, he/she has a further legal right to appeal the decision pursuant to the Maine Rules of Civil Procedure, Rule 80B. To take advantage of this right, the claimant must file a petition for review with the Superior Court within 30 days of receipt of the fair hearing decision.
 - F. When the decision by the fair hearing authority or court authorizes assistance to the claimant, the assistance will be provided within 24 hours.