

Town of Windham

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To: Tony Plante
From: Phyllis Moss *P. Moss*
Re: General Assistance Policy Guidance
Date: September 12, 2014

At the September 9, 2014 Council meeting, the Council discussed the DHHS General Assistance Guidance mandating that

- a. all municipalities determine if an individual that is applying for assistance is “lawfully present” and
- b. if an individual is determined to be not “lawfully present” no General Assistance benefits be provided to them.

The Council was provided with background information and the recommendation from the Town’s legal counsel, Jensen Baird Gardner & Henry (JBGH), indicating that this is a policy decision that must be made by the Town. We are asking that the Council provide guidance regarding this issue at its September 23, 2014 Council Meeting.

At the conclusion of the discussion item, the Council seemed to be leaning in favor of providing assistance to an otherwise qualifying individual regardless of immigration status and including with its response [to DHHS] a disclaimer as recommended by legal counsel.

Background

1. In 1996, President Clinton signed into law The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). As a result of the law, an alien who is not lawfully present in the U.S. is not eligible for state or local public benefits unless the state passes a new law after 8/22/96 affirmatively making them eligible. Maine has not enacted such a law.
2. On June 13, 2014, the Department of Health and Human Services (DHHS) issued a document entitled General Assistance Program Guidance (“the Guidance”). The Guidance provides, among other things, that DHHS will no longer reimburse municipalities for G.A. benefits they provide to applicants who are not “lawfully present” in the U.S.. This was later clarified in a letter (dated June 20th) from the Governor to all

municipalities stating, “If DHHS finds that a municipality fails to comply with the law, it will cut off all General Assistance reimbursement to the community” and that audits would be conducted to ensure compliance.

3. On June 17, 2014, the Attorney General , Janet Mills, sent a letter to Maine Municipal Association expressing concerns about the Guidance:
 - a. The Guidance purports to require GA Administrators to make sufficient findings about the immigration status of all applicants to determine which are “unlawfully present.”
 - b. This would impose a mandate on the towns that is not funded by the state and not passed by a 2/3rd vote of the Maine Legislature.
4. On July 10, 2014, Maine Municipal Association, the Cities of Portland and Westbrook filed a petition for review of the DHHS Guidance stating that it did not comply with the rulemaking procedures of the Maine Administrative Procedure Act, under 5 M.R.S. § 1107(c), including the DHHS audit and a presumptive denial of reimbursement for all General Assistance if noncompliance is found, is
 - a. In violation of constitutional and statutory provisions, as alleged above;
 - b. In excess of the statutory authority of DHHS
 - c. Made upon unlawful procedure;
 - d. Affected by bias or error of law;
 - e. Unsupported by substantial evidence on the whole record; and
 - f. Arbitrary or capricious, or characterized by abuse of discretion.

As of September 12, 2014, no decision has been made regarding the petition.

5. On September 2, 2014, DHHS provided additional guidance in the form of a Flow Chart spelling out what documents are needed for verification to determine if an individual is not “lawfully present” which may be incomplete according to the Town’s attorneys.
6. The Town sought legal guidance from JBGH and was told that “there is a substantial legal concern that if you deny benefits to an otherwise qualifying individual based upon that person’s immigration status, you could be subject to litigation. As a result, you should
 - a. consider providing assistance for such persons; and
 - b. include a disclaimer with [the Town’s] response.”