

Tony Plante

From: Natalie L. Burns <nburns@JBGH.com>
Sent: Wednesday, August 27, 2014 2:17 PM
To: Phyllis A. Moss
Cc: Tony Plante; Kenneth M. Cole, III; Patricia M. Dunn
Subject: GA Guidance
Attachments: General Assistance Disclaimer (draft).docx

Phyllis,

As discussed, due to the litigation and the State's constant changes to the Guidance and sometimes conflicting advice, it has been difficult to come up with a final recommendation on how to deal with the reimbursement issue. Based upon the most recent changes from DHHS, my recommendations are as follows:

1. The revised guidance from DHHS should be utilized in determining whether aliens qualify for GA under the State's new policy. This includes a list of documents that DHHS says are the appropriate ones to make the determination of whether a non-citizen falls within an exception to the federal law. Unfortunately, as we discussed, I do not believe that the revised guidance is complete (e.g., no reference to children of domestic violence victims) or that documents actually exist for some of the exceptions.
2. If there are any GA applicants who qualify financially but cannot provide the documents listed by DHHS in the for the various exceptions, the Town will have to determine whether it is going to provide assistance nonetheless. As we discussed, if you do provide assistance, I believe that you should still run this through the Town's GA account and not otherwise, as will be discussed below.
3. Because the reimbursement form has now been modified to remove the line stating the number of illegal aliens, you do not have to worry about that. However, the Town still has to certify that it is not seeking reimbursement for "Non-Citizens who are not qualified for General Assistance as defined by Federal law in 8 U.S.C § 1621." Based upon the most recent email, the Town will not be reimbursed for any amount of GA if it includes anyone who falls within that category (although the State will allow you to resubmit an application without the request for reimbursement for anyone falling within that category). For that reason, it is my opinion that you should only submit for reimbursement for non-citizens who can provide the documentation set forth on the "Alien Status Flow Chart" provided yesterday.
4. While you should only submit for reimbursement as required by DHHS, if you decide to provide assistance to an otherwise qualified individual who cannot provide the information in the Flow Chart, you should run this through the General Assistance account. DHHS has stated that it understands that municipalities may be able to submit these individuals for reimbursement if MMA, Portland and Westbrook are successful in the pending litigation. So, all of this should continue to be treated as GA, since that is what it is and you will need to document it if you seek reimbursement in the future.
5. As set forth in the Bernstein Shur memo, 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 consider providing assistance for such persons. However, this involves a policy determination that must be made by the Town.
6. The final issue is our discussed concern about the Town having to "certify" that it has determined the immigration status of GA applicants and has not included anyone described in the certification in the request for reimbursement. Since the Flow Chart may be incomplete as to some exclusions and incorrect as to documentation, I think that the Town should include a disclaimer with its response and I have attached proposed language for this as well as reserving the Town's right to submit future requests for reimbursement for any non-citizens for whom reimbursement is not sought at this time. However, the use of the disclaimer is another policy determination for the Town to make.

Please give me a call with any questions.

Thanks,

Natalie

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