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October 19, 2016

NOTICE OF APPEAL OF THE CITY OF BELFAST

Via email, fax & FEDEX

Sam Adolphsen, Chief Operating Officer
Department of Health and Human Services
221 State Street
11 State House Station
Augusta, ME 04333-0011

Ian Miller
Department of Health and Human Services
Family Independence, 19 Union Street
11 State House Station
Augusta, ME 04333-0011

RE: Letter of September 20, 2016 from Ian Miller to Pamela Chase

Dear Mr. Miller:

Please be advised that pursuant to 22 M.R.S § 4323 (4), Notice of Appeal of the City of Belfast is hereby provided to DHHS regarding the actions taken, findings made and the legal conclusions as found in your September 20, 2016 letter to Ms. Pamela Chase, as General Assistance Administrator for the City of Belfast. I attach a copy of your letter hereto in Exhibit A, which was received by the City via certified mail on or about September 23, 2016.

Without excluding the generality of the appeal from the findings of fact and conclusions of law as stated in your September 20, 2016 letter, the City of Belfast additionally hereby appeals your letter of September 20, 2016 for the following reasons, to wit:

1. ~~It is contrary to existing law, practices and procedures of the Department of~~ Health and Human Services ("DHHS") to request resubmission of reimbursement requests beginning August, 2015. This request ~~unduly~~ ~~burdensome and unreasonable~~ in its scope and its duration. Statutory authority for General Assistance requires both the State of Maine and its member Municipal constituents to apply the General Assistance laws and regulations as ~~partners and work cooperatively~~ with one another. For several months, the City of Belfast ~~understood that DHHS was working with the City of Belfast as the~~ new General Assistance Administrator was working through all of the complexities of the process. For example, as of May 24, 2016, you provided an email to Pamela Chase, General Assistance Administrator for the City of Belfast, that all reimbursements from ~~DHHS through January, 2016~~ were in the process of being paid. Additionally, the City has been working with DHHS to refine and clarify its procedures pursuant to letters from DHHS dated April 6, 2016 and June 30, 2016. The City of Belfast provided amended Plans on August 11, 2016 through its General Assistance Administrator. Furthermore, ~~on August 22, 2016, the City Manager for the City of Belfast provided a~~ detailed response to the June 30, 2016 "audit" by DHHS. This detailed

explanation of modifications to the Plan and amendments has been entirely ignored by DHHS and it has not even been acknowledged in your September 20, 2016 letter. In short, the City of Belfast has failed to receive fair notice and due process that would support the unilateral request by DHHS to go back through hundreds of GA files running back to August 15, 2015. The City of Belfast has made every effort to follow and refine Plans of correction.

2. The findings and legal conclusions of your letter of September 20, 2016 exceed DHHS' legal authority to withhold reimbursement and issue civil penalties. 22 M.R.S. § 4323 (2) provide that penalties may not be instituted until full notice and opportunity to correct has been enjoyed by the City of Belfast. DHHS is required to identify violations, provide specific notice to the City of Belfast in which it has 30 days to correct the violation and then file a Plan with DHHS. Effectively, the City of Belfast did that on August 11, 2016 when the City's General Assistance Administrator submitted a Corrective Plan to DHHS. The Corrective Plan was further supplemented by the City Manager's filing on August 22, 2016. No notice or opportunity to respond regarding this Corrective Plan was sent to the City of Belfast until your letter of September 20, 2016 summarily setting forth penalties that DHHS "will issue," penalizing the City of Belfast. The notice and opportunity to cure statutory requirement as described in §4323 (2) have not been followed by

DHHS and the City has failed to receive its opportunity to cure after its submission of detailed and amended Plans. Additionally, at least verbally and via email, DHHS has provided misleading information in terms of the requirements of the City of Belfast outside and beyond the requirement of the General Assistance Policy Manual 10-144 Chapter 323; your letter of September 20, 2016 and the findings therein explicitly and implicitly ignore the significant discretion provided to General Assistance Administrators. You have also misstated requirements such as, for example, that one of the reasons that the City of Belfast is being penalized in this matter is because of failure of the City of Belfast to keep receipts. Receipts are not required to be kept under the existing Maine General Assistance Policy Manual. DHHS does not have the authority to withhold reimbursement in this fact pattern. See 22 M.R.S. 4323 and DHHS Rules, Chapter 323, Sec. X.

3. More specifically, there is no authority for DHHS, as you state in the second to last sentence of your letter of September 20, 2016, providing that there would be "civil penalty of not less than \$500.00 for every 30 day period Belfast had been out of compliance." This is a misstatement of the law as §4323 (2) clearly anticipates a process of notice, opportunity to cure and then penalties should the City of Belfast if it fails to cooperatively and in good faith work to comply with DHHS' requested corrections. In this case, the City filed

two amended Plans and made every effort to correct any deficiencies alleged by DHHS. The finding that DHHS will retroactively penalize the City for "every" 30 day period running back for some period of unknown time, including, but not limited to, August, 2015, is without legal authority, without due process and an abuse of discretion. In City of Portland v. Maine Department of Health and Human Services, et. al., Cumb. Sup. Ct. Dk. # AP-15-20, the Court stated: "Secondly, DHHS regulations unequivocally provide that withholding of reimbursement as a result of a review shall not take place, unless a satisfactory plan of correction has not been submitted or is not being followed. 10-344 ch. 323 Section XII page 1 (emphasis added). It is a fundamental principle of administrative law that agencies are required to follow their own rules (citations omitted)." Order, pg. 17. For some reason, this finding of Justice Warren in his Order of August 3, 2016 is not being adhered to by DHHS in this matter, which is unlawful, arbitrary and capricious.

Thank you for your consideration.

Sincerely,
KELLY & ASSOCIATES, LLC



William S. Kelly, Esq.

Encl.
cc: City of Belfast