**94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

# Chapter 401: GUIDELINES FOR DETERMINATION OF FINANCIAL ELIGIBILITY FOR ASSIGNED COUNSEL AND REIMBURSEMENT FOR ASSIGNED COUNSEL COSTS

**Summary: This chapter establishes guidelines for determining a person's financial eligibility for assigned counsel and for determining whether eligible persons should be required to reimburse the state for some or all of the cost of assigned counsel. These guidelines govern the work of financial screeners employed by the commission and are intended to provide guidance to courts in their determination of financial eligibility and the amount, if any, of reimbursement.**

## SECTION 1. DETERMINATION OF FINANCIAL ELIGIBILITY

1. Definitions. The following definitions shall be used in making a determination of financial eligibility:

A. Income. Income means actual available current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit. Income may also include potential wages from seasonal employment when the applicant has a history of seasonal employment. Types of income include, but are not limited to: wages, income from self-employment, rents, royalties, child support, alimony, Social Security benefits, including SSDI and SSI, TANF benefits, VA benefits, general assistance, cash benefits, unemployment compensation, workers compensation, insurance or pension benefits, strike benefits, interest, dividends, and military family allotments. Income does not include in-kind assistance such as food stamps or vouchers.

B. Cash assets. Cash assets means cash on hand; money in savings, checking, IRA, certificates of deposit or other readily accessible accounts; stocks or bonds that can be sold; and cash bail unless another person has been designated as the owner of the cash pursuant to 15 M.R.S.A. §1074(1).

C. Other assets. Other assets include equity in real estate equal to an amount necessary to obtain a home equity loan; cash value of insurance policies; cash value of pension, retirement, or profit sharing plans to which the applicant has access; equity value of major personal property items such as boats, snowmobiles, and motor vehicles that are not needed for work or family transportation; valuable jewelry; antiques or collections; and any other property that could be sold, exchanged, or used to obtain a loan.

D. Necessary Monthly Expenses. Necessary monthly expenses include only expenses necessary for the following:

(1) food;
(2) shelter, including mortgage payments on a principal residence, rent and utilities;
(3) medical care, including medical insurance premiums paid by the applicant and installment payments on debts for medical expenses;
(4) employment, including loan payments on a vehicle used to get to work and uniforms required by the employer;
(5) debts, including minimum payments on credit card debt and payments on student loans and long term (longer than 6 months) personal loans.

Expenses for items not listed above should not be included in the calculation of necessary monthly expenses.

2. Procedure for determining financial eligibility and amount of reimbursement. The following procedures shall be used for determining financial eligibility and the amount of any reimbursement obligation:

A. Determine gross income and assets of the applicant and all members of the applicant's family unit.

B. If the cash assets of the applicant and the applicant's family unit exceed the amounts set forth below, the applicant is not eligible for assigned counsel. For adult criminal and juvenile cases: $1,000 in cases where the most serious charge alleges a Class D or E crime; $2,000 in cases where the most serious charge alleges a C crime; $3,000 in cases where the most serious charge alleges a B crime; $4,000 in cases where the most serious charge alleges a Class A crime; and $2,500 for child protective cases.

C. If the applicant's cash assets are less than the amounts above, it is necessary to determine whether the applicant can convert other assets into cash so that the applicant can retain an attorney. If the other assets are such that they can be used to hire an attorney, the applicant is not eligible. If the applicant is or has been converting cash assets into other assets, such as making a large down payment or substantial monthly payments on a motor vehicle or similar item, this fact can be taken into consideration in determining eligibility.

D. If the applicant's cash and convertible assets equal less than the amounts listed in Paragraph 2, the income amount should be compared to the appropriate amount on the Income Table attached as Appendix A. The Income Table is based on 110% of the federal poverty guidelines and shall be updated by the Commission annually on July 1st. If the income of the applicant and applicant's family unit is less than the

appropriate amount on the Income Table, the applicant is eligible for assigned counsel.

E. In order to determine whether the applicant can reimburse the State for the expense of assigned counsel, compare the monthly income of the applicant with the applicant's necessary monthly expenses. If income exceeds necessary monthly expenses, the applicant should be required to make periodic payments based on the amount by which income exceeds necessary expenses to reimburse the State for the cost of assigned counsel. Payments should be required up to an amount equal to the maximum fee set by the Commission for the type of case for which counsel is assigned. Maximum fees are set forth on Appendix B. Cash and convertible assets that are available but are insufficient to disqualify an applicant under subsection 2 should also be considered when determining whether an applicant can make reimbursement and the amount of reimbursement.

F. Applicants whose income exceeds 110% of the federal poverty guidelines may be eligible for assigned counsel if they have extraordinary necessary monthly expenses that render them unable to retain counsel. In such cases, an order for reimbursement should be entered unless the interests of justice demand otherwise.

G. In any case where a person represented by assigned counsel subsequently retains counsel, the court should, when granting assigned counsel leave to withdraw, order the person to reimburse the State for amounts expended for representation by assigned counsel prior to the entry of appearance of retained counsel.

**SECTION 2. BAIL**

1. In all cases where a criminal defendant represented by assigned counsel has posted cash bail that has not been designated the property of another pursuant to 15 M.R.S.A. §1074(1), the bail should be ordered set-off pursuant to 15 M.R.S.A. §1074(3)(c) to reimburse counsel fees and other expenses paid by the state for representation in the proceeding in which bail is posted or in any unrelated proceeding.

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STATUTORY AUTHORITY: 4 M.R.S. § 1804(2)(A) and (4)(D)

EFFECTIVE DATE:

# APPENDIX A

## INCOME TABLE FOR DETERMINATION OF ELIGIBILITY FOR ASSIGNED COUNSEL

| Family Size | Gross Annual Income | Monthly Gross | Weekly Gross |
|---|---|---|---|
| 1 | $12,837 | $1,069.75 | $246.86 |
| 2 | $17,303 | $1,441.91 | $332.75 |
| 3 | $21,769 | $1,814.08 | $418.63 |
| 4 | $26,235 | $2,186.25 | $504.51 |
| 5 | $30,701 | $2,558.41 | $590.40 |
| 6 | $35,167 | $2,930.58 | $676.28 |
| 7 | $39,633 | $3,302.75 | $762.17 |
| 8 | $44,099 | $3,674.91 | $848.05 |
| For each additional person add | $4,466 | $372.16 | $85.88 |

| Allowable Cash Assets | |
|---|---|
| Class A | $4,000 |
| Class B | $3,000 |
| Class C | $2,000 |
| Class D & E | $1,000 |
| Protective Custody | $2,500 |

APPENDIX B

MAXIMUM FEES FOR VARIOUS CASE TYPES

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL

| Type | Amount |
|---|---|
| | |
| Class A | $2,750.00 |
| Class B & C (against person) | $2,062.50 |
| Class B & C (against property) | $1,375.00 |
| Class D & E (Superior or UCD) | $687.50 |
| Class D & E (District Court) | $495.00 |
| Post-Conviction Review | $1,100.00 |
| Probation Revocation | $495.00 |
| Miscellaneous | $495.00 |
| Juvenile | $495.00 |
| Child Protective | $825.00 |
| Termination of Parental Rights (with hearing) | $1,155.00 |
| Application for Involuntary Commitment | $385.00 |
| Petition for Emancipation | $385.00 |
| Petition for Modified Release Treatment | $385.00 |
| Petition for Release or Discharge | $385.00 |
| Criminal Direct Appeals & Appellate work | $1,100.00 |