94-649 MAINE COMMISSION ON ~~INDIGENT LEGAL~~PUBLIC DEFENSE SERVICES

Chapter 9: GUIDELINES FOR DETERMINATION OF FINANCIAL ELIGIBILITY FOR ~~ASSIGNED COUNSEL~~COUNSEL AT PDS EXPENSE ~~AND REIMBURSEMENT FOR ASSIGNED COUNSEL COSTS~~

Summary: This ~~chapter~~ 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~~counsel at PDS expense. These guidelines govern the work of financial screeners employed by the C~~c~~ommission 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~~Definitions.

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

1. **PDS or Commission.** "PDS" or "Commission" means the Maine Commission on Public Defense Services.

2. **Executive Director.** "Executive Director" means the Executive Director of the Commission or the Executive Director's decision-making designee.

3. **Applicant.** "Applicant" means a person entitled to Indigent Legal Services who has applied for court-appointed counsel at PDS expense.

4. **Indigent Legal Services.** "Indigent Legal Services" is defined by 4 M.R.S. § 1802(4).

5. **Means-Tested Benefit.** "Means-Tested Benefit" means a benefit which the Applicant receives on the basis of their poverty, as determined by a local, state, or United States federal government, and which the Applicant is currently receiving as of the date the eligibility determination is made. Means-Tested Benefits include only:

    a. Medicaid when the Medicaid application was approved based on financial eligibility. Katie Beckett MaineCare does not count as a means-tested benefit for the purposes of this Chapter;

    b. Supplemental Nutrition Assistance Program (SNAP) or food stamps;

c. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);

d. Section 8 or other housing subsidized by the state or federal government, if the Applicant is a named lessee;

e. Low-Income Home Energy Assistance Program (LIHEAP);

f. Temporary Assistance for Needy Families (TANF); and

g. Supplemental Security Income.

6. ~~A.~~ **Income**. "Income" means Applicant's 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 also includes any money that the Applicant's spouse, if married, contributes to the Applicant or their Necessary Expenses or Business Expenses, unless the spouse or the spouse's minor children are named alleged victims of a crime with which Applicant is charged. Income may also include potential wages from seasonal employment when the A~~a~~pplicant 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~~Disability Income ~~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.

7. ~~B.~~ **Cash A~~a~~ssets**. "Cash A~~a~~ssets" means Applicant's cash on hand; money in savings, checking, IRA, certificates of deposit or other readily accessible accounts; stocks or bonds that can be sold; money held in trust for the Applicant if the Applicant has access to the funds; and cryptocurrency or other digital funds. ~~and cash bail unless another person has been designated as the owner of the cash pursuant to 15 M.R.S.A. §1074(1).~~

8. ~~C.~~ **Other A~~a~~ssets**. "Other A~~a~~ssets" means ~~include~~ equity in real estate exceeding $100,000 that is Applicant's Primary Residence ~~equal to an amount necessary to obtain a home equity loan~~if it is reasonably likely that the Applicant could obtain a home equity loan; all equity in real estate that is not Applicant's Primary Residence; cash value of insurance policies; cash value of pension, retirement, or profit sharing plans to which the A~~a~~pplicant 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 nonessential property that could be sold, exchanged, or used to obtain a loan.

9. **Estimated Retained Counsel Cost.** "Estimated Retained Counsel Cost" means the amount PDS would expect that an Applicant would need to pay a private attorney if they retained counsel for their case. The Estimated Retained Counsel Cost is contained in Appendix B and shall be increased to reflect the cost of inflation on July 1st of each year. The cost of inflation will be calculated based on the Consumer Price Index, as determined by the United States Bureau of Labor Statistics.

10. ~~D.~~ **Necessary Monthly Expenses**. "Necessary M~~m~~onthly E~~e~~xpenses" ~~include only~~means expenses actually paid by the Applicant which are necessary for the following:

~~a.~~ ~~(1)~~ ~~f~~Food for Applicant and their dependents, less any food stamps or food vouchers that Applicant and/or their spouse, if married, receive;

a.

~~(2)~~ S~~s~~helter, including mortgage payments on a principal residence, rent, and utilities;

b.

~~b.~~ ~~(3)~~ M~~m~~edical care~~, including medical insurance premiums~~ paid by the A~~a~~pplicant on behalf of the Applicant or their dependents, including medical insurance premiums, medical devices, medication, ~~-~~and installment payments on debts for medical expenses;~~;~~

c.

d. Employment, including uniforms required by the employer;

e. Childcare, child support, diapers, and other expenses necessary to the health or safety of Applicant's minor child(ren) if the children reside with the Applicant;

f. Internet for the Applicant's primary residence;

g. Transportation expenses, including the cost of transportation to get to and from work, school, or medical appointments. This includes vehicle loan payments, fuel, insurance, and money paid to another for transportation to or from work, school, or medical payments; and

h. 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.~~

11. **Business Expenses.** "Business Expenses" means expenses necessary for the operation of Applicant's self-employment or business ownership and includes rent, utilities, employee

compensation, insurance, office expenses, loans on vehicles used primarily for business purposes, software subscriptions, professional services, and equipment.

12. **Net Income.** "Net Income" means the Applicant's remaining income after Necessary Expenses and Business Expenses are deducted from the Applicant's Income.

13. **Primary Residence.** "Primary Residence" means that place where an individual has a true, fixed and permanent home and principal establishment to which the individual, whenever absent, has the intention of returning. An individual may have only one permanent residence at a time and, once a permanent residence is established, that residence is presumed to continue until circumstances indicate otherwise.

SECTION 2. Procedure for Calculating Net Income of Applicants with Business Expenses.

1. To calculate the Income generated from a business owned by the Applicant, the financial screener or court must total the Income generated from said business from the twelve months preceding the date on which the screening is conducted and divide that number by twelve.

2. To calculate the Business Expenses of the Applicant, the financial screener or court must total all of Applicant's Business Expenses from the twelve months preceding the date on which the screening is conducted. Then, that total must be divided by twelve to arrive at a monthly Business Expense.

3. To calculate the Net Income of the Applicant, the financial screener or court must subtract the Business Expenses calculated in paragraph two, above, from the Income generated from the business calculated in paragraph one, above.

SECTION 3. Procedure for Determination of Financial Eligibility.

~~c. (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:~~

1. ~~A.~~If the Applicant receives a Means-Tested Benefit, they are indigent for the purposes of assigning counsel and no further inquiry is necessary.

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

2. If the Applicant does not receive a Means-Tested Benefit, the financial screener or court must calculate the Applicant's Cash Assets. If the Applicant's Cash Assets and Other Assets exceed the Estimated Retained Counsel Cost, the Applicant is not indigent for purposes of assigning counsel, unless a court determines that extraordinary circumstances which justify assigning counsel exist.

3. If the Applicant does not receive a Means-Tested Benefit and their Cash Assets do not exceed the Estimated Retained Counsel Cost, the financial screener or court must calculate the Applicant's Net Income. If the Applicant's Net Income is at or below 200% of the federal poverty level, the Applicant is indigent for purposes of assigning counsel and no further inquiry is necessary.

4. If the Applicant does not receive a Means-Tested Benefit and their Net Income exceeds 200% of the federal poverty level, they are not indigent and are not eligible for court-appointed counsel at PDS expense.

~~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.~~

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

EFFECTIVE DATE:
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APPENDIX A

INCOME TABLE FOR DETERMINATION OF ELIGIBILITY FOR ~~ASSIGNED COUNSEL~~COUNSEL AT PDS EXPENSE

200% OF THE FEDERAL POVERTY LEVEL

Family Size	Gross Annual Income	Monthly Gross	Weekly Gross
1	$31,920.00~~$17,556.00~~	$2,660.00~~$1,463.00~~	$613.85~~$337.62~~
2	$43,280.00~~$23,804.00~~	$3,606.67~~$1,983.67~~	$832.31~~$457.77~~
3	$54,640.00~~$30,052.00~~	$4,553.33~~$2,504.33~~	$1,050.77~~$577.92~~
4	$66,000.00~~$36,300.00~~	$5,500.00~~$3,025.00~~	$1,269.23~~$698.08~~
5	$77,360.00~~$42,548.00~~	$6,446.67~~$3,545.67~~	$1,487.69~~$818.23~~
6	$88,720.00~~$48,796.00~~	$7,393.33~~$4,066.33~~	$1,706.15~~$938.38~~
7	$100,080.00~~$55,044.00~~	$8,340.00~~$4,587.00~~	$1,924.62~~$1,058.54~~
8	$111,440.00~~$61,292.00~~	$9,286.67~~$5,107.67~~	$2,143.08~~$1,178.69~~
For each additional person add	$11,360~~$6,248.00~~	$946.67~~$520.67~~	$218.46~~$120.15~~

~~**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~~

~~FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL~~

~~Type~~	**~~Amount~~**
~~Class A~~	~~$2,500.00~~
~~Class B & C (against person)~~	~~$1,875.00~~
~~Class B & C (against property)~~	~~$1,250.00~~
~~Class D & E (Superior or UCD)~~	~~$625.00~~
~~Class D & E (District Court)~~	~~$450.00~~
~~Post-Conviction Review~~	~~$1,000.00~~
~~Probation Revocation~~	~~$450.00~~
~~Miscellaneous~~	~~$450.00~~
~~Juvenile~~	~~$450.00~~
~~Child Protective~~	~~$750.00~~
~~Termination of Parental Rights (with hearing)~~	~~$1,050.00~~
~~Application for Involuntary Commitment~~	~~$350.00~~
~~Petition for Emancipation~~	~~$350.00~~
~~Petition for Modified Release Treatment~~	~~$350.00~~
~~Petition for Release or Discharge~~	~~$350.00~~
~~Criminal Direct Appeals & Appellate work~~	~~$1,000.00~~
~~Unsuccessful Application for Certificate of Probably Cause~~	~~$750.00~~

APPENDIX B

ESTIMATED RETAINED COUNSEL COST:

1. For adult criminal cases:

    i. $4,000 in cases where the most serious charge alleges a Class D or E crime.

    ii. $10,000 in cases where the most serious charge alleges a Class B or C crime.

    iii. $12,000 in cases where the most serious charge alleges a Class A crime.

    iv. $78,200.00 in cases where the most serious charge alleges a homicide offense.

2. For child protection cases, $10,000.