

## Andrus, Justin

---

**From:** Maciag, Eleanor  
**Sent:** Thursday, June 16, 2022 11:41 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Clarification on Reconsideration Process and Application of Chapter 301 to PC Vouchers

---

**From:** Brochu, Stephen <Stephen.Brochu@maine.gov>  
**Sent:** Tuesday, March 1, 2022 2:54 PM  
**To:** MCILS <MCILS@maine.gov>  
**Cc:** Washer, Arthur <Arthur.Washer@maine.gov>; Maciag, Eleanor <Eleanor.Maciag@maine.gov>; Guillory, Christopher <Christopher.Guillory@maine.gov>; Andrus, Justin <Justin.Andrus@maine.gov>; Fisher, Darcy <Darcy.Fisher@maine.gov>  
**Subject:** Clarification on Reconsideration Process and Application of Chapter 301 to PC Vouchers

Greetings, Counsel:

I am writing to provide clarification on two issues that seem to be causing some confusion among Counsel. First, I will discuss the Reconsideration Process that is referenced in Chapter 301, Section 6 of the MCILS Rules and was further clarified in the January 13, 2022 email of Executive Director Andrus. Second, I will discuss how the recently amended Chapter 301 applies to Protective Custody matters, and, specifically, how it changes the definition of a timely-submitted voucher.

### RECONSIDERATION PROCESS OF VOUCHERS REJECTED UNDER THE OLD RULE

Chapter 301, Section 6 of the MCILS Rules, as amended, reads, in part: "Counsel may request reconsideration of a voucher rejected between April 1, 2021 and the effective date of this rule if that voucher would be payable under this [new] rule." The effective date of the new rule was January 18, 2022.

The class of vouchers that may have been entitled to the reconsideration process were vouchers that were rejected between April 1, 2021 and January 18, 2022. Those vouchers would have been rejected while the old rule was still effective.

Also, the language of the newly amended Chapter 301, Section 6 states: "Vouchers not submitted within 90-days of a terminal case event cannot be paid, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel." This language provided a basis upon which the above-stated class of vouchers could have been reconsidered for payment. Under the old rule, there was no discretion to pay a voucher that was submitted past the 90-day deadline. Under the new rule, a late voucher can be reconsidered if the above reasons are sufficiently put forth.

On January 13, 2022, Executive Director Andrus sent an email to Counsel clarifying how the vouchers in the above-stated class could be submitted for reconsideration. It was stated that those vouchers would be reconsidered for payment if they were submitted at or before 11:59:59 p.m. Eastern Standard Time on Thursday, February 17, 2022.

The time for submitting those vouchers for reconsideration has ended.

In other words, any voucher that was rejected between April 1, 2021 and January 18, 2022 and was not submitted for reconsideration pursuant to the instructions laid out in Executive Director Andrus' 1/13 email is now considered to be finally rejected for payment.

If a voucher was sent back to the attorney or rejected for violating the 90-day rule on or after January 18, then the attorney may still request an exception to the 90-day rule under the language of Chapter 301 Section 6. Again, any voucher not submitted within 90 days of a terminal case event will not be paid unless Counsel makes the specific showing that it “could not have been timely submitted for reasons outside the actual or constructive control of counsel.”

#### APPLICATION OF AMENDED CHAPTER 301 TO PROTECTIVE CUSTODY MATTERS

The recently amended language of Chapter 301, Section 6 of the MCILS Rules significantly changes the definition of a timely-submitted voucher. Prior to January 18, 2022, a voucher in a protective custody matter had to have been submitted within the 90 days of the “end of a stage” or a stage event. Examples of an end of a stage included but was not limited to an Order after a Judicial Review, an Order after a Jeopardy Hearing, an Order after a PPO Hearing, and an Order after a TPR Hearing. If a voucher was submitted more than 90 days after one of those events, that voucher would have been rejected.

Under the recently amended Chapter 301, Section 6, vouchers “shall be submitted within ninety days of a terminal case event.” Terminal case events are:

- 1) The withdrawal of counsel
- 2) The entry of dismissal of all charges or petitions
- 3) Judgment in a case, or
- 4) Final resolution of post-judgment proceedings for which counsel is responsible.

The 90-day period for submitting a voucher shall run from the date that an Order, Judgment, or Dismissal is docketed. In the context of a protective custody matter, a “Judgment in a case” is an Order after a Termination of Parental Rights Hearing.

Under the new rule, if a submitted PC voucher does not contain any of the above-listed terminal case events, it will be considered to be an interim voucher. Most importantly, that voucher would not contain any event that would start the 90-day clock running. For example, if a voucher is now submitted more than 90 days after an Order after a Jeopardy Hearing and it does not contain any of the above terminal case events, it will be payable under the rule.

As a reminder, interim vouchers are vouchers which do not contain any terminal case events. The approval of interim vouchers was once the exception and not the rule. Now that the new language of Chapter 301, Section 6 has been adopted, interim vouchers are not only allowed but are encouraged by MCILS staff. The pertinent language in Chapter 301 reads: “Counsel are encouraged to submit interim vouchers not more often than once every 90 days per case.” If a voucher is submitted for payment and it is intended to be an interim voucher, please clearly indicate this intent in the note section of the voucher.

Finally, Chapter 301, Section 4 of the MCILS Rules addresses the various trigger limits for presumptive review. Vouchers submitted for amounts in excess of the applicable trigger for presumptive review will be considered for payment after review by the Executive Director or designee.

The applicable section for protective custody cases is Chapter 301, Section 4(2)(A), which lists the following triggering fees: (1) Child Protective cases (each stage) \$1,500, and (2) Termination of Parental Rights stage (with a hearing) \$2,500. The intent of this section is to show that the triggering amount will depend on the Case Type.

This section has understandably created some confusion among Counsel as it continues to use the word “stage”. Some revision of that language may be necessary in the future to make the rules more operationally consistent. For now, Counsel should simply interpret this wording to mean that when a voucher is submitted in excess of the above amounts, presumptive review will be triggered. Counsel should continue to submit vouchers when they are allowed (interim voucher) and when they are required (within 90 days of a terminal case event) under the Rule. The calculation of when the triggering fee is met and when a voucher is due are entirely separate considerations.

I sincerely hope that this email clarifies these issues. I appreciate that many of you are trying to understand and work through some of the significant changes that have occurred in the last few months. I also appreciate that many of you have taken the time to read through the Case Entry and Billing Guidance that was sent out on February 3<sup>rd</sup> of this year.

Please continue to contact myself ([stephen.brochu@maine.gov](mailto:stephen.brochu@maine.gov)) or Art ([arthur.washer@maine.gov](mailto:arthur.washer@maine.gov)) with any questions or concerns you may have regarding any of the recent billing changes.

Sincerely,

Steve Brochu

Stephen Brochu  
Audit Director  
Maine Commission On Indigent Legal Services  
(207) 287-3275  
[Stephen.brochu@maine.gov](mailto:Stephen.brochu@maine.gov)