



Administrative Policy 02 Financial Eligibility

Approved by CEO: S. Polkosnik Date: Nov. 20/15
Suzanne Polkosnik, President & CEO

Takes effect on: **December 7, 2015**

Previous Policy: February 2014 Rules,
2009 Ops Manual, 2012 LSC SOP Manual

Purpose: To set out policy, protocol and criteria necessary to implement the Financial Eligibility Guidelines in the 2015 Legal Aid Alberta Rules.

Related Rules: Part II, Rules 2.1 to 2.10 as amended
Part IV, Rules 4.1 to 4.8 as amended
Schedule 1, Definitions as amended

Policy

Interpreting Definitions in the Rules

1. A client's family and dependents do not include:
 - a. children under a Permanent Guardianship Order;
 - b. children residing with the client less than 40 per cent of the time;
 - c. foster children living in the home;
 - d. adults who are living in the home, except where they are included in the definition of dependents in Schedule 1 of the Rules;
 - e. the dependents of adults referred to in section 1.d., who are living in the home;
 - f. a client's spouse who is no longer living in the home; and
 - g. a client's spouse who is living in the home but is living separate and apart within the home.

2. For the purpose of determining what is a "reasonable period of time" to convert assets into cash, Legal Aid Alberta will take the circumstances of the client into consideration, including:
 - a. the urgency of the legal matter;
 - b. the marketability of the assets; and
 - c. the options available to the client for conversion of the assets.

When do Financial Eligibility Guidelines and Policies not apply?



3. Financial Eligibility Guidelines do not apply to Applications for Bail for clients who have a criminal matter and are in custody. The Bail Only Certificate will permit 1 appearance whether in Provincial Court or in the Court of Queen's Bench. Where a client seeks to appeal the bail decision, legal merit will be required to meet service eligibility guidelines.
4. Where LAA provides services through:
 - a. its own demonstration project or pilot project; or
 - b. a collaborative or partnership project operated jointly by Legal Aid Alberta and one or more other government or non-profit organizations;and where the project is set to operate for a defined period of time, the CEO may decide that Financial Eligibility Guidelines do not apply, partially or fully, to clients during the term of the project.

Who makes Financial Eligibility decisions?

5. Decisions on whether or not a client meets Financial Eligibility Guidelines and Policies, including termination of services, will be made by the persons identified in accordance with Table 1 at the end of this Policy.
6. In making a financial eligibility decision, Legal Aid Alberta will consider the following:
 - a. how Legal Aid Alberta's Rules, Board Policies and Administrative Policies apply to the client and the matter;
 - b. whether the materials and information provided by the client form a sufficient basis upon which to make a decision; and
 - c. whether any of the factors which would warrant exercising discretion under the Rules or Policies exist.
7. Legal Aid Alberta will take all reasonable steps to ensure that:
 - a. the client understands the financial eligibility decision that has been made and the reasons for it; and
 - b. where the client does not agree with the decision,
 - i. the client has an opportunity to ask questions of the decision-maker and get further clarification, if requested;
 - ii. the decision-maker or delegate explains how the client can ask for a review of the decision or, where no review is available, that the decision is final; and
 - iii. where review is available, the client may be assisted in making a Request to Review.

On what basis, beyond what is in the Rules, is allowed income calculated?

8. The Financial Eligibility Guidelines and Policies for allowed income will be applied using two time periods, being the 30 days and the 12 months immediately preceding the date the client requests assistance from Legal Aid Alberta on a matter.

9. Allowed income does not include:
 - a. income tax refunds;
 - b. money received from student loans;
 - c. Child Tax Benefit or National Child Care Benefit;
 - d. GST rebates; and
 - e. payments received for foster children.

10. Registered Retirement Savings Plan (RRSP) or pension contributions may be deducted in calculating allowed income, if the client's employer requires those payments to be made.

When will Legal Aid Alberta re-assess financial eligibility of a client?

11. Where Financial Eligibility Guidelines apply, a client will be assessed for financial eligibility for each new legal matter regardless of when the client was previously assessed.

12. Legal Aid Alberta will re-assess financial eligibility:
 - a. every six months, for an immigration and refugee matter; and
 - b. every two years, for all other matters.

13. Legal Aid Alberta may re-assess financial eligibility where Legal Aid Alberta becomes aware of what it considers a significant change or discrepancy in the client's financial circumstances.

14. Where a re-assessment determines new levels of income or assets for a client, Fee and Payment Guidelines and Policies will apply.

Under what financial circumstances may Legal Aid Alberta terminate service provision?

15. In addition to termination provisions in the Rules or other Policies, Legal Aid Alberta may stop providing legal services where a client is no longer financially eligible for services or refuses to provide financial information.

16. Legal Aid Alberta must consider the following when deciding whether to terminate Stage 3 legal services under section 15:
 - a. if there are any court or tribunal dates scheduled and, if so, how far ahead in time;
 - b. the type of matter, legal issue and service being provided;
 - c. whether counsel is on the record at court or tribunal;
 - d. how close the matter is to a scheduled proceeding or hearing date;
 - e. how close the matter is to completion; and
 - f. the impact termination of services may have upon the client and the client's family.

How does Legal Aid Alberta exercise its discretion in other areas of the Financial Eligibility Guidelines and Policies?

17. Legal Aid Alberta may exercise its discretion:
 - a. to require a client to provide proof of income to substantiate the amounts claimed by the client; or
 - b. to reconsider a decision that a client does not meet Financial Eligibility Guidelines and Policies, upon receipt of proof of income or other documentation (including when such documentation is part of a client's request for a review of that decision).

18. When exercising discretion under section 17, Legal Aid Alberta must consider, in addition to the factors in section 20, the extent of any discrepancy between the information provided by the client and any other relevant information which Legal Aid Alberta may have obtained.

19. Where a client's allowed income exceeds the Financial Eligibility Guidelines over either time period under section 8, Legal Aid Alberta may, in limited circumstances, exercise its discretion, and in accordance with the Rules, authorize the provision of services so long as the client's allowed income is no more than 10% above the Financial Eligibility Guidelines over either or both time periods.

20. Legal Aid Alberta must consider the following when deciding whether to provide legal services under section 19 of this Policy:
 - a. the reasonableness of the client's request;
 - b. the indebtedness of the client;
 - c. the client's ability to handle the matter on his or her own;
 - d. whether the client can obtain private counsel on a contingency basis;
 - e. the consequences to the client of Legal Aid Alberta not providing legal representation services; and
 - f. any other resources that may be available to the client to assist in dealing with the legal matter.

21. The CEO, or the CEO's delegate, may in their discretion authorize the provision of services to clients who do not meet the Financial Eligibility Guidelines or Policies.

22. The CEO, or the CEO's delegate, must consider the following when deciding whether to provide legal services under section 21 of this Policy:
 - a. the factors set out in Board Policy 02, Financial Eligibility – Assets, or its successor Policy;
 - b. the factors set out in section 20 of this Policy;
 - c. the timeframe within which legal services should begin; and
 - d. any other relevant item.

Table 1: Eligibility Decisions - Initial

Legal Service or Issue:	Decision Maker
Legal Representation	Legal Services Officer
Full representation – Appeals to a Court	VP, Client Services or delegate
Full representation – SCC Appeals	CEO or delegate
Termination of services, not certificate-based	Duty Counsel,
Termination of services, certificate-based	Legal Services Manager or delegate