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## Administrative Policy 04 Eligibility Decision Review and Appeal

Approved by CEO: S. Polkosnik  
Suzanne Polkosnik, President & CEO

Date: Nov. 20/15

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

**Previous Policy:** February 4, 2014

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**Purpose:** To set out the protocols and criteria for the review and appeal of eligibility decisions.

To establish an Appeal Secretariat to support appeal processes.

**Related Rules:** Part VI, Rules 6.1 to 6.11 as amended

### Policy

#### How does an eligibility decision get reviewed?

1. Where a right to a review of an eligibility decision exists under the Rules or Policies, a client who wishes to request a review on his or her eligibility must:
  - a. file a Request to Review in the format set by Legal Aid Alberta; and
  - b. send the completed Request to Review to Legal Aid Alberta within 15 days of the date of the decision with which the person does not agree.
2. A Request to Review must be received by Legal Aid Alberta within the time set out in the Legal Aid Alberta Rules and Policies.
3. Legal Aid Alberta can, in its discretion, waive or extend the 15 day period in section 1.
4. The reviewer will be the person identified in Table 1 at the end of this policy.
5. The reviewer may:
  - a. uphold the eligibility decision;
  - b. vary the eligibility decision;
  - c. overturn the eligibility decision and substitute her or his own decision;
  - d. return the matter to the original decision-maker for reconsideration, if new information has been provided by the person requesting the review; or
  - e. dismiss the review if:
    - i. the request was not received within the time limits in the Rules and Policies;

- ii. the decision for which the review is requested is not a decision for which review is available;
  - iii. the request does not identify an error in the eligibility decision.
6. The client requesting the review has no right to appear in person before the reviewer.
7. The reviewer will:
  - a. conduct the review within 15 working days of the receipt of the Request to Review or final production of the documents required by Legal Aid Alberta for the review, whichever is later, or as soon as possible thereafter;
  - b. base the review on materials in the Request for Review, any client records relating to the matter under review and any other material the reviewer deems relevant;
  - c. advise the client, in writing, of the reviewer's decision within five working days of making that decision; and
  - d. where the client's request was refused and where there is a right to appeal the review decision, provide the client with information on the right to appeal.
8. The reviewer must comply with and is bound by Legal Aid Alberta's Rules, Board Policies and Administrative Policies in making his or her decision.
9. The reviewer will consider the following when making a review decision:
  - a. how Legal Aid Alberta's Rules, Board Policies and Administrative Policies apply to the facts of the matter and decision under review;
  - b. whether the materials and information relating to the matter under review form a sufficient basis upon which to make a decision;
  - c. whether the decision under review was based on an error or misapplication of the Rules, Board Policies or Administrative Policies; and
  - d. whether any of the factors which would warrant exercising discretion under the Rules or Policies exist in the matter and decision under review.
10. A copy of the reviewer's decision will be attached to the client's electronic case record, if any.

### **How does a decision get appealed?**

11. Where a right of appeal exists under the Rules or Board Policies, a client who wishes to request an appeal of a review decision on his or her matter must send a Request to Appeal, in the format set by Legal Aid Alberta, to Legal Aid Alberta within 30 days of the date of the reviewer's decision.
12. A Request to Appeal must be received by Legal Aid Alberta within the time set out in the Legal Aid Alberta Rules and Policies.
13. Legal Aid Alberta can, in its discretion, waive or extend the 30 day period in section 11.

14. Legal Aid Alberta may return a Request to Appeal to the appellant where the eligibility decision has not gone to review or a review decision has not yet been made.
15. The Appeal Committee may:
  - a. allow the appeal in whole;
  - b. allow the appeal in part and substitute its own decision;
  - c. dismiss the appeal; or
  - d. dismiss the appeal, without an oral hearing even where one was requested, if:
    - i. the decision for which the appeal is requested is not a decision for which appeal is available; or
    - ii. the request does not identify an error in the reviewer's decision.
16. The Appeal Committee must comply with and is bound by Legal Aid Alberta's Rules, Board Policies and Administrative Policies when making a decision.
17. Unless the appellant requests an oral hearing, the appeal is an appeal on the record and the appellant has no right to appear in person before the Appeal Committee.
18. Where an appellant requests an oral hearing, notice of the hearing date, time and location may be given to the appellant by telephone, email or regular mail.
19. The Appeal Committee will:
  - a. conduct the appeal within 15 working days of the receipt of the Request to Appeal or the documents required by Legal Aid Alberta for the appeal, whichever is later, or as soon as possible thereafter;
  - b. base its decision on the materials in the Request for Appeal, the materials which were available to the reviewer, and any other materials it believes are relevant; and
  - c. advise the client in writing of the appeal decision within 10 working days of making that decision.
20. The Appeal Committee will consider the following when making an appeal decision:
  - a. how Legal Aid Alberta's Rules, Board Policies and Administrative Policies apply to the facts of the matter and decision under appeal;
  - b. whether the materials and information relating to the matter under appeal form a sufficient basis upon which to make a decision; and
  - c. whether the decision under appeal was based on an error or misapplication of the Rules, Board Policies or Administrative Policies.
21. A copy of the appeal decision will be attached to the appellant's electronic case record, if any.

**How are the appeal processes supported?**

22. Legal Aid Alberta will establish an Appeal Secretariat to support:
- a. the appeal process; and
  - b. the Appeal Committee.
23. The Appeal Secretariat will:
- a. oversee and coordinate the processes for appeals, including the scheduling of appeal hearings and selection of Committee members for panels to hear the appeals;
  - b. coordinate the appointment process to the Appeal Committee;
  - c. provide orientation and training for Appeal Committee members;
  - d. maintain forms for appeal requests, hearings and decisions;
  - e. receive reports on reviews;
  - f. receive and process Requests to Appeal, including:
    - i. determining whether a request was received within the time limits in the Rules and Policies; and
    - ii. where it is determined that a request was not received within the time limits in the Rules and Policies, dismissing the appeal;
  - g. provide support for appeal hearings and decisions;
  - h. monitor and evaluate appeal processes and supports; and
  - i. report to the CEO or delegate, with recommendations, on:
    - i. the operation of the Appeal Committee including its Terms of Reference, in the format and at the times requested by the CEO or delegate; and
    - ii. issues which appear to systemically contribute to the volume or type of appeals coming before it.
24. When scheduling appeal hearings and Committee members to hear the appeals, the Appeal Secretariat will:
- a. do everything reasonably possible to meet the timelines in this Policy;
  - b. make reasonable efforts to schedule similar types of appeals on the same date;
  - c. make reasonable efforts to accommodate the person appealing, when he or she has requested an oral hearing; and
  - d. when scheduling Panel members, consider:
    - i. any specific knowledge and expertise needed for hearing the appeals being scheduled;
    - ii. the geographic location of the person appealing, their matter and the appeal hearing site;
    - iii. the availability of Committee members to sit on a Panel; and
    - iv. any other relevant factor.

**Table 1: Eligibility Decisions – Reviews and Appeals**

| Legal Service or Issue   | Right of Review                 | Appeal           |
|--|---------------------------------|------------------|
| Service or Financial Eligibility for legal representation services | VP, Client Services or delegate | Appeal Committee |
| Termination of legal representation services                       | VP, Client Services or delegate | Appeal Committee |

