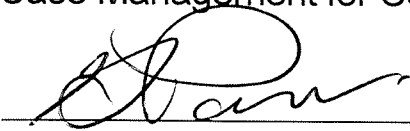


Administrative Policy 5

Case Management for Certificate-Based Matters

Approved By:


G. John Panusa, President & CEO

Approved:

April 24, 2020

Takes Effect On: April 27, 2020

Previous Policy: February 16, 2016

Purpose:

To set out protocols and guidelines for case management and billing of regular certificate cases.

To set out when a case management decision, in a certificate-based manner, is final, or when and how it can be reviewed.

Related Rules:

Part I, Rules 1.9 to 1.11 as amended
Part VII, Rules 7.1 to 7.7 as amended
Schedule 2, Tariff for Roster Lawyers as amended

Policy

General

1. In this Policy:
 - a. “case” means any client matter for which legal services are provided through a certificate issued to a roster lawyer or staff Law office; and
 - b. “lawyer” includes an articling student who is on a Legal Aid Alberta roster.
2. This Policy applies to any Legal Aid Alberta client’s case, including those as defined in the High Cost Case Management Program (being Administrative Policy 07).
3. Legal Aid Alberta will manage cases and make decisions on their management to:
 - a. improve effectiveness of service delivery and help control costs;
 - b. ensure that the provisions of the Tariff are being followed and identify where changes to the Tariff should be considered;
 - c. identify potential High Cost Cases and manage them so that they proceed as efficiently and cost-effectively as possible, while ensuring clients receive the right services for the right issues; and
 - d. identify systemic factors which contribute to costs or hinder effectiveness of service delivery and, where possible, address them on its own or in partnership with others.

4. Case management decisions will be made by the persons identified in accordance with Table 1 at the end of this Policy.
5. Case management decisions do not include eligibility decisions.
6. A person making a case management decision will consider the following:
 - a. how Legal Aid Alberta's Rules and Policies apply to the client and the matter;
 - b. whether the materials and information provided 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 person who requested a case management decision understands the decision that has been made and the reasons for it; and
 - b. where the person who made the request does not agree with the decision,
 - i. the person 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 person 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 person is assisted in making a Request to Review.
8. Legal Aid Alberta will maintain mechanisms to ensure that legal matters are managed effectively and efficiently, including but not limited to:
 - a. disallowing payment to roster lawyers where Legal Aid Alberta finds that steps were not justified, unnecessary or the matter was unreasonably prolonged; and
 - b. requiring prior approval for additional hours, items or disbursement costs not covered by the Tariff.
9. Lawyers and staff law offices must keep time records that reflect the actual time spent for all steps in a case that are billable on an hourly basis and produce them as required.
10. Legal Aid Alberta may request time records from lawyers and staff law offices:
 - a. as part of its billing review and audit processes;
 - b. when considering requests for more time on a matter than provided for in the Tariff;
or
 - c. as part of its High Cost Case Management Program.

11. The client's lawyer or staff law office may notify the client where the client's lawyer or staff law office has requested time, items or disbursements which are more than what is allowed under the Tariff.
12. Legal Aid Alberta will use its best efforts to notify a client where the client's lawyer or staff law office will no longer be providing legal services to the client under a certificate.
13. Legal Aid Alberta may develop evaluative tools and processes to assess and improve case management practices.

Certificates

14. Certificates will be issued only where Legal Aid Alberta has determined a client and the client's matter is eligible for specified certificate-based legal services.
15. Certificates may, at Legal Aid Alberta's sole discretion, include legal services which were delivered before the client or client's matter was determined by Legal Aid Alberta to be eligible to receive legal services.
16. When a certificate is issued, it shall be issued to:
 - a. an individual lawyer on a Legal Aid Alberta roster; or
 - b. a staff law office.
17. The lawyer or staff law office to whom a certificate is issued is responsible to ensure that:
 - a. the identified lawyer or staff law office provides the legal services for which the certificate was issued;
 - b. the quality of the legal services is acceptable to Legal Aid Alberta;
 - c. there is full compliance with any conditions or restrictions relating to:
 - i. the legal services to be provided; and
 - ii. the disposition of funds or property received during the course of the matter;
 - d. Legal Aid Alberta is advised of any material change, which comes to the attention of the lawyer or staff law office, in the client's financial situation, the progress of the client's matter or any other change that could affect the client's continued eligibility for Legal Aid Alberta legal services; and
 - e. the lawyer or staff law office complies with Legal Aid Alberta Rules, Policies and Procedures in the delivery of the legal services.
18. Nothing in sections 16 or 17 prevents the lawyer from obtaining minor assistance in the provision of legal services from other lawyers or staff within that lawyer's office.
19. A certificate may include, but not be limited to, conditions or restrictions relating to:

- a. obligations for client fee payments or the giving of security for client fees (only where the lawyer will be receiving funds or property division);
 - b. the number of hours of legal service that may be provided; and
 - c. the types or scope of legal services that may be provided.
20. Additional legal services or legal issues may be added to an existing certificate, without first requiring the client to obtain a new assessment, in accordance with the Service Eligibility Policy.
21. A certificate will be finalized when:
- a. the services which were the subject of the certificate have been provided or terminated under section 22; or
 - b. the lawyer or staff law office withdraws or is removed by Legal Aid Alberta from the matter; and
 - c. a final account balance has been paid.
22. Services may be terminated when Legal Aid Alberta has decided:
- a. a client is no longer eligible for the services which were the subject of the certificate; or
 - b. to stop providing legal services to the client.
23. Finalization of a certificate does not end any outstanding obligations of the client or the lawyer to Legal Aid Alberta.

Selecting lawyers for cases

24. Once client eligibility for certificate-based legal services has been determined, Legal Aid Alberta will take all reasonable steps to select and appoint a lawyer or staff law office as soon as possible.
25. Where a matter falls within the geographic and legal services areas of a staff law office, Legal Aid Alberta will appoint that staff law office except where:
- a. there is an existing certificate appointing a roster lawyer and, in Legal Aid Alberta's sole discretion, it is in the best interests of the client and Legal Aid Alberta to appoint the same lawyer;
 - b. a conflict of interest exists; or
 - c. the staff law office refuses the appointment.
26. Where a matter falls within a legal service area of a staff law office but is not within its geographic service area, Legal Aid Alberta may appoint that staff law office where it would be in the best interests of the client and Legal Aid Alberta.

27. Subject to sections 25 and 26, Legal Aid Alberta will, in its sole discretion, select the most appropriate lawyer by considering the following:
 - a. any standards relating to the roster on which the lawyer has been placed;
 - b. maintaining an equitable distribution of certificates;
 - i. ensuring the lawyer has the appropriate level of experience or expertise;
 - ii. maintaining geographic proximity to the client and/or the court or tribunal;
 - c. ensuring the lawyer is available to provide services; and
 - d. a request by the client for a specific lawyer or staff law office.
28. Once Legal Aid Alberta has made a selection, it will advise the lawyer or staff law office that it wishes to appoint the lawyer or staff law office.
29. Where a lawyer or staff law office does not respond or accept the appointment within the time set by Legal Aid Alberta, it may make a different selection.
30. Where a lawyer or staff law office accepts the appointment, Legal Aid Alberta will send the lawyer or staff law office a certificate and other relevant information.
31. Where an appointed lawyer or staff law office requests that an additional lawyer or staff law office be appointed to assist in the provision of the certificate-based legal services, Legal Aid Alberta may in its sole discretion determine whether or not to make such an appointment.

Changing a client's appointed lawyer

32. Before changing a client's appointed lawyer or staff law office, Legal Aid Alberta will try to identify and facilitate a resolution of any communication or other issues between the client and the lawyer or staff law office.
33. When deciding whether to change a client's appointed lawyer or staff law office, Legal Aid Alberta will consider:
 - a. the seriousness of the client's matter;
 - b. the complexity of the case;
 - c. the personal circumstances of the client;
 - d. the relationship between the client and the lawyer or staff law office; and
 - e. any other factors identified in the Legal Aid Alberta Rules or Policies.
34. Legal Aid Alberta will replace a client's appointed lawyer where the appointed lawyer has been suspended or removed from a roster.
35. Legal Aid Alberta may replace a client's appointed lawyer where the appointed lawyer is unable to provide the services as required under the certificate.

36. Legal Aid Alberta may refuse a client request for a change of lawyer or staff law office where the client has:
 - a. refused to take reasonable steps to work with the lawyer, staff law office or Legal Aid Alberta;
 - b. refused to do something that the client needed to do before the next step in the matter could be taken; or
 - c. already requested and received a change of lawyer.

37. Where a lawyer or staff law office requests to be removed from a certificate for the reasons in section 36(a) or 36(b), Legal Aid Alberta will decide whether or not the client is still eligible for services before appointing another lawyer on the certificate.

Billing and reporting

38. An appointed lawyer or staff law office must submit bills for fees and disbursements, along with case management reports, in accordance with Legal Aid Alberta's Rules, Policies and procedures relating to case management of regular or high cost cases.

39. Legal Aid Alberta may require a lawyer or staff law office to report on the status of a case prior to the submission of a bill.

40. The following billing protocols apply to all bills submitted by a lawyer or staff law office for a case:
 - a. all bills must be submitted in the format required by Legal Aid Alberta;
 - b. where a lawyer or staff law office represents co-accused or co-clients on a matter, the lawyer or staff law office will bill at one half the applicable tariff item rates plus 10%, on each certificate, for all jointly-rendered services;
 - c. where a lawyer or staff law office has more than one certificate for a client, and completes more than one case at the same court or tribunal appearance, the lawyer and staff law office may bill the applicable tariff fee on only one certificate;
 - d. Legal Aid Alberta may require a lawyer or staff law office to produce receipts or other proof of disbursements billed on a certificate before it will be approved for payment;
 - e. GST is paid on all fees and applicable disbursements;
 - f. a lawyer or staff office must submit their final bill on a case within six months of the date of completion of the certificate services;
 - g. the final bill must include the outcome of the case, the date upon which certificate services were completed and any other matters required by Legal Aid Alberta; and
 - h. a lawyer or staff law office has 45 days after submission of an interim or final bill to correct any errors or omissions.

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41. Although Legal Aid Alberta does not ordinarily pay for lost trial or hearing time that a lawyer expected to be able to bill under the Tariff, Legal Aid Alberta may, at its discretion, decide to compensate a lawyer if a matter unexpectedly fails to proceed and if the case was subsequently concluded without a trial or hearing (that is, the matter was not merely adjourned). When deciding whether to grant a lawyer's authorization request and when deciding how much to compensate the lawyer, Legal Aid Alberta may consider:
 - a. the reason the trial or hearing did not proceed;
 - b. how much time the anticipated trial or hearing took up in the lawyer's calendar;
 - c. the amount of notice the lawyer received that the trial or hearing would not proceed;
 - d. whether, with the exercise of due diligence, the lawyer might have had more notice that the trial or hearing would not proceed;
 - e. whether the lawyer can be reasonably expected to use time that was scheduled for the trial or hearing for other matters or for other remunerative work; and
 - f. the actual time the lawyer expended in preparation for the trial or hearing that would have been compensated by a block Tariff item if the trial or hearing had proceeded, but that the lawyer is now unable to bill under any other Tariff item.

 42. Notwithstanding sections 4 and 41, Legal Aid Alberta will not compensate a lawyer for lost trial or hearing time:
 - a. when the trial or hearing that did not proceed was scheduled to last fewer than five business days; or
 - b. when the lawyer had more than six months' notice that the trial or hearing would not proceed,except in extraordinary circumstances and with the approval of the CEO.

 43. Legal Aid Alberta will review all submitted bills to ensure that they comply with:
 - a. Legal Aid Alberta Rules, Policies and procedures;
 - b. the terms, conditions and restrictions of the certificate to which the bill applies; and
 - c. any case management decisions which were made relating to that certificate.

 44. Where Legal Aid Alberta determines, in its sole discretion that a lawyer has failed to comply with the requirements in the Rules, Policies or procedures for submitting a bill or where any part of a bill does not comply under section 40, Legal Aid Alberta may:
 - a. refuse to pay all or part of a lawyer's bill; and/or
 - b. remove items and amounts which do not comply and pay the balance.

 45. Legal Aid Alberta may designate one or more persons to act as a case manager for regular cases which are not in the High Cost Case Management program.

 46. The case manager will case manage regular cases by working with the lawyer or staff law office to ensure that:

- a. the lawyer or staff law office understands;
 - b. what is included and required as legal services under a certificate;
 - i. how the Tariff applies to the certificate; and
 - ii. the process for requesting additional tariff items or changes to a certificate;
 - c. the lawyer or staff law office obtains the required prior approval under the Tariff:
 - i. to proceed to trial; and
 - ii. for extra or special Tariff items and disbursements;
 - d. certificates are amended, where warranted, in accordance with the Rules and Policies; and
 - e. where it appears a lawyer or staff law office may be failing to meet obligations under a certificate, those issues are addressed.
47. Where, in the course of case management, it appears that the lawyer may not be meeting the standards or conditions required of a lawyer under Legal Aid Alberta's Roster Management Policy, the case manager will refer the issue to the Vice President, Justice Services.

Special disbursements related to experts and expert witness fees

48. Legal Aid Alberta will pay the following hourly rates for costs associated with Experts and Expert Witness Fees:
- a. Psychologists - \$155.00 per hour
 - b. General Practitioners - \$180.00 per hour
 - c. Medical Doctor Specialists (including psychiatrists) - \$200.00 per hour
 - d. Other experts -to a maximum of \$115.00 per hour

What case management decisions can be reviewed?

49. A case management decision can be reviewed only if it deals with:
- a. the amount or type of fees or disbursements paid to counsel which are:
 - i. above those set out in the Tariff; or
 - ii. discretionary in the Tariff;
 - b. refusal to provide co-counsel or an additional lawyer on a case;
 - c. refusal to change a client's appointed lawyer or staff law office; or
 - d. changes or reductions made by Legal Aid Alberta to a lawyer's bill for fees and disbursements.
50. A review decision is final and cannot be appealed.

How does a case management or high cost case management decision get reviewed?

51. Only the client may request a review of a decision identified in section 49(c).

52. Only the client's lawyer or staff law office may request a review of decisions identified in sections 49(a), 49(b), and 49(d).
53. If a person wishes to request a review of a case management decision described in section 49, the person must:
 - a. fill in the Request to Review form;
 - b. set out the reasons for disagreeing with the decision;
 - c. include copies of any documents in support of the request for internal review; and
 - d. send the completed Request to Review to Legal Aid within 15 days of the decision with which the person does not agree.
54. A copy of a Request to Review, under section 49, must be sent to the client by the client's lawyer or staff law office.
55. The reviewer will be the person or Committee identified in accordance with Table 1 of this Policy.
56. Review is a paper review and the person has no right to appear in person before the reviewer.
57. The reviewer will:
 - a. conduct the review within 15 days of the receipt of the Request;
 - b. base the review on the materials in the Request to Review, the client's records relating to the matter under review, any Case Management Plans, and any other materials the reviewer believes are relevant; and
 - c. send the person who requested the review, notice of the reviewer's decision within 5 days of making that decision.
58. A copy of the reviewer's decision will be attached to the client's electronic case record.

Table 1: Case Management Decisions

Issue	Initial Decision	Review Decision
A. For Regular Matters (not in the High Cost Case Management Program)	Case Manager or delegate	Vice President, Justice Services or delegate
B. For Matters in the High Cost Case Management Program		
• up to 900 hours or \$70,000	High Cost Case Manager or delegate	High Cost Case Committee
• over 900 hours or \$70,000	High Cost Case Committee	CEO