

10-707. Eligibility determination for indigent defense services.

[For use with Rule 10-223 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT

In the Matter of _____, a Child. No. _____

**ELIGIBILITY DETERMINATION
FOR INDIGENT DEFENSE SERVICES**

Child's Name: _____ DOB: _____ Age: _____
AKA: _____ Sex: Male Female SSN: _____
Child's Address: _____ Phone: _____
P/G/C's Name¹: _____ Phone: _____
P/G/C's Address¹: _____ Phone: _____

Charges: _____
Child Lives with: Alone: ___ Lives with: Spouse ___ Children ___ Parent ___ Friend ___ Other ___
Parent's Marital status: Single ___ Married ___ Divorced ___ Separated ___ Widowed ___
Number of dependents in household: _____

Child is in detention. Child is not in detention.
 Child is in legal custody of CYFD or other Public Agency.

PRESUMPTIVE ELIGIBILITY:

___ Parents/guardian/custodian DOES NOT receive public assistance.
___ Parents/guardian/custodian receives the following type of public assistance in _____ County:
DEPARTMENT OF HEALTH CASE MANAGEMENT SERVICES (DHMS) \$ _____
TANF/GA \$ _____ Food Stamps \$ _____ Medicaid \$ _____
Public Housing \$ _____ SSI/SSDI \$ _____
VA Disability _____

___ Unable to complete application because of possible Mental Health/Developmental Issue of Parent/Guardian/Custodian.

NET INCOME:	CHILD	PARENT, GUARDIAN, CUSTODIAN
Employer's Name	_____	_____
Employer's Phone	_____	_____
Pay Period <i>(weekly, every second week, twice monthly, monthly)</i>	_____	_____
Net take home pay <i>(salary wages minus deductions required by law)</i>	\$ _____	\$ _____
Other income sources <i>(please specify)</i>	\$ _____	\$ _____

TOTAL ANNUAL INCOME \$ _____ + **SCREENING USE ONLY** _____ = ____/____/____ **A**

ASSETS:

CASH ON HAND	\$ _____	\$ _____
BANK ACCOUNTS	\$ _____	\$ _____
REAL ESTATE (<i>equity</i>)	\$ _____	\$ _____
	\$ _____	\$ _____
MOTOR VEHICLES (<i>equity</i>)	\$ _____	\$ _____
	\$ _____	\$ _____
OTHER PERSONAL PROPERTY (<i>equity</i>):		
(<i>describe and set forth equity</i>)		
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

TOTAL ASSETS \$ _____ + **SCREENING USE ONLY** _____ = ____/____/____ **B**

EXCEPTIONAL EXPENSES (*total exceptional expenses of dependents*):

MEDICAL EXPENSES (<i>not covered by insurance</i>)	\$ _____
MEDICAL INSURANCE PAYMENTS (<i>receipts required</i>)	\$ _____
COURT-ORDER SUPPORT PAYMENTS/ALIMONY	\$ _____
CHILD-CARE PAYMENTS (<i>e.g. day care</i>)	\$ _____
OTHER (<i>describe</i>) _____	\$ _____
_____	\$ _____

TOTAL EXCEPTIONAL EXPENSES \$ _____ = ____/____/____ **C**

I UNDERSTAND THAT I WILL BE CHARGED IF THE ABOVE-NAMED CHILD IS REPRESENTED BY THE PUBLIC DEFENDER DEPARTMENT AND I AM NOT INDIGENT AS DETERMINED BY THE PUBLIC DEFENDER STANDARD.

STATE OF NEW MEXICO)
) ss
 COUNTY OF _____)

This statement is made under oath. I hereby state that the above information is correct to the best of my knowledge. I hereby authorize the screening agent, district defender, and the court to obtain information regarding my financial condition from financial institutions, employers, relatives, the internal revenue service, and other state agencies.

 Date

 Signature of parent(s)/guardian/custodian

I UNDERSTAND THAT I WILL BE CHARGED IF THE ABOVE-NAMED CHILD IS REPRESENTED BY THE PUBLIC DEFENDER DEPARTMENT AND I AM NOT INDIGENT AS DETERMINED BY THE PUBLIC DEFENDER STANDARD.

STATE OF NEW MEXICO)
) ss
 COUNTY OF _____)

Signed and sworn to (*or affirmed*) before me on _____ (*date*) by _____ (*name of*

parent, guardian, or custodian).

(Seal, if any)

Notary
My commission expires: _____

I UNDERSTAND THAT IF IT IS DETERMINED THAT I AM NOT INDIGENT, I MAY APPEAL TO THE COURT WITHIN TEN (10) DAYS AFTER THE DATE I AM ADVISED OF THIS DECISION.

____ I wish to appeal.
____ I do not wish to appeal.

Date

Signature of parent/guardian/custodian

**COLUMN "A" (net income)
plus COLUMN "B" (assets)
minus COLUMN "C" (exceptional expenses)
equals AVAILABLE FUNDS / _____ / _____**

**SCREENING USE ONLY
AVAILABLE FUNDS**

____ The parent/guardian/custodian is indigent.
____ The parent/guardian/custodian is *not* indigent.
____ The parent/guardian/custodian applicant [has] [has not] paid the \$10.00 application fee.
Receipt number: _____

Based on the above answers and information, I find that the applicant [is] [is not] indigent.

Signature of screening agent

Title

____ I find that the parents/guardian/custodian is unable to pay the \$10.00 indigency application fee due to _____ and I therefore waive the payment of the \$10.00 application fee.

Signature of Screening Agent

¹ P/G/C means parent(s)/guardian/custodian

² Dependent means any person who qualifies as a dependent of the applicant under Section 152 of the Internal Revenue Code. The Public Defender Department is committed to a policy against discrimination based on race, color, religion, national origin, age, sex, ancestry, veteran status, or mental or physical disability.

GUIDELINES FOR DETERMINING ELIGIBILITY

Pursuant to Section 31-15-7 and 32A-2-30 NMSA 1978, the following guidelines are established for determination of indigency and eligibility for public defender services in juvenile cases.

I. APPLICATION FEE

A person shall pay a non-refundable application fee for each case in the amount set in Section 35-15-12 NMSA 1978 at the time the person applies with the public defender for representation. *The interviewer will determine if the financial circumstances of the applicant are such that the fee would pose an exceptional hardship, and will recommend to the District office Administrator or Eligibility Supervisor if the fee should be waived. The interviewer will document on the application the reason for the fee waiver.*

II. PRESUMPTION OF INDIGENCY

A parent, parent(s), guardian, or custodian is presumed indigent if the parent(s), guardian, or custodian is a current recipient of state or federally administered public assistance programs for the indigent: temporary assistance for needy families (TANF), general assistance (GA), supplemental security income (SSI), social security disability income (SSDI), Veteran's disability benefits (VA) if the benefit is the sole source of income, food stamps, Medicaid, public assisted housing, or Department of Health, Case Management Services (DHMS). Proof of assistance must be attached to the application and no further inquiry is necessary. The document submitted as proof must clearly identify the child, parent, guardian, or custodian as currently receiving the qualifying benefit. Benefit cards without other supporting documents will not be accepted as proof of benefit. If the applicant is not receiving Medicaid benefits, but has dependents in the household for whom Medicaid eligibility has been determined, the applicant will be presumed indigent. Home equity, *etc.* is not to be taken into account if the parent(s), guardian, or custodian is a current recipient of one of the six programs described above. If the child is in the physical custody of the Children Youth and Family Department (CYFD) the parent(s), guardian, or custodian is presumed indigent and no further inquiry is necessary.

If the parent, guardian, or custodian is the alleged victim in the case for which application is being made, they will be approved for Public Defender representation and no further inquiry is necessary.

If the interviewer is unable to complete the indigency application or believes the information to be unreliable because of communication or other problems associated with a mental or developmental disability of the parent/guardian/custodian, indigency will be presumed. If because of the mental disability of the parent/guardian/custodian, the interviewer is unable to complete the indigency application or believes the information is unreliable, the *Mental Health/Communication* section of the application should be checked. The designated attorney for juvenile cases is to be immediately notified, and if that person is not available the duty attorney is to be immediately notified.

III. FINANCIAL RESOURCES

If the parent(s), guardian or custodian is not presumptively indigent, the screening agent shall examine the financial resources of the applicant with consideration given to:

Net Income, Paragraph A;
Assets, Paragraph B; and
Exceptional Expenses, Paragraph C.

A. **Net Income.** The screening agent shall include total salary and wages for the applicant and the applicant's spouse minus deductions required by law (FICA, state and federal withholding). Child support deductions and *medical* insurance deductions will also be considered if already deducted from salary, but will not be recounted in the *Exceptional Expenses* section if counted here. Savings deductions and non-mandatory retirement deductions will be added to the net income. In order to calculate the salary of an individual, the screening agent shall use one of the two methods:

(1) if the individual is presently unemployed, the screening agent shall ask about employment during the twelve (12) months preceding the interview date and calculate the amount of money earned during such twelve (12) months. Proof of this income must be attached to the application; or

(2) if the individual is presently employed, the screening agent shall project the current income for twelve (12) months into the future. Proof of this income must be attached to the application. If the applicant is unemployed and has no income, the screening agent shall inquire as to how the applicant "gets by." Proof of income is not required but responses must be documented on the eligibility form (*i.e.* eats on soup line, street person, sleeps in car, *etc.*) and some proof of how the individual lives must be provided if available, *i.e.*, lives with someone providing support, lives on the street (*must provide some proof of assistance from homeless shelters or other street assistance providers*). If the applicant gets by on "odd jobs," the income from the odd jobs must be verified. Zeros will not be accepted for income. If there is no income, an explanation is needed as to why there is no income and documentation is needed that sets forth the reason for no income.

(3) Any parent, guardian, or custodian that has been incarcerated for six (6) months or more is also presumed to be indigent. Proof must be provided, *i.e.*, proof of incarceration, jail release form. An individual incarcerated in a Department of Corrections facility in any state automatically qualifies.

Net income shall include, but is not limited to social security payments, union funds, veteran's benefits, worker's compensation, unemployment benefits, regular support from any absent family member, public or private employee pensions, or income from dividends, interests, rents, estates, trusts, or gifts. If the parent, guardian, or custodian lives alone but receives rent from a family member, the rent shall be considered as regular support from the parent's, guardian's, or custodian's family and shall be included as income.

The income of each of the child's parent(s), guardians, or custodians who have a legal obligation to support the child must be included in the calculation of income even though the child is not living in the same household. If one parent makes application, and the whereabouts of the other parent is unknown, the income, assets, and exceptional expenses of the applying

parent will be assessed. If the parent is deemed to not be indigent, and reimbursement is required for representation, the reimbursement contract or order of reimbursement will reflect the applying parent as owing half of the fee required for the offense in question. If the absent parent is located an order of reimbursement will be prepared for the other half of the fee.

B. **Assets.** The screening agent shall consider all assets of the child's parent(s), guardians, or custodians that are readily convertible into cash within a reasonable period of time. Assets include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. Real estate other than the primary residence shall be valued at the current full valuation on the county property tax rolls less any outstanding obligations against the property. Written documentation of both the value and the outstanding obligations will be attached to the application.

C. **Exceptional Expenses.** The screening agent shall consider any unusual expenses of the applicant and the applicant's legal dependents that would, in all probability, prohibit the applicant from being able to secure private counsel. The following expenses are *not* exceptional expenses: rent, food, utilities, gas money, consumer loans, and student loans. Exceptional expenses shall include, but not be limited to, costs for medical care or medical insurance, family support obligations, and child care payments. In order to be included as an exceptional expense:

- (1) the cost of medical care cannot be covered by insurance;
- (2) family support expense obligations must be verified by court order or a notarized statement from the person to whom the support is paid. The support must actually be paid on a regular basis; and must be verified by written documentation such as receipts or cancelled checks; and
- (3) child care must be paid on a regular basis.

If the parent(s)/guardian/custodian says that child support is paid when the parent(s)/guardian/custodian can, the payments do not qualify as exceptional expenses.

The parent(s)/guardian/custodian must provide proof of the exceptional expense incurred and proof that payment is being made on a regular basis. If proof is provided, the regular monthly payment for the exceptional expense is multiplied by twelve (12) months and the calculated amount can be deducted from total income.

Other exceptional expenses shall include: payroll garnishments, internal revenue service claims, court ordered attorney fees, or other court ordered payments and funeral expenses not covered by insurance.

An approved filing from a pending bankruptcy proceeding of a potential client can be considered in determining indigency.

IV. INDIGENCY FORMULA

An applicant is indigent if the applicant's available funds do not exceed one hundred fifty percent (150%) of the current federal poverty guidelines established by the United States Department of Labor.

The screening agent shall calculate the amount of available funds by adding the total for net income for the household (Column A) together with the total for assets for the household (Column B) and subtracting the total for exceptional expenses (Column C). If the available funds exceed one hundred fifty percent (150%) of the applicable federal poverty level guideline, the applicant is not indigent.

If a parent, guardian, or custodian does not know the income or assets of all other persons who are legally responsible for the child's support, and the whereabouts of that person(s) is known, the child is presumed not indigent and is not eligible for free representation unless the applicant produces the necessary information within two (2) working days after the interview.

V. APPEAL

If the parent(s)/guardian/custodian is found by the screening agent or the court not to be indigent, the parent(s)/guardian/custodian may appeal the decision to the district defender in those districts with public defender offices. If a parent(s), guardian, or custodian wishes to appeal the decision of the district defender, the parent(s), guardian, or custodian shall file a notice of appeal in the district court. In those districts without public defender offices, the parent, guardian, or custodian may appeal directly to the court. If the parent, guardian, or custodian wishes to appeal a finding that the parent, guardian, or custodian is not indigent:

(1) in those districts with district public defender offices, the screening agent shall notify the public defender of the appeal;

(2) in those districts without public defender offices, the screening agent shall notify the court of the appeal.

All appeals shall be filed within ten (10) working days after the date of the decision.

VI. REIMBURSEMENT

A parent, guardian, or custodian who is ineligible for free representation but is unable to hire private counsel may sign a contract for public defender representation on a reimbursement basis. The reimbursement cost shall cover all charges for legal fees, expert witness, and private investigation costs. Reimbursement fees shall be governed by the schedule adopted by the Public Defender Department. If one parent makes application, and the whereabouts of the other parent is unknown, the reimbursement contract will reflect one-half of the scheduled fee. If the absent parent is located, an order of reimbursement will be prepared for the other half of the fee.

First payment under a reimbursement contract shall be due thirty (30) days from the date of execution of the contract and note. If the parent(s), guardian, or custodian fails to complete a

contract, the order of appointment with reimbursement shall serve as notice for collection if payments are not made. If this is the case, a copy of the order of appointment and a copy of the application shall be sent to the administration office instead of the contract and note.

VII. NEW CHARGES

If a child has applied for public defender services within six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is not necessary, but the parent, guardian, or custodian shall be required to pay the application fee. A printout of the CDMS entry for the original application with the new referral should be placed in the new file being opened. If a child has applied for public defender services and been found eligible more than six (6) months prior to the filing of new charges or a probation violation, completion of a new eligibility determination form is necessary. A parent, guardian, or custodian must pay the application fee for each case for which the child seeks representation regardless of whether completion of a new eligibility documentation form is required, unless the fee has been waived.

[Adopted, effective September 24, 1986; as amended, effective August 1, 1989; December 1, 1993; February 14, 1997; November 1, 2004; as amended by Supreme Court Order No. 09-8300-038, effective October 26, 2009; 10-408 recompiled and amended as 10-707 by Supreme Court Order No. 16-8300-017, effective for all cases pending or filed on or after December 31, 2016.]