



**FINANCIAL ELIGIBILITY CRITERIA FOR CERTIFICATES  
POLICIES AND PROCEDURES MANUAL**

**November 21, 2008**

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## Overview

Legal Aid Ontario pays private lawyers acting on certificates on a fee for service basis to provide case representation to Legal Aid applicants who qualify under the established financial and legal eligibility criteria.

An overview of both types of eligibility criteria is provided below. The detailed policies and procedures pertaining to the financial criteria are described in the guidelines attached. The policies and procedures pertaining to the legal criteria are described elsewhere.

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## Financial Eligibility Criteria

The financial eligibility criteria for legal aid are based on a 'needs' test approach to determine whether or not an applicant is able to pay any or all of the cost of the legal service requested.

Where the test results show no ability to pay, an applicant will qualify for free legal aid.

Where the test results show an ability to pay, the applicant:

- may qualify for legal aid with a payment agreement whereby the applicant is required to contribute to some or all of the cost of the applicant's legal aid; or
- may be deemed ineligible for legal aid on the grounds that sufficient resources are available to the applicant to obtain legal services privately.

In this regard, the test includes the following four components in order to assess an applicant's ability to pay:

1. **A family unit definition** to identify who, if anyone besides the applicant, is to be included in the applicant's family unit for purposes of financial assessment.
2. **An asset test** to determine the net worth of the applicant's family unit based on equity in real property and liquid assets.
3. **An income test** to identify what income is to be counted as available to the applicant's family unit.
4. **A needs test** to determine the total disposable income available to the applicant's family unit.

The 'needs' test involves a comparison of the budgetary requirements (expenses) of the applicant and any dependants to pre-established allowances for basic necessities and extraordinary items. The applicant's disposable income is then calculated by subtracting the expenses allowed from the available income previously calculated.

## Legal Eligibility Criteria

The [Legal Aid Services Act](#) states the Corporation shall establish priorities for the areas of law, types of cases and types of proceedings for which it will provide legal aid services.

The Corporation is mandated to provide legal aid services in the areas of criminal law, family law, clinic law and mental health law. The Corporation may provide legal aid services in other areas of civil law.

A certificate would be refused if the applicant does not have reasonable grounds to initiate, defend or continue the proceeding.

Where an individual wishes to appeal (either in the court system or within an administrative structure) or to make an application for judicial review, a certificate may be issued with the approval of the Legal Aid Area Committee.

A certificate shall not be issued in respect of a defamation proceeding, in relater actions, in proceedings for a recovery of a penalty where the proceedings may be taken by another person and the penalty may be payable to the person instituting the proceedings, or in proceedings relating to any election.



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## I. Statutory Authority

The Financial Eligibility Criteria for Legal Aid are established by the [LGIC Regulations](#) passed pursuant to Sec. 97(2)(c) of the [Legal Aid Services Act](#) which provides that “the Lieutenant Governor in Council may make regulations prescribing financial eligibility requirements for an individual to receive legal aid services”.

The Financial Eligibility Criteria were jointly developed and approved by the Ministry of the Attorney General and Legal Aid Ontario. The standards and procedures established in accordance with the statutory authority are described in the guidelines attached.

### Who is an Applicant?

- s.2 of the [Legal Aid Services Act](#) states that an "applicant" means a person who applies for or receives legal aid. (A person does not include a Corporation.)

### Who can apply on behalf of an Applicant?

- s. 7(1) of the [Legal Aid Regulation](#) states that an application for legal aid for an minor may be made on the minor's behalf by the minor's parent or guardian.
- s. 7(2) states that an application for a person who has been found, pursuant to any Act, to be mentally incapable of managing his or her affairs may be made on the person's behalf by the person's guardian for property or guardian of the person, by the person's attorney, by a friend or relative or by the Public Guardian and Trustee.
- s. 7(3) states that for the purposes of an application under the [Substitute Decisions Act](#), the [Mental Health Act](#), of the [Health Care Consent Act](#), an application for legal aid may be made by the person or a friend or relative on the person's behalf.
- s. 7(4) states that an application for a person who is unable by reason of physical disability to make an application in person may be made by a friend or relative of the person.

### Who is a person responsible with respect to an Applicant?

- s. 2 of the [Legal Aid Services Act](#) defines a "person responsible" with respect to another person to mean a person responsible for contributing towards the costs of legal aid services provided to the other person.
- s. 2 of the [LGIC Regulation](#) states a person is responsible with respect to an applicant for a certificate if:
  - The person is legally responsible to support the applicant;
  - The person has a personal relationship with the applicant because of which the applicant, in the area director's opinion, would have a reasonable expectation of financial assistance in a situation as serious as one for which the application for legal aid services is made; or

- The person would, in the area director's opinion, receive a direct benefit if the legal aid assistance were provided to the applicant.

**What guidelines govern issuance of certificate on financial grounds?**

- s. 6(b) of the [Legal Aid Regulation](#) states that in determining whether to issue a certificate, an Area Director shall have regard to the financial eligibility requirements and the policies and priorities established by the Corporation under Section 12 of the [Legal Aid Services Act](#).
- s. 97(2)(c) of the [Legal Aid Services Act](#) states that the financial eligibility requirements for an individual are established by regulations made by the Lieutenant Governor in Council.
- s.17(3) of the [Legal Aid Services Act](#) states that an applicant for legal aid shall at the time of making the application provide information on his or her income, disposable capital, indebtedness, requirements of persons dependent on the applicant and such other information as is necessary for the Corporation to assess whether the applicant meets the prescribed eligibility requirements.

**When is an Area Director likely to refuse a certificate on financial grounds?**

- s. 16(1)(b) states an applicant is eligible for assistance if the person meets the prescribed financial eligibility requirements.
- s. 17(4) provides that the application may be refused if it does not meet the requirements or may be accepted subject to terms and conditions.

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## II. Policies and Procedures

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### II.1.1 Family Unit

#### 1.0 Authority

##### *Family Unit Design*

In accordance with the statutory authority, the Family Unit is defined to include the applicant and any other individual who:

1. has a legal obligation to support the applicant; or
2. the applicant is legally obligated to support; or
3. will benefit from the applicant's litigation; or
4. customarily pays for or contributes to the needs of the applicant in matters of similar significance; or
5. voluntarily contributes to the applicant's cost of Legal Aid.

Where support obligations exist, the applicant and the other person are expected to undergo joint financial assessment unless a conflict of interest exists between the parties. Where the applicant and/or other person refuse to be jointly assessed, a Legal Aid Area Director or Area Committee is likely to refuse Legal Aid.

The Legal Aid Area Director or Area Committee may refuse a Legal Aid certificate where the applicant is entitled to other aid and has failed to satisfy the Area Director that such aid is not available to the applicant.

#### 2.0 Policy Intent

To ensure fair and consistent treatment of persons included in the definition of the Legal Aid Family Unit.

To define who is deemed to be legally obligated to support an applicant for the purposes of joint assessment.

To define what constitutes "reasonable effort" by an applicant to obtain compensation or realize any financial resource to which he or she may be entitled.

#### 3.0 Procedures

The Family Unit design of a financial test identifies who, besides the applicant, is to be included in the applicant's financial assessment. In this regard, there are three general groups of applicants under the Legal Aid Family Unit design. These are:

1. Applicants with a "spouse or same-sex partner" and any "dependent children";

2. "Single" applicants without a spouse or same-sex partner including single "parents" with dependent children; and
3. Applicants with "other financial sources" who may be able to assist with the applicant's cost of Legal Aid.

For each of these three groups:

- The definitions associated with the group for purposes of the financial test (e.g. "spouse", "same-sex partner", "parent", "dependent child") are identified in Section I. The definitions are based on the Family Law Act (see Appendix 1, page II-10).
- The way in which each group of applicants is assessed is explained in Section II.

➔ **Note:**

Section 32 of the Family Law Act which sets out support obligations of a child for a parent where the child is no longer a minor has not been enforced by Legal Aid.

### *Definitions*

#### *Applicants with "spouse or same-sex partner"*

##### **(a) General Rule**

- Subject to the treatment of unclear situations identified below, a "spouse" is defined to be:
  - a person who is legally married to the applicant and is not living separate and apart from the applicant for justifiable reasons such as employment, incarceration, institutionalization etc.;
  - a person of the opposite sex who is living with the applicant and although not legally married to the applicant, self declares marital status;
  - person of the opposite sex who is living with the applicant and although not legally married to the applicant:
    - has cohabited continuously with the applicant for a period of not less than three years; or
    - has cohabited with the applicant in a relationship of some permanence and is together with the applicant, the natural or adoptive parent of a child.
- Subject to the treatment of unclear situations identified below, a "same-sex partner" is defined to be:
  - a person of the same sex who is living with the applicant and self declares an equivalent to marital status;
  - a person of the same sex who is living with the applicant and:
    - cohabited continuously with the applicant for a period of not less than three years; or

- has cohabited with the applicant in a relationship of some permanence, if they are the natural or adoptive parents of a child.

➔ **Note:**

"Cohabit" means to live together in a conjugal relationship outside of marriage.

**(b) Unclear definition of Spouse or same-sex partner**

Legal Aid staff cannot determine where a living arrangement with a co-resident constitutes:

- cohabitation; or
- continuous co-residency; or
- a relationship of some permanence.

In addition, Legal Aid staff are not required to decide who is the parent of an applicant's child where the applicant is not legally married to the other person.

Instead, the applicant is required to sign a self-declaration respecting the equivalent to married status where the applicant identifies that one or the other of these arrangements exist.

If uncertainty exists, the applicant should not be required to complete the self-declaration respecting the equivalent to married status. Instead, the applicant should be treated as a single applicant without a spouse or same-sex partner for purposes of the applicant's financial assessment.

Where an applicant signs a self declaration respecting equivalent to married status and then later changes his or her mind, the reason(s) for the change should be noted on the applicant's file and the file should be brought to the attention of the Area Director for review.

If the applicant has self declared an equivalent to married status to another agency, the applicant can not refuse to make the same self declaration to Legal Aid. Instead, the previous self declaration will be applied to the Legal Aid application and the applicant will be required to undergo a joint assessment.

**Example:** A self declaration as equivalent to married status has been made for the purpose of receiving company/employee benefits for both parties. This type of self declaration applies to Legal Aid.

***"Single" applicants***

A single applicant is defined to be:

- a single individual without a spouse or same-sex partner or any dependent children; or
- a single parent with one or more dependent children.

In this regard, a single applicant includes a widow, widower, unmarried, deserted, separated or divorced person with or without dependent children.

A "separated" or "deserted" person is defined to be a legally married person with or without a dependent child who is living apart from his or her spouse and does not intend to resume that spousal relationship.

The definitions of "parent", "dependent child" and "dependent adult" are provided below. The treatment of unclear situations follows.

(a) **General Rule**

***"Parent"***

A "parent" is defined to be the father or mother of an unmarried child who is under age 18 or enrolled in a full-time program of education and, if age 16 or older, has not withdrawn from parental control. A parent includes a person who has:

- adopted a child under section 140 of the Child and Family Services Act;
- demonstrated a settled intention to treat a child as a child of his or her own family.

***"Dependent child"***

A "dependent child" is a child who is unmarried, under age 18 or enrolled in a full-time program of education, and if age 16 or older has not withdrawn from parental control. A dependent child includes a child adopted under section 140 of the Child and Family Services Act.

**→ Note:**

A dependent child:

is not obligated to support his or her parent(s);

is not normally considered to be an applicant for Legal Aid. Instead, a parent of a dependent child is expected to apply for necessary legal services on behalf of the dependent child unless extenuating circumstances exist. (See Section (b) Unclear Definition of "Parent" or "Dependent Child");

does not include a foster child who is in the care of an adult who is neither the natural or adoptive parent of the child and who has not demonstrated a settled intention to treat the child as a child of his or her own.

***"Dependent adult"***

A dependent adult would include any person for whom the applicant is providing ongoing financial support where there is no legal obligation to do so. This would exclude a spouse or same-sex partner or dependent child but would include a parent or adult child. The dependent adult is not part of the Family Unit but an additional amount of \$205 per dependent adult is allowed for basic needs. The total basic allowance plus dependent adult allowance shall not exceed the basic allowance for family size 5.

**(b) Unclear Definition of "Parent" or "Dependent Child"**

*"Settled intention"*

Legal Aid staff cannot determine when a parent has demonstrated a "settled intention" to treat a child as his or her own. Instead, "settled intention" is defined to be a situation where:

- an applicant demonstrates a settled intention by self declaring that he or she has decided to treat a child as his or her own.

*"Withdrawn from parental control"*

It is often difficult for Legal Aid staff to identify whether a child has "withdrawn from parental control".

*Young offender*

The parents or guardians who support an applicant applying for proceedings under the Young Offender Act are required to complete a financial assessment on behalf of their dependent child. Failure to do so may result in a refusal to grant assistance.

Young Offenders who have withdrawn from parental control and who are no longer dependent children when they apply to legal aid will be assessed as individuals in the normal manner.

*Attending school full-time*

The definition of dependent child includes persons age 18 or over who are attending school full-time. Depending upon the circumstances and whether or not the school and or training program is approved by the Area Director, some individuals may be treated as dependent children while others may be deemed eligible to apply for benefits as a single person.

If an applicant is uncertain as to his or her status as a "parent" or "dependent child", Legal Aid staff should refer the file to the Area Director for review.

*Applicants with an "other financial source"*

**(a) General Rule**

An "other financial source" is defined to be a person who:

- will benefit from the applicant's litigation; or
- customarily pays for or contributes to the needs of the applicant in matters of like significance; or
- voluntarily contributes to the applicant's cost of Legal Aid.

**(b) Unclear definition of "Other Financial Source"**

Where uncertainty exists concerning whether there is in fact an other financial source, or whether the other financial source can contribute to an applicant's cost of Legal Aid, the file should be reviewed by the Area Director.

*Financial Assessment of Applicants*

*Applicants with spouse or same-sex partner*

(a) **General Rule**

Subject to the exceptions given below, the applicant, spouse or same-sex partner and any dependent children are expected to be assessed as a joint family unit for purposes of Legal Aid.

Where an applicant, spouse or same-sex partner refuses to be jointly assessed, the applicant is to be advised that a refusal will jeopardize eligibility for Legal Aid. In this event, the Area Director is expected to refuse the applicant Legal Aid on financial grounds unless there are extenuating circumstances pertaining to the case.

For Legal Aid purposes, "withdrawn from parental control" is defined to be the situation where:

- A young person aged sixteen years or more self declares that he or she has voluntarily and freely made the choice to become independent and assume the responsibility for his or her own support. In this event, it can be assumed that the family unit has, in effect, been severed and the responsibility of the parent to support the child has ceased.

(b) **Exceptions**

(i) **Conflict of Interest**

In situations where there is a potential conflict of interest (e.g., one spouse suing the other for divorce or where one spouse has charged the other with assault), contact with the spouse or same-sex partner is to be waived and the spouse or same-sex partner should not be included in the applicant's financial assessment.

(ii) **Institutionalized Applicant**

Unless exceptional circumstances exist, the institutionalized applicant will be assessed as single and a financial assessment on a spouse or same-sex partner in the community will not be required. A study showed that there are no payment agreements from these assessments that would make it cost effective to assess the spouse or same-sex partner.

*Single applicant*

(a) **General Rule**

Subject to the exceptions noted below, single applicants aged 18 years and over and any dependent children are to be assessed without regard to the financial circumstances of any other person.



**(b) Exceptions**

An unwed parent who is under age 18 with a dependent child is considered eligible in his/her own right as a single person even if the young person is still living in his/her parental home.

*Applicant with an other financial source*

Where an applicant identifies an other financial source, it is the responsibility of the applicant to obtain the financial contribution identified. Any income from another financial source will be deemed to be income to the applicant.

**4.0 Observations and Comments**

*Joint Custody Situation*

In situations where the applicant or Family Partner has joint custody of a child, the child will be considered to be the dependent child of the parent who is in receipt of the Child Tax Benefit cheque.

*Definition of Spouse or Same-Sex Partner*

It is incumbent on Legal Aid staff to fully advise and explain to the applicant the policy respecting co-residency and its implications in relation to their current or future eligibility.

*Marriage/Cohabitation Contracts*

Where a spouse or same-sex partner, as defined in this manual, has been identified, a joint assessment is required regardless of the existence of a marriage or cohabitation contract. The contract does not preclude the spouse or same-sex partner from using funds to support the applicant. The spouse or same-sex partner will not be excluded from the assessment process.

*Other Financial Source for Immigration Cases*

Family and extended family members of an immigration applicant, who are residing in Ontario, will be considered an other financial source. It is assumed that the family will benefit from an applicant not being returned to the country of origin and to potential danger. The applicant will be advised to discuss a private retainer with their family and the lawyer.

Family and extended family members include parents, adult children, adult siblings, adult aunts and uncles, grandparents and adult grandchildren who are not on social assistance.

**5.0 Cross Reference**

Appendix 1 - Family Law Act excerpt.

## Appendix 1

### *Support Obligations under the Family Law Act (FLA)*

#### *1. Support Obligations between "Spouses" and "Same-sex partners"*

Section 30 of the FLA states:

"Every spouse and every same-sex partner has an obligation to provide support for himself or herself and for the other spouse or same sex-partner, in accordance with need, to the extent that he or she is capable of doing so".

In this section, a spouse is defined to be a person of the opposite sex who:

1. has entered into a marriage with an applicant which is:
  - (a) a valid marriage; or
  - (b) a voidable marriage contracted in good faith; or
  - (c) a void marriage contracted in good faith (ref. s.1(1) FLA); or
2. is not married to the applicant but has cohabited with the applicant:
  - (a) continuously for a period of not less than three years; or
  - (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child (ref. s. 29 FLA).

A same-sex partner is defined to be a person of the same sex who has cohabited with the applicant:

1. continuously for a period of not less than three years; or
2. in a relationship of some permanence, if they are the natural or adoptive parents of a child (ref. S. 29 FLA).

#### **➔ Note:**

"Cohabit" means to live together in a conjugal relationship, in or out of marriage.

Generally, no action or application for an order of support of a spouse shall be brought under the FLA after two years from the day the spouses separated.

#### *2. Support Obligations between Parents and Dependent Children*

Section 31 of the FLA states:

A parent has a legal obligation to support his or her natural or adopted child, as long as that child is under age eighteen or is enrolled in a full-time program of education. The legal obligation terminates when the child marries, or if the child withdraws from parental control at the age of sixteen or older.

Definition of "parent":

- A parent is the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a

person in whose home a child was placed as a foster child for consideration by a person having lawful custody (ref. s.1(1) FLA).

### *3. Support obligation between child and parent where child is not a minor*

Section 32 of the FLA states:

"Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so."

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## II.2.1 Assets

### 1.0 Authority

In accordance with the statutory authority, the standard exemptions for assets are:

Family Size One	\$1,000
Family Size Two	\$1,500
Family Size Three or More	\$2,000

Where the total value of 'assets' as defined below exceeds the exemption level, an applicant may be made ineligible for a Legal Aid certificate or shall be expected to contribute in full or in part to the cost of his or her Legal Aid.

Subject to the exclusions identified below, 'Asset's' are defined to mean:

- an interest in real property, excluding the amount remaining to be paid under a mortgage or agreement for sale; and
- any 'liquid' asset owned by an applicant or the spouse or same-sex partner of an applicant or any dependent child included in the applicant's financial assessment, where the asset can be readily converted into cash.

Liquid assets include:

- cash, bonds, stocks, debentures, a beneficial interest in assets held in trust and available to be used for maintenance.

Liquid assets do not include:

- the assets of a dependent child except where deemed available by the Area Director;
- assets that are the subject of an arrangement approved by the Area Director as necessary for the health and welfare of an applicant, the spouse or same-sex partner of an applicant or any dependent child;
- any death benefit payment under the Canada Pension Plan (Canada);
- any motor vehicles deemed necessary by the Area Director;
- assets held in a Registered Disability Savings Plan (RDSP);
- an amount received as compensation, other than compensation for loss of income, related to a claim of abuse sustained at an Indian residential school, including compensation received under the Indian Residential Schools Settlement Agreement;
- a loan or bursary received by an applicant, a spouse or same-sex partner of an applicant or any dependent child under one or other of the following Ontario Student Awards Programs:

- any payment received under the Ministry of Colleges and Universities Act or the Canada Student Loans Act for purposes of tuition, books, or educational supplies and expenses;
- any bursary received by a student under the Regulation 773 of the Revised Regulations of Ontario, 1990.

### 2.0 Policy Intent

To include as liquid assets, only those assets that can be readily converted into cash. To consider that necessities are not expected to be converted into cash.

To consider real property, other than a principle residence, exempt from assets, where it is considered to be necessary for the health and welfare of the applicant, and where applicable, the spouse or same-sex partner of the applicant and or any dependent children.

To determine when the liquid asset exemption should NOT be applied and when all liquid assets should be considered available for legal fees.

### 3.0 Procedures

#### Necessities

- Furniture, clothing, household effects, etc., could be readily converted into cash, but they are necessities and, consequently, are not included liquid assets.
- Vehicles of all sorts can be readily converted into cash, but in many instances they are necessities and therefore not assets. One motor vehicle per applicant is to be allowed as an excluded liquid asset. Exclusion of other vehicles is subject to the discretion of the Area Director.
- A CPP Death Benefit is most often used to cover funeral expenses and is not to be included as a liquid asset.

#### Liquid Assets

Subject to the Area Director's discretion, the following items are considered to be liquid assets:

- Cheques, money orders, etc., are liquid assets because they can be readily converted into cash;
- Guaranteed Investment Certificates and Registered Retirement Savings Plans can also be converted into cash, although sometimes with a loss of interest, or other penalty.;
- Stamps, or coin collections, antiques etc. are to be considered liquid assets;
- Payment of an income tax rebate received by an applicant or an applicant's spouse or same-sex partner is to be included as an asset.

#### Assets of Dependent Child

The assets of a dependent child are specifically excluded from liquid assets except where deemed available by the Area Director. This policy also applies where the child's assets, if in trust, can be encroached upon for legal aid.

### **Valuation of assets**

The value of an asset is to be the fair market value. Only the applicant's net equity in the item is to be considered an asset. (For example, an applicant should be allowed any loss associated with the liquidation of a Registered Retirement Savings Plan or Guaranteed Investment Certificate.)

### **Liquid Asset Exemption Levels**

An exemption against liquid assets is allowed in order to recognize that savings may be required to cover monthly expenses. However, the exemption is NOT to be applied in the following circumstances:

- where an applicant has no shelter expenses (i.e.: free rent, free room and board);
- where room and board is paid to a parent by a child who has withdrawn from parental control;
- for institutionalized clients who have no shelter expenses outside the institution;
- for Young Offender applicants who have not withdrawn from parental control;
- where money may be obtained from the sale of a non-principle/second vehicle;
- where the applicant cannot demonstrate how the savings are required or intended for necessary expenses (i.e.: difference between a bank account and a Canada Savings Bond);
- applications for legal matters where the estimated cost of legal fees is less than the total amount of liquid asset.

### **Sale or Disposition of an Asset**

Payment received from the sale of an asset is considered an asset unless, subject to the Area Director's approval, the proceeds may be used for a principal residence or are otherwise deemed to be necessary for the health and welfare of the applicant, the spouse or same-sex partner of the applicant or any dependent children. In this regard, a written statement as to the applicant's intention for disposition of the money should be obtained at the time of the financial assessment.

#### **→ Note:**

Where the Area Director approves the proceeds of a sale of an asset to be used for a principal residence, a lien may be applied by Legal Aid on the new principal residence and the applicant may be required to enter into a monthly payment agreement to repay Legal Aid.

Where an applicant, the spouse or same-sex partner of an applicant or any dependent child has accumulated or is intending to accumulate assets for the purchase of a specific item

which is necessary for his/her well being (e.g. special van, electric wheelchair, etc.) approval must be obtained from the Area Director prior to the accumulation of such excess assets. In this event, Legal Aid staff must obtain details concerning the item to be purchased, written estimated cost and supporting documentation setting out the reason the item is required (for example, doctor's report for a wheelchair) together with a recommendation to the Area Director.

### **Sale or Transfer of Assets in Past 12 months**

Where an applicant or the spouse or same-sex partner of an applicant has transferred by reason of gift, sale, quitclaim or foreclosure, any assets or realty within the preceding 12 months of the application for Legal Aid, Legal Aid staff are expected to consider whether or not the payment or consideration for the transfer of the asset was adequate or inadequate. Where the transfer was unusual, the circumstances of the expenditures are to be reported to the Area Director.

### **Inheritance/Windfall**

Inheritances and windfalls of any amount are deemed to be assets and not income.

### **Real Property**

Real property including land and buildings is considered an asset which is to be used for a private retainer. Arrangements may be made through a bank or lending agency to borrow or refinance a mortgage, to extend the amortization period of a mortgage in order to free up monthly income or to arrange a private mortgage with the lawyer.

If private financing is not available, and upon verification that every attempt for financing has been made, the property may be considered an asset against which legal aid may secure a lien. The lien becomes payable upon sale of the property, upon refinancing or renewal of the mortgage or in 5 years, whichever comes first.

### **Future Changes**

Many applicants expect changes in assets in the near future (e.g. tax rebate, inheritance, sale of realty, etc.). Where an applicant identifies such future change, it should be brought to the Area Director's attention.

## **4.0 Observations and Comments**

Where an applicant identifies assets in excess of the liquid asset exemption level per family size and the assets can be sold in a reasonable time period, Legal Aid may request an applicant to sign a Payment Agreement whereby the applicant will be required to make a future lump sum payment at the time the applicant anticipates the asset will be sold.

Large lump sums received for support arrears may be considered available for legal fees subject to Area Director discretion. The Area Director should consider whether the lump sum is for spousal support or child support and whether the funds are for past arrears owing or for future support.

The Assistive Devices Program (ADP) administered by the Ministry of Health pays for up to 75% of the cost of certain assistive devices (e.g. wheelchairs, orthotics, prosthesis, genito-

urinary supplies etc.) for persons who qualify under the ADP guidelines. Where an applicant indicates the need for an Assistive Device, information on this program may be obtained by phoning ADP (Toronto) at (416) 327-8804 or toll-free 1-800-268-6021, or TDD (for deaf people) 1-800-268-6023.

Many individuals utilize safety deposit boxes for storage of assets. When use of a safety deposit box is identified, the location and box number should be recorded on the Application Form.

Funds received from the Multi-Provincial/Territorial agreement (IE: awards for Grandview Training School, agreements to people infected with HIV through blood transfusions) are exempt as income. However, any retained funds or funds which have been redirected into other investments or assets are considered assets.

### 5.0 Cross Reference

Motor Vehicles.

One Time Extraordinary Expenses.



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## II.2.2 Motor Vehicle

### 1.0 Authority

In accordance with the statutory authority, the definition of liquid assets includes motor vehicles.

### 2.0 Policy Intent

To determine when a motor vehicle is not considered a liquid asset.

To explain the procedures related to the liquidation of additional vehicles.

### 3.0 Procedures

All applicants are allowed one motor vehicle per family.

Other vehicles may or may not be considered to be a liquid asset.

The following are some examples of when additional vehicles are not considered to be liquid assets:

- where an additional motor vehicle is considered by Legal Aid staff to be a necessity in light of family requirements and the absence of public transportation;
- farm or other vehicles necessary for use in connection with an applicant's business or employment;
- snowmobiles or other specialized vehicles necessary for transportation in remote areas during the winter months.

Where a vehicle is not considered a necessity by Legal Aid staff and where the value of the vehicle, together with other liquid assets, exceeds the liquid asset exemption level per family size, the applicant may be required to make reasonable efforts to dispose of any and all additional vehicles for fair market value. Vehicles may include automobiles, tractors, trucks, snowmobiles, motorcycles, recreation vehicles etc. For example, such a vehicle may include a mobile home used for recreational purposes and not as the applicant's home.

The value of the liquid assets shall be the market value of the additional vehicles less any verified encumbrances. The details of all vehicles including the market values and the basis upon which the decision was made to designate or not designate additional vehicles as necessary should be recorded on the applicant's file by Legal Aid staff.

### 4.0 Observations and Comments

### 5.0 Cross Reference

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## II.2.3 One Time Extraordinary Expenditure

### 1.0 Authority

In accordance with the statutory authority, the Area Director may allow an applicant to accumulate assets for an extraordinary one time expense. This may include:

- (a) dental services;
- (b) funeral and burial;
- (c) prosthetic appliances;
- (d) education or training;
- (e) travel;
- (f) moving;
- (g) home repairs;
- (h) real property;
- (i) rent.

### 2.0 Policy Intent

To recognize that some applicants have special needs which will entail a lump sum payment in the future and to allow for payment of this extraordinary expense from accumulated assets.

### 3.0 Procedures

Subject to the provisions outlined in Appendix 2, page II-19, the Area Director may allow in full an amount for an extraordinary medical expense upon verification of the expense. Any non-medical extraordinary expense is subject to Area Director Discretion.

#### **Definition**

One Time Extraordinary Expenditure is defined to be a one time expense necessary for the health and/or welfare of the applicant or applicant's benefit unit which is not reasonably avoidable.

### 4.0 Observations and Comments

### 5.0 Cross Reference

Monthly Extraordinary Items.

Appendix 2 - Extraordinary Expenditure.

## Appendix 2

### *Dental Services*

Dental services which are necessary to relieve pain, or for medical or therapeutic reasons are allowable. Dental services for cosmetic reasons such as orthodontic treatment and appliances are not allowable.

Verification by way of a dentist's note or copies of invoices is required.

### *Funeral and Burials*

Where the applicant is responsible or will be responsible for the funeral or burial expenses in the foreseeable future the Area Director may allow a reasonable exemption.

### *Prosthetic Appliances and Assistive Devices*

May Include such items as:

- back braces;
- surgical stockings;
- artificial limbs;
- any device that replaces or strengthens a bodily function including wheelchairs and inhalators;
- orthotics;
- oxygen equipment;
- eyeglasses - cost of lenses plus reasonable amount for frames;
- hearing aids.

The Assistive Devices Program (ADP) administered by the Ministry of Health pays for up to 75% of the cost of certain assistive devices (eg. wheelchairs, orthotics, prosthesis, genito-urinary supplies etc.) to persons who are eligible under the ADP guidelines. For more information a client may be referred to ADP at (416) 327-8804 or 1-800-268-6021 or TDD (for deaf applicants) 1-800-268-6023.

Verification of need and appropriate cost required by way of a doctor's letter and agency estimate is required.

### *Education or Training*

An exemption for the cost of a course of Education or a Vocational Training Program may be allowed by the Area Director.

Verification that the applicant is enrolled in the course of study is required.

### *Travel*

An exemption for the cost of travel to seek employment or attend court etc. may be allowed by the Area Director.

### *Moving*

An exemption for moving costs may be allowed by the Area Director where the applicant must relocate for employment or education purposes. The cost of moving household furniture and effects would be included in this allowance.

Verification that the move is necessary (proof of employment or enrolment in course of study) is required.

### *Home Repairs*

The Area Director may approve one time extraordinary expenditure for repairs to the applicant's residence if owned by the applicant and required in order for the applicant to continue to reside in the premises and providing the applicant is not eligible for a grant through the Ontario Home Renewal Program or the Residential Rehabilitation Assistance Program.

No exemption is to be allowed for repairs:

- where the applicant has received a loan under one of the above noted programs;
- for digging a well;
- for internal renovation or remodeling;
- for the cost of new foundations;
- for the cost of a new furnace except where the Area Director is satisfied that the existing furnace is unsafe for the occupants of the premises;
- for the cost of insulation materials;
- where in the Area Director's opinion the market value of the premises do not warrant incurring the cost of repairs.

### *Real Property*

The Area Director may exempt real property (other than the family residence) owned by the applicant or a member of the applicant's family unit from the applicant's liquid assets that are available to be sold:

- where the Area Director is satisfied that real property is necessary for the health and welfare of the applicant's benefit unit;
- the property is not marketable;

- the applicant would be unable to obtain a fair market price because of local circumstances - the applicant would be expected to receive a fair return on the property based on market conditions by offering the property for rent.

### *First and Last Months Rent*

The Area Director may exempt an amount from accumulated assets to enable the applicant to save sufficient funds to cover first and last months rent where:

- the applicant is about to be discharged from a residential facility (i.e. chronic care facility, mental institution, jail, hostel, etc.) to live permanently and independently in the community; or
- the applicant is about to leave one independent resident in the community for another because of:
  - family violence;
  - abuse of children;
  - death of supporting family member;
  - eviction.

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## II.3.1 Income

### 1.0 Authority

In accordance with the standards authorized pursuant to the statutory authority, the income of an applicant is defined to be all payments of any kind whatsoever, received by, or on behalf of, the applicant, the spouse or same-sex partner of the applicant and any dependent child and includes the net income, as determined by the Area Director, from an interest in or operation of a business, subject to the exclusion of certain payments and the provisions for income averaging specified below.

#### *Income Exclusions*

- i. The earnings of a dependent child.
- ii. The total amount of non-voluntary deductions from wages, salaries, casual earnings, training allowances and other income made in respect of:
  - income tax;
  - Canada Pension Plan;
  - Employment insurance;
  - union and professional dues;
  - wage garnishees; and
  - mandatory pension plan contributions.
- iii. Insurance premiums paid by or on behalf of the applicant, the spouse or same-sex partner of the applicant and any dependent child for health and disability insurance.
- iv. Payments made by the applicant or spouse or same-sex partner of an applicant to another person for support and maintenance paid under an order made by a court of competent jurisdiction or under a domestic contract or a paternity agreement where there is proof of payment.
- v. For each dependent child and not otherwise reimbursed or subject to reimbursement up to a maximum amount of:
  - \$390 per month for expenses paid to a non licensed child care provider; or
  - the actual amount paid if those expenses are paid to a child care provider licensed under the Day Nurseries Act  
where
    - (a) the applicant and/or, where applicable, the applicant's spouse or same-sex partner is unable to provide child care due to reasons of
      - (i) employment; or

- (ii) enrolment in a full or part-time program of education approved by the Area Director; or
    - (iii) special circumstances respecting the employment, health, disability or education of the applicant and/or the applicant's spouse or same-sex partner, where approved by the Area Director; and
  - (b) the child is less than thirteen years of age, or if the child is older and, in the opinion of the Area Director, requires care because of special circumstances.
- vi. 40 percent of the gross income as determined by the Area Director received from rental income associated with the principle residence including:
- the rental of self contained quarters;
  - the provision of lodging without meals; or
  - the rental of land or a garage;
- subject to a minimum amount of \$40 for each such renter.
- There is no income exclusion for rental income associated with a non-principle property. All income is included as net income and expenses associated with the non-principle property are identified as extraordinary needs.
- vii. 60 percent of the gross income as determined by the Area Director where an applicant or spouse or same-sex partner of an applicant is providing lodging and meals to a person subject to a minimum amount of \$40 for each such person receiving lodging and meals.
- viii. Any assistance received under the Ontario Works Act or the Ontario Disability Support Act where the applicant is a single person in receipt of social assistance or where the applicant and his/her spouse or same-sex partner both receive social assistance.
- ix. Charitable donations and gifts of small value received by an applicant, the spouse or same-sex partner of an applicant or any dependent child.
- x. Any payment received under clause 159(f) of the Child and Family Services Act, 1984.
- xi. A loan or bursary received by an applicant, a spouse or same-sex partner of an applicant or any dependent child under one or other of the following Ontario Student Awards Programs:
- any payment received under the Ministry of colleges and universities act or the Canada Student Loans Act for purposes of tuition, books, or education supplies and expenses;
  - any bursary received by a student under the Regulation 773 of the Revised Regulations of Ontario, 1990;

- where there is no other source of household income. If there is other income, only that portion of loans and bursaries applied towards tuition, books and school supplies is considered exempt from income.
- xii. Interest and dividends earned on liquid assets.
  - xiii. Any payment received from the Universal Child Care Benefit program**
  - xiv. Any payment received from the Ontario Child Benefit program.**

### *Income Averaging*

The Area Director may average the gross income for wages, salaries and casual earnings over a period not exceeding twelve months.

Where, in the opinion of the Area Director, any payment of income other than the gross income for wages, salaries and casual earnings applies to a number of months, the payment may be averaged over that number of months.

## 2.0 Policy Intent

To identify the income to be included in the applicant's financial test in order to calculate what income may be available for contribution to Legal Aid.

## 3.0 Procedures

### *General Policy*

Subject to specified exemptions, income includes all payments, inclusive of non-recurring payments, such as inheritances, insurance settlements, death benefits, etc. Unless otherwise specified, income will be treated as income for the months intended. Lump sum payments covering arrears are not regular or periodic payments and therefore must be considered as income for the months intended. Lump sum payments for support arrears are not to be included as income.

### *Support or Maintenance*

#### **Removing Dependent Child**

If a court order for support designates specific amounts payable for each child in the family, when the child is no longer a dependent child as defined under the Legal Aid test, the amount of maintenance that pertains to that child should be removed from the maintenance received. For instance, such an order might read "support in the amount of \$55.00 per week to include \$25.00 for each of the children and \$5.00 for the wife". Therefore, if the wife applied to Legal Aid and identified that one child had withdrawn from parental control, the \$25.00 per week for the child should not be included as income.



### *Periodic Income*

If income is received at periodic intervals, (e.g., mortgage receivable, pensions) the first payment received by the applicant will be averaged over the months for which it was intended. The averaged amount of this first payment will then be included as income.

### *Income Averaging*

When income from earnings is reported to be received on an irregular basis (e.g., fluctuating number of hours worked per week, seasonal employment) Legal Aid staff may average the gross income for a period of up to twelve months where it is in the applicant's interest to do so.

If the client is paid in any month after the month in which work begins, averaging may commence with the first month worked, rather than beginning the averaging period when the money is received. Whichever month is used to commence averaging, it should always be the applicant's advantage.

### *Income from Employment of Dependent Children*

All earnings of a dependent child are exempt as income i.e. the earnings of a dependent child are not to be included as part of the income deemed available to an applicant.

### *Income Waiver*

Where the gross or net income of an applicant's family unit is below the specified net income levels set out in Schedule VI, the applicant is deemed to be financially eligible for free Legal Aid subject to asset testing. Accordingly, applicants who qualify under the income waiver are not required to undergo detailed "needs" testing.

#### ➔ Note

Information is required on actual shelter and transportation costs for purposes of cost sharing in civil Legal Aid.

The income waiver will only apply for applicants who are paying shelter expenses. For non-paying boarders, applicants with no or free shelter, the income waiver will not be used and detailed needs testing is required.

### *Social Assistance Income*

**General Rule:** Where an applicant identifies that he or she is in receipt of social assistance from the provincial Ontario Disability Support Program (ODSP) or the municipal Ontario Works (OW) program, the applicant is normally eligible to receive free Legal Aid subject to asset testing. This is regardless of the monthly income received from social assistance which can vary from a minimum cheque amount of \$2.50 per month to in excess of \$1,000 per month depending upon individual circumstances and the amount of other income available to the applicant.

**Exception:** Where a Legal Aid applicant who is in receipt of social assistance self declares to Legal Aid that he or she is living in an equivalent to married situation, and the other party

is not in receipt of social assistance, the assets and income of the applicant and other party are to be jointly assessed in the normal manner. This means that, with respect to income, the applicant's social assistance income is to be added to any income received by the other party in order to perform the Legal Aid financial test. This policy also applies to situations where an applicant for Legal Aid who is not in receipt of social assistance is living as equivalent to married with a person who is in receipt of social assistance.

**Verification:** Visual verification of social assistance income is required on all social assistance cases. Applicants should be requested to provide a copy of their ODSP or OW cheque stub or other means of confirming their social assistance entitlement (e.g. letter from appropriate official).

### *Calculations*

**Gross Monthly Income:** To calculate gross monthly income the following calculations are used:

- gross weekly income x 4.3 = gross monthly income;
- gross bi-weekly income x 2.15 = gross monthly income.

**Net Income:** In most cases, net income will be calculated according to the deductions shown on the pay slips. In the absence of payslips, and when tax tables are used, the income tax deduction will be calculated according to the allowable deduction for the family size.

**Example:** Single parent with one child will have income tax deducted according to the single plus equivalent to married allowance.

### **Using Payroll Deduction Tables:**

Income tax is calculated on total taxable income. Taxable income takes into account the tax implications of support payments as follows:

#### **Court order or separation agreement *prior* to May 1/97:**

- Support paid is not taxable for the payer
  - Gross Income - Support paid = Taxable Income
- Support received is taxable for the recipient
  - Gross Income + Support = Taxable Income

#### **Court order or separation agreement *after* April 30/97:**

The following rules also apply to previous orders that specify payments made after a set date (May 1/97 or later) will not be taxable or deductible or where both parties jointly agree on a change in payments after May 1/97.

- For the payer, child support is not tax deductible but spousal support continues to be deductible
  - Gross Income ( - Spousal Support paid) = Taxable Income

- For the recipient, child support is not taxable but spousal support is
  - Gross Income ( + Spousal Support received) = Taxable Income

Employment Insurance and Canada Pension deductions are calculated on total employment income but not on non-employment income such as support, employment insurance benefits and pensions.

Child Tax Benefits and Worker's Compensation Benefits are not subject to any deductions for income tax, Employment Insurance or Canada Pension.

$$\begin{aligned} \text{Gross Income +/- Applicable Support} &= \text{Taxable Income} - \text{Income Tax} \\ &\quad \downarrow \\ &= \text{Gross Income} - \text{EI} - \text{CPP} - \text{Income Tax} - \text{Exclusions} = \\ &\quad \text{Net Income} \end{aligned}$$

Any voluntary wage deductions, such as contributions to purchase Canada Savings Bonds or funds in excess of mandatory pension plans, are not considered income exemptions and are not to be considered in calculating net income.

### 4.0 Observations and Comments

The income provisions allows the Area Director discretion to refuse or cancel a Legal Aid certificate where the applicant or spouse or same-sex partner of an applicant does not make a reasonable effort to obtain compensation or realize a financial resource to which the applicant, or spouse or same-sex partner of an applicant may be entitled. In general, this section is applicable to the types of income addressed in this guideline.

It is the responsibility of the applicant to inform Legal Aid staff of any income received. However, to avoid or reduce future overpayments, it is also incumbent on Legal Aid staff to ensure that the applicant understands that all income received (including retroactive income) must be reported to Legal Aid. This includes lump sum arrears pertaining to foreign pensions.

An applicant who has no income and few, if any, assets is normally eligible for free Legal Aid. However, the applicant is required to provide an explanation concerning his or her means of support (e.g. supported by parents, relatives, friends while job searching; living off savings while temporarily unemployed; homeless; institutionalized etc.).

An applicant who has made a voluntary assignment or has been petitioned into bankruptcy may be able to contribute towards the cost of legal fees. Although a payment agreement entered into may not be enforceable, an agreement should be offered or, if appropriate, the application refused if there is surplus income.

Income earned on liquid assets is excluded from monthly income as it is expected the asset can and should be liquidated for legal fees thereby terminating any income presently generated. Income from non-liquid assets will be included as monthly income provided

reasonable effort to liquidate has been made or verification of the non-availability of the asset has been provided.

### 5.0 Cross Reference

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## II.3.2 Child Care

### 1.0 Authority

In accordance with the standards authorized pursuant to the statutory authority, the income exemptions include an amount for necessary child care expenses for children under age 13 respecting employment, education and disability. The amount allowed varies by the type of child care.

### 2.0 Policy Intent

To recognize employment and training opportunities by allowing child care expenses as a deduction from net earnings and net training allowances.

To recognize child care costs as a special need associated with health and education.

### 3.0 Procedures

The procedures and amounts allowed for child care vary according to whether an applicant's child is in licensed or unlicensed care.

#### *Licensed Child Care*

The maximum amount of child care expenses permitted for each child is the actual amount paid where those expenses are paid to a licensed child care provider.

#### *Unlicensed Child Care*

The maximum amount of child care expenses permitted for each child is the actual amount paid subject to a maximum of \$390 per month.

#### **→ Note:**

Where special circumstances exist respecting the employment, education, health or disability of an applicant or an applicant's spouse or same-sex partner, the Area Director may approve the actual cost of up to \$390 per month for children 13 years of age or older.

Each type of child care is discussed in Appendix 1 attached.

#### *Advance Child Care Payment*

An advance child care payment may be allowed where an applicant or spouse or same-sex partner begins or changes employment and an advance child care payment is necessary to permit the employment to begin or change.

Applicants must provide verification of new employment and must be required to pay child care in advance.

### *Child Care Expenses as a Deduction*

Where the child care costs are not reimbursed nor reimbursable from another funding source, child care expenses for children under 13 years of age are allowed as a deduction from an applicant's or spouse's or same-sex partner's net earnings or net training allowance.

In family situations where both an applicant and spouse or same-sex partner are working or one person is employed and the other is in a training program, total child care costs allowed are deducted once per family unit.

Where only one person is working or in a training program, child care costs will be allowed only where the other non working spouse or same-sex partner is unable to provide the child care. For example, the non working person is too disabled to care for the children or is job searching or enrolled in full time education approved by the Area Director.

### *Partial Payments*

Where a portion of the child care costs are paid for by another funding source, the portion that is not reimbursed nor reimbursable, may be allowed as an allowable expense. For example, where a client has subsidized day care but is charged user fees of \$2.50 per day, the user fees would be an allowable deduction.

### *Verification of Child Care Costs*

Verification of child care costs may be by self-declaration by an applicant or, where deemed necessary by Legal Aid staff, receipts may be required. Verification of employment is required prior to issuance of the advance child care payment.

## 4.0 Observations and Comments

The child's age will be calculated as of the first day of the month in which the child's date of birth occurs.

Where the type of child care is unclear from the applicant's receipt, Legal Aid staff can contact the local Child Care Branch of the Ministry of Community & Social Services.

## 5.0 Cross Reference

Child Care - Appendix 3.

### Appendix 3

Child care may be informal or licensed. Both types are discussed below.

#### 1. *Licensed*

Licensed child care, also called formal child care, is child care provided by a child care provider licensed under the Day Nurseries Act and includes:

- Child Care Centres and Nursery Schools, including integrated centres for children with special needs:
  - Private Home Daycare Agencies;
  - "In-Home" Services:
    - (a) **Licensed child care centres** have minimum standards of quality monitored by the Ministry of Community and Social Services (MCSS), are covered by liability insurance and have a high level of operational stability. Child Care Centres and Nursery Schools usually maintain a structured program and provide subsidized spaces.
    - (b) **Private Home Day Care agencies** provide a more home-like atmosphere with small numbers of children in the caregivers home. The sponsoring agency recruits, trains and supervises the caregivers. They also have minimum standards of quality established and monitored by MCSS, are covered by liability insurance and have a high level of operational stability. This type of child care may provide more flexible hours of operation and the costs may be less than group care. Subsidized spaces are also available.
    - (c) **"In-Home" services** are targeted at special needs and handicapped children. They have flexible hours, low child/caregiver ratio but are comparatively costly and are not available in all communities. In this category also are some pilot projects for farm children in rural areas (non-special needs). Subsidized spaces are available for these programs.

#### 2. *Unlicensed*

**Unlicensed child care**, also called informal child care, is child care arranged by the parent with the caregiver who may be a relative, friend, neighbour or nanny.

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## II.3.3 Net Income from a Business

### 1.0 Authority

In accordance with the statutory authority, income includes the net income, as determined by the Area Director, from an interest in or operation of a business subject to the exclusion of certain payments.

### 2.0 Policy Intent

To provide guidelines for determining what is a business.

To provide guidelines for determining net income, assets and equity from a business.

### 3.0 Procedures

A business is deemed to be any activity other than regular employment from which the applicant derives income, and includes remunerative self-employment.

Legal Aid Ontario (LAO) will use the accountant's rules of measure as the method by which a business will be assessed. This involves looking at the income, assets and equity of the business.

#### *Financial Statements*

To determine the income, assets and equity of a business, the applicant is required to provide an unaudited set of financial statements prepared by an accountant. This includes a Balance Sheet, Statement of Income and Expenses and a Review Engagement. (Notice to Reader). In addition personal and/or corporate tax returns with filed schedules may be required.

The requirement for financial statements prepared by an accountant may be waived if appropriate. Instead, a set of financial statements prepared by a bookkeeper or the applicant or another party may be accepted.

In the absence of any prepared statements and providing the business is unincorporated and not a complex operation, the applicant may be asked to prepare financial statements using the sample Balance Sheet and sample Statement of Income and Expenses (Appendix 4). Any statements not prepared by an accountant must be scrutinized by the Assessment Officer and, if necessary, adjusted to ensure the statements follow the basic rules of accounting.

#### *How to Determine Net Income*

In an unincorporated business, the applicant's share of net income will be determined from the Net Income in the Statement of Income and Expenses. Any amount for depreciation or amortization will be added back to the Net Income for the purpose of calculating net



income for Legal Aid. Any salary or draw paid to the applicant which has incorrectly been included as a business expenses will be added back to Net Income.

In an incorporated business, any salary paid to the applicant/owner as an employee outside of dividends or profits will be considered net income to the applicant.

Business Versus Personal Expenses: If the business is operating from the home, business and personal shelter costs may be mixed. The Assessment Officer will determine the ratio of business to personal expenses and allow the appropriate portion for the business. Personal shelter expenses will be included in the application and subject to the standard allowances per family size and accommodation type. If personal shelter expenses have been identified in the business statements, the Assessment Officer will adjust the expenses to reflect only the business portion and add back any adjustment to Net Income.

Any salary paid to members of the Family Unit will be deemed to be income for the applicant and the household.

Transportation Expenses: Expenses which are primarily business expenses will not be allowed as personal expenses. Valid business transportation expenses will be allowed in full as a business expense. No additional amount will be allowed as a personal expense. Therefore, the Assessment Officer will subtract the flat rate transportation allowance from the basic allowance (\$59 for a single person or \$137 for a family size of 2 or more). Any transportation expenses which are not allowable as business expenses but have been included in the financial statements, will be added back to Net Income.

Other Business Income: Many businesses receive cash income which is not included in the financial statements. All self-employed applicants will be asked about cash income and the amount disclosed will be added to Net Income.

Similarly some businesses, such as convenience/variety stores, provide the owner with goods which are not accounted for in Net Income. If goods such as food, groceries, clothing, etc. are taken from the business, the applicant will be asked to put a dollar value on the amount. This amount will be added to Net Income and the applicant will then be allowed the full flat rate basic allowance for personal expenses.

Income Exemptions: The applicant's share of net income from the business is to be reduced by deductions for Canada Pension and Income Tax, if appropriate, together with other allowable income exemptions under the Legal Aid test.

**➔ Note:**

Information obtained in the financial statements shows income, assets and equity of the business only. Other sources of income must also be pursued.

### *How to Determine Equity*

Equity represents funds which the applicant may access for legal fees. Equity is the initial investment made by the owner(s) plus annual net incomes which have been retained in the business. Equity may be accessed by withdrawing cash, borrowing against assets, selling accounts receivables and selling inventory. The equity is in addition to any income earned

from the business and is identified in the recommendation to the Area Director as a liquid asset.

Unincorporated Business: In an unincorporated business, the equity is identified as Owners Equity on the Balance Sheet. The owner(s) access funds from the business through equity or by drawing from net income. The owner may access funds from equity even if the Net Income for the year is a loss.

Incorporated Business: Equity in an incorporated business is identified as shares or retained earnings. The shareholders receive profits from the business through dividends or payments to shareholders. The amount the owner(s) may access may also be identified as a shareholder's loan under liabilities in the Balance Sheet. This is the initial capital investment that the business owes the shareholder and which the shareholder may access.

### *How to Determine Assets*

Assets identified in the Balance Sheet may be recorded at historical cost and may or may not include depreciation. The Assessment Officer must ask for the estimated market value of all assets owned by the business to more accurately reflect the current assets available to the applicant. Assets which have been fully depreciated and have no value on the Balance Sheet may still have some market value.

All applicants who are self-employed should be asked to have a **Bank Confirmation Form** completed by a bank manager.. The form should be completed in the name of the business: one form per business and per financial institution is required.

## 4.0 Observations and Comments

The onus is on the applicant to provide financial information in the form of financial statements. The Assessment Officer should not assist with the completion of the statements. Failure to provide the information in the requisite form may result in a refusal or cancellation of a Legal Aid certificate.

Financial statements are required even where the business is operating at a loss. It is accepted that some businesses will make a profit while others will have a loss.

Proper financial statements should be provided in the application process, especially if the legal action is related to the operation of the business. Maintaining proper financial records is a requirement of owning and operating a business. LAO should not cover accountant's fees for preparing financial statements which are disguised as a legal disbursement. If proper financial statements have not been provided, the Area Director may wish to limit the certificate so as to not cover the accounting fees as a disbursement.

Assessments for people who are self-employed may be time consuming. It may be necessary to conduct the interview in two stages in order to provide an opportunity to study the financial statements prior to continuing the assessment.

Social assistance may be given to individuals who own a business under certain guidelines. The rules for qualifying for social assistance are not based on a detailed assessment of the business and the financial statements. The Assessment Officer should not automatically

treat these clients as social assistance recipients but conduct a review of the financial statements. A detailed financial assessment may then be required.

The Assessment Officer may request other sources of verification or documentation in addition to the financial statements:

- business bank statements;
- personal income tax return with filed schedules;
- corporate tax return with filed schedules (incorporated business);
- loan applications;
- insurance policies for listing of insured assets.

A corporation does not qualify for Legal Aid since the owners have limited liability. However, the owner of an incorporated business may qualify for Legal Aid because of the personal liability involved.

### 5.0 Cross Reference

Sample Statement of Income and Expenses - Appendix 4.

Sample Balance Sheet - Appendix 4.1.

Sample Bank Confirmation - Appendix 4.2.

Appendix 4

Sample Statement of Income and Expenses

➔ Note:

A separate Statement is required for each business

APPLICANT NAME S.I.N. \_\_\_\_\_

BUSINESS NAME

BUSINESS LOCATION

BUSINESS ACTIVITY

STATEMENT PERIOD FROM: \_\_\_\_\_ TO \_\_\_\_\_

(# mos. if less than one year \_\_\_\_)

1. INCOME

Commissions and Allowances \$ \_\_\_\_\_

Sales

Other Income (specify)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Add: Reserves from prior year

\$ \_\_\_\_\_

Bad debt recovery \_\_\_\_\_

Sub-Total \_\_\_\_\_

Less: Returns & Discounts Allowed \_\_\_\_\_

Provincial Sales Tax  
(if included in sales) \_\_\_\_\_

Total Income \_\_\_\_\_ \$ \_\_\_\_\_ (A)

**II. Policies and Procedures**

**Total Income (Brought Forward from previous page)** \$ \_\_\_\_\_ (A)

**EXPENSES**

- Inventory at beginning of period \_\_\_\_\_
- less inventory at end of period \$ \_\_\_\_\_
- Merchandise purchased \_\_\_\_\_
- Delivery, Express, Freight \_\_\_\_\_
- Employee Wages (Gross) \_\_\_\_\_
- Employer contribution to  
UI, CPP, WCB, Pension Plan \_\_\_\_\_
- Business Tax, Fees, Licences \_\_\_\_\_
- Property Tax for business \_\_\_\_\_
- Rent \_\_\_\_\_
- Mortgage Payment \_\_\_\_\_
- Fire and Liability Insurance \_\_\_\_\_
- Light, Heat, Water \_\_\_\_\_
- Telephone \_\_\_\_\_
- Advertising, Promotion \_\_\_\_\_
- Accounting, Legal Fees \_\_\_\_\_
- Collection Fees \_\_\_\_\_
- Supplies, Materials purchased to  
produce sales \_\_\_\_\_
- Shipping & Wrapping \_\_\_\_\_
- Office expenses, postage, stationery \_\_\_\_\_
- Loan interest, Exchange, Bank Charges \_\_\_\_\_
- Convention Expenses (Provide details) \_\_\_\_\_
- Auto Expenses (gas, insurance, repairs) \_\_\_\_\_
- Other Business Travel Expenses \_\_\_\_\_
- Salary withdrawal paid to applicant \_\_\_\_\_
- Salary withdrawal paid to Others (other  
than direct wages) \_\_\_\_\_
- Other expenses (specify) \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**Total expenses** \$ \_\_\_\_\_ \$ \_\_\_\_\_ (B)

**NET INCOME FOR THE PERIOD (A minus B)** \$ \_\_\_\_\_

**DISTRIBUTION OF NET INCOME**

- Applicant \$ \_\_\_\_\_
- Other Partners (specify  
name and address)  
\_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_



*Sample Bank Confirmation*

DATE:

TO WHOM IT MAY CONCERN

RE:

*Please provide the information requested for the person or business named in the space provided below. This request is*

Authorized by:

Position:

Date:

Deposits/Overdrafts GIC's etc.	Issue Date	Maturity Date	Account Number	Type of Account or Currency

Loans, Liabilities and Collateral Security			
Amount and Currency	Name of Liability	Due Date	

Contingent Liabilities	Date of Note	Due Date	Payable by

Securities in Safe Keeping or Other Information

Completed by:

Position:

Phone Number:

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## II.4.1 Allowances

### 1.0 Authority

In accordance with the statutory authority, the allowance structure of the Legal Aid "needs" test is designed to include the following budgetary items:

- a Basic allowance to recognize the cost of basic necessities required for daily living (e.g., food, clothing, toiletries, transportation, entertainment etc.);
- a Shelter allowance;
- an allowance for items of Extraordinary need;
- a Debt allowance.

The Allowance Structure is subject to pre-established "standards" and "rate schedules" set out in the guidelines attached (see 5.0 Cross Reference, page II-43).

### 2.0 Policy Intent

To allow for the budgetary requirements of individuals in a fair and consistent manner.

To explain the way in which the allowances are calculated.

### 3.0 Procedures

The Legal Aid allowance structure contains three distinct categories of 'need':

- Basic necessities (including shelter);
- Extraordinary need; and
- Debt repayment.

Calculation for each of the categories is discussed in detail below.

#### *Basic Necessities*

An allowance for basic necessities is provided to all applicants based on the applicant's:

- **Family size** i.e. the number of persons included in the applicant's Family Unit, including the applicant. (For example, an applicant, spouse and two dependent children would equal a family size of 4.);
- Type of Accommodation as discussed below.

#### *Accommodation Type*

The accommodation type is dependant upon the type of living arrangement entered into by the applicant. There are four general accommodation types:



- Homeless;
- renters, homeowners, sharers;
- boarders;
- institutionalized applicants.

The definitions pertaining to the accommodation types are given below. The way in which allowances for basic necessities (including shelter) are structured for each type of accommodation follows.

### *Definitions*

#### **Homeless**

A homeless person is an individual without a home i.e. an individual without a fixed permanent address (e.g., living on the street, in an automobile, staying overnight with friends etc.).

#### **Renter (including persons renting a room)**

A renter is defined to be an applicant who purchases and prepares food for him/herself and family members.

A renter may be living in self-contained accommodation (e.g. apartment) or non self-contained accommodation (e.g. room).

#### **Homeowner**

A homeowner is defined to be an applicant who owns or is purchasing a principal residence. A person who has a another residence (e.g. recreational cottage, income producing property) is not considered to be a homeowner unless he/she also has a principal residence.

#### **Boarder**

A boarder is defined to be a person who receives food and shelter from the same source. If a landlord/lady provides food in addition to shelter, the applicant is in a board and lodging situation. If the applicant buys and prepares food separately for him/herself and any family members, the applicant is not in a board and lodging situation, but is renting accommodation.

#### **Sharer**

A sharer is defined to be a person who declares that he or she is sharing accommodation with another person(s) who is not a spouse or same-sex partner or dependent child of the applicant (e.g., sharing accommodation with a roommate).

#### **Institutionalized Applicant**

An institutionalized applicant is defined to be a person who is living for whatever period of time in a jail, hospital, nursing home or other facility where shelter and meals are provided by the institution. There may or may not be a cost of care associated with the residency.

### *Allowance Calculation*

#### **Homeless applicants**

Homeless applicants are allowed a Basic Allowance in accordance with Schedule I.

#### **Renters, Homeowners and Sharers**

Renters, homeowners and sharers are allowed:

- a Basic allowance in accordance with Schedule I to cover any basic budget item not otherwise allowed; and
- a Shelter allowance to recognize actual shelter costs up to a maximum amount set out in Schedule 2, subject to the definition and guidelines for Shelter (see Shelter guideline).

#### **→ Note:**

Sharers are to be allowed their actual cost of shelter up to the maximum as set out in Schedule II.

#### **Boarders**

Boarders are allowed a flat rate amount for Board and Lodging as set out in Schedule III.

If no Board and Lodging is being paid, the income waiver is not to apply and a detailed assessment is to be completed. Also the flat rate Board and Lodging allowance does not apply. Instead, the applicant is allowed \$120 per person for personal needs plus transportation of \$59 for a single person and \$137 for a Family Size of 2 or more (Schedule IV).

#### **Applicant with Dependent Adult**

Applicants who are financially supporting individuals who are not part of the Family Unit will be allowed:

- Basic allowance according to Family Size;
- Additional \$205 per dependent adult for basic needs (the total of the dependent adult allowance and basic allowance may not exceed the maximum basic allowance for Family Size 5 of \$1423);
- Shelter allowance according to Family Size.

**Example:** Applicant supports wife, 1 child and dependent mother. Allow basic allowance for Family Size 3 (\$1014) + \$205. For shelter allow actual to maximum shelter allowance for Family Size 3.

#### **Institutionalized Applicant**

An institutionalized applicant is allowed the cost of care in an institution plus \$100 per month for personal needs plus any other necessary expenses, such as medical expenses and debt repayments incurred prior to being institutionalized.

**4.0 Observations and Comments**

**5.0 Cross Reference**

Benefit (Family) Unit.

Shelter.

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## II.4.2 Shelter

### 1.0 Authority

In accordance with the statutory authority, shelter costs are defined to mean:

- (a) rent;
- (b) principal and interest on a mortgage;
- (c) amounts repayable towards a loan obtained through the Ontario Home Renewal Program authorized by regulation 506 of Revised Regulations of Ontario 1980 made under the Housing Development Act or through the Residential Rehabilitation Assistance Program authorized by section 34.1 of National Housing Act (Canada) for repairs to the dwelling place approved by the Area Director;
- (d) additional costs now, or shortly to be incurred, arising out of an agreement for the sale of property;
- (e) taxes;
- (f) premiums for a policy of fire insurance covering the dwelling place or the contents thereof;
- (g) the amount of the common expenses required to be contributed for a condominium unit except that portion of the common expenses allocated to the cost of energy for heat;
- (h) energy costs associated with heating a dwelling;
- (i) any of the following utilities if their cost is not included in rent or condominium fees:
  - o any energy source used for household purposes other than heating a dwelling;
  - o water and sewage;

but does not include, with respect to the dwelling place, any refund or payment under section 7 of the Income Tax Act or grant under section 2 or section 7 of the Ontario Pensioners Property Tax Assistance Act to any applicant or spouse of an applicant included in the applicant's Family Unit.

### 2.0 Policy Intent

To recognize the actual costs of shelter up to pre-set maximums.

To explain the procedures related to the shelter calculation.

### 3.0 Procedures

#### *Persons ineligible for a Shelter Allowance*

Subject to treatment of shelter costs for persons who retain accommodation in the community (see below), the following applicants are ineligible for a shelter allowance:

- homeless applicants who are without a permanent, fixed address;
- applicants who reside in a board and lodging situation;
- applicants who are residents of:
  - (i) a home under the Homes for Retarded Persons Act (including apartment projects);
  - (ii) a home under the Homes for the Aged and Rest Homes Act;
  - (iii) an institution under the Charitable Institutions Act;
  - (iv) a nursing home;
  - (v) a home for special care;
  - (vi) a facility under the Developmental Services Act;
  - (vii) a chronic care facility;
  - (viii) incarcerated applicants.

### *Treatment of Shelter Costs where institutionalized applicant retains accommodation in the community*

The Area Director may exercise discretion to allow for the additional costs of maintaining a residence outside the institution subject to the guidelines established for monthly extraordinary expenses (Index 4.3).

### *Shared Accommodation*

Where an applicant declares he/she is sharing accommodation with one or more persons, the actual share of shelter costs paid by the applicant is to be allowed up to the maximum Shelter Allowance for the Family Size.

### *Utilities - Definition*

Utilities are defined to mean the actual cost of:

- water and sewage; and
- hydro, gas, propane or any other energy source used for normal household purposes (e.g., lighting, cooking, hot water, etc.).

Utility costs do not include:

- utility hook up charges;
- refundable utility deposits;
- installation and ongoing costs associated with telephone and cable TV.

→ **Note:**

Where all utilities and/or heat are covered in the cost of rent, they are not to be included as a separate item of shelter cost. Where one or more utilities and/or heat are not included in the cost of rent, the cost of these items are to be included as an additional item of shelter cost.

*Verification*

(a) **Shelter costs**

Receipts for shelter costs may be verified but copies are not required to be kept on file. i.e. receipts for rent, mortgage payments, property taxes, utilities, heat should be reviewed and returned to the applicant.

(b) **Utilities**

To verify that utility costs are paid by the applicant, the applicant is required to provide a copy of an actual utility bill. The annual utility costs may be calculated from the gross amount shown on the bill and may include the cost of other utilities for which bills are not provided. *Where a discount is provided for early payment of a utility bill, it should be assumed that the applicant pays the higher gross amount unless there is information to the contrary.* The annual utility costs should be averaged over twelve months to obtain the monthly utility cost.

### 4.0 Observations and Comments

### 5.0 Cross Reference

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## II.4.3 Monthly Extraordinary Items

### 1.0 Authority

In accordance with the statutory authority, an applicant is allowed deductions for monthly extraordinary items over and above regular expenses included in the basic allowance .

These may include:

- (a) Prescription drugs or medical supplies;
- (b) Guide dog;
- (c) Special diet;
- (d) Handicapped child.

### 2.0 Policy Intent

To recognize that some applicants have special needs which entail extraordinary costs.

### 3.0 Procedures

Subject to the provisions outlined in Appendix 5, the Area Director may allow in full an amount for an extraordinary medical expense upon verification of the monthly expense. Any non-medical extraordinary need under \$50.00 may be allowed but a monthly expense in excess of \$50.00 requires Area Director discretion.

#### **Definition**

Extraordinary Items are defined to be monthly expenses which are not included in the basic allowance but are not reasonably avoidable.

### 4.0 Observations and Comments

### 5.0 Cross Reference

One Time Extraordinary Expenditures.

Monthly Extraordinary Items - Appendix 5.

Appendix 5

*Prescription Drugs or Medical Supplies*

An allowance may be made for prescription drugs (not covered by insurance) for an illness or condition recognized by the Area Director to be of an extraordinary nature.

Verification by way of doctor's note and/or receipts is required.

*Guide Dog*

An allowance of \$57.00/month or the actual cost (which ever is greater) of the care of a guide dog as defined in the Blind Person's Rights Act. A guide dog is defined as a dog that has been trained at an approved school in Canada, the United States or England.

In the case of a deaf applicant, the cost of the care of a guide dog trained by Hearing Ear Dogs of Canada or another hearing ear dog guide school which provides an identification/certification card is allowable.

Verification of the expense is required if the applicant is claiming expenses in excess of \$57 monthly.

*Special Diet*

An allowance may be made for a special diet prescribed by a physician but not including:

- Reducing diets;
- Low cholesterol diets;
- Restricted fat diets;
- Gastric/ulcer type diets;
- Low residue diets;
- High residue diets.

Nutritional supplements for cystic fibrosis and thalassaemia are free through designated hospital programs and thus an allowance is not available.

The cost of milk formula recommended for the normal development of healthy infants is already considered in the calculation of the Basic Allowance, however, when prescribed for therapeutic purposes and the amount of formula required exceeds normal infant intake, an additional allowance may be made for the additional cost.

An additional allowance for the below listed three infant formulae frequently prescribed may be allowed for infants of up to 8 months:

Isomil	\$11.00/month
Prosobee	\$13.00
Soyalac	\$11.00



Verification by way of a doctor's note or prescription is required for all claims for a diet allowance.

### *Handicapped Child*

An allowance of \$350/month may be allowed for each severely handicapped child in the applicant's benefit unit.

Additional transportation costs related to transporting a child to a treatment centre may also be allowed.

As well an allowance for the actual cost to a maximum of \$50.00/month for parental relief of the parent or guardian of the handicapped child may be allowed.

To be eligible for this allowance:

- the child must be less than 18 years of age; and
- the child must be severely handicapped with a functional loss; and
- extraordinary costs must be present which are incurred directly as a result of the handicap.

**Definition** of "severely handicapped resulting in functional loss" - An ongoing mental or physical condition which results in a major loss of ability or capacity to engage in any substantive activity commonly considered necessary and appropriate to normal daily living.

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## II.4.4 Debts

### 1.0 Authority

In accordance with the statutory authority, debt costs are defined to mean:

- (a) instalments of principal and interest on loans incurred for the purchase of a motor vehicle or the costs of leasing an automobile;
- (b) any instalment payments on a loan from a bank, trust company, finance company or other financial institution or retail organization;
- (c) any payments being made or deductions being incurred pursuant to any arrangement(s) with creditors;
- (d) payments being made by way of repayment of private loans from friends or relatives.

#### *Debt Exclusions*

- Any contributions or payments being made towards the purchase of an asset (i.e. Canada Savings Bond) are not debts and should not be included as part of the monthly debt repayment.
- A wage garnishee is not considered to be a debt. Instead, the monthly repayment is treated as an income exclusion in the calculation of net income. Further details regarding the total amount of the garnishee and the expected length of the garnishee should be noted for the purpose of reassessment.
- A bank overdraft is not considered a debt unless regular monthly payments to reduce the overdraft are being made. Otherwise the overdraft is to be shown as a negative asset.

### 2.0 Policy Intent

To recognize the actual costs of debt up to pre-set maximums.

To not differentiate between types of debt so that all debt payments are treated equally and consistently.

### 3.0 Procedures

Actual monthly payments towards debts are to be allowed subject to the maximum as set out in Schedule V except in the following circumstances:

- The allowable monthly debt payment for credit cards is the minimum amount required by the bank/financial institution (usually 5%) unless verification is provided that there is a demand for increased payments;

- Payments are 2 or more months overdue and there is no reasonable explanation (i.e.; temporary interruption of income);
- Payments are one month overdue and there is no intention to make payments in the near future.

### *Excess Credit on Credit Cards/Line of Credit*

Any credit available through a credit card or line of credit will be considered available for legal fees, either as a private retainer or as a contribution towards legal aid. Consideration will be given to the ability to pay the additional financing when determining if a credit card is available for legal fees. Excess funds on a line of credit will always be considered available.

### *Debt Incurred After Need for Legal Fees*

Any debt incurred after the need for legal fees should have been recognized by the applicant, must be justified to the Area Director. The debt will be included in the application and referred to the Area Director to determine if the monthly expense should be allowed.

### *Verification*

Verification of the amount being paid on a debt and proof that the payments are being paid should be provided. It is not necessary to keep copies of the verification documents on file but the application should indicate that visual verification was conducted. In those cases where there is suspicion or concern regarding the debt payments, verification may be retained on file.

## 4.0 Observation and Comments

## 5.0 Cross Reference

Rate Allowance - Schedule V.

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## II.5.1 Verification

### 1.0 Authority

In accordance with the statutory authority, financial information should be verified for the most part. Requests for verification should be reasonable and necessary to the assessment.

### 2.0 Policy Intent

To provide a guideline as to when verification is required and the mechanism for providing proof of documentation.

To ensure that all financial information disclosed by an applicant and spouse or same-sex partner is accurate and complete.

To ensure that the recommendation to the Area Director correctly reflects a client's eligibility for legal aid assistance.

### 3.0 Procedures

#### *Types of Documentation*

Each applicant should be advised that the following information for the applicant and spouse or same-sex partner is required and should be provided at the interview:

- Proof of income such as pay slips, employer letter, pension receipt, copy of last year's income tax return etc.;
- If unemployed, separation slip or proof of receipt of Employment Insurance Benefits;
- If in receipt of Ontario Disability benefits or Ontario Works benefits, a cheque stub or letter from the agency identifying the file number;
- Verification of shelter costs such as mortgage payments, property tax, rent, utilities etc.;
- Verification of debts including bank loans, car payments, charge accounts etc.;
- Up-to-date bank books, credit union statements, proof of bonds, RRSP's, stocks, GIC's etc.;
- Where applicable, support orders or other contracts or agreements setting out other financial obligations;
- If property is owned and a lien is being considered, a copy of the deed **plus** verification that private financing is not available. This includes:
  - letter from bank manager/mortgagee denying refinancing and/or re-amortization of the mortgage; and

- letters from managers or loan officers at other financial institutions refusing a second mortgage; and
  - letters from managers or loans officers refusing other financing using the property as collateral; and
  - letter from a lawyer refusing a private mortgage for legal fees or refusing to obtain fees through sale/division of assets in a matrimonial case; and
  - mortgage documents showing the mortgage renewal dates.
- If self employed, business bank accounts, financial statements and a recent income tax return with filed schedules (see Business Income, Index 3.3).

### *Mandatory Verification*

The following verification must be provided subject to a reasonable explanation as to why proof cannot be obtained:

- Income from all sources should be verified unless documentation from a 3rd party is not possible;
- Income from Ontario Disability and Ontario Works programs;
- Financial statements for self employed applicants or applicants who own a business;
- Verification of recent loss or upcoming termination of employment;
- Bank account balances and values of liquid assets;
- Claims of assets being locked in or unavailable for legal fees;
- Verification of dispersal of assets (i.e.: disbursements for sale of property, proof of payments from assets);
- Support paid via court order, separation agreement or voluntarily;
- Any extraordinary need or expense which may be allowed subject to Area Director discretion;
- Statements which conflict with original or previous statements, especially if a financial decision is under appeal;
- All financial information if there is a question of credibility or if full financial disclosure is in doubt.

### *Optional Verification*

In some situations, verification of information may not be required and may be waived in the following circumstances:

- bank accounts/assets which are sufficient to justify a refusal do not need to be verified

- ownership of vehicles and property except when required for the purpose of a payment agreement (lien/chattel);
- rent, debts and other expenses unless reason to question whether payments are being made;
- child care/day care costs;
- cost of transportation (gas, insurance and maintenance) which is a flat rate item in basic allowance;
- utilities unless expenses are unusually high;
- any expense which would not be allowed in view of the test or the standard allowances;
- financial information which common sense indicates need not or can not be verified (i.e.: bank accounts which separated spouse controls, proof of income from tips).

### *File Notation of Verification*

Verification may be copied and retained on file and this mechanism is necessary if a detailed study of the documentation is required. This would include but is not limited to:

- pay stubs showing extensive deductions;
- bank records where deposits and withdrawal over a period of time are important;
- financial statements for self employed clients;
- documentation supporting extraordinary expenses and needs.

Other types of verification may be made visually where proof is shown to the A/AO and then noted (1) in the paper application with the symbol (**V**) and the A/AO's initials or (2) in the SES by selecting visually verified form the pick lists. This indicates the documentation had been reviewed in accordance with standard procedures. Such verification would include:

- proof of ODSP/OW;
- income from EI, CPP, OAS, WSIB, etc.;
- bank account balances;
- debt payments;
- shelter expenses.

### 4.0 Observation and Comments

Ideally, applicants should be advised of the requirements for documentation prior to an application. The area office should communicate the requirements to the public, the bar,

court and community workers by whatever means are available. This could include handouts to clients, notices to lawyers, recorded phone messages etc.

If the required documentation has not been provided at the time of the interview, the applicant should be given a list of the information required and allowed two weeks to return to complete the application.

If the application has been completed subject to verification only, the client may mail the documentation to the area office.

For the purpose of verifying bank balances, automated teller slips are insufficient verification as recent transactions which may affect eligibility can not be identified.

If verification cannot be provided, reasons should be outlined in the case narrative. Reasons would include: income under the table and employer refuses to provide proof, income from tips, joint bank books controlled by separated spouse, etc.

It is impossible to obtain verification of information not disclosed in the application. Therefore, it is important to ask all questions on the application and to read the warning and properly swear the declaration to the client.

The Consent to Inspect Assets may be used to conduct a bank check if warranted. If a more detailed investigation is necessary, contact the Investigations and Complaints Department or the Financial Assessment Program Co-ordinator.

### 5.0 Cross Reference

Assets Overview - Sale or Disposition of an Asset.

Appendix 2 - Extraordinary Expenses.

Income Overview - Social Assistance Income - Verification.

Income Overview - Observations and Comments.

Verification of Child Care Costs.

Net Income from a Business.

Shelter - Verification.

Appendix 5 - Extraordinary Needs.

Debts - Verification.

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### III. Rate Schedules

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#### Basic Allowance

##### SCHEDULE I

renters, homeowners, sharers homeless

(RATES IN EFFECT APRIL 1, 1996)

<u>FAMILY SIZE</u>	<u>\$/MONTH</u>
ONE	427
TWO	830
THREE	1014
FOUR	1218
FIVE AND OVER	1423

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#### Maximum Shelter Allowance

##### SCHEDULE II

renters, homeowners, sharers

(RATES IN EFFECT APRIL 1, 1996)

<u>FAMILY SIZE</u>	<u>\$/MONTH</u>
ONE	487
TWO	766
THREE	831
FOUR	903
FIVE AND OVER	974



**Boarder Allowance (paying)**

SCHEDULE III  
(RATES IN EFFECT APRIL 1, 1996)

<u>FAMILY SIZE</u>	<u>\$/MONTH</u>
ONE	593
TWO	1027
THREE	1163
FOUR	1290
FIVE AND OVER	1425

**Boarder Allowance (Non-Paying)**

SCHEDULE IV  
(RATES IN EFFECT APRIL 1, 1996)

<u>FAMILY SIZE</u>	<u>\$/MONTH</u>
ONE	179
TWO	377
THREE	497
FOUR	617
FIVE AND OVER	737

➔ NOTE:

The flat rate boarder allowance includes an amount paid for board and lodging plus an amount for personal needs of \$120 per person included in the applicant's family unit.

**Debt Allowance**

SCHEDULE V  
TOTAL ALLOWANCE STRUCTURE

(RATES IN EFFECT APRIL 1, 1996)

<u>FAMILY SIZE</u>	<u>\$/MONTH</u>
ONE	175
TWO	225
THREE	275
FOUR	325
FIVE AND OVER	375

**Income Waiver Levels**

SCHEDULE VI  
(RATES IN EFFECT APRIL 1, 1996)

<u>FAMILY SIZE</u>	<u>\$/MONTH</u>
ONE	601
TWO	1075
THREE	1137
FOUR OR MORE	1281

**Table of Allowances**

<b>BASIC ALLOWANCE</b>		<b>SHELTER ALLOWANCE</b>	
<u>Family Size</u>	<u>\$/Month</u>	<u>Family Size</u>	<u>\$/Month</u>
One	427	One	487
Two	830	Two	766
Three	1014	Three	831
Four	1218	Four	903
Five and over	1423	Five and over	974
<b>BOARDER ALLOWANCE (PAYING)</b>		<b>BOARDER ALLOWANCE (NON-PAYING)</b>	
<u>Family Size</u>	<u>\$/Month</u>	<u>Family Size</u>	<u>\$/Month</u>
One	593	One	179
Two	1027	Two	377
Three	1163	Three	497
Four	1290	Four	617
Five and over	1425	Five and over	737
<b>DEBT ALLOWANCE</b>		<b>INCOME WAIVER LEVELS</b>	
<u>Family Size</u>	<u>\$/Month</u>	<u>Family Size</u>	<u>\$/Month</u>
One	175	One	601
Two	225	Two	1075
Three	275	Three	1137
Four	325	Four and over	1281
Five and over	375		
<b>LIQUID ASSET EXEMPTION</b>			
	<u>Family Size</u>		<u>\$/Month</u>
	One		\$1,000
	Two		\$1,500
	Three and over		\$2,000