

1 **9-403. Eligibility determination for indigent defense services.**

2  
3 [For use in the District Court, Magistrate Court  
4 and Metropolitan Court]  
5 [NMSA 1978, Section 31-15-7 [~~NMSA 1978~~].]  
6

7 STATE OF NEW MEXICO  
8 COUNTY OF \_\_\_\_\_  
9 \_\_\_\_\_ COURT

KEY \_\_\_\_\_

10 [STATE OF NEW MEXICO]  
11 [COUNTY OF \_\_\_\_\_]

v. No. \_\_\_\_\_

12 \_\_\_\_\_, Defendant

13  
14 **ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES**

15  
16 Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Age: \_\_\_\_\_

17 AKA: \_\_\_\_\_ Sex: Male Female SSN: \_\_\_\_\_

18 Address: \_\_\_\_\_ Phone: \_\_\_\_\_

19 Charges: \_\_\_\_\_

20 Lives alone: \_\_\_ Lives with: Spouse \_\_\_ Children \_\_\_ Parent \_\_\_ Friend \_\_\_ Other

21 \_\_\_\_\_  
22 Marital status: Single \_\_\_ Married \_\_\_ Divorced \_\_\_ Separated \_\_\_ Widowed \_\_\_

23 Number of dependents in household: \_\_\_\_\_

24  Defendant is in jail.  Defendant is not in jail.

25  
26 **PRESUMPTIVE ELIGIBILITY:**

27 \_\_\_ I currently DO NOT receive public assistance.

28 \_\_\_ I currently receive the following type of public assistance in \_\_\_\_\_ County:

29  
30 DEPARTMENT OF HEALTH CASE MANAGEMENT SERVICES (DHMS) \$ \_\_\_\_\_

31 TANF/GA \$ \_\_\_\_\_ Food Stamps \$ \_\_\_\_\_ Medicaid \$ \_\_\_\_\_

32 Public Housing \$ \_\_\_\_\_ SSI/SSDI \$ \_\_\_\_\_

33 VA Disability \_\_\_\_\_

34 \_\_\_ Unable to complete application because of possible Mental Health/Developmental Issue of  
35 applicant.

36	<b>NET INCOME:</b>	<b>SELF</b>	<b>SPOUSE</b>
	Employer's Name	_____	_____
	Employer's Phone	_____	_____
	Pay Period ( <i>weekly, every second week, twice monthly, monthly</i> )	_____	_____

Net take home pay (*salary wages minus deductions required by law*) \$ \_\_\_\_\_ \$ \_\_\_\_\_

Other income sources (*please specify*)  
\_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

**SCREENING USE ONLY**

**TOTAL ANNUAL INCOME** \$ \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_ / \_\_\_\_ / \_\_\_\_ **A**

**ASSETS:**

CASH ON HAND \$ \_\_\_\_\_ \$ \_\_\_\_\_

BANK ACCOUNTS \$ \_\_\_\_\_ \$ \_\_\_\_\_

REAL ESTATE (*equity*) \$ \_\_\_\_\_ \$ \_\_\_\_\_

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

MOTOR VEHICLES (*equity*) \$ \_\_\_\_\_ \$ \_\_\_\_\_

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

OTHER PERSONAL PROPERTY (*equity*):

(*describe and set forth equity*)

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

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

**SCREENING USE ONLY**

**TOTAL ASSETS** \$ \_\_\_\_\_ + \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_ **B** =

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

MEDICAL EXPENSES (*not covered by insurance*) \$ \_\_\_\_\_

MEDICAL INSURANCE PAYMENTS (*receipts required*) \$ \_\_\_\_\_

COURT-ORDER SUPPORT PAYMENTS/ALIMONY \$ \_\_\_\_\_

CHILD-CARE PAYMENTS (*e.g. day care*) \$ \_\_\_\_\_

OTHER (*describe*) \_\_\_\_\_ \$ \_\_\_\_\_

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

**SCREENING USE ONLY**

**TOTAL EXCEPTIONAL EXPENSES** \$ \_\_\_\_\_ =  
\_\_\_\_\_ / \_\_\_\_ / \_\_\_\_ **C**

3  
4 I UNDERSTAND THAT IF IT IS DETERMINED THAT I AM NOT INDIGENT, I MAY  
5 APPEAL TO THE COURT WITHIN TEN (10) DAYS AFTER THE DATE I AM ADVISED OF  
6 THIS DECISION.

1  
2  I wish to appeal.  
3  I do not wish to appeal.  
4

5 **STATE OF NEW MEXICO**  
6 **COUNTY OF** \_\_\_\_\_  
7

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

\_\_\_\_\_  
Date Signature of applicant

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF )  
\_\_\_\_\_ )

12 Signed and sworn to (or affirmed) before me on \_\_\_\_\_ (date) by  
13 \_\_\_\_\_ (name of applicant).

\_\_\_\_\_  
(Seal, if any) Notary  
My commission expires: \_\_\_\_\_

14  
15 **COLUMN "A" (net income) plus COLUMN "B" (assets) SCREENING USE ONLY**  
16 **minus COLUMN "C" (exceptional expenses) AVAILABLE FUNDS**  
17 **equals AVAILABLE FUNDS** ..... =/ \_\_\_\_\_

18 \_\_\_\_\_ The applicant is indigent.  
19 \_\_\_\_\_ The applicant is not indigent.  
20 \_\_\_\_\_ The applicant [has] [has not] paid the \$10.00 application fee.  
21 Receipt number: \_\_\_\_\_

22 Based on the above answers and information, I find that the applicant [is] [is not] indigent.  
23

\_\_\_\_\_  
Signature of Screening Agent Title

24  
25 (Complete the following only if the court has determined that the applicant is unable to pay the  
26 \$10.00 application fee).  
27

\_\_\_\_\_ I find that the applicant is unable to pay the \$10.00 indigency application fee, due  
to the following reason \_\_\_\_\_  
and I therefore waive the payment of the \$10.00 application fee.

\_\_\_\_\_  
Signature of Screening Agent

1  
2 **GUIDELINES FOR DETERMINING ELIGIBILITY**  
3

4 ~~[Pursuant to Section 31-15-7]~~ Under NMSA 1978, Section 31-15-7, the following  
5 guidelines are established for determination of indigency and eligibility for public defender  
6 services.  
7

8 **I. APPLICATION FEE**

9 A person shall pay a non-refundable application fee for each case in the amount set in  
10 ~~[Section 35-15-12 NMSA 1978]~~ NMSA 1978, Section 31-15-12 at the time the person applies  
11 with the public defender for representation. *The interviewer will determine if the financial*  
12 *circumstances of the applicant are such that the fee would pose an exceptional hardship, and will*  
13 *recommend to the District office Administrator or Eligibility Supervisor if the fee should be*  
14 *waived. The interviewer will document on the application the reason for the fee waiver.*  
15

16 **II. PRESUMPTION OF INDIGENCY**

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

29 If the interviewer is unable to complete the indigency application or believes the  
30 information to be unreliable because of communication or other problems associated with a mental  
31 or developmental disability of the applicant, indigency will be presumed. When this is the case  
32 the *Mental Health/Communication* section of the application should be checked. Where available,  
33 the designated attorney for mental health issues is to be immediately notified, and if that person is  
34 not available the duty attorney is to be immediately notified.  
35

36 **III. FINANCIAL RESOURCES**

37 If the applicant is not presumptively indigent, the screening agent shall examine the  
38 financial resources of the applicant with consideration given to:

- 39 Net Income, Paragraph A;  
40 Assets, Paragraph B; and  
41 Exceptional Expenses, Paragraph C.

42 **A. Net Income.** The screening agent shall include total salary and wages for the applicant  
43 and the applicant's spouse minus deductions required by law (*FICA, state and federal withholding*).  
44 Child support deductions and *medical* insurance deductions will also be considered if already  
45 deducted from salary, but will not be recounted in the *Exceptional Expenses* section if counted  
46 here. Savings deductions and non-mandatory retirement deductions will be added to the net

1 income. In order to calculate the salary of an individual, the screening agent shall use one of the  
2 two methods:

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

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

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

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

26 The income of a spouse must be included in the calculation of income even though the  
27 applicant and the applicant's spouse are not living in the same household unless:

- 28 A. (a) the applicant and the spouse are legally separated (*must provide proof of legal*  
29 *separation*);  
30 B. (b) the applicant and the spouse have not resided together within the last 12 months  
31 and the applicant can provide a notarized statement from an adult family member  
32 verifying that fact; or  
33 C. (c) the spouse is an alleged victim of the applicant or complaining witness against  
34 the applicant.

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

42 C. **Exceptional Expenses.** The screening agent shall consider any unusual expenses of the  
43 applicant and the applicant's legal dependents that would, in all probability, prohibit the applicant  
44 from being able to secure private counsel. The following expenses are not exceptional expenses:  
45 rent, food, utilities, gas money, consumer loans and student loans. Exceptional expenses shall

1 include, but not be limited to, costs for medical care or medical insurance, family support  
2 obligations and child care payments.

3 In order to be included as an exceptional expense:

4 (1) the cost of medical care cannot be covered by insurance;

5 (2) family support expense obligations must be verified by court order or a notarized  
6 statement from the person to whom the support is paid. The support must actually be paid on a  
7 regular basis; and must be verified by written documentation such as receipts or cancelled checks;

8 (3) child care must be paid on a regular basis. If the applicant says that child support is  
9 paid when the applicant can, the payments do not qualify as exceptional expenses.

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

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

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

19  
20 **IV. INDIGENCY FORMULA**

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

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

29 If the applicant does not know the applicant's spouse's income or assets the applicant is  
30 presumed not indigent and is not eligible for free representation unless the applicant produces the  
31 necessary information within two (2) working days after the interview.

32  
33 **V. APPEAL**

34 If the applicant is found by the screening agent or the court not to be indigent, the applicant  
35 may appeal the decision to the district defender in those districts with public defender offices. If  
36 the applicant wishes to appeal the decision of the district defender, the applicant shall appeal to  
37 the district court. In those districts without public defender offices, the applicant may appeal  
38 directly to the district court. If the applicant wishes to appeal a finding that the applicant is not  
39 indigent:

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

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

44 Any appeal regarding indigency shall be filed within ten (10) working days after the date  
45 of the decision and must be disposed of by the district court within thirty (30) days of the filing.

1 **VI. NEW CHARGES**

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

11  
12 [Adopted, effective September 24, 1986; as amended, effective August 1, 1989; December 1,  
13 1993; February 14, 1997; November 1, 2004; as amended by Supreme Court Order No. 09-8300-  
14 039, effective October 26, 2009; as amended by Supreme Court Order No. 21-8300-023, effective  
15 for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order  
16 No. S-1-RCR-2025-00173, effective for all cases pending or filed on or after December 31, 2025.]