

9-403. Eligibility determination for indigent defense services.

[Section 31-15-7 NMSA 1978. For use in the
District Court, Magistrate Court and Metropolitan Court]

STATE OF NEW MEXICO

COUNTY OF _____
_____ COURT

KEY _____

[STATE OF NEW MEXICO]

[COUNTY OF _____]

v.

No.

_____, Defendant

ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES

Name: _____ DOB: _____

Age: _____

AKA: _____ Sex: Male Female SSN: _____

Address: _____ Phone: _____

Charges: _____

Lives alone: ___ Lives with: Spouse ___ Children ___ Parent ___ Friend ___

Other _____

Marital status: Single ___ Married ___ Divorced ___ Separated ___ Widowed ___

Number of dependents in household: _____

[] Defendant is in jail. [] Defendant is not in jail.

PRESUMPTIVE ELIGIBILITY:

___ I currently DO NOT receive public assistance.

___ I currently receive the following type of public assistance in _____

County:

DEPARTMENT OF HEALTH CASE MANAGEMENT SERVICES (DHMS)

\$ _____

TANF/GA \$ _____ Food Stamps \$ _____ Medicaid \$ _____

Public Housing \$ _____ SSI/SSDI \$ _____

**CRIMINAL FORMS
9-403**

**Supreme Court Approved
November 1, 2021**

1 VA Disability _____

2

3 _____ Unable to complete application because of possible Mental Health/Developmental
4 Issue of applicant.

5

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

6

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

9

10 **ASSETS:**

11

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

12

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

15

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

**CRIMINAL FORMS
9-403**

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

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SCREENING USE ONLY

TOTAL EXCEPTIONAL EXPENSES \$ _____

= _____ / _____ / _____ C

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

_____ I wish to appeal.
_____ I do not wish to appeal.

STATE OF NEW MEXICO
COUNTY OF _____

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

Date Signature of applicant

State of _____)
County of _____) ss

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

Notary My
(*Seal, if any*)
commission expires: _____

1 COLUMN "A" (net income) plus COLUMN "B" (assets) SCREENING USE ONLY
2 minus COLUMN "C" (exceptional expenses) AVAILABLE FUNDS
3 equals AVAILABLE FUNDS = / _____
4

- 5 _____ The applicant is indigent.
- 6 _____ The applicant is *not* indigent.
- 7 _____ The applicant [has] [has not] paid the \$10.00 application fee.
- 8 Receipt number: _____

9
10 Based on the above answers and information, I find that the applicant [is] [is not] indigent.

11
12
13 _____ Title _____
Signature of screening agent

14
15 *(Complete the following only if the court has determined that the applicant is unable to pay*
16 *the \$10.00 application fee).*

17
18 _____ I find that the applicant is unable to pay the \$10.00 indigency application fee, due
19 to the following reason _____ and I therefore waive
20 the payment of the \$10.00 application fee.

21
22
23
24 _____
Signature of Screening Agent

25
26
27 **GUIDELINES FOR DETERMINING ELIGIBILITY**

28
29 Pursuant to Section 31-15-7 NMSA 1978, the following guidelines are established
30 for determination of indigency and eligibility for public defender services.

31
32 **I. APPLICATION FEE**

33
34 A person shall pay a non-refundable application fee for each case in the amount set
35 in Section 35-15-12 NMSA 1978 at the time the person applies with the public defender
36 for representation. *The interviewer will determine if the financial circumstances of the*
37 *applicant are such that the fee would pose an exceptional hardship, and will recommend*
38 *to the District office Administrator or Eligibility Supervisor if the fee should be waived.*
39 *The interviewer will document on the application the reason for the fee waiver.*

40
41 **II. PRESUMPTION OF INDIGENCY**

1 An applicant is presumed indigent if the applicant is a current recipient of state or
2 federally administered public assistance programs for the indigent: temporary assistance
3 for needy families (TANF), general assistance (GA), supplemental security income (SSI),
4 social security disability income (SSDI), Veteran’s disability benefits (VA) if the benefit
5 is the sole source of income, food stamps, medicaid, public assisted housing or Department
6 of Health, Case Management Services (DHMS). Proof of assistance must be attached to
7 the application and no further inquiry is necessary. The document submitted as proof must
8 clearly identify the applicant as currently receiving the qualifying benefit. Benefit cards
9 without other supporting documents will not be accepted as proof of benefit. If the
10 applicant is not receiving Medicaid benefits, but has [~~dependants~~] dependents in the
11 household for whom Medicaid eligibility has been determined, the applicant will be
12 presumed indigent. Home equity, *etc.* is not to be taken into account if the applicant is a
13 current recipient of one of the six programs described above.

14
15 If the interviewer is unable to complete the indigency application or believes the
16 information to be unreliable because of communication or other problems associated with
17 a mental or developmental disability of the applicant, indigency will be presumed. When
18 this is the case the *Mental Health/Communication* section of the application should be
19 checked. Where available, the designated attorney for mental health issues is to be
20 immediately notified, and if that person is not available the duty attorney is to be
21 immediately notified.

22
23 **III. FINANCIAL RESOURCES**

24
25 If the applicant is not presumptively indigent, the screening agent shall examine the
26 financial resources of the applicant with consideration given to:

- 27
28 Net Income, Paragraph A;
29 Assets, Paragraph B; and
30 Exceptional Expenses, Paragraph C.

31
32 A. **Net Income.** The screening agent shall include total salary and wages for
33 the applicant and the applicant's spouse minus deductions required by law (*FICA, state and*
34 *federal withholding*). Child support deductions and *medical* insurance deductions will also
35 be considered if already deducted from salary, but will not be recounted in the *Exceptional*
36 *Expenses* section if counted here. Savings deductions and non-mandatory retirement
37 deductions will be added to the net income. In order to calculate the salary of an individual,
38 the screening agent shall use one of the two methods:

39
40 (1) if the individual is presently unemployed, the screening agent shall
41 ask about employment during the twelve (12) months preceding the interview date and
42 calculate the amount of money earned during such twelve (12) months. Proof of this

1 income must be attached to the application; or

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

15
16 (3) Any person that has been incarcerated for six (6) months or more is
17 also presumed to be indigent. Proof must be provided, *i.e.*, proof of incarceration, jail
18 release form. An individual incarcerated in a Department of Corrections facility in any
19 state automatically qualifies.

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

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

30 (a) the applicant and the spouse are legally separated (*must provide*
31 *proof of legal separation*);

32 (b) the applicant and the spouse have not resided together within the last
33 12 months and the applicant can provide a notarized statement from an adult family
34 member verifying that fact; or

35 (c) the spouse is an alleged victim of the applicant or complaining
36 witness against the applicant.

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

1 outstanding obligations against the property. Written documentation of both the value and
2 the outstanding obligations will be attached to the application.

3
4 **C. Exceptional Expenses.** The screening agent shall consider any unusual
5 expenses of the applicant and the applicant's legal dependents that would, in all probability,
6 prohibit the applicant from being able to secure private counsel. The following expenses
7 are *not* exceptional expenses: rent, food, utilities, gas money, consumer loans and student
8 loans. Exceptional expenses shall include, but not be limited to, costs for medical care or
9 medical insurance, family support obligations and child care payments.

10
11 In order to be included as an exceptional expense:

12
13 (1) the cost of medical care cannot be covered by insurance;

14
15 (2) family support expense obligations must be verified by court order
16 or a notarized statement from the person to whom the support is paid. The support must
17 actually be paid on a regular basis; and must be verified by written documentation such as
18 receipts or cancelled checks;

19
20 (3) child care must be paid on a regular basis. If the applicant says that
21 child support is paid when the applicant can, the payments do *not* qualify as exceptional
22 expenses.

23
24 The applicant must provide proof of the exceptional expense incurred and proof
25 that payment is being made on a regular basis. If proof is provided, the regular monthly
26 payment for the exceptional expense is multiplied by twelve (12) months and the calculated
27 amount can be deducted from total income.

28
29 Other exceptional expenses shall include: payroll garnishments, internal revenue
30 service claims, court ordered attorney fees or other court ordered payments and funeral
31 expenses not covered by insurance.

32
33 An approved filing from a pending bankruptcy proceeding of a potential client can
34 be considered in determining indigency.

35
36 **IV. INDIGENCY FORMULA**

37
38 An applicant is indigent if the applicant's available funds do not exceed one hundred
39 fifty percent (150%) of the current federal poverty guidelines established by the United
40 States Department of Labor.

41
42 The screening agent shall calculate the amount of available funds by adding the
RCR No. 1091

1 total for net income for the household (Column A) together with the total for assets for the
2 household (Column B) and subtracting the total for exceptional expenses (Column C). If
3 the available funds exceed one hundred fifty percent (150%) of the applicable federal
4 poverty level guideline, the applicant is not indigent.
5

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

10
11 **V. APPEAL**
12

13 If the applicant is found by the screening agent or the court not to be indigent, the
14 applicant may appeal the decision to the district defender in those districts with public
15 defender offices. If the applicant wishes to appeal the decision of the district defender, the
16 applicant shall appeal to the district court. In those districts without public defender
17 offices, the applicant may appeal directly to the district court. If the applicant wishes to
18 appeal a finding that the applicant is not indigent:
19

20 (1) in those districts with district public defender offices, the screening
21 agent shall notify the public defender of the appeal;
22

23 (2) in those districts without public defender offices, the screening agent
24 shall notify the district court of the appeal.
25

26 ~~[All appeals]~~ Any appeal regarding indigency shall be filed within ten (10) working
27 days after the date of the decision and must be disposed of by the district court within thirty
28 (30) days of the filing.
29

30 **[VI.—REIMBURSEMENT]**
31

32 ~~Any applicant who is ineligible for free representation but is unable to hire private~~
33 ~~counsel may sign a contract for public defender representation on a reimbursement basis.~~
34 ~~The reimbursement cost shall cover all charges for legal fees, expert witness, and private~~
35 ~~investigation costs. Reimbursement fees shall be governed by the schedule adopted by the~~
36 ~~Public Defender Department.~~
37

38 ~~First payment under a reimbursement contract shall be due thirty (30) days from~~
39 ~~the date of execution of the contract. If the applicant is incarcerated on the date of~~
40 ~~execution of the contract, the date of payment shall be thirty (30) days from the date of the~~
41 ~~applicant's release from incarceration.~~
42

1 ~~If a court enters an order appointing the Public Defender Department to represent a~~
2 ~~defendant and ordering the defendant to reimburse the state for representation, the~~
3 ~~defendant shall execute a contract for reimbursement in the appropriate amount under the~~
4 ~~department's schedule. If the defendant fails to execute a reimbursement contract, the order~~
5 ~~of appointment shall be forwarded to Public Defender administration for collection along~~
6 ~~with the documentation stating the amount owing for representation. If the defendant~~
7 ~~refuses to provide information necessary to determine net income or eligibility, the~~
8 ~~reimbursement fee shall be the maximum contract rate allowable for the crimes charged~~
9 ~~under the schedule set by the department.]~~

10
11 ~~[VII]~~VI. **NEW CHARGES**

12
13 If an applicant has applied for public defender services within six (6) months prior
14 to the filing of new charges or a probation violation, completion of a new eligibility
15 determination form is not necessary, but the applicant shall be required to pay the
16 application fee. A printout of the CDMS entry for the original application with the new
17 referral should be placed in the new file being opened. If an applicant has applied for
18 public defender services and been found eligible more than six (6) months prior to the filing
19 of new charges or a probation violation, completion of a new eligibility determination form
20 is necessary. An applicant must pay the application fee for each case for which the
21 applicant seeks representation regardless of whether completion of a new eligibility
22 documentation form is required, unless the fee has been waived.

23
24 [Adopted, effective September 24, 1986; as amended, effective August 1, 1989; December
25 1, 1993; February 14, 1997; November 1, 2004; as amended by Supreme Court Order No.
26 09-8300-039, effective October 26, 2009; as amended by Supreme Court Order No. 21-
27 8300-023, effective December 31, 2021.]