

STATE OF WEST VIRGINIA



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*"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."
Griffin v. Illinois, 351 U.S. 12 (1956)*

FINANCIAL GUIDELINES FOR DETERMINING ELIGIBILITY FOR LEGAL REPRESENTATION BY APPOINTED COUNSEL OR PUBLIC DEFENDER (effective April 1, 2021)

Pursuant to the provisions of Section 16(a) of Article 21 of Chapter 29 of the West Virginia Code, W. Va. Code §29-21-16(a), Public Defender Services, a West Virginia executive agency, hereby establishes the following financial guidelines for determining the eligibility of individuals for the representation that is made available under the provisions of Article 21 of Chapter 29 of the West Virginia Code, W. Va. Code §§29-21-1, *et seq.* (the "Statutory Provisions"):

1. Presumptive Eligibility.

An individual is presumed to be indigent and, as a result, is deemed to be eligible for representation under the Statutory Provisions if the individual is currently receiving assistance from a state or federal program that is based on poverty threshold guidelines and that includes asset limitations. The programs which would give rise to this presumption, include, but are not limited to: Medicaid; the Supplemental Nutrition Assistance Program; Temporary Assistance for Needy Families; Supplemental Security Income; and a Title XIX Waiver program. The presumption can be rebutted if, upon the Court's review, it is determined that the program from which the individual is receiving assistance does not establish actual indigence.

2. Established Eligibility.

An individual can establish that he or she is indigent and that, as a result, he or she is eligible for representation under the Statutory Provisions by submitting a sworn affidavit setting forth that the individual's gross income is less than the applicable amount set forth in the below table, which is calculated at 125% of the Poverty Income Guidelines established by the United

States Department of Health and Human Services in the year 2020 for the 48 Contiguous States and the District of Columbia and published in the *Federal Register*, 85 FR 3060 – 3061.

Persons in Household	1	2	3	4	5	6	7	8
Eligibility Guidelines	\$15,950	\$21,550	\$27,150	\$32,750	\$38,350	\$43,950	\$49,550	\$55,150
For each additional person beyond 8, add \$5,600								

3. Determined Eligibility.

The Court may determine that an individual is indigent and that, as a result, the individual is eligible for representation under the Statutory Provisions if the individual establishes by submitting a sworn affidavit that the individual’s net income is less than the applicable amount set forth in the table in Section 2 of these guidelines and if the Court determines that, upon consideration of the factors set forth in Section 16(e) of the Statutory Provisions, W. Va. Code §29-21-16(e), the individual should be eligible for representation under the Statutory Provisions. The Court must make a written statement of its reasons for such a determination of eligibility.

4. General.

The *Affidavit: Eligibility for Appointed or Public Defender Counsel*, SCA-C&M 101, revised 2/10/2020, continues to be the form of the sworn affidavit to be submitted by individuals making application for the appointment of counsel under the Statutory Provisions.