

Eligibility Determination

Section 1 - Policy

It is the policy of the Office of the State Public Defender (OPD) that OPD will provide public defender services to applicants who qualify under 47-1-111, MCA.

Section 2 - Definitions

1. Household: an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses, but does not include bona fide lessees, tenants, or roommates.
2. Hardship: When evaluation of an applicant's disposable household income (gross household income less reasonable and necessary expenses), extent and liquidity of assets, severity of crime(s) charged, incarceration status, and estimated cost of retaining private counsel demonstrate an individual would incur substantial hardship to his/her family to retain competent private counsel, the applicant qualifies for public defender services.
3. Presumptive Eligibility: An applicant who is a current, verified or documented recipient of a state or federally administered public assistance program such as TANF, SNAP, or SSI, who is a respondent in a proceeding for involuntary commitment, who is presently homeless, who has been or likely will be incarcerated for at least 14 days, who is a minor at the time of application, or who is unable to complete the application or retain counsel due to mental disability shall be considered presumptively eligible and, therefore, qualified for public defender services.
4. Current Client Status: An applicant who has been approved for public defender services by OPD or by a court order affirmatively denying an OPD Motion to Rescind will remain qualified for services for any new cases received while the original approved case (or appeal therefrom) remains pending and for one year from the original approval date.
5. Eligibility exempt: Individuals entitled to appointment of counsel under 47-1-104(b) regardless of financial ability to retain private counsel are exempt from OPD's financial eligibility process and will be recorded in OPD's case management system as ED-exempt.

Section 3 - Appointment of Counsel

1. All district courts and courts of limited jurisdiction shall send appointment forms to their local OPD office. The appointment form shall be provided by the Central Services Division and contains information about the application process for public defender services. Clients approved for public defender services qualify for representation in an appeal, absent additional information requiring an eligibility redetermination. The Appellate Defender Division may also receive new appointments from the Supreme Court.
2. When an office receives an appointment from the court under 47-1-104(4)(a), OPD shall immediately ensure the individual is provided representation for the individual who, in turn, shall promptly complete the application for public defender services. OPD's representation of the individual shall continue unless OPD determines that the individual is not eligible for services and a motion to rescind is filed and granted by the Court.
3. When an office receives an appointment under 47-1-104(4)(b) for an eligibility exempt client, OPD shall immediately ensure the individual is provided representation and shall not require any financial application.

Section 4 - Application Form

1. The Central Services Division shall provide all OPD offices with a standard Application for Court-Appointed Counsel form.
2. OPD offices will make forms available to all jails and courthouses and any other venues deemed appropriate.
3. The application form shall also be available through OPD's online client portal, and OPD shall encourage clients to submit their applications through the portal.

Section 5 - Application Procedure

1. An applicant for public defender services must complete the Application for Court-Appointed Counsel form, sign it, and submit it to OPD within ten days of appointment.
2. An applicant may also be required to provide documentation to verify income, expenses, and assets.
3. OPD will aid any applicant requesting assistance in completing the application.
4. OPD may move to rescind the appointment if the completed application or other requested materials are not provided in a timely manner.
5. Information on the Application for Court-Appointed Counsel form and all supporting documentation is confidential.

Section 6 - Eligibility Determination

1. OPD will appoint Eligibility Specialists (ES). This information will be maintained by the Central Services Division.
2. Regional Deputy Public Defenders, Conflict Office Managing Attorneys, and the Appellate Defender Division Administrator will sign motions to rescind appointments as required and will appear in court as needed. They will not act as the ES and will not be involved in the eligibility determination process for any of their own cases.
3. The ES will review the Application for Court-Appointed Counsel form, obtain missing information including proof of income, and assure that the form is signed by the applicant. Materials related to the application process will be maintained and coded in the case management system.
4. If Presumptive Eligibility or Current Client Status is not indicated, the ES will determine eligibility for services based on the Gross Income Guidelines (Attachment A), which are based on the federal poverty level.
5. If the applicant does not qualify under 6.4, the ES will be notified through the case management system to verify and evaluate the application materials and make a hardship determination. Verification may include, but is not limited to, production of paystubs, monthly bank statements, unemployment, food stamps/SNAP, TANF, SSI, SSDI, Worker's Compensation, pension/retirement, and financial aid benefit statements, and/or other documentation requested by the ES. The ES will also do a property records search when indicated.
6. The income and assets of another household member will not be considered in the eligibility determination if the household member is the alleged victim of the offense(s) allegedly committed by the applicant.
7. New or additional information regarding an applicant's income, assets and/or expenses may result in a redetermination of eligibility.

Section 7 - Eligibility Determination Timelines

1. The ES shall send each client a follow-up letter with a copy of the application form by email or physical mail within 3 days of OPD's receipt of a court appointment.
2. If OPD has not received an application form back from the client within 7 days of OPD's receipt of court appointment, OPD's case management system will send an automated reminder on behalf of the ES to any client participating in email or text communications and will notify assigned counsel the client has not completed the application process and needs to do so immediately.
3. If OPD has not received an application form back from the client within 10 days of OPD's receipt of court appointment, an ES will be tasked with attempting to contact the client by telephone.
4. If OPD has not received an application form back from the client within 14 days of OPD's receipt of court appointment and the client is not in active communication with the ES to complete the application process, the eligibility specialist will determine the client to be ineligible.
5. If OPD has received an application but that application is incomplete, the ES specialist shall immediately attempt to call the client regarding the missing information.
 - a. If OPD has not received the missing information within 5 days of an ES contacting the client, OPD's case management system will send an automated reminder on behalf of the ES to any client participating in email or text communications and will notify assigned counsel that the client has not completed the application process and needs to do so immediately.
 - b. If OPD has not received the missing information within 7 days of an ES contacting the client, OPD's case management system will send an additional automated reminder on behalf of the ES.
 - c. If OPD has not received the missing information within 10 days of an ES contacting the client and the client is not in active communication with the ES to complete the application, the ES will determine the client to be ineligible.
6. If the client's application has been elevated for hardship review, the ES shall request additional information and records from the client.
 - a. If OPD has not received the requested additional materials within 7 days of an ES contacting the client, OPD's case management system will send an automated reminder on behalf of the ES to any client participating in email or text communications and will notify assigned counsel that the client has not submitted required materials and needs to do so immediately.
 - b. If OPD has not received the requested additional materials within 10 days of an ES contacting the client, the ES will be tasked with attempting to contact the client by telephone.
 - c. If OPD has not received the requested additional materials within 14 days of an ES contacting the client, and the client is not in active communication with the ES to provide the additional materials, the ES will determine the client to be ineligible.

Section 8 - Disqualified Applicants

1. If the applicant does not qualify for public defender services, the ES shall document the reasons for the determination and notify the client, assigned attorney(s), and the appropriate Regional Deputy Public Defender, Conflict Office Managing Attorney, or Appellate Defender Division Administrator through the case management system.
 - a. If the applicant did not qualify under hardship and income review or did not qualify under the income review and then failed to submit the materials necessary for hardship review, the reason for denial shall be documented as financial. If the applicant never turned in a

- complete, initial application, the reason for denial shall be documented as non-compliance.
2. The notified Regional Deputy Public Defender, Conflict Office Managing Attorney, or Appellate Defender Division Administrator will determine whether a Motion to Rescind Appointment should be filed with the appointing court.
 - a. In a particular case, the applicable Deputy Regional Public Defender, Conflict Office Managing Attorney, or Appellate Defender Division Administrator may waive application requirements for good cause.
 - b. If the Regional Deputy Public Defender, Conflict Office Managing Attorney, or Appellate Defender Division Administrator decides that such a motion should not be filed, they must document the special circumstances establishing good cause for that decision in OPD's case management system.
 - c. If the Regional Deputy Public Defender, Conflict Office Managing Attorney, or Appellate Defender Division Administrator decides that a Motion to Rescind should be filed, OPD's case management system will task the relevant local office with immediately filing a Motion to Rescind and sending the applicant a written notice of that action and of their right to judicial review of OPD's eligibility determination.
 3. OPD shall continue to ensure the individual is represented and any assigned public defender shall continue to provide representation to the applicant until receipt of a signed order from the judge rescinding the appointment of counsel.
 - a. When the signed order rescinding the appointment is received, the attorney of record, whether FTE or contract, will be notified through the case management system, and the case will be closed.
 - b. A judge may overrule a determination that an applicant is ineligible for public defender services. If a court affirmatively denies a Motion to Rescind, OPD will change the eligibility status to Court Ordered as the outcome and continue provide public defender services to the applicant.
 - c. If the court does not rule upon the Motion to Rescind within 30 days, OPD's case management system will record Denied-No Ruling as the outcome and continue to provide public defender services.
 4. If an applicant turns in an application or other previously requested documentation during the period between filing of the Motion to Rescind and the court's ruling or elapse of 30 days, and this additional information establishes eligibility, OPD shall withdraw the Motion to Rescind and record the appropriate eligibility determination outcome.

Section 9 - Compliance Monitoring

OPD will use the case management system to monitor, on a systematic basis, compliance with statutory and administrative policies governing the eligibility determination process.