

New York State Defenders Association

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MEMORANDUM

To: NY Chief Defenders
From: Charlie O'Brien, Managing Attorney
Date: January 22, 2015
Re: 2015 Poverty Guidelines: Making an Informed Eligibility Determination

The constitutional and statutory standard for determining eligibility is "financially unable to afford counsel,"¹ not indigency. The Court of Appeals has ruled that courts must "make a sufficient inquiry into the defendant's ability to engage a lawyer."² Income measures, such as a percentage of the poverty guidelines, may be useful shorthand for making an initial eligibility finding, but the failure to meet income guidelines alone cannot be a basis to deny the appointment of counsel. Likewise, the receipt of public assistance benefits such as Temporary Assistance, SSI or food stamps should indicate an individual's inability to retain counsel.

Meeting or exceeding income guidelines is not determinative of eligibility, but must be considered with other factors. In addition to income, a court (or any program or office that may make an initial eligibility recommendation) must consider other relevant information to determine an individual's ability to afford counsel, including:

- an individual's assets and debts;
- seriousness of charge(s);
- complexity of the case; and
- cost of private representation in the community where the defendant is charged.

Since some defender offices and courts use percentages of the Federal Poverty Guidelines for eligibility purposes, the table below provides the current Legal Services Corporation (LSC) income guidelines along with other commonly used levels. Please note that the LSC guidelines are used for civil legal services program eligibility determinations, and we do not endorse their use in determining public defense eligibility. Further, LSC guidelines are susceptible to misapplication. For example, non-cash benefits, such as food stamps and housing subsidies, are sometimes counted as income, even though LSC regulations specifically exclude them.

Please note that the Office of Indigent Legal Services will establish eligibility criteria and procedures to guide courts pursuant to its statutory authority³ and as part of the settlement agreement in *Hurrell-Harring v State of New York* (No. 8866-07 [Supreme Ct, Albany County]). Feel free to contact the Backup Center with questions (518-465-3524).

Family Size	Annual Income by Percentage of Federal Poverty Guidelines* (Effective January 22, 2015)				
	125% (LSC)	133%	200%	250%	350%
1	\$14,713	\$15,654	\$23,540	\$29,425	\$41,195
2	\$19,913	\$21,187	\$31,860	\$39,825	\$55,755
3	\$25,113	\$26,720	\$40,180	\$50,225	\$70,315
4	\$30,313	\$32,253	\$48,500	\$60,625	\$84,875
5	\$35,513	\$37,785	\$56,820	\$71,025	\$99,435
6	\$40,713	\$43,318	\$65,140	\$81,425	\$113,995
7	\$45,913	\$48,851	\$73,460	\$91,825	\$128,555
8	\$51,113	\$54,384	\$81,780	\$102,225	\$143,115
Each Add'l. Person	\$5,200	\$5,533	\$8,320	\$10,400	\$14,560

*These guidelines are based upon the current official poverty guidelines by family size as determined by the Department of Health and Human Services. The LSC guidelines are typically updated in the beginning of each year and published in 45 CFR Part 1611 et seq.

¹ See CPL Articles 170 and 180; County Law Article 18-B.

² *People v. McKiernan*, 84 NY2d 915 (1994).

³ See Executive Law § 832(3)(c).