

# STATE OF WEST VIRGINIA



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**WV PUBLIC DEFENDER SERVICES**

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## FINANCIAL GUIDELINES FOR DETERMINING ELIGIBILITY FOR LEGAL REPRESENTATION BY APPOINTED COUNSEL OR PUBLIC DEFENDER COUNSEL

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), the West Virginia Public Defender Services 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 shall be presumed to be indigent and, as a result, shall be 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 shall establish that he is indigent and that, as a result, he 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 2013 for the 48 Contiguous States and the District of Columbia and published in the *Federal Register*, Vol. 78, No. 16 January 24, 2013, pp. 5182 – 5183:

Persons in Household	1	2	3	4	5	6	7	8
Poverty Guidelines	\$14,363	\$19,388	\$24,413	\$29,438	\$34,463	\$39,488	\$44,513	\$49,538
For each additional person beyond 8, add \$5,025.								

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 shall 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 101/7-96, shall continue to be the form to be submitted by individuals making application for the appointment of counsel under the Statutory Provisions.

Effective Date: October 1, 2013