

L.N. 224 of 2005**LEGAL AID (ASSESSMENT OF RESOURCES AND CONTRIBUTIONS) (AMENDMENT) REGULATION 2005**

(Made by the Chief Executive in Council under section 28 of the Legal Aid Ordinance (Cap. 91))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Director of Administration by notice published in the Gazette.

2. Schedule 1 amended

Part II of Schedule 1 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) is amended—

(a) in rule 5—

(i) by repealing subparagraph (a) and substituting—

“(a) the expenses for the care of a dependant who is—
(i) an infant; or
(ii) unable to take care of himself by reason of his mental or physical condition, during the time that that person is at work (whether that person is absent from home or not);”;

(ii) in subparagraph (b), by adding “and” at the end;

(b) by adding before rule 5A—

“5AA. Where the income of the person concerned consists, wholly or in part, of profits from a trade, business or gainful occupation other than an employment at a wage or salary, there shall be deducted, if it is reasonable to do so, the expenses to provide for the care of a dependant who is—

(a) an infant; or

(b) unable to take care of himself by reason of his mental or physical condition,

during the time that that person is at work (whether that person is absent from home or not).”;

(c) by adding—

“9. (1) Subject to paragraphs (2) and (3), where the person concerned makes regular payments for the maintenance of—

(a) a spouse living separate and apart or a former spouse; or

(b) a child,

there shall be a deduction in respect of those payments.

(2) The deduction under paragraph (1) may only be made if the spouse or child (as the case may be) is not taken into account as a dependant of the person concerned in calculating the amount equivalent to the 35-percentile household expenditure referred to in rule 8(1).

(3) The amount to be deducted under paragraph (1) shall be—

(a) where the payment is made under a court order, the amount actually paid; or

(b) in any other case, the amount specified in paragraph (4).

(4) The amount to be deducted under paragraph (3)(b) shall be such amount as the Director considers to be reasonable having regard to the circumstances of the case, but shall not exceed whichever is the lower of the following—

(a) the amount actually paid as maintenance;

(b) the 35-percentile household expenditure differential.

(5) In this rule, “35-percentile household expenditure differential” (住戸開支第35個百分値差額) means the difference in amount between the 35-percentile household expenditure (calculated in accordance with rule 8(2)) in—

(a) the case where the person or persons (as the case may be) for whose maintenance the payment is made, is or are regarded as the only dependant or dependants of the person concerned; and

(b) the case where the person concerned is regarded as having no dependant.”.

3. Rules for computing disposable capital

Schedule 2 is amended by adding—

“12A. (1) Where an application relates to a claim for damages arising from personal injury to a person, and monies have been received by the person concerned under an insurance policy in respect of the injury, there shall be disregarded such amount as the Director considers to be reasonable to provide for the care and medical treatment and appliance which are likely to be required by the injured person as a result of the injury over the 3-year period commencing on the date of application.

(2) In determining the amount to be disregarded under subsection (1), the Director shall have regard to the circumstances of the case, including but not limited to—

- (a) the amount, if any, actually incurred to provide for the care and medical treatment and appliance required by the injured person as a result of the injury during the 12-month period immediately preceding the date of application; and
- (b) the medical evidence, if any, as to the care and medical treatment and appliance which are likely to be required by the injured person as a result of the injury.”.

4. Contributions

Part III of Schedule 3 is amended—

- (a) by repealing paragraph 3 and substituting—

“3. Subject to paragraph 4, the rate of contribution is 10%.”;
- (b) by repealing paragraph 4 and substituting—

“4. Where a claim is settled prior to delivery of a brief for attendance at trial to counsel, the rate of contribution is 6%.”.

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
6 December 2005

Explanatory Note

This Regulation amends the rules for computing the disposable income and disposable capital of a person applying for or receiving legal aid, and the contribution under the Supplementary Legal Aid Scheme. The rules and the contribution are set out in the Schedules to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) (“principal Regulations”).

2. The amendments to the rules for computing the disposable income of a relevant person are as follows—

- (a) The expenses to provide for the care of a dependant who is an infant or who is unable to take care of himself due to his mental or physical condition when the person is at work (whether the person is absent from home or not) may be deducted, where it is reasonable to do so. This deduction is given where the person is at work by reason of employment for a wage or salary or engagement in a trade, business or gainful occupation. Currently, a deduction is allowed only for the care of a dependant infant living with the person during the time that the person is absent from home by reason of employment (see section 2(a) and (b)).
- (b) A new rule is added to provide for deduction to be made in respect of regular payments made by the person for the maintenance of a spouse living separate and apart or a former spouse, or a child. In the case of a payment under a court order, the amount actually paid is deductible. In the case of a voluntary payment, an amount that the Director of Legal Aid (“Director”) considers to be reasonable is deductible, but it should neither exceed the amount actually paid nor the amount calculated in respect of the spouse or child using the formula set out in rule 8(2) of Schedule 1 to the principal Regulations (see section 2(c)).

3. A new rule for computing disposable capital is added. Under the new rule, if an application for legal aid relates to a claim for damages arising from personal injury to a person and monies have been received under an insurance policy in respect of the injury, an amount that the Director considers to be reasonable to provide for the care and medical treatment and appliance that the injured person may require as a result of the injury over the next 3 years may be disregarded (see section 3).

4. The contribution to be paid to the Director in respect of a property recovered or preserved under the Supplementary Legal Aid Scheme is reduced from 12% to 10% of the value of the property. The rate of contribution remains at 6% where a claim is settled before delivery of the brief for attendance at trial to counsel (see section 4).