



# ILLINOIS JUDICIAL BRANCH

## Bench Card: Civil Fee and Criminal Assessment Waivers

### Before Evaluating Applications

- Applications can be decided on the basis of the information in the application, without a hearing, unless the application gives rise to a factual issue.
- A judge has the discretion to:
  - hold an in-person hearing and/or order the applicant to produce supporting documents;
  - allow deferred or installment payments; and
  - grant a waiver based on substantial hardship.
- All waiver applications should be reviewed independent of the underlying pleading or charge.

### How Does a Judge Determine Whether an Applicant is Indigent and Qualifies for a Waiver?

There are three ways an applicant qualifies for a FULL waiver:

1. **Means-Based Public Benefit:** Applicant receives assistance from one or more of the following governmental public benefits programs:
  - Supplemental Security Income (SSI) (Not Social Security Retirement, Disability, or Survivors benefits)
  - Aid to the Aged, Blind and Disabled (AABD)
  - Temporary Assistance for Needy Families (TANF)
  - Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps)
  - General Assistance (GA), Transitional Assistance, or State Children and Family Assistance

*NOTE: receiving another type of public benefit that is not on this list means that the person doesn't automatically qualify for a full waiver under statute, but may still qualify based on hardship or income level.*

2. **Substantial Hardship:** Applicant demonstrates that paying court fees would pose a substantial hardship.
3. **Household Income:** Applicant's available household income is at or below a percentage of the Federal Poverty Level (FPL): 125% in civil cases or 200% in criminal cases for a full waiver.

*NOTE: for both criminal and civil cases, parties are also considered indigent and the parties' fees/assessments can be waived if a legal services provider certifies that the person is eligible to receive those free legal services.*

### Applicants must use the Statewide Standardized Forms

- Forms suites include:
  - Getting Started overview
  - How to instructions on asking for a waiver
  - Application for applicants to fill out
  - Order for judges to complete
- One suite for civil cases and another for criminal cases
- Available at <http://illinoiscourts.gov/Forms/approved/Circuit.asp>

### 1. Determining Indigency – Means-Based Public Benefits

An applicant who receives one or more of the listed means-based public benefits automatically qualifies for a full waiver. These benefits require rigorous screening and regular recertification. Most programs have asset caps, but allow recipients to own one home and one car. Many public benefits recipients work or own property but still live in or near poverty due to low wages, irregular work schedules, dependents, or declining property values. *If an applicant establishes they receive a qualifying public benefit, analysis is complete and the full waiver SHALL be granted.*

*NOTE: For more information on the specific criteria and screening procedures for the individual benefit programs, please visit <https://www.ssa.gov/ssi/> or <http://www.dhs.state.il.us/page.aspx>.*

### Public Benefits as a Proxy for Indigency

Means-based public benefits programs are:

- Contingent on proof of income, assets, identity, legal status, and other eligibility criteria.
- Recertified on a regular basis.
- Verified by experienced agencies with access to federal databases that can check bank accounts, employment history, and immigration records.
- Proven to have minimal levels of fraud.

Relying on these programs will:

- Reduce the administrative burden on judges and staff.
- Increase efficiency in processing waiver applications.
- Improve statewide consistency of application handling.
- Avoid the appearance of bias by adhering to objective criteria.
- Reduce redundancy for applicants who have already gone through background and income screening.
- Avoid duplication of work by multiple government agencies.

### 2. Determining Indigency-Substantial Hardship

*If an applicant does not receive a public benefit or their income is higher than the stated FPL percentage, they can still qualify for a waiver. A judge may exercise discretion and grant a full waiver to an applicant who can demonstrate that paying the court fees or assessments would constitute a substantial hardship to the individual or the family. Factors to consider, in addition to public benefits and income, are the applicant's monthly expenses and supporting documents showing the fee or assessment would be a substantial hardship.*

### 3. Determining Indigency – Household Income

If an applicant does not receive a means-based public benefit, the thing to look at before substantial hardship is income. The most common measure of indigency is the Federal Poverty Level (FPL), which is set and used by the US government. The FPL is updated each year and applies uniformly throughout the US without adjustment for variation in cost of living. 100% of the 2021 annual FPL for one person is \$12,880 and \$26,500 for a family of four, and the monthly FPL is \$1,073 for one person and \$2,208 for a family of four.

NOTE: For more information on the federal poverty level, visit <https://aspe.hhs.gov/poverty-guidelines> or see the chart to the right or the separate 2021 annual and monthly charts.

MONTHLY Federal Poverty Level 2021

#	125% FPL	150% FPL	175% FPL	200% FPL	250% FPL	300% FPL	400% FPL
1	\$1,342	1,610	1,878	2,147	2,683	3,220	4,293
2	\$1,815	2,178	2,540	2,903	3,629	4,355	5,807
3	\$2,288	2,745	3,203	3,660	4,575	5,490	7,320
4	\$2,760	3,313	3,865	4,417	5,521	6,625	8,833
5	\$3,233	3,880	4,527	5,173	6,467	7,760	10,347
6	\$3,706	4,448	5,189	5,930	7,413	8,895	11,860

#### Full or Partial Waivers

If an applicant's available household income is 125% or less of FPL (civil cases) or 200% or less of FPL (criminal cases), judges SHALL grant them full waivers. If their income falls in the ranges listed below, judges SHALL grant the corresponding partial waiver. Use these charts to determine full or partial waivers:

##### Civil Fee Waiver 735 ILCS 5/5-105

100% Waiver	Receives a means-based public benefit (regardless of income)
100% Waiver	Payment would result in substantial hardship (regardless of income)
100% Waiver	Available income 125% FPL or less
75% Waiver	Available income greater than 125% but does not exceed 150% FPL
50% Waiver	Available income greater than 150% but does not exceed 175% FPL
25% Waiver	Available income greater than 175% but does not exceed 200% FPL

##### Criminal Assessment Waiver 725 ILCS 5/124A-20

100% Waiver	Receives a means-based public benefit (regardless of income)
100% Waiver	Payment would result in substantial hardship (regardless of income)
100% Waiver	Available income 200% FPL or less
75% Waiver	Available income greater than 200% but does not exceed 250% FPL
50% Waiver	Available income greater than 250% but does not exceed 300% FPL
25% Waiver	Available income greater than 300% but does not exceed 400% FPL

#### Considerations When Granting or Denying Applications

- A judge must specify a reason in the order if the waiver application is denied per SCR 298 and 404.
- Rely on the objective criteria to review waiver applications to avoid potential influence or appearance of bias.
- Do not make assumptions based on an applicant's appearance, clothing, possessions, or demeanor.
- Many applicants have disabilities, both visible and invisible, that can interfere with their ability to work.
- Having a job is not an automatic disqualifier. A federal minimum wage employee with one minor child can work 40 hours a week and still fall under the federal poverty level.
- Having a lawyer is not an automatic disqualifier. Some pro bono and limited scope attorneys represent clients in or near poverty. Other lawyers work on contingency or are paid by someone other than the applicant.
- Owning a home is not an automatic disqualifier. Many homeowners are "underwater." Even those with equity in the home may live in poverty since it is not a fungible asset.
- There are no residency requirements for waiver applications.

For additional information, please contact:

Administrative Office of the Illinois Courts

Access to Justice Division

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ILLINOIS SUPREME COURT COMMISSION

