

## **Chapter 8**

# **Costs Awarded Against A Legally Assisted Person**

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1. A request that the Commission pay to another party on behalf of a legally assisted person an amount representing the whole or a part of costs directed to be paid by the legally assisted person, shall be made in writing to the Director and shall be supported by such material as the Director may require, verified by the statutory declaration of the person making the request.
2. The Commission shall not pay any amount pursuant to such a request unless the officer or Legal Aid Committee deciding the request is satisfied that the legally assisted person will suffer substantial hardship unless the amount requested to be paid, or some lesser amount, is paid.
3. The Commission shall not pay an amount upon the request of the legally assisted person if, in the opinion of the officer or Legal Aid Committee deciding the request, the legally assisted person failed to disclose any significant and relevant matter in her or his application for assistance; or where she or he was specifically advised that the Commission would not meet any order for costs made against her or him.
4. In making a decision upon a request by the legally assisted person or the other party, the officer or Legal Aid Committee shall have regard, inter alia, to the following matters:
  - (a) the effect on the person making the request and on the legally assisted person, of the result of the proceedings;
  - (b) the effect on the person making the request and on the legally assisted person of a refusal to meet the request in whole or in part;
  - (c) the amount at issue in the proceedings;
  - (d) the amount at issue between the parties by way of costs;
  - (e) any other action or remedy available to the person making the request or to the legally assisted person;

- (f) the conduct of the person making the request during the proceedings;
  - (g) the conduct of the legally assisted person during the proceedings;
  - (h) whether or not the Commission was given any notice of the likelihood of the making of an order for costs against the legally assisted person and of the likely amount of such costs;
  - (i) whether or not the matter or proceeding was in the nature of a test case having a potential benefit to persons other than the legally assisted person or the person making the request, being persons likely to be within the means test determined by the Commission; and
  - (j) the funds available to the Commission for the purpose of meeting the request and the effect of meeting the request in whole or in part on the capacity of the Commission to provide legal assistance in the future.
5. It has been determined that the Commission will not pay, on the application of the other party, an amount in respect of costs incurred in a proceeding at first instance, unless it appears to the Commission that the person who made the request will suffer substantial hardship if that amount is not paid by the Commission.
6. In determining whether or not a person will suffer substantial hardship, in accordance with paragraphs 2 and 5, regard shall be had by the officer or Legal Aid Committee to, inter alia, the following matters:
- (a) whether the person, or another person who usually resides with her or him, will lose or be forced to vacate her or his home;
  - (b) whether the person will lose a motor vehicle, or the use of a motor vehicle, reasonably necessary for domestic or employment purposes;
  - (c) whether the person will lose furniture or effects reasonably necessary for the well being of herself or himself and her or his dependants; and
  - (d) whether the person will lose her or his employment or livelihood.