

August 2016

Legal Aid News is your official regular communication from Legal Aid Services on all matters related to legal aid. *Legal Aid News* is generally published in the last week of every month.

In this issue ...

[Three fixed fees that may be claimed incorrectly](#)

[Determining merit in Protection of Personal Property Rights Act 1988 applications](#)
[Queries](#)

Three fixed fees that may be claimed incorrectly

A recent internal review identified more clarity is required on the following fixed fees:

Specialist reports

The family fixed fees schedules for cases under the Care of Children Act 2004 (COCA) and the Children, Young Persons and their Families Act 1989 (CYP Act) both specify fixed fees for specialist reports. These fees are claimable for considering specified reports and reporting to the client on them.

A Judge directed Lawyer for Child report is specified as a specialist report under both the COCA and the CYP Act schedules. The COCA schedule also specifies reports requested by the court under sections 132 or 133 of COCA while the CYP Act schedule specifies reports requested by the court under sections 178, 186 or 187 of the CYP Act.

On occasion, we receive claims for the specialist reports fee for reports that are not deemed specialist reports. For example, these include reports requested by the court under section 131A of COCA, similar reports in relation to notifications under section 15 of the CYP Act and lawyer for child memoranda that are not directed by the court. These reports cannot be claimed as specialist reports. Considering other non-specialist reports/memoranda is covered by the pre-hearing matters fixed fee.

Expert witness/reports'

The 'Expert witness/reports' fee is payable in a criminal case where an *expert* witness has given oral evidence or produced a report.

A pre-sentence report prepared by a probation officer is not an expert report for this purpose. Reviewing pre-sentence reports is a routine activity undertaken by providers during the trial and sentencing stages. 'Obtaining pre-sentence reports' is included as a task in the fee schedules in the 'Trial' stage for applications received between 1 July 2013 and 3 July 2016; and in the 'Trial and Sentencing' stage for applications received after 3 July 2016.

If the relevant 'Trial' or 'Trial and sentencing' fee is inadequate for the work done, the provider may apply for an amendment to grant.

Interlocutories — Document preparation where there is no hearing

Several of the family fixed fee schedules include a fixed fee for an interlocutory application where there is no hearing. An interlocutory is defined as an *application* for a *court order or direction* in relation to a matter of procedure, or for a *temporary order*. This definition is consistent with the Family Court Rules 2002.

Where a provider withdraws as counsel in a family case, they may either:

- make an application to the court for a declaration that they have withdrawn as counsel, and serve any order made on the other parties (Family Court rule 88), or
- file a notice at court that they have withdrawn as counsel and serve it on the other parties (Family Court rule 87).

In the first scenario, where an application to the court is made, there is an interlocutory application and the fixed fee 'Interlocutories — Document preparation where there is no hearing' may be claimed. In the second scenario, where a notice is filed at the Court, this is not an interlocutory application and no separate fee is payable.

Determining merit in Protection of Personal Property Rights Act 1988 applications

Recently some providers have sought clarification about how Legal Aid Services determines merit in Protection of Personal Property Rights Act 1988 (PPPR) applications.

Proceedings under the PPPR are a specified enactment that is included in Schedule 2 of the Legal Services Act 2011 (the Act). Under section 10(5) of the Act, on receipt of a legal aid application for Schedule 2 proceedings, the Legal Services Commissioner must assess whether a grant of aid is justified.

In the case of PPPR proceedings, if the subject person has no assets and low income, (eg only benefit or superannuation), and there is no dispute with regard to the appointment of the legal aid applicant as property manager and/or welfare guardian, then it is unlikely a grant of legal aid would be justified. There would be no need to instruct a lawyer in these circumstances.

In these circumstances, if there is a dispute or any complex factual, legal or evidential matters that require the determination of the court then legal aid may be justified.

Queries?

If you have queries about any article in this newsletter, please contact legalaidnews@justice.govt.nz.