Legal Services Agency
Pokapū Ratonga Ture

Part 15 – Withdrawal of legal aid

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Withdrawal of family/civil legal aid

Introduction

A request to withdraw aid can be made to the Agency by the aided person, lead provider, or a third party. The Agency may withdraw aid at its discretion in certain circumstances, and must withdraw in other situations.

Legislation

Section 26, *Withdrawal of, or amendment to, grant of legal aid: civil matters:*

- S26(1) describes the circumstances in which the Agency must withdraw aid
- S26(2) outlines the circumstances in which the Agency may withdraw aid at its discretion.

Section 27, *Withdrawal of grant* specifies the process which the Agency must follow when withdrawing aid and the requirements for notifying all parties.

Section 28, *Consequences of withdrawing aid,* describes the effect of withdrawing aid on repayment conditions and debt recovery.

Policy

The Agency **must** withdraw aid:

- if the grant includes a condition that the person pay an interim repayment and payment:
  - is more than 21 days in arrears, or
  - has still not been made a new due date to which the Agency has extended time for payment
- the grant of aid is subject to authorisation of a charge being registered over a property and this has not been done within 20 working days
- the aided person was not entitled to legal aid because subsection 1 of Section 10 applies, and subsection 2 of that section does not.

The Agency **may** withdraw aid if:

- aided person is no longer entitled to aid due any of the provisions in ss9, 10 or 11
- the Agency is satisfied the proceedings have been disposed of
- the Agency is satisfied that the aided person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Agency, or has required unreasonably that the proceedings be continued
- the Agency considers that the aided person no longer has reasonable grounds for taking, defending, or being party to the proceedings, or it is unreasonable or undesirable in the circumstances to continue aid
- the aided person has
  - intentionally or negligently made untrue statements about resources or failed to disclose material concerning them, or
  - the aided person has intentionally contravened or failed to comply with the Legal Services Act 2000 or regulations made under the Act
- the aided person requests that legal aid be withdrawn.

Procedure

Step 1. The Grants Officer determines whether to withdraw aid.

Consider	Guidance
Whether the mandatory ground of non-payment of interim repayment applies.	Under s26(1)(a), the Grants Officer will withdraw aid if: (i) payment of an interim repayment is more than 21 days is arrears, or (ii) unpaid by any date to which the Agency has extended the time for paying the interim repayment. If payment is not made on or before either of the dates stipulated, then aid must be withdrawn.
Whether the other mandatory grounds for withdrawing aid apply	The grant of aid is subject to authorisation of a charge being registered over a property and this has not been done within 20 working days
	The aided person was not entitled to legal aid because subsection 1 of Section 10 applies, and subsection 2 of that section does not. See 'Does the matter involve certain immigration decisions?' in **Part 4** of this manual.
Whether the discretionary grounds for withdrawal apply.	The aided person is no longer entitled to aid due any of the provisions in ss9, 10 or 11. See **Part 4** of this manual: ▪ s9 – see 'Does the application have sufficient merit? ▪ s10 – see 'Does the matter involve certain immigration decisions?' ▪ s11 – see 'Does the applicant have insurance or indemnification?'
	The Grants Officer is satisfied that the proceedings have been disposed of. See 'Has the matter already been disposed of by a court, tribunal or by any other means?' in **Part 4** of this manual.
	The Grants Officer is satisfied that the aided person has required the proceedings to be conducted unreasonably so as to incur unjustifiable expense. For example, repeated requests from the aided person to change their lawyer. ▪ The aided person can ask to have another lawyer confirmed as their provider. ▪ However, there must be sound reasons for this and the Agency cannot go on reassigning new lawyers indefinitely. See 'Termination of Assignment and Reassignment – Family, Civil and Criminal' in **Part 13** of this manual. ▪ Therefore, in general, the Agency may allow up to a maximum of 3 changes of provider at the aided

Consider	Guidance
	person's request. ▪ There will have to be special circumstances for considering a further request to change providers. ▪ Where there are no special circumstances, and/or the provider has advised that the case cannot succeed, there **may** be grounds under s26(2)(c) for withdrawing aid.
	The Grants Officer considers that the aided person no longer has reasonable grounds for taking, defending, or being party to the proceedings, or it is unreasonable or undesirable in the circumstances to continue aid.
	▪ the aided person has - intentionally or negligently made untrue statements about resources or failed to disclose material concerning them, or - the aided person has intentionally contravened or failed to comply with the Legal Services Act 2000 or regulations made under the Act. Go to step 2, *The Grants Officer* i*ssues notice of intention to withdraw.*
	The aided person requests that legal aid be withdrawn. A notice of intention to withdraw is **not** required. Go to step 5, *The grants Officer* w*ithdraws aid.*

Step 2. The Grants Officer issues a notice of intention to withdraw.

If…	then…
aid is to be withdrawn under s26(2)(f) at the aided persons request,	a notice of intention to withdraw will not be issued. S27(1) excludes withdrawals "*with the agreement, or at the request, of the aided person"* from the requirement to issue a notice of intention to withdraw. Go to step 5, *Withdraw aid.*
aid is to be withdrawn under any of the following sections: ▪ 26(1)(a) repayment overdue ▪ 26(1)(b) authorisation letter has not been provided ▪ 26(2)(a) – no longer entitled under s 9 10 or 11 ▪ 26(2)(b) matters disposed of – aid to cease ▪ 26(2)(c) proceedings being conducted unreasonably ▪ 26(2)(d) unreasonable/undesirable ▪ 26(2)(e) untrue/misleading statements have been made	a notice of intention to withdraw will be issued. The notice of intention to withdraw: ▪ will include: - the Act reference that applies - the 21-day time frame for submissions from the aided person about why aid should not be withdrawn - the appropriate clause codes (see the 'Family Sample Letters' in the Letters Guide) ▪ may include a request for a final invoice from the lead provider if this has not already received. Go to step 3, *The Grants Officer considers any submissions from the aided person or their provider.*

If…	then…
▪ 26(2)(d) no instructions received – unreasonable/ undesirable that aid continue	

Step 3. The Grants Officer considers any submissions from the aided person or their provider.

Consider	Guidance
Factors about the case which may indicate that aid should **not** be withdrawn.	These may include, but are not limited to: ▪ the interests or welfare of the aided person and/or dependents ▪ the aided person is currently involved in mediation ▪ the dispute is close to being resolved (or the case finalised). Go to step 4, *The Grants Officer makes a decision.*

Step 4. The Grants Officer makes a decision.

If…	then…
the grounds for not withdrawing aid in the aided person's or provider's submissions are accepted,	the grant will continue and the Grants Offcier will advise the aided person and their provider in writing of their decision and the reasons for it. End of process
no submissions are received to the notice of intention to withdraw aid within 21 days,	Go to step 5, *The Grants Officer withdraws aid.*
the grounds for not withdrawing aid in the aided person's or provider's submissions are not accepted,	

Step 5. The Grants Officer withdraws aid.

Step	Action
The Grants Officer sends a letter withdrawing aid.	This letter will include: ▪ the Act reference that applies ▪ the date on which the withdrawal is to take effect. That is, 5 working days, which is, letter date + 4 working days. This will give the provider time to seek permission of the court to withdraw from the case if necessary and to send their invoice for this work. ▪ the reconsideration and review rights.
The grants Officer considers whether there will be a final repayment (s28(2)&(3)) and the amount of the final repayment.	If interim repayments paid exceed the cost of services, a refund will be made.
If no response is received to the letter advising withdrawal, the case and file	15 working days will be allowed for the final invoice to be submitted.

Step	Action
may be closed.	End of process.

Withdrawal of criminal legal aid

Introduction

A request to withdraw aid can be made to the Agency by the aided person, lead provider, or a third party. The Agency may only withdraw aid in the circumstances specified in the Act.

Legislation

Section 25, *Withdrawal of, or amendment to, grant of legal aid: criminal matters:* specifies the grounds on which the Agency may withdraw aid.

Section 27, *Withdrawal of grant* specifies the process which the Agency must follow when withdrawing aid and the requirements for notifying all parties.

Section 28, *Consequences of withdrawing aid,* describes the effect of withdrawing aid on repayment conditions and debt recovery.

Policy

The Agency may at any time withdraw aid in a criminal matter from the aided person if:

- the Agency is satisfied the aided person has sufficient means to obtain legal representation him or herself,
- interests in justice no longer require that aid be afforded to the person, or
- the aided person requests it.

The Agency will not withdraw aid in a criminal matter if the aided person defaults on a condition of the grant. Note that the Agency's Debt Management Group will monitor compliance with conditions on a grant and undertake debt recovery actions as appropriate.

Procedure

Step 1. The Grants Officer determines whether to withdraw aid.

Consider	Guidance
Whether the grounds specified in s 25(a) apply.	If the aided person has sufficient means to obtain legal representation, then the ground in s25(a)(i) has been met. See 'Does the applicant have sufficient means?' in **Part 5** of this manual. Go to step 2, *The Grants Officer issues a notice of intention to withdraw.*
	If the interests of justice no longer require that aid be afforded to the person, then the ground in s25(a)(ii) has been met. See 'Do the *interests of justice* require a grant of aid?' in **Part 5** of this manual.

Consider	Guidance
	Go to step 2, *The Grants Officer issues a notice of intention to withdraw.*
	If the aided person requests that aid be withdrawn, the ground under s25(a)(iii) has been met. Go to step 4 *The Grants Officer withdraws aid.*

Step 2. The Grants Officer issues a notice of intention to withdraw.

POLICY If aid is to be withdrawn, then except for withdrawals under 25(a)(iii), the Agency will give notice in writing of the intention to withdraw aid. This is a requirement of s27.

If…	then…
aid is to be withdrawn under 25(a)(iii) at the aided persons request,	a notice of intention to withdraw will not be issued. S27(1) excludes withdrawals "*with the agreement, or at the request, of the aided person*" from the requirement to issue a notice of intention to withdraw. Go to step 4, *The Grants Officer withdraws aid.*
aid is to be withdrawn under: ▪ s25(a)(i) Client has sufficient means ▪ s25(a)(ii) Interests of justice no longer require legal aid	a notice of intention to withdraw will be issued. The notice of intention to withdraw includes: ▪ the Act reference that applies ▪ the 21-day time frame for submissions from the aided person about why aid should not be withdrawn Go to step 3, *The Grants Officer considers any submissions from the aided person or their provider.*

Step 3. The Grants Officer considers any submissions from the aided person or their provider.

If…	then…
the grounds for not withdrawing aid in the aided person's or provider's submissions are accepted,	the grant will continue and the Grants Offcier will advise the aided person and their provider in writing of their decision and the reasons for it. End of process.
no submissions are received to the notice of intention to withdraw aid within 21 days,	Go to step 4, *The Grants Officer withdraws aid*
the grounds for not withdrawing aid in the aided person's or provider's submissions are not accepted,	

Step 4. The Grants Officer withdraws aid.

Step	Action
The Grants Officer sends a letter withdrawing aid.	This letter will include: ▪ the Act reference that applies

Step	Action
	▪ the date on which the withdrawal is to take effect. That is, 5 working days, which is, letter date + 4 working days. This will give the provider time to seek permission of the court to withdraw from the case if necessary and to send their invoice for this work. ▪ the reconsideration and review rights.
The grants Officer considers whether there will be a final repayment (s28(2)&(3)) and the amount of the final repayment.	If interim repayments paid exceed the cost of services, a refund will be made.
If no response is received to the letter advising withdrawal, the case and file may be closed.	15 working days will be allowed for the final invoice to be submitted. End of process.