



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2001-1008

To: Deborah Perluss
Northwest Justice Project
401 Second Avenue South
Seattle, WA 98104

Date: April 3, 2001

Subject: **Health Insurance Premiums as Medical Expenses under 45 CFR Part 1611**

You requested an opinion from this office as to whether health insurance premiums paid for by a prospective client and not reimbursed by an employer or other external source may be considered a medical expense for the purposes of determining financial eligibility under applicable Legal Services Corporation regulations at 45 CFR Part 1611. For the reasons set forth below, health insurance premiums may be considered a medical expense for the purpose of determining client eligibility under Part 1611.

Under 45 CFR §1611.3, unless otherwise authorized, a person whose income exceeds the maximum annual income level established by a recipient is not eligible for legal assistance. A person whose gross income exceeds the maximum income level (but does not exceed 150% of the national income eligibility level) may still be eligible for assistance, after consideration of other enumerated factors affecting the person's ability to afford legal assistance. 45 CFR §1611.4(a)(1). One of the factors which must be considered in determining whether a person is eligible to receive legal assistance is the person's medical expenses. 45 CFR §1611.5(b)(1)(B).

The term "medical expenses" is not defined in Part 1611 or elsewhere in the LSC Act or regulations. Neither is the term discussed in the preambles to the various iterations of the rule which have appeared over the years, or in previous opinions from this Office. Thus, there is no directly applicable controlling law requiring unreimbursed health insurance premiums to be considered medical expenses, nor directly applicable controlling law prohibiting them from being considered as such. In order to determine whether unreimbursed health insurance premiums are reasonably considered medical expenses for the purposes of 1611, we must consider the purpose of the regulation and can look to other regulatory schema for guidance.

As noted above, the regulations at Part 1611 are intended to ensure that LSC funded legal assistance is provided only to those persons financially eligible to receive such services. The regulations describe what is to be considered income and also require consideration of a variety of other assets and expenses which affect a person's ability to afford private legal assistance. For example, the definition of "total cash receipts"

excludes non-cash benefits, such as insurance premiums paid by the employer, and business expenses incurred by the self-employed. Such items are not imputed as income to the applicant because they cannot be considered to represent funds available for the applicant's use in obtaining private legal services.

Typical unreimbursed medical expenses, such as the cost of medical services not otherwise paid for by insurance or some other third party, are allowed to be deducted because they similarly negatively impact on the availability of disposable income. Health insurance premiums pay, essentially, for the same sort of services, only in an indirect manner. Likewise, the funds spent by the applicant on unreimbursed health insurance premiums are unavailable for use on private legal assistance. Thus, to the extent that health insurance premiums are similar to other types of expenses which are not considered available as part of an applicant's income, it appears consistent with the purposes of 1611 to consider unreimbursed health insurance premiums to be the one of the kind of expenses which recipients are supposed to consider in determining eligibility.¹ In addition, for the purposes of federal income tax and for several other Federal assistance programs,² unreimbursed health insurance premiums are considered medical expenses. Thus, it appears to be a reasonable to consider such expenses as "medical" expenses for the purposes of 1611.

Very truly yours,

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¹ Unreimbursed health insurance premium expenses may not simply be excluded from total cash receipts, however. The definition of total cash receipts sets forth a list of what is excluded and any item not specifically accounted for in that list may not be excluded. 45 CFR §1611.2.

² E.g. Senior Companion Program, 45 CFR 2551.42(2)(c); Foster Grandparent Program, 45 CFR 2552.42(2)(c); Rural Housing Assistance, 7 CFR pt. 1930, Subpt. C, Exh. B(3)(b); Section 8 Project-Based HUD Housing Assistance, 24 CFR 5.603(b); Veteran's Relief Benefits, 38 CFR 3.262(6)(1)(Unusual medical expenses).