


**LEGAL SERVICES CORPORATION**

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May 13, 1998

 Edgar Pauk, Esquire  
 Legal Services for the Elderly  
 130 W. 42nd St. 17th Floor  
 New York, New York 10036

Dear Mr. Pauk:

This letter responds to your April 29, 1998 letter to Danilo Cardona, Compliance and Enforcement Division of the Legal Services Corporation (LSC or Corporation), requesting whether Legal Services for the Elderly (LSE) may seek attorneys' fees in an ERISA case you state was filed before an administrative entity prior to April 26, 1996. Mr. Cardona has forwarded your request to the Office of the General Counsel.

Your letter pointed out that LSE had received a September 16, 1997 letter from the Corporation permitting your program to seek fees in a social security disability case because the case had been filed before an Administrative Law Judge before April 26, 1996. You request assurance that the ERISA case is sufficiently analogous to the social security case to receive similar treatment.

I have reviewed your letter and the additional information provided by your office and I find that the proceedings under which you filed the claims in the ERISA case before resorting to the Federal courts constitute administrative proceedings.<sup>1</sup> You have also assured us that the claims for which you are seeking attorneys' fees in Federal court are the same claims filed in the administrative proceedings. Therefore, LSE may seek attorneys' fees for the representation.

Briefly, the Legal Services Corporation's rule on attorneys' fees provides that:

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<sup>1</sup> See Barnett v. I.B.M. Corporation, 885 F. Supp. 581, (S.D.N.Y. 1995); 29 C.F.R. §2560.503-1 and §1133.

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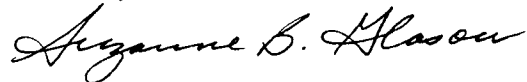
The prohibition contained in §1642.3 shall not apply to cases filed prior to April 26, 1996, except that the prohibition shall apply to any additional related claim made in such a case on or subsequent to April 26, 1996.

45 CFR §1642.4(a)(emphasis added). The rule does not provide guidance on the scope of the meaning of “cases filed,” but the plain meaning of the term should include the first formal filing of the case, regardless of whether it was filed before an administrative agency or a Federal court.<sup>2</sup> Cases or claims are filed before administrative agencies or entities as a matter of course and, with few exceptions, when parties seek relief from an adverse administrative action, they must pursue all administrative solutions before seeking judicial relief. *See Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, (1938); *Martinez v. United States*, 19 F.3d 97 (2d Cir. 1994). Thus, the entire process of seeking relief for a particular case or claim often encompasses, as required by law, both administrative and judicial stages.

Based on the information in your letter, LSE formally filed a claim for the client before the appropriate administrative entity before April 26, 1996, and is seeking attorneys’ fees in the Federal courts on the same claim. Therefore, as stated above, LSE may seek attorneys’ fees in the case under the authority of §1642.4(a).

I hope this adequately responds to your inquiry. Please let me know if I can provide any additional assistance.

Sincerely,



Suzanne B. Glasow

Senior Assistant General Counsel

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<sup>2</sup> “Cases filed” does not include all forms of representation of a client. Thus, if the recipient gave the client legal advice or even prepared a claim but did not file the claim before the administrative entity prior to April 26, 1996, then the recipient cannot find a safe harbor in §1642.4(a).