

June 16, 2005

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RE: Proposed 45 C. F. R. Part 1611

Dear Mr. Condray:

I am writing to comment on the proposed revisions to 45 C.F.R. Part 1611 published in the May 24, 2005 Federal Register. I am the Managing Attorney of the Health and Benefits section of the Nashville Legal Aid office. For several years, I have organized our annual review of eligibility guidelines. These comments are solely my own, but do follow consultation with my colleagues. I believe the proposed regulations represent substantial improvements over the current regulations and they clearly reflect extensive work and thoughtful preparation. Please consider my comments regarding relatively minor aspects of the proposed regulations in that context.

The Corporation may want to consider both expanding and restricting the permitted resource exclusion for “vehicles required for work.” 45 C.F.R. § 1611.3(d)(1). Until very recently, the Supplemental Security Income (SSI) program permitted the exclusion of one automobile per household if the automobile was needed for work, education, or health care. On February 7, 2005, the SSI regulation was revised to permit the exclusion of one automobile regardless of its use. 70 Fed. Reg. 6345, 20 C.F.R. § 416.1218. The Social Security Administration determined that virtually every household was able to exclude one automobile under the prior rule and it was wasteful to require that each applicant be asked about the specific uses of one automobile. The SSI exclusion is broader than the proposed LSC exclusion in that it allows the exclusion of one automobile regardless of use and narrower than the proposed LSC exclusion in that it allows the exclusion of just one vehicle per household rather than an unlimited number of vehicles needed for work. I would urge LSC to follow the SSI regulation when final regulations are issued.

The proposed regulatory language regarding financial eligibility for victims of domestic violence, 45 C.F.R. § 1611.3(e), tracks the statutory language, but is unfortunately ambiguous in two significant respects. First, it is unclear whether financial eligibility for a victim of domestic violence is based solely on the applicant's individual income and assets or whether grantees should consider the income and assets of other household members except for the perpetrator of the domestic violence. Second, it is unclear whether the special rule applies whenever an applicant is a victim of domestic violence or only when the request for assistance involves domestic violence or when the perpetrator of domestic violence is the adverse party. I hope that the final regulations can provide clarification.

Proposed 45 C.F.R. § 1611.4(c) permits grantees to presume financial eligibility when an applicant's income is derived solely from a governmental program for low income individuals or families. I believe this is a positive provision which will make it convenient to determine financial eligibility for households consisting of SSI recipients or recipients of benefits under the TANF program. I would suggest, however, that the regulation should be expanded to permit presumed financial eligibility when all income is either derived from a program for low income families or was counted in determining eligibility for and benefit amount under a governmental program for low income families. The proposed regulation would presume eligibility for an SSI recipient receiving a maximum benefit of \$579 per month, but would require a new eligibility determination for an applicant who received an SSI benefit of \$500 per month and a Social Security benefit of \$99 per month. I believe it is reasonable to presume eligibility for the latter individual because he remains financially eligible for SSI despite his receipt of a Social Security benefit.

The preamble to the proposed regulations indicates that the current regulation permitting representation of clients within 150% of the national eligibility level who seek assistance "to secure benefits provided by a governmental program for the poor" permits representation only for benefit applicants. I never interpreted the current regulation so narrowly. I thought that it applied when an applicant sought help to "secure" a higher benefit than currently received or when an applicant sought help to secure a right to continuing benefit payments. The proposed regulations seek to broaden the current regulation by explicitly allowing the representation of clients seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families regardless of income. 45 C.F.R. § 1611.5(a)(1). I agree that the higher income limit should apply equally to benefit applicants and to clients seeking to maintain benefit eligibility. I would urge that the final regulations explicitly apply the higher income limit to clients who seek legal assistance with other matters related to the receipt of welfare

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benefits. I believe it is an unnecessary complication to create three categories of clients: (1) terminees for whom there is no income limit; (2) applicants who are subject to 150% of the national income limit; and (3) other clients with welfare issues subject to the normal income limit. I would urge that the final regulations either presume income eligibility for all clients seeking legal assistance regarding welfare benefits or that all such clients be subject to the same higher income limit.

Again, I applaud the Corporation for undertaking a rewrite and substantial improvement of the current financial eligibility regulations. I appreciate the opportunity to submit these comments.

Sincerely,

David A. Ettinger

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