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Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1611—ELIGIBILITY

Amendments to the Regulations

AGENCY: Legal Services Corporation.

ACTION: Final regulation.

SUMMARY: Prior to its amendment last year, section 1007(a)(2)(B)(iv) of the Legal Services Corporation Act provided that evidence of a prior determination that an applicant for legal assistance had refused employment without good cause would automatically disqualify that person for service. Section 9 of the Legal Services Corporation Act Amendments of 1977 changed that language to permit a program to consider such evidence in determining eligibility, without requiring disqualification. These amendments to part 1611 reflect that change.

EFFECTIVE DATE: August 28, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: Both the House and Senate versions of the amendments were clear as to their intentions on this issue. The Senate Committee, for example, stated:

This amendment states that an individual's unwillingness, without good cause, to seek or accept an appropriate employment situation shall be taken into consideration by a legal services program in determining an individual's eligibility for services. Such prior determination, however, is not to be an automatic disqualification or, for that matter, dispositive as to whether an individual is eligible to receive legal services. Other later considerations may be more relevant to an applicant's current need for assistance. Sen. Rep. No. 95-172, 95th Cong., 1st Sess. (1977), at 12.

Similarly, the House Committee observed:

Programs may consider circumstances surrounding a person's lack of income, but should not be required to make retrospective judgments requiring them to turn away poor people having serious legal problems. H. Rep. No. 95-310, 95th Cong., 1st Sess. (1977), at 10.

The amendment to § 1611.5 implements this congressional intent.

The amendment was published for comment on May 22, 1978. (43 FR 21905).

Following is the complete regulation, as amended. The comment that

appeared in the November 23, 1978 final publication of part 1611 remains in effect.

Sec.

- 1611.1 Purpose.
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- 1611.3 Maximum income level.
- 1611.4 Authorized exceptions.
- 1611.5 Determination of eligibility.
- 1611.6 Manner of determining eligibility.
- 1611.7 Change of circumstances.

Appendix A

AUTHORITY: Sec. 1007(a)(2) (42 U.S.C. 2996(a)(2)).

§ 1611.1 Purpose.

This part is designed to ensure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The part also seeks to ensure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

"Governmental income maintenance program" means aid for dependent children, supplemental security income, unemployment compensation, and a State or county general assistance or home relief program.

"Governmental program for the poor" means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deduction, but do not include food or rent in lieu of wages. They include income from self-employment after deductions for business or farm expenses; they include regular payments from public assistance, social security, unemployment and worker's compensation, strike benefits from union funds, veterans benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, or received from sale of real or personal property, or from tax refunds, gifts, one-time insurance payments or compensation for injury; nor do they include non-cash benefits.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the official poverty threshold as defined by the Office of Management and Budget.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

- (1) Cost-of-living in the locality;
- (2) The number of clients who can be served by the resources of the recipient;
- (3) The population who would be eligible at and below alternative income levels; and
- (4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

§ 1611.4 Authorized exceptions.

A person whose income exceeds the maximum income level established by a recipient may be provided legal assistance under the Act if:

(a) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b); or

(b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor; or

(c) The person would be eligible but for receipt of benefits from a governmental income maintenance program.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to income, a recipient shall consider other relevant factors before determining whether a person is eligible to receive legal assistance. Factors considered shall include:

- (1) Current income prospects, taking into account seasonal variations in income;

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- (2) Liquid net assets;
- (3) Fixed debts and obligations, including Federal and local taxes, and medical expenses;
- (4) Child care, transportation, and other expenses necessary for employment;
- (5) Age or physical infirmity of resident family members;
- (6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;
- (7) The consequences for the individual if legal assistance is denied; and
- (8) Other factors related to financial inability to afford legal assistance, which may include evidence of a prior administrative or judicial determination that the person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment.

(c) A recipient may provide legal assistance to a group, corporation, or association if it:

- (1) Is primarily composed of persons eligible for legal assistance under the act, or
- (2) Has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance, and
- (3) Provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without the express written consent of the client.

§ 1611.7 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford pri-

vate legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

Appendix A.—Guidelines for all States excluding Alaska and Hawaii

Size of family unit	Amount
1	\$3,925
2	5,200
3	6,475
4	7,750
5	9,025
6	10,300

For family units with more than six members, add \$1,375 for each additional member.

Guidelines for Alaska

Size of family unit	Amount
1	\$4,925
2	6,213
3	7,500
4	8,788
5	10,075
6	11,363

For family units with more than six members, add \$1,363 for each additional member.

Guidelines for Hawaii

Size of family unit	Amount
1	\$4,925
2	6,208
3	7,490
4	8,773
5	10,055
6	11,338

For family units with more than six members, add \$1,463 for each additional member.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.
(FR Doc. 78-20748 Filed 7-28-78; 8:45 am)

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PART 1611—ELIGIBILITY

Revision of Specified Income Levels

AGENCY: Legal Services Corporation.

ACTION: Final rule; corrected amendment.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document revises specified income levels to reflect amendments to the official poverty threshold as defined by the Office of Management and Budget.

EFFECTIVE DATE: June 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Barbara Allen, Legal Services Corporation, 733 18th Street NW., Suite 700, Washington, D.C. 20005, 202-376-8113.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 43 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of Corporation regulations establishes a maximum income level equivalent to one-hundred and twenty-five percent (125%) of the official poverty threshold as defined by the Office of Management and Budget. That definition was revised on April 8, 1978. The Legal Services Corporation published a revised appendix listing maximum income levels on June 26, 1978 (43 FR 27534). As published, the figures for Alaska and for Hawaii were inadvertently reversed. The correct figures for all States are as follows:

GUIDELINES FOR ALL STATES EXCLUDING ALASKA AND HAWAII

Size of family unit	Amount
1	\$3,925
2	5,200
3	6,475
4	7,750
5	9,025
6	10,300

For family units with more than six members, add \$1,375 for each additional member.

GUIDELINES FOR ALASKA

Size of family unit	Amount
1	\$4,925
2	6,213
3	7,500
4	8,788
5	10,075
6	11,363

For family units with more than six members, add \$1,363 for each additional member.

GUIDELINES FOR HAWAII

Size of family unit	Amount
1	\$4,925
2	6,208
3	7,490
4	8,773
5	10,055
6	11,338

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For family units with more than six members,
add \$1,463 for each additional member.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.
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