



LEGAL SERVICES CORPORATION

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July 29, 1997

Rodger L. McCollister, Executive Director
Kansas Legal Services, Inc.
712 S. Kansas Avenue, Suite 200
Topeka, Kansas 66603

Dear Mr. McCollister:

This is a response to your July 23, 1997 letter requesting advice on how to handle fees received by Kansas Legal Services, Inc. ("KLS") from Social Security cases that were claimed prior to the effective date of the Legal Services Corporation's revised regulation on attorneys' fees, 45 C.F.R. Part 1642.

As you know, Part 1642 did not prohibit recipients from seeking and retaining fees awarded in Social Security cases until it was revised in a final regulation that became effective on June 11, 1997. See 62 Fed. Reg. 25862. As of the effective date, recipients may not "collect and retain" any attorneys' fees, including fees from a client's back statutory Social Security benefits, even if the fees had already been claimed before the restriction became effective. See 45 CFR §1642.2(a)(definition of "attorneys' fees" includes "a payment to an attorney from a client's retroactive statutory benefits.")¹ Section 1642.3 provides in part that "no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient" [emphasis added]. The use of "or" between "claim" and "collect and retain"

¹ The rule's restriction on attorneys' fees does not apply to cases filed prior to April 26, 1996, the commencement date of the Congressional restriction. See 45 CFR §1642.4(a); Pub. L. 104-134, Section 508(b)(3).

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means that the singular action of “collecting and retaining” the fees after the effective date of the rule would constitute a violation.

Because of the special nature of Social Security fees, however, the Corporation will permit recipients to take action to ensure that fees claimed as attorneys’ fees before the final rule became effective be given to the client. Unlike fees shifted from an unsuccessful party to a prevailing party, Social Security fees are taken from the client’s back statutory benefits and are assigned to the attorney pursuant to an agreement between the client and the attorney. Thus, absent the agreement, the funds would go to the client.² If possible, the recipient’s attorney should request the Social Security Administration or other responsible agency to send directly to the client that portion of the client’s retroactive benefits which the recipient had earlier claimed as attorneys’ fees. Your letter, however, suggests that there is no mechanism available to accomplish the redirection of the funds to the client once the client has assigned them to the recipient. If this is so, the recipient may **immediately** upon receipt of the Social Security check endorse the check over to the client. Clear documentation of this transaction should be retained by the recipient sufficient to satisfy auditors or Corporation monitors and, under no circumstances, should there be any undue delay in sending the endorsed check to the client.³

One option your letter suggested was to cash the Social Security check and donate the funds to a charity. This option is not permitted under the rule. Nor may the recipient assign the funds to any other third party. Receiving and cashing or otherwise holding onto the check for any period of time, including time sufficient to take action to donate or assign the funds, constitutes “collecting and retaining” the fees and would violate the restriction. The only reason the Corporation will allow the recipient to endorse a check to a client in a Social Security case is because, as stated above, the funds come from the client’s back benefits and would go to the client absent the agreement to give the funds to the recipient. This is not true of another third party.

² The reason such fees are included in the restriction on attorneys’ fees is because Federal law regulates such agreements and the statutory restriction in the Corporation’s appropriations act applies to attorneys’ fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. See preamble to final rule, 62 Fed. Reg. 25862.

³ Allowing a Social Security check to be endorsed to a client is a transition measure since, as of the effective date of the rule, recipients may no longer claim any attorneys’ fees in Social Security cases.

I hope this adequately responds to your inquiry. Please let me know if I can provide any additional assistance.⁴

Sincerely,



Suzanne B. Glasow

Senior Assistant General Counsel

cc: Edouard C. Quatrevaux, Inspector General
John Tull, Director, Office of Program Operations

⁴ For your information, the Corporation anticipates that a program letter providing interpretive guidance on the Corporation's rule on attorneys' fees will soon be sent to all LSC recipients.