



OFFICE OF LEGAL AFFAIRS

EXTERNAL OPINION

External Opinion # EX-2006-1008

To: Charles S. Hey-Maestre, Executive Director
Puerto Rico Legal Services
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San Juan, PR 00908-9134

Date: November 2, 2006

Subject: Financial Eligibility of Client Member of Board of Directors

You asked this office for an Opinion on the proper method to establish eligibility for a “eligible client member” of the Puerto Rico Legal Services (PRLS) Board of Directors pursuant to the Legal Services Corporation’s (LSC) governing bodies regulation at 45 CFR Part 1607. Specifically you ask whether PRLS is required to consider only whether the potential Board member’s annual household income exceeds 125% of the Federal Poverty Guidelines or whether PRLS is required to apply the same financial eligibility standards to a potential PRLS Board member that it would apply to an applicant for LSC-funded legal assistance.

Brief Answer

PRLS must apply the same financial eligibility standards to a potential PRLS “eligible client member” of the PRLS Board that it would apply to an applicant for LSC-funded legal assistance.

Background

As we understand the situation from the information you provided to us there was “a determination made at a recent regional client meeting in Caguas, Puerto Rico in which a one of the candidates (an incumbent Board member) to represent the client [sic] of that region on the PRLS Board was declared ineligible due to excess income” because his annual household income exceeds 125% of the applicable Federal poverty guideline amount. We also understand that the

“disqualified candidate has challenged this determination, pointing out that if the deductions PRLS uses to determine eligibility for client representation were applied, he would have qualified.” We further understand that the ineligibility determination was made because PRLS has understood the 45 CFR §1607.2(c) to require client eligible board member eligibility determinations to be based on 125% of the federal poverty guidelines with no deductions.

Analysis

LSC requires that recipients have “eligible client members” serving on their governing bodies. 45 CFR § 1607.3(c). “Eligible client member” is defined in the regulation as someone “who is financially eligible to receive legal assistance under the [Legal Services Corporation] Act and part 1611 of this chapter” 45 CFR §1607.2(c). This section further specifies that “eligibility of client members shall be determined by the recipient, or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.” *Id.*

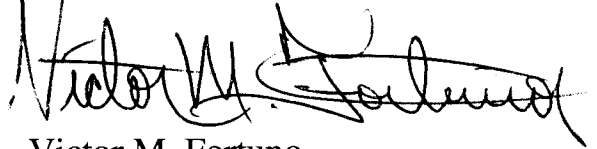
Under Part 1611, recipients are required to have written financial eligibility policies not inconsistent with the provisions of Part 1611. A recipient’s financial eligibility policies must establish annual household income ceilings of not more than 125% of the Federal Poverty Guidelines. 45 CFR §1611.3(c)(1). However, a recipient’s policies may also adopt authorized exceptions to its annual income ceilings consistent with section 1611.5 of the Part 1611. 45 CFR §1611.3(c)(2). If a recipient adopts some or all of the permitted exceptions as part of its policies, the recipient may then determine an applicant whose income exceeds the recipient’s applicable annual income ceiling to be financially eligible if one or more of the exceptions apply to the applicant. 45 CFR §1611.5(a).

Taken together, if a prospective “eligible client member” of a recipient’s Board would meet the recipient’s financial eligibility criteria for LSC-funded legal assistance under Part 1611, that person would meet the criteria of “eligible client member” under Part 1607. There is no basis upon which to make a distinction in determinations of financial eligibility between applicants for legal assistance and “eligible client” governing body members. Nor is there any basis upon which to conclude that financial eligibility determinations for prospective Board members must be limited to a review as to whether the prospective Board member’s annual household income is less than or greater to the 125% of the applicable Federal Poverty Guidelines amount. Rather, as noted in a previous opinion from this

Office, a financial eligibility determination for a prospective Board member “must be fact specific and identical to the type of determination conducted for any individual seeking legal assistance from [the recipient].” Opinion of March 22, 1990 from J. Kelly Martin, Staff Attorney, Office of the General Counsel, LSC, to Mark Moreau, Executive Director, New Orleans Legal Assistance Corporation.

Accordingly, PRLS must apply its financial eligibility standards to the prospective Board member as it would apply them to him were he applying for legal assistance from PRLS. PRLS may not ignore applicable authorized exceptions PRLS has adopted as part of its eligibility policies in making this financial eligibility determination.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victor M. Fortuno". The signature is stylized and somewhat cursive, with a long horizontal stroke extending to the right.

Victor M. Fortuno
General Counsel
Office of Legal Affairs