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POLICY TITLE: **Criteria for Evaluating Motions to Waive MCCP Filing Fees**  
DATE ISSUED: April 8, 2005  
EFFECTIVE DATE: April 8, 2005

### Introduction

This policy updates the policy and procedures utilized in evaluating ex parte motions to waive the filing fees for claims filed with the Medical Claims Conciliation Panel ("MCCP").

### Legal Reference

Hawai'i Revised Statutes ("HRS") §671-11.5 authorizes the Director of the Department of Commerce and Consumer Affairs to grant or deny motions to waive MCCP filing fees, and provides in relevant part:

- §671-11.5 Waiver of filing fee.** (a) If any party to a claim cannot pay the required filing fee, the party may file with the director a motion to waive the filing fee. The motion to waive the filing fee shall be accompanied by an affidavit in a format prescribed by the department, showing in detail:
- (1) The party's inability to pay the filing fee;
  - (2) The party's belief that the party is entitled to redress; and
  - (3) A statement of the issues that the party intends to present at the hearing before a medical claims conciliation panel.
- (b) The director shall decide on the motion to waive the filing fee as expeditiously as possible, and no oral arguments shall be permitted.

### Policy

In keeping with intent of HRS §671-11.5, and the past practices of the MCCP program, determinations as to whether a party to an MCCP claim is not financially capable of paying the required filing fees, shall be guided by the most current provisions of Rule 24, Hawai'i Appellate Rules (proceedings *in forma pauperis*), and Title 45 Code of Federal Regulations §1611 (eligibility guidelines to receive legal assistance from the

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Legal Services Corporation), copies of which are attached hereto, and by this reference incorporated herein.

This policy shall be effective as of April 8, 2005, shall be reviewed as needed by the Administrator of the MCCP program, and shall remain in effect until repealed.

MARK E. RECKTENWALD  
Director

**Code of Federal Regulations**  
**Title 45--Public Welfare**  
**Subtitle B--Regulations Relating To Public Welfare**  
**Chapter XVI--Legal Services Corporation**  
**Part 1611--Eligibility**

**2005 Amendments**

**§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 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; income from self-employment after deductions for business or farm expenses; 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; and income from dividends, interest, rents, royalties or from estates and trusts. They do not include money withdrawn from a bank, tax refunds, gifts, compensation and/or one-time insurance payments for injuries sustained, and 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 current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(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 Section 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) A person whose gross income exceeds the maximum income level established by a recipient but does not exceed 150 percent of the national eligibility level [125% of poverty] may be provided legal assistance under the Act if:

- (1) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in Section 1611.5(b)(1); or
- (2) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor.

(b) In the event that a recipient determines to serve a person whose gross income exceeds 125% of poverty, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual bases for the decisions made.

**§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. By January 30, 1984, and annually thereafter, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to gross income, a recipient shall consider the other relevant factors listed in paragraphs (b)(1) and (b)(2) of this section before determining whether a person is eligible to receive legal assistance.

- (1) Factors which shall be used in the determination of the eligibility of clients over the maximum income level shall include:

- (A) Current income prospects, taking into account seasonal variations in income;
  - (B) Medical expenses, and in exceptional instances, with the prior, written approval of the project director based on written documentation received by the recipient and available for review by the Corporation, if a person's gross income is primarily committed to medical or nursing home expenses, a person may be served even if that person's gross income exceeds 150 percent of the national eligibility level;
  - (C) Fixed debts and obligations, including unpaid Federal, state and local taxes from prior years;
  - (D) Child care, transportation, and other expenses necessary for employment;
  - (E) Expenses associated with age or physical infirmity of resident family members; and
  - (F) Other significant factors related to financial inability to afford legal assistance.
- (2) Factors which shall be used in the determination of the eligibility of clients under the maximum income level shall include:
- (A) Current income prospects, taking into account seasonal variations in income;
  - (B) The availability of private legal representation at a low cost with respect to the particular matter in which assistance is sought;
  - (C) The consequences for the individual if a legal assistance is denied;
  - (D) The existence of assets, including both liquid and nonliquid, which are available to the applicant and are in excess of the asset ceiling set by the recipient pursuant to Section 1611.6;
  - (E) Other significant 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.
- (3)
- (A) If a recipient tentatively determines to serve a client over the maximum income level on the basis of factors listed in § 1611.5(b)(1), the factors listed in 1611.5(b)(2) shall also be used before reaching a final determination.
  - (B) If a recipient tentatively determines not to serve a client under the maximum income level on the basis of factors listed in § 1611.5(b)(2), the factors listed in §1611.5(b)(1) must also be used before reaching

a final determination.

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

**§ 1611.6 Asset ceilings.**

(a) By January 30, 1984, and annually thereafter, the governing body of the recipient shall establish and transmit to the Corporation guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services. The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need.

(b) The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped.

(c) Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client. The guidelines shall take into account impediments to an individual's access to assets of the family unit or household.

(d) Reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of a family unit, shall not be utilized to disqualify an applicant, provided that the owner is attempting to produce income consistent with its fair market value.

(e) The governing body may establish authority for the project director to waive the ceilings on minimum allowable assets in unusual or extremely meritorious situations. In the event that a waiver is granted, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual basis for the decisions made.

**§ 1611.7 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 express written consent of the client, except that the recipient shall provide such information to the Corporation when:

- (1) The Corporation is investigating allegations that question the financial eligibility of a previously identified client and the recipient's representation thereof;
- (2) The information sought by the Corporation relates solely to the financial eligibility of that particular client;
- (3) The information sought by the Corporation is necessary to confirm or deny specific allegations relating to that particular client's financial eligibility and the recipient's representation thereof; and
- (4) The specific information sought by the Corporation is not protected by the attorney-client privilege.

The information provided to the Corporation by the recipient shall not be disclosed to any person who is not employed by the Corporation. Prior to providing the information to the Corporation, the recipient shall notify the client that the recipient is required to provide to the Corporation the information sought.

#### **§1611.8 Retainer agreement.**

(a) A recipient shall execute a written retainer agreement, in a form approved by the Corporation, with each client who receives legal services from the recipient. The retainer agreement shall be executed when representation commences (or, if not possible owing to an emergency situation, as soon thereafter as is practicable), and shall clearly identify the relationship between the client and the recipient, the matter in which representation is sought, the nature of the legal services to be provided, and the rights and responsibilities of the client. The recipient shall retain the executed retainer agreement as part of the client's file, and shall make the agreement available for review by the Corporation in a manner which protects the identity of the client.

(b) A recipient is not required to execute a written retainer agreement when the only service to be provided is brief advice and consultation.

#### **§ 1611.9 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 private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

Federal Register: January 31, 2006 (Volume 71, Number 20)]  
Rules and Regulations  
Page 5012-5013  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
DOCID:fr31ja06-10

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**LEGAL SERVICES CORPORATION**

**45 CFR Part 1611**

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

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**SUMMARY:** The Legal Services Corporation (“Corporation”) is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

**EFFECTIVE DATE:** This rule is effective as of January 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; (202) 295-1624; [mcondray@lsc.gov](mailto:mcondray@lsc.gov).

**SUPPLEMENTARY INFORMATION:** Section 1007(a)(2) of the Legal Services Corporation Act (“Act”), 42 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 other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The revised figures for 2006 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on January 24, 2006 (71 FR 3848).

In addition, LSC is publishing charts listing income levels that are 200% of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 125% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

List of Subjects in 45 CFR Part 1611

Grant Programs--Law, Legal Services.

For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611--ELIGIBILITY

1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of part 1611 is revised to read as follows:

**Appendix A of Part 1611**

**Legal Services Corporation 2006 Poverty Guidelines\***

Size of family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$12,250	\$15,313	\$14,088
2	16,500	20,625	18,975
3	20,750	25,938	23,863
4	25,000	31,250	28,750
5	29,250	36,563	33,638
6	33,500	41,875	38,525
7	37,750	47,188	43,413
8	42,000	52,500	48,300

For each additional member of the household in excess of 8, add:

4,250	5,313	4,888
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**\*The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.**

**Reference Chart--200% of DHHS Federal Poverty Guidelines**

Size of family Unit	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$19,600	\$24,500	\$22,540
2	26,400	33,000	30,360
3	33,200	41,500	38,180
4	40,000	50,000	46,000
5	46,800	58,500	53,820
6	53,600	67,000	61,640
7	60,400	75,500	69,460
8	67,200	84,000	77,280

For each additional member of the household in excess of 8, add:

6,800	8,500	7,820
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Victor M. Fortuno,  
Vice President for Legal Affairs, General Counsel & Corporate  
Secretary.

[FR Doc. 06-880 Filed 1-30-06; 8:45 am]

BILLING CODE 7050-01-P