

June 10, 2009

Diane K. Smith, Executive Director
Legal Services of Northwest Jersey
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Somerville, NJ 08876-2218

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Re: Follow-Up to CSR/CMS Visit, Recipient # 331016

Dear Ms. Smith:

I would first like to thank you and the Legal Services of Northwest Jersey (LSNWJ) staff for the courtesy and cooperation extended to the team conducting the Legal Services Corporation's (LSC) Office of Compliance and Enforcement (OCE) Follow-Up Review of April 14 -16, 2009.

As you will recall, OCE conducted an on-site Case Service Report/Case Management System (CSR/CMS) Review of LSNWJ in April 2006. OCE's June 2007 Final Report (hereinafter Final Report) identified several exceptions to LSC regulatory and reporting requirements and required that LSNWJ take appropriate corrective action. The Follow-Up Review demonstrated that LSNWJ has taken adequate and appropriate measures to address many of the exceptions.

Prior Corrective Action Items

- 1. Ensure that cases are timely closed.**
- 2. Ensure proper PAI follow-up and oversight.**

The Final Report noted several untimely closed files in the Morris, Hunterdon, and Warren offices. Additionally, the Final Report noted several inactive open Private Attorney Involvement (PAI) files in the Morris and Somerset offices. LSNWJ stated that it would continue to work on these issues with its casehandlers and its pro bono coordinators.

Recipients are required to ensure the timely closing of cases so that case service reports to LSC contain current and accurate information about both open and closed cases for the grant year. Recipients are instructed to report cases as having been closed in the year in which assistance ceased, depending on case type. Cases closed in one of the CSR limited service case categories must be reported as having been closed in the grant year in which the case was opened, except that such cases which are opened after September 30 may be reported either in the year it was opened or the following year, or, if there is an entry in the file or case management system stating why the case should be held open into the

following year, it may be closed in the grant year in which assistance was completed. *See* CSR Handbook (2008 Ed.), § 3.3(a). Cases closed in one of the CSR extended service case categories must be reported as having been closed in the year in which legal assistance is completed. *See* CSR Handbook (2008 Ed.), § 3.3(b). Additionally, LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

The Follow-Up Review demonstrated that LSNWJ has taken effective corrective action to ensure that cases are closed in a timely manner. During the review, OCE examined 280 case files. Without exception, the files that were reviewed during the visit were timely closed.¹

3. Ensure that each case contains a written description of the legal assistance provided.

The Final Report noted several files in the Morris office that lacked a description of the legal assistance provided to the client. LSNWJ stated that many of these files should have been coded as “reject”.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

The Follow-Up Review demonstrated that LSNWJ has taken effective corrective action to ensure that cases reported to LSC contain a description of the legal assistance provided to the client. Eight of the closed 2007 and closed 2008 files that OCE reviewed lacked a description of the legal assistance provided to the client and should have been excluded from LSNWJ’s 2007 and 2008 CSR data submissions. *See* Somerset closed 2007 File No. 06-4000920, Hunterdon closed 2007 PAI File Nos. 06-10000801, 07-10000420, and 07-10000336, Warren closed 2007 PAI File No. 07-7000235, and Hunterdon closed 2008 PAI File Nos. 08-10000358, 07-10000785, and 08-10000671. However, each of the 83 closed 2009 files that OCE reviewed contained sufficient information to support the closing code selected to close the file.

¹ OCE did review one file that did not appear to be active. *See* Morris open File No. 08-9000730. The file was opened in May 2008, but there was no recorded activity in the current reporting period, nor did the file contain any documentation indicating why it was being held open.

- 1. Ensure that each LSC funded case contains a properly documented financial eligibility determination. In this regard, LSNWJ must also ensure that food stamps are not included as income.**
- 5. Ensure compliance with Part 1626.**

The Final Report noted one file in the Morris office in which the value of the client's allotment of food stamps was used in calculating income eligibility. The Final Report also noted several open files in the Morris office and at least one open file in the Warren office that lacked the requisite citizenship/alien eligibility documentation.

For each case reported to LSC, recipients are required to maintain financial and citizenship/alien eligibility documentation. Regarding financial eligibility, recipients are required to record the household size, total household income, and the total value of the assets held by all members of the household. *See* CSR Handbook (2008 Ed.), §§ 5.3 and 5.4. As for citizenship/alien eligibility, the eligibility documentation will vary according to the service provided to the client. Where the only service provided is counsel and advice or limited action by telephone, the eligibility documentation shall consist of a written notation or computer entry which reflects the client's oral response to the recipient's citizenship/alien eligibility inquiry. Where the recipient has in-person contact with the client, or provides continuous representation beyond counsel and advice or limited action, the eligibility documentation shall consist of either a signed citizenship attestation, or verification of alien eligibility. *See* CSR Handbook (2008 Ed.), § 5.5. Eligibility documentation must be recorded manually on a form or electronically in a case management system, and must be preserved for audit purposes. *See* CSR Handbook (2008 Ed.), § 5.2.

The Follow-Up Review demonstrated that LSNWJ has taken effective corrective action to ensure that the value of the client's allotment of food stamps is not used in calculating income eligibility. Similarly, the Follow-Up Review demonstrated that LSNWJ has taken effective corrective action to ensure that cases reported to LSC contain the required financial and citizenship/alien status eligibility documentation.

The eligibility documentation was not immediately available in five of the PAI files that OCE reviewed. *See* Warren closed 2007 PAI File No. 07-7000984, Warren closed 2008 PAI File No. 08-7001120, Hunterdon closed 2008 PAI File Nos. 08-1000060 and 08-1000132, and Morris open PAI File No. 08-9001089. LSNWJ explained that the files were conflicts handled by private attorneys employed by Merck & Co. According to LSNWJ, eligibility – both financial and citizenship/alien – is determined by a Merck attorney. Because of the conflict, LSNWJ does not maintain information concerning the client's eligibility. LSNWJ did, however, arrange for Merck & Co. to provide the eligibility information to LSC for each of the files.

LSNWJ also explained that New Jersey Rules of Professional Conduct do not prevent it from accepting the case. Rather, the Rules only address whether LSNWJ may provide representation.

Recipients are obliged to carry out their activities in a manner consistent with their applicable rules of professional responsibility. However, LSC may not abrogate the authority of local jurisdictions to enforce local ethical standards. As such, the determination of whether acceptance of a particular client and referral of that client to a PAI attorney is consistent with the recipient's ethical duties is a matter for local law and rules of professional responsibility. Certainly, if the local bar finds that the recipient's PAI referral activities in conflict situations is consistent with applicable rules, and the activity is otherwise consistent with the LSC Act, regulations and other applicable authority, there is no reason why a recipient could not allocate the expenses associated with such activity toward its 12.5% requirement and report the cases in its CSR data submission to LSC.

LSNWJ has advised OCE that it is unaware of any state ethics opinion that addresses the issue. LSNWJ may wish to consult the state bar to ensure that this activity is consistent with its ethical responsibility.

6. Ensure compliance with 45 CFR § 1611.9, Retainer Agreements.

The Final Report noted several files in the Somerset, Warren, and Morris offices that lacked retainer agreements. LSC regulations require that recipients execute a written retainer with the client when the recipient provides extended service to the client. *See* 45 CFR § 1611.9.

The Follow-Up Review demonstrated that LSNWJ has taken corrective action in this regard. As opposed to the several files noted in the Final Report, only two of the extended service closed files that OCE reviewed during the visit lacked the necessary retainer agreement. *See* Morris closed 2007 File No. 08-9000815 and Somerset closed 2009 File No. 09-4000077.

New Findings Requiring Action by LSNWJ

1. LSNWJ staff inconsistently apply the program's financial eligibility policy.

According to LSNWJ's eligibility policy, if an applicant is receiving benefits from General Assistance, Temporary Assistance for Needy Families (TANF) or supplemental Security Income, the applicant is qualified as "financially eligible" for LSNWJ services. During the interviews with the intake staff only one intake staff person knew of the exemption and utilized the option. However, the paralegal only utilized the exemption regarding the screening of assets. Although the government exemption mentioned in the LSNWJ policy is under the asset section of the policy, the use of the terms "Financially

Eligible” implies that the exemption allows intake staff to disregard both asset and income screening. None of the sample case files reviewed indicated that the government benefit exemption was utilized during the screening of the applicants.

LSNWJ must first decide if it wishes staff to utilize the government exemption or ignore the option similar to staff’s approach to the income factors that are described in the LSNWJ eligibility policy. If staff is to utilize the exemption, then it must be specific if it means staff is to disregard both asset and income screening or both. Staff then must be trained how and when to use the exemption. Lastly if LSNWJ wishes staff to implement the asset exemptions, it must be able to show that the Board has determined that the income standards of the government programs listed in the LSNWJ policy are at or below 125% of the FPG amounts and that government programs has eligibility standards which include an asset test.²

2. LSNWJ must cease using closing code “K” for rejected cases.

The Executive Director stated, during interviews, that LSNWJ staff have been instructed to use LSC closing code “K” to denote rejected cases. This is an inappropriate use of that closing code and should cease.

Closing Code “K” is one of the Case closing codes denoting a case that was accepted and in which legal assistance as defined in Section 2.1 of the 2008 CSR Handbook was rendered to a client or clients. Neither Closing Code “K” nor any other of the Case Closing codes “A”-“L” may be used for any case except one that meets all the requirements for a CSR case to be reported to LSC (*See* particularly Chapters II and V of the 2008 CSR Handbook).

Accordingly, the use of Closing Code “K” to denote a rejected case - or any other case in which legal assistance was not rendered to an eligible client - is a misuse of that Closing Code. And it is clearly not permissible to use code letter “K” concurrently for the Case Closing Code “other” or for any other purpose as this causes confusion and ambiguity in the CMS and the CSR records; nor is it acceptable to use any other code letter from “A-L” for the purpose of denoting a rejected or de-selected case.

LSNWJ must cease applying closing code “K” or any other LSC closing code to rejected non-LSC cases. LSNWJ should create a closing code such as “X” or “R” for those cases that are rejected and are not to be reported to LSC. LSNWJ’s current ACMS system allows for additional closing codes to be added.

In summary, LSNWJ has sufficiently addressed the required corrective actions stated in OCE’s June 2007 Final Report and no further actions stemming from that Report are necessary. However, the two new findings discussed above must be addressed. Please

² *See* 45 CFR § 1611.4(c)

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provide OCE with a written response regarding these findings within 30 days of receipt of this letter.

Thank you once again for your courtesy, your patience, and your cooperation. Please do not hesitate contacting myself at (202) 295-1520 or Bertrand S. Thomas at (202) 295-1528 if you have any questions or concerns.

Sincerely,



Danilo A. Cardona, Director
Office of Compliance and Enforcement

cc: Thomas J. Welchman
Board Chair, LSNWJ