



OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2003-1007

To: Edward Berg
Executive Director
Mid-Missouri Legal Services Corporation
205 East Forest Avenue
Columbia, MO 65203

Date: April 2, 2003

Subject: Definition of Family Unit When Household is Split into Two Residences

You asked this Office for an Opinion regarding whether a recipient must consider a husband and wife who, while remaining married, live in separate houses as being one or two family units in evaluating the household income for income eligibility purposes.

Brief Answer

Within reason, the recipient has the discretion to determine whether the applicant and her husband constitute one family unit or separate family units.

Background

We understand the facts to be the following: The applicant's family consists of the applicant, a spouse, a three dependent children. Because of limitations on available public housing, the applicant has been placed in one house with two children and her husband has been placed with the remaining child in a neighboring house. Although they live in separate houses, the family otherwise functions as a unit. If the applicant is considered as a family unit separate from her spouse, the applicant meets the program's financial eligible criteria, but if the entire family is considered one family unit, the applicant does not meet the income eligibility requirements. The government agency responsible for determining eligibility for food stamps has considered the applicant and her husband as separate family units.

Analysis

Under section 1007 of the LSC Act and LSC's implementing regulations at 45 CFR Part 1611, recipients must ensure that LSC funded legal assistance is provided only to persons who are financially eligible to receive such assistance. Generally, in order to be deemed financially eligible for LSC-funded legal assistance an applicant's annual

income must not exceed the recipient's established maximum income ceiling.¹ The regulations define "income" as the "actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of the family unit." 45 CFR §1611.2. The question presented herein is whether the applicant (and dependent children living with her) may, may not, or must be considered a separate family unit from her husband.

The term "family unit" is defined neither by the LSC ACT nor the LSC regulations. LSC generally defers to the recipient's determination regarding the definition of the "family unit," although a recipient's determination of what constitutes a "family unit" for eligibility purposes must be reasonable. This Office has previously issued guidance listing criteria a recipient may choose to consider in making a reasonable determination. The list includes, but is not limited to, living arrangements, familial relationships, legal responsibility, financial responsibility and family unit definitions used by government benefits agencies. See OLA External Opinion EX-2000-1012. Under the current circumstances, the program retains the discretion to define the family unit and is neither required nor prohibited from determining that the applicant is a separate family unit from her husband.

Very truly yours,

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¹ There are authorized exceptions to this general requirement, but those exceptions are not germane to this Opinion.