



March 30, 2011

**VIA E-MAIL AND U.S.P.S.**

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Re: 1630 Questioned Costs Appeal

Dear Messrs. Gillson, Henry, and Gurley:

This responds to your February 28, 2011 appeal of the January 13, 2011 Management Decision to disallow \$348,218.56 in costs incurred by DNA-People's Legal Services, Inc. (DNA) and paid for with Legal Service Corporation (LSC) funds.

I have reviewed the record in accordance with 45 C.F.R. § 1630.7(g). Pursuant to the authority given to me under 45 C.F.R. § 1630.7(f), I am modifying the Management Decision to disallow \$169,972.72 in costs and to allow costs of \$178,245.84. The reasons for my decision are set forth below.

***Background***

As a result of a Case Service Reporting/Case Management System Review Visit by the LSC Office of Compliance and Enforcement (OCE), on October 13, 2010, OCE sent DNA a Notice of Questioned Costs pursuant to 45 C.F.R. Part 1630. The Notice questioned expenditures made in connection with DNA's

Temporary Workweek Policy, which was in effect from July 7, 2008 through September 28, 2009. Pursuant to that policy, 22 employees were permitted to reduce their work hours from 40 to 32 per week but continued to be paid for 40 hours per week. The Notice also questioned expenditures for mortgage and maintenance expenses related to a building DNA purchased without having requested or received prior approval from LSC for the purchase, as required by 45 C.F.R. Part 1630 and the LSC Property Acquisition and Management Manual (PAMM).

On November 29, 2010, DNA submitted a response primarily addressed to the temporary workweek policy. DNA submitted a supplemental response on December 9, 2010 addressing the property matter. (DNA's response was due on November 29, 2010. DNA did not seek leave from LSC for any additional extension to submit a supplemental response. Notwithstanding the untimeliness of DNA's supplemental response, OCE considered it, as have I.) On January 13, 2011, OCE issued a Management Decision pursuant to 45 C.F.R. § 1630.7(d) disallowing the costs questioned in the October 13 Notice. On February 28, 2011, DNA filed an appeal with me pursuant to 45 C.F.R. § 1630.7(e).

### *Analysis*

#### *Temporary Workweek Policy*

The Management Decision disallowed \$147,271.15 paid pursuant to the DNA Temporary Workweek Policy. This figure reflects the total cost of the eight hours each week for which the covered employees were paid in excess of the 32 hours per week they actually worked. The Management Decision was based on a determination that the costs were not adequately documented as required by 45 C.F.R. § 1630.2(g)(2). Some timesheets of the affected employees showed discrepancies between the reported daily hours worked (eight per day for four days a week) and the reported total number of hours worked during each pay period (40 hours for a two-week pay period). In other cases, the timesheets showed a total number of hours worked per pay period (32) that was different from the number of hours worked reflected on the corresponding payroll records (40). These timekeeping and payroll documentation practices did not comport with either the LSC Accounting Guide or DNA's own policies requiring accurate timesheets and payments in accordance with time reported.

On the facts presented, I conclude that the record is insufficient to demonstrate that (1) the required documentation standards were followed, (2) the Temporary Workweek Policy was a justified salary increase, and (3) the Board of DNA was clearly informed of and approved the policy before it was implemented. Moreover, I note that the Temporary Workweek Policy resulted in a significant reduction in client access to DNA's services: during the period when the policy was in effect; DNA offices were closed to clients one business day every week. Accordingly, I am adopting the Management Decision to disallow of \$147,271.15 in costs.



*Flagstaff Building Purchase*

The Management Decision disallowed DNA's use of \$200,947.41 in LSC funds to make mortgage and monthly maintenance payments between January 2008 and January 2011 on a building in Flagstaff DNA purchased without the prior approval of LSC. The Management Decision to disallow the costs was based both on DNA's failure to seek the required prior approval and on DNA's subsequent failure to provide sufficient information to demonstrate that the purchase was reasonable. DNA emphasizes that it is not withholding any pertinent documents, and I have no reason to believe the contrary. The fact remains, however, that DNA has failed to perform the analyses required by the PAMM or to provide anything other than conclusory statements regarding the reasonableness of the purchase.

On the facts presented, I conclude that there is insufficient evidence to demonstrate that the purchase of the building, and the subsequent use of LSC funds to pay for the mortgage and maintenance costs, was justified. Absent the building purchase, however, DNA would still have incurred occupancy costs for which the use of LSC funds would have been allowable if those costs were reasonable. Prior to the purchase of the building in Flagstaff, DNA used LSC funds to pay rent on premises it leased. I believe it is appropriate to allow DNA an expenditure for occupancy costs at the rate it was paying under the prior lease, which is the only basis I have for determining a reasonable cost. I am therefore exercising my discretion under 45 C.F.R. § 1630.7(f) to modify the Management Decision and will allow \$178,245.84 in occupancy costs, the amount DNA would have incurred under the lease. I am disallowing \$22,701.57, the difference between the mortgage and monthly payments on the purchased building and the prior lease costs for the period from January 2008 through January 2011.

DNA's payment with LSC funds of any amount in excess of the prior rental cost is not supported by the necessary documentation. If DNA continues this practice, DNA may be subject to future questioned cost proceedings.

***Conclusion***

In accordance with the provisions of 45 C.F.R. Part 1630, I am disallowing \$169,972.72 in expenditures of LSC funds in connection with DNA's Temporary Workweek Policy and for excess mortgage and maintenance costs on the Flagstaff building.

DNA has requested that any disallowed costs be recouped over calendar year 2012. DNA's current grant term, however, runs only through the end of calendar year 2011. By statute, there is no presumptive right to re-funding of a grant, and I cannot assume that DNA will have a grant in 2012 from which the costs owed to LSC could be recouped.

DNA may make a direct payment by check to LSC in the amount of the disallowed costs, or repayment to LSC may be in the form of reductions from grant checks from LSC to DNA through the end of its current grant term.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James J. Sandman", written in a cursive style.

James J. Sandman  
President