



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES

370 L'Enfant Promenade, S.W.

Washington, D.C. 20447

MAR 28 1997

Dear Colleague:

Some concerns have been raised lately by the Inspector General of the U.S. Department of Health and Human Services regarding the disposition and reporting of attorney's fees awarded by courts in the due course of advocacy by Protection and Advocacy systems (P&A) on behalf of individuals with developmental disabilities. As was clarified in ADD-PI-86-3 (enclosed), the Department normally regards such fees as program income, and has given P&A systems the authority to collect them and to use them for additional costs for the general purposes of the program. When legal services are provided by a contractor to the system, the fees are normally to be collected by the P&A system for furthering the purposes of the program, and are not to be used to augment payments to the contractor or to award personal bonuses as has been made clear in the Developmental Disabilities Assistance and Bill of Rights Act, Section 142(h)(2) entitled "Use of Amounts from Judgement." This is amplified upon in the Code of Federal Regulations [45 CFR 1386.24(b)], recently published in the Federal Register, Vol.61, #190, page 51159, September 30, 1996:

Attorneys fees are considered program income pursuant to Part 74 -- Administration of Grants and Part 92 -- Uniform Administrative Requirements for Grants and Cooperative Agreements, and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys fees, including those earned by contractors and those received after the project period in which they were earned.

In order to ensure that your system is in compliance with the Act, its regulations, and with the applicable policy, I encourage

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you to review these sources. If you have questions regarding the collection and reporting of program income, you may contact John Gridley of my staff at 202-690-5906.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Williams", written in a cursive style.

Bob Williams  
Commissioner  
Administration on Developmental  
Disabilities

Enclosure



**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**Administration on Developmental Disabilities**

1. Log No. ADD-PI-86-3	2. Issuance Date: 10/31/86
3. Originating Office: Administration on Developmental Disabilities	
4. Key Word: P&A Court Judgments	5. Program Income
6.	7.

**PROGRAM INSTRUCTION**

**TO : Directors, Protection and Advocacy Systems**

**SUBJECT : Court Judgments awarded to Protection and Advocacy Systems**

**LEGAL AND  
RELATED**

**REFERENCES:** Developmental Disabilities Assistance and Bill of Rights Act of 1984, Public Law 98-527; 45 CFR Part 1386, Developmental Disabilities Program, Final Rule; 45 CFR Part 74, Administration of Grants; and ADD-Information Memorandum-85-4 dated March 8, 1985, subject: Program Income.

**BACKGROUND:** In several recent instances, we have been informed of court judgments awarded to Protection and Advocacy Systems after litigation has been initiated by such systems. The use and reporting of funds awarded to Protection and Advocacy Systems have been inconsistent. The purpose of this Program Instruction is to provide guidance concerning the proper treatment of funds awarded from court judgments.

**INFORMATION:** We have studied the general nature of typical court judgments and the circumstances concerning Protection and Advocacy suits on behalf of developmentally disabled persons. In our opinion, funds awarded to Protection and

Advocacy Systems, as distinguished from their clients, as the result of legal proceedings constitute general program income if the criteria for determining program income under 45 CFR 74.41(a) and 74.42(a) are met. The relationship between the amounts of the court judgments and the amounts expended by the Protection and Advocacy Systems on the court proceedings is unimportant in classifying the proceeds as program income.

All of the proceeds realized by Protection and Advocacy Systems through court action that meet the criteria of 45 CFR 74.41(a) and 74.42(a) must be classified and treated as program income. This Program Instruction applies to all funds awarded through court judgments, including awards specifically identified as attorney fees.

General program income received through court judgments should be reported on the financial status reports (SF-269's) and used in accordance with either the deduction alternative or the additional costs alternative as described in ADD-IM-85-4, 45 CFR Part 74.42 and in the State Plan. The matching alternative may not be used, since there is no matching requirement. Under the additional costs alternative, the funds may be used for costs which would otherwise be unallowable under the Protection and Advocacy Program. However, such funds must be used to further the broad objectives of the Protection and Advocacy statute. Funds expended on litigation and program income recovered from court judgments should be reported as provided in ADD's separate instructions for completing the SF-269's.

We recognize that many different situations exist throughout the nation as to how grantees secure legal representation for court cases. Where Protection and Advocacy Systems contract for legal services, their own procedures and the applicable procurement standards (either OMB Circular A-102, Attachment O or OMB Circular A-110, Attachment O) must be followed. Both of the OMB Circulars prohibit using the cost plus a

percentage of cost method of contracting. The only situations where attorneys may receive funds awarded as attorney fees through court judgments are those in which the attorneys (who are not employees or contractors of Protection and Advocacy Systems) have represented clients on behalf of Protection and Advocacy Systems on no-fee bases.

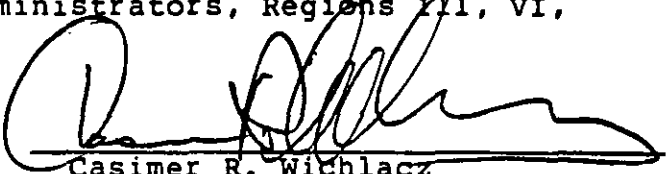
Vigilance must be exercised to assure that funds awarded through court judgments are used by the Protection and Advocacy Systems to further the objectives of the program. It was never intended nor is there a legal basis for such funds to be used to augment grantee payments to legal contractors or grantee staff as additional fees and personal bonuses.

EFFECTIVE  
DATE:

Upon Issuance

INQUIRIES  
TO:

HDS Regional Administrators, Regions II, VI,  
VII, and IX.



Casimer R. Wichlacz  
Acting Commissioner  
Administration on Developmental  
Disabilities