

FLSA-1106

June 25, 1990

This is in response to your letter regarding the initiation of a fee to be charged to clients with disabilities to help maintain programs and services.

As described in your letter, your agency offers two types of programs. The sheltered work program, geared toward individuals with greater skills, provides remunerative employment in conjunction with counseling, training, treatment, and other services to increase productivity, develop positive work habits, develop social skills, and enhance adaptive behaviors needed so that clients with disabilities can enter supported or competitive employment.

In the Adult Development Activity (ADA) program, severely disabled clients receive evaluation, training, and therapy in motor skills, communication, social functioning, and community awareness with a goal of entering a supported work or sheltered work program. The program is directed at increasing self-help skills to lessen dependency. The ADP program may have a remunerative work component.

Your agency currently provides certain services to clients in either program at no charge. These include, but are not limited to, individual and group physical therapy, occupational therapy and speech therapy, habilitation training in daily living skills, individual and group social work treatment, and behavior management. Work evaluation and work adjustment are provided before a client enters day services or supported employment.

You have calculated costs for providing the following services to clients: sheltered work, adult developmental activity, behavior management, habilitation training, transportation, speech therapy, physical therapy, occupational therapy, work adjustment training, work evaluation, and job-coaching/transition. You wish to know if clients may be billed for these services not to exceed \$30.00 a month. (If a client did not receive \$30.00 in services, your agency would not charge a fee for that month).

We recognize that an agency such as yours has a dual function: to employ workers with disabilities and to provide needed rehabilitation or therapy to workers with disabilities. As an employer, your agency must comply with the provisions of the Fair Labor Standards Act (FLSA), the law of most general application concerning wages and hours of work. Under the provisions of section 3(m) of FLSA and Regulations, Part 531 (copies enclosed), when an employer customarily provides board, lodging, or other facilities to employees, the employer may claim as a wage credit the fair cost or reasonable value of such facilities. Transportation furnished to clients between their homes and work where the transportation is not an incident of and necessary to the employment of the clients, may also be considered a service for which your agency may assess a fee. The employee must receive the benefits of the facility for which he or she is charged and it is essential that the employee's acceptance of the facility be voluntary and uncoerced.

In your role as a provider of rehabilitation services, your agency may charge clients for services which are unrelated to their employment in a work program. Costs related to the supervision of clients in the sheltered workshop or supported employment setting or the costs of operating such programs cannot be claimed as a wage credit or separately billed to clients. For example, we would question the assessment of fees you have listed for the following services: sheltered work, adult developmental activity, work adjustment training, work evaluation, and job coaching/transition. Evaluation or training which is directly related to the work being performed by the work shop (or prospective work to be performed by the workshop) would be considered compensable hours of work and clients could not be assessed fees for costs related to such evaluation or training. In addition, transportation provided to clients which would constitute hours worked under FLSA, such as travel from job site to job site, could not be charged to clients, as stated in section 531.32 of Regulations, Part 531.

With respect to such charges, if your agency receives grant funds or donations designated to cover expenses incurred in providing any service, those grants or donations must be subtracted from the calculation of "reasonable cost" for the purposes of claiming a wage credit.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question(s) presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on matters which are under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of FLSA.

I trust the above is responsive to your inquiry.

Sincerely,

Samuel D. Walker
Acting Administrator

Enclosure