

**42 IAC 1-5-1 Gifts; travel expenses, waivers
42 IAC 1-5-2 Donor restrictions**

DDRS case workers were considered “employees” under 4-2-6 and 42 IAC, as individuals providing services for the State, and were consequently prohibited from accepting gifts from a provider with whom their agency had a business relationship. As a result, contract providers for DDRS were precluded from providing gifts to independently contracted case managers who were considered employees for the purposes of 4-2-6 and 42 IAC.

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BACKGROUND

The FSSA Director of the Division of Disability and Rehabilitative Services (DDRS) requests an advisory opinion regarding the status of independent contractors in relation to the ethics gift rule. DDRS contracts with case management entities, as independent contractors, to provide case management services to the clients of DDRS. The division also contracts with service providers to provide the services that the case managers recommend for the clients. For example, a case manager might request residential treatment, outpatient treatment, or therapy for a client. The case manager then decides who among the DDRS-approved providers will be contracted to provide the necessary service. The provider is paid by FSSA on a per-case basis.

This specific inquiry concerns TLC, an approved DDRS and Medicaid Waiver provider of supported living services and supports. Case management entities, also approved DDRS and Medicaid Waiver providers, are in the position of recommending TLC's services to DDRS. Thus, both TLC and case-management entities contract with DDRS to provide services to DDRS clientele. TLC hosted DDRS independently contracted case managers to a paid luncheon. The case managers had a choice of date and location for the free luncheon. The luncheon locations were Maggiono's Little Italy, Palomino, and Jonathan Byrd's. The dates of these luncheons were January 18, 2005, January 24, 2005 and January 25, 2006.

Prior to this invitation, DDRS had received notice that TLC had sent a holiday gift of \$20 gift cards to Applebee's to many case managers, a few BDDS staff and one staff member of the Bureau of Quality Improvement Services. Afterward, DDRS learned that TLC had sent gift cards to every case manager.

Case managers, by regulation, must remain independent from all other providers because case managers are the ones who guide individuals in choosing services and providers. Case management companies and providers (Like TLC) are for-profit corporations for the most part.

On December 22, 2005, the Ethics Commission Staff Attorney, wrote an informal advisory opinion to DDRS regarding the application of the gift rule to this fact situation.

The informal opinion confirmed with DDRS that the case managers are prohibited from taking gifts from other providers.

On January 8, 2006, DDRS sent a letter to all case managers, informing them of the application of the gift rule to gifts from other DDRS providers. They were told not to accept any such gifts in the future.

On January 11, 2006, DDRS sent a letter to TLC, advising TLC that the provider violated the gift rule by offering gifts to the DDRS case managers. TLC was warned that such activity must cease.

ISSUE

Are FSSA-DDRS independently contracted case managers subject to the gift rule since they are considered ' employees' within IC 4-2-6 and 42 IAC?

RELEVANT LAW

42 IAC 1-5-1 Gifts; travel expenses; waivers

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6

42 IAC 1-5-2 Donor Restrictions

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7-3

CONCLUSION

DDRS independent case managers are employees for purposes of IC 4-2-6.

42 IAC incorporates the statutory definition of "employee" into the ethics rules. For purposes of both the statute and rules, case managers are individuals who provide personal services for the state, i.e., employees. The status of "employee" invokes the application of the State Code of Ethics. As a result, the gift rule applies to the case managers. The "donor restriction" section of the gift rule also applies to persons who are contract providers for DDRS. The providers are prohibited by the gift rule from providing gifts to state employees or special state appointees, or to the spouse or unemancipated child of employees or special state appointees.