

DSWD OPINION NO. 46 S. 2024

DRN: LS-L-LO-24-04-78293-C

MEMORANDUM

FOR : DIRECTOR JENNIFER M. RIZO
Human Resource Management and Development Service

FROM : OFFICER-IN-CHARGE, LEGAL SERVICE¹

SUBJECT : COMMENTS ON THE FACILITATION CLAIMS FOR MAGNA CARTA BENEFITS – HAZARD PAY OF DSWD FIELD OFFICE III

DATE : 04 JUNE 2024

This pertains to your MEMORANDUM² regarding the facilitation of the Claims for Magna Carta Benefits – Hazard Pay of DSWD Field Office III pursuant to their Memorandum³ dated 02 April 2024.

In the FO III Memorandum, Regional Director Venus F. Rebuildela requested for the support of the Undersecretary for General Administration and Support Services, Atty. Edward Justine R. Orden, in processing the facilitation of Hazard Pay claims in accordance with the existing legal bases and relevant guidelines.

Background

Republic Act (RA) No. 9433 entitled Magna Carta for Public Social Workers aimed to improve the plight of our Public Social Workers (PSWs) as professionals in the government service. In doing so, the said law intends to uplift the social and economic well-being of our PSWs.

Among the benefits provided by RA 9433, hazard pay is granted to public social workers and public social welfare and development workers assigned in remote and depressed areas, strife-torn or embattled areas, distressed or isolated stations, mental hospitals, leprosaria, areas declared under a state of calamity or emergency which expose them to great danger, volcanic activity/eruption, occupational risks or threats to life shall be compensated with hazard allowance equivalent to at least twenty per centum (20%) of the monthly basic salary.⁴

In pursuance with RA 9433, the Commission on Audit (COA) issued Circular No. 2012-001 which provides for the documentary requirements on how an official or employee may avail the Hazard Pay, thus:

5.8 Hazard Duty Pay of COA Circular No. 2012-001⁵**General Guidelines**

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¹ Special Order No. 6021, series of 2023

² Annex "A" – Memorandum from HRMDS

³ Annex "B" – Memorandum from DSWD Field Office III

⁴ Section 15, Other Benefits., RA 9433 entitled "Magna Carta for Public Social Workers"

⁵ COA Circular No. 2012-001 entitled "Prescribing the Revised Guidelines and Documentary Requirements for Common Government Transactions"

The payment of Magna Carta benefits under RA No. 7305 (Magna Carta for Public Health Workers) and RA No. 8439 (Magna Carta for Scientists, Engineers, Researchers and Other Science and Technology personnel in the government) shall be limited to the appropriations authorized in the GAA for the purpose. Augmentation thereof from any available savings of the agency shall be subject to the approval by the DBM (Section 41 of FY 2012 GAA or pertinent provisions of the GAA for the year)

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Documentary Requirements

- Certification by the Secretary of Department of Science and Technology (DOST)/Department of Health (DOH)/Department of National Defense (DND)/Director of the Philippine Institute of Volcanology and Seismology that the place of assignment/travel is a strife-torn/embattled/disease-infested/distressed or isolated areas/stations, or areas declared under state of calamity or emergency, or with volcanic activity and/or eruption.
- Duly accomplished time record of employees or travel report
- Copy of special order from the agency/department head covering the assignment to hazardous/difficult areas
- Approved DTR/Service Report

Subsequently, Department of Budget and Management (DBM) - Department of Social Welfare and Development (DSWD) Joint Circular (DBM-DSWD JC) No. 1, series of 2018 was issued intending to outline the specific criteria for the grant of hazard payment to public social workers (PSWs) as an additional compensation for performing hazardous duties and for enduring physical hardships in the course of the performance of duties.⁶

Consistent with the DBM-DSWD JC No. 1, series of 2018, the Department has issued an Administrative Order (AO) No. 06, series of 2023 entitled "Guidelines in Providing Specific Criteria and Administrative Procedures on the Grant of Hazard Pay for Public Social Welfare and Development Workers as Supplement to DBM-DSWD Joint Circular No. 1, series of 2018", this AO has provided additional supporting documents for claiming for Hazard Pay which were not provided in any of the previous issuances, to wit:

"1.5. The claim for Hazard Pay must be supported by the following documents:

- Copy of Special Order (SO) of assignment or travel signed by the approving authority pursuant to the Delegation and Delineation of Authority;
- Originally signed Travel/Service Report during the period of actual exposure to hazards and hardships"

The Commission on Audit issued the Updated Documentary Requirements for Common Government Transactions⁷, through this, the documentary requirements, in availing hazard pay, are the following:

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- Copy of Special Order from the agency/department head covering the assignment to hazardous/difficult areas;

⁶ 5.0 Hazard Pay, DSWD DBM Joint Circular No. 01, s 2018

⁷ COA Circular No. 2023-004

- For non-DOST personnel, Certification from DOST Secretary showing non-DOST personnel, Certification from DOST Secretary showing the degree of risk to hazards, actual exposure and rates
- Certification issued by the Chief Accountant that the amounts received by the recipient/s are compliant with the rules and rates on hazard pay set under Item 3 of DBM-DOH Joint Circular No. 01, series of 2012 and DBM-DOH Joint Circular No. 01, series of 2016, and any future amendments thereof"

Short after the issuance of the above-cited COA Circular, COA has issued another Circular No 2024-004 entitled "Suspension of the Application of COA Circular No. 2023-004 dated 14 June 2023, Prescribing the Updated Documentary Requirements for Common Government Transactions, amending COA Circular No. 2012-001 dated 14 June 2012", in this Circular, it expressly stated that the application of COA No. 2023-004 is suspended, retroactive to its effectivity on 01 July 2023, and COA Circular No. 2012-001 is reinstated.

Discussion

This level concurs with the DSWD Field Office III in the implementation of its grant for Hazard Pay.

The words of the abovementioned COA Circulars are clear and unambiguous. A cardinal rule in statutory construction is that *when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation*. There is only room for application. As the provisions of the COA Circulars are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation. This is what is known as the plain meaning rule, as expressed in the maxim, *verba legis non est recedendum*, or from the words of a statute there should be no departure.⁸

In these Circulars, it has expressly provided under the latest issuance that the COA Circular No. 2023-004 is deemed withdrawn and has no force and effect with the exception of those provisions that were copied and lifted from the COA Circular No. 2012-001⁹. In effect, the additional requirements imposed under the latter COA Circular are also deemed withdrawn and cannot be used in complying with the documentary requirements on claiming hazard pay. Consistent with the latest issuance, it stated that the prevailing documentary requirement shall be the COA Circular No. 2012-001.

However, this level observes that DSWD FO III cited DBM-DSWD Joint Circular No. 1 series of 2018 as part of their legal basis, upon careful review of the JC, it is submitted that the same is inconsistent with the main intention of the general law. The clear intent of RA No. 9433 is to accord all our PSWs with Magna Carta Benefits from the time of its enactment.

Particularly, on the retroactive payment of the Social Workers in the abovementioned JC which tacitly stated, under Section 12.2, that "non-entitlement to back Magna Carta benefits for prior years". This is a clear inconsistency with the general law.

In the Supreme Court case of **Limkaichong vs. Landbank of the Philippines**¹⁰, it held that "the spring cannot rise higher than its source. And just as a statute cannot be at variance with the Constitution, so too must the implementing rules conform to the language of the law. Rules and regulations cannot go beyond the terms and provisions of the basic law they seek to

⁸ Dubungco v COA, GR. No. 23713, 05 March 2019 citing *Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 608 (2010)

⁹ last paragraph, COA Circular No. 2024-004

¹⁰ G.R. No. 158464, 02 August 2016

implement. The power to promulgate Rules and Regulations cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute.”

Thus, having inconsistency between the law and the guidelines, this level is of opinion that the DSWD Field Office III discourages the use of the DBM-DSWD JC No. 01, series of 2018 as part of their legal reference. Assuming arguendo, that the Field Office will include this Joint Circular as part of their basis, it would be detrimental to the public social workers who intend to avail retroactive payment of hazard pay.

Corollary, the Memorandum also mentioned Administrative Order No. 6, series of 2023 which pertained to the guidelines on availing hazard pay. Since the above-cited JC and COA Circular No. 2023-004 are clear incongruity with the general law, the same cannot be used as well since it delimits the claiming of the social worker's benefits.

Recommendation

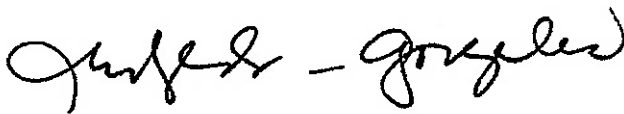
In view of the foregoing, the Legal Service submits its support with the facilitation of the hazard pay claims with modification on the legal bases used in their Memorandum particularly on the following:

- COA Circular No. 2024-004 is the prevailing rule on the documentary requirements, reverting the requirements on availing the hazard pay;
- Item 12.2. PSWs and PSWDWs shall not be entitled to back Magna Carta benefits for prior years, DBM - DSWD Joint Circular No. 1, series of 2018 is inconsistent with the general law and thus, it cannot be used as part of the legal basis in the facilitation of availing the hazard payment.
- Administrative Order No. 06, series of 2023 is inconsistent with the general law and has used a legal basis that is inconsistent with the law.

Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

Thank you.



ATTY. MARIA CASSANDRA M. URBIZTONDO-GONZALES

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