



Minnesota Department of **Human Services**

April 7, 2015

David Ferleger, Esq.
Independent Consultant, Court Monitor and Technical Advisor
Archways Professional Building
413 Johnson Street, Suite 203
Jenkintown, PA 19046

Re: Court Monitor expenses Jensen et al. v. Minnesota Department of Human Services et al. Court File No: 09-cv-1775 (DWF/FLN) and Karsjens et al. v. Jesson et al. Court File No: 11-cv-03659 (DWF/JJK)

Dear Mr. Ferleger:

As you are aware I reviewed your most recent invoice dated February 24, 2015 for expenses incurred for one month in 2015 in the above cases.

I appreciate our communications over the past week regarding your, your staff's, and your consultant's use of first class flights, accrual of frequent flyer miles, and per diem charges related to work in the above cases. While our discussions addressed several of my questions, I remain concerned. After hearing from you, I went back and more closely reviewed your most recent invoice for January 5, 2015 – February 3, 2015. It included charges for two first class plane tickets for you and one first class ticket for your assistant during this one month.

I write to inform you of the direction I have given my staff going forward regarding expense reviews, which I generally described to you in our phone call this morning.

Airline Tickets and Frequent Flyer Miles

As we discussed, state employee policies require the use of the lowest round trip airfare when state funds are used as payment. In addition, state employees and other officials traveling on state business using state funds cannot claim benefits as their own (such as a free night of lodging given after a specified number of days paid, airline benefits that may include cash payments, discount coupons, free tickets, or frequent flyer mileage) and are required to remit these benefits to the state. Federal policies provide similar guidance to federal employees.

While I recognize that you serve as an Independent Consultant, Court Monitor, and Technical Advisor in the above federal lawsuits and that you are technically not a state employee, state funds are being used to pay for your expenses. Therefore, I reiterate the request that you book the lowest round trip airfare for your trips to Minnesota. I also request that benefits issued as a result of your travels

(including frequent flyer miles) should be acknowledged in invoices to the state and credited towards future travel for the state rather than upgrades or for personal use. I ask that your staff and consultants do the same.

Although Department staff have previously informally raised to you concerns about the use of expensive airline tickets (the description of these conversations and emails vary), you are correct that the Department did not assert formal objections to your invoices with the Court. We should have. Now this matter has come to my attention. While the timeframe set by the Court's orders to formally object to past invoices has expired, I have directed staff going forward to assert formal objections to airline expenses which exceed state guidelines. The fact that DHS did not assert formal objections earlier is a disservice to Minnesota tax payers and the Court.

Per Diem

State of Minnesota employees currently are allowed the following for meal reimbursement if the person is in travel status: Breakfast \$9.00, Lunch \$11.00, and Dinner \$16.00. There are no allowances for incidentals. Overnight hotel stays require the employee to stay in a licensed hotel that offers the government rate.

The 2015 United States General Services Administration (GSA) allows the following for reimbursement if a person is in travel status to St. Paul: Breakfast \$12.00, Lunch \$18.00, and Dinner \$36.00 plus \$5.00 incidentals with modified amounts for the first and last day of travel. The GSA allows a \$135.00 per diem for hotel for overnight stays.

In a recent communication, you indicated that you follow the per diem rate for federal court jurors. To provide assurance to our internal auditors for state funds expended, I ask that you, your staff, and consultants instead follow the State of Minnesota travel reimbursement guidelines or the GSA standards, which more closely align with your work. (Based on your description of the juror per diem standards, they appear similar to the GSA per diem). We need to have clarity on the standards used so that should we see billed items that fall outside of these guidelines or standards, we raise objections in accordance with the Court's orders on the process for compensation.

In the upcoming days, our internal audits office, at my request, will review the past billing practices in the above cases to ensure appropriate internal controls and the proper use of taxpayer dollars. I understand that the time for formal objections has passed but I want to more fully understand what occurred and ensure that more controls are in place moving forward. I appreciate your cooperation in meeting with our internal audits office for this purpose if needed. Until I receive the internal audit report and have the opportunity to review its recommendations, I have told DHS staff that your invoices must be approved by either me or Deputy Commissioner Chuck Johnson.

We value your input in many respects and hope you understand our need to carefully monitor the use of state funds.

Sincerely


Lucinda E. Jesson
Commissioner

Cc: The Honorable Donovan W. Frank, United States District Court
Colleen Wieck, Executive Director for the Governor's Council on Developmental Disabilities
Roberta Opheim, Ombudsman for Mental Health and Developmental Disabilities
Shamus O'Meara, Attorney for Plaintiffs
Scott Ikeda, Assistant Attorney General
Gregory Gray, Chief Compliance Officer, Department of Human Services
Amy Kaldor Akbay, Chief General Counsel, Department of Human Services
Emily Johnson Piper, General Counsel, Office of Governor Mark Dayton