

FLSA-593

November 12, 1975

This is in response to your letter of July 22, 1975, concerning the application of the Fair Labor Standards Act to patient workers at *** State Hospital. Thank you for your thoughtful comments on the patient-worker regulations. You can be assured that they will receive careful consideration along with other comments we receive in connection with our six-month review of these regulations.

You state that payment in cash to patient workers for work performed "does not adequately meet the needs of the severely retarded clients" at the hospital as they do not understand the value of money nor have adequate judgment to handle money appropriately.

The Fair Labor Standards Act does not make provision for an alternative to cash payments to the severely retarded. Regardless of the severity of the mental handicap of the patient worker, the law provides that all payments must be "free and clear." If in specific cases it can be demonstrated that the severely retarded patient has no concept of the value of money, or the patient is unable to handle money, the requirement for "free and clear" payment may be met by the introduction of a third party. This may be accomplished by appointing a legal guardian for the patient who has power of attorney over the patient's personal affairs including wages which may be deposited in an independent bank account in the patient's name.

This of course does not mean that the institution cannot prohibit certain purchases or use of funds by its residents, provided it has statutory authority to do so. The institution would be well advised to get the State Attorney General's opinion of its authority, if any, over the funds of patients who are in state custody, and its authority to restrict the use (as opposed to access) of monies by its residents.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division