

Internal Revenue Service

District Director

Department of the
Treasury

401 West Peachtree
Street, N.W.
Atlanta, GA 30365

Person to Contact:

Telephone Number:

Date:

NOV 30 1995

CERTIFIED MAIL-RECEIPT REQUESTED

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under section 501(c)(3) of the Internal Revenue Code. We have determined that you do not qualify for exemption under this section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated in the State of [REDACTED] on [REDACTED]. Your articles of incorporation specifically state your purpose is to assist mentally ill citizens and their families in obtaining health, educational, vocational, financial and other services designed to improve the quality of living of the mentally ill; serve as a central clearing house for information which will enable families of the mentally ill to plan effectively for the future of the mentally ill relative. Your amended bylaws state your purpose is to help relatives and friends of mentally disabled persons and develop and provide oversight of personal future care plans after the relative or friends are no longer able to care for the disabled persons because of death or disability. The corporation will also provide referral lists of attorneys, financial planners and trustees and information on entitlements.

Your governing body has full power to manage the affairs of the corporation and consists of five persons, with the president, treasurer, and secretary, each having mentally handicapped children that may benefit from the organization's services.

Your activities as stated in your application shall consist of providing services to and on behalf of seriously and chronically mentally disabled persons (clients) when their parents, family members or friends are deceased or otherwise

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unable or unwilling to help them; providing information to parents, family members and friends of clients or prospective clients; and advocating on behalf of the seriously and chronically mentally disabled. Your services shall consist of:

1. Meeting with the parents, family members or close friends during their lifetime, to determine the needs of the client as seen by primary care providers.

2. Advising the primary care providers regarding methods of funding for those who cannot afford to fund such a program.

3. Periodically reviewing and revising the personal care plan, as the client's needs change;

4. Periodically reviewing the adequacy of each client's living arrangements, food and clothing requirements and the health and mental health services being provided to him;

To qualify for your services a person must be afflicted by mental illness. An administrative charge of \$ [redacted] is assessed to cover the cost of an intake interview by a professional social worker to determine the needs of the client and develop a plan of care. The intake interviews will be conducted when the parent/guardian decides to participate in PLAN. The interview will establish a file which includes a case history and other pertinent information about the client. The fees charged after the intake interview will be established by the actual cost of operation with fees covering case management, visitation and administration ranging from \$ [redacted] to \$ [redacted] an hour.

Your service as a parent advocate will be provided on a fee-for-service basis and will be provided for a client covered by a trust or entitlement funds. Clients covered by a trust are privately funded by the family and clients covered by entitlement funds receive Medicare, Medicaid, SSI or other government support. PLAN will not manage or arrange for funding, you advise the family members regarding methods of funding the program. You will engage the trust department of a financial institution to hold, protect, invest and account for trust funds. You will also accept money on a pay-as-you-go basis from families who cannot or do not want to establish a trust. The trustee will be selected by a family/guardian. You will utilize grants and contributions for the benefit of needy clients and will take needy clients on a first-come/first-serve basis. You have not been able to specify what percentage of your services will be provided to needy versus percentage provided solely on a fee for service basis.

Actual services to mentally ill persons will occur after the death of the parents or guardian. The PLAN case worker will

monitor the client in a mental institution, group home or outpatient situation and provide the services contracted for by the family/guardian and paid for through the trust funds. The services rendered are above and beyond the basic care provided by the institution or home. If you should cease to exist, the clients will still receive customary services provided by the institution or home and required under state law. The mentally impaired individual would lose those items contracted for by the family/guardian in the personal care plan. Personal care plans include items such as a proper place to live, shopping for personal items, getting proper medical treatment and recreational activities.

You have stated services will be publicized by presenting information about your organization to all Mental Health Associations and providers and becoming a part of their information distribution services. You will also distribute fliers and brochures to educate and publicize the availability of PLAN services to the general public through public broadcasting messages.

Your organization will initially serve [REDACTED]. You estimate the population of [REDACTED] to be [REDACTED] of which 10% have some form of mental illness. You state you are unable to determine the number of persons your organization plans to serve; however, you are currently serving children of your founders.

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for educational, charitable or other exempt purposes provided that no part of the net earnings inure to the benefit of any private shareholder or individuals.

Section 1.501(a)-1(c) of the Income Tax Regulations provides that the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this

subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization or persons controlled, directly or indirectly, by such interests.

Revenue Ruling 67-367, 1967-2 C.B. 188 denied exemption under section 501(c)(3) to an organization whose sole activity was the operation of a "scholarship" plan for making payments to specifically named individuals.

Revenue Ruling 68-73, 1968-1, C.B. 251 provided exemption under section 501(c)(3) to an organization that was created to minister to the non-medical needs of all patients in a proprietary hospital.

Revenue Ruling 69-161, 1969-1 C.B. 149 provided exemption under section 501(c)(3) to a legal aid society that provided free legal services to indigent persons.

Revenue Ruling 72-369, 1972-2 C.B. 245 denied exemption under section 501(c)(3) to an organization that was formed to provide managerial and consulting services at cost to unrelated exempt organizations.

Revenue Ruling 75-75, 1975-1 C.B. 154 denied exemption under section 501(c)(3) to a public interest law firm that had an established policy of charging or accepting attorneys' fees from its clients. The representation provided could not be distinguished from that available through traditional private law firms.

Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348, the Tax Court held that an organization whose purpose is providing care and treatment for coma victims in the stages of recovery was denied exemption from taxation. The adverse ruling was upheld by the Tax Court because a child of the founder and chief operating officer of the foundation was a substantial beneficiary of the services provided by the organization. This constituted inurement for the benefit of a private individual which is prohibited under the qualifications for exemption.

Better Business Bureau v. U.S., 326 U.S. 279 (1945), Ct D. 1650, C.B., 375 states that a single nonexempt purpose will destroy the exemption regardless of the number or importance of truly exempt purposes.

Your primary goal is to provide services to preselected mentally ill clients before and after their parent, guardian or care giver is deceased. Your governing body has full power to manage the affairs and each has mentally handicapped children that may benefit from the organizations services. At the present, you have not been able to specify what percentage of your services will be provided to the needy versus the percentage provided solely on a fee-for-service basis. It appears you were created to insure that

the pre-selected mentally ill children of members of your organization receive personal care after their relatives or friends are no longer able to care for them. Providing services at cost on a fee-for-service basis to preselected mentally ill persons whose relatives are members of the organization indicates you are serving private interest rather than public interest. Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

If you do not agree with our proposed denial, we recommend that you request a conference with a member of the Regional Director of Appeals Staff. Your request for a conference should include a written appeal signed by an authorized officer giving the facts, law and any other pertinent information to support your position as explained in the enclosed Publication 892. If you are to be represented by someone who is not one of your authorized officers, he/she will need to file a power of attorney or tax information authorization and be qualified to practice before the Internal Revenue Service as provided in Treasury Department Circular No. 230. The conference may be held at the Regional Office or, if you request, at any mutually convenient District office.


If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If we do not hear from you within 30 days, we will send you a final determination on this matter. Also, appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Because this letter could help resolve any question about your exempt status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely


District Director

Enclosure: Publication 892

cc: State Officials