

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



May 15, 1998

ALL COUNTY LETTER NO. 98-33

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS

SUBJECT: BASS V. ANDERSON

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation Change
 Court Order or Settlement Agreement
 Clarification Requested by One or More Counties
 Initiated by CDSS

The purpose of this letter is to provide County Welfare Departments (CWDs) with instructions and materials for implementing the judgement and order in Bass v. Anderson.

BACKGROUND

On June 6, 1997, the Superior Court of Alameda County ruled in Bass v. Anderson that Welfare and Institutions Code (WIC) 11004 does not provide sufficient authority for the California Department of Social Services (CDSS) or CWDs to recover nonfraudulent overpayments from relative and licensed foster family homes.

County Welfare Departments were recently directed in All County Letter (ACL) 97-55, dated September 17, 1997, to:

- Discontinue the practice of pursuing recovery of non-fraudulent overpayments from relative and licensed foster family homes.
- Identify and rescind all current actions to recover non-fraudulent overpayments from relative or licensed foster family homes.
- Notify all relative or licensed foster family home providers currently subject to overpayment recovery actions of the rescission of actions to collect such overpayments.

These directives also apply to nonrelated legal guardians.

ACL 97-55 also explained that a subsequent ACL regarding retroactive reimbursement of non-fraudulent overpayments previously collected would be forth coming. This ACL provides such instruction.

DEFINITION OF THE CLASS FOR RETROACTIVE RELIEF

The subject class members for purposes of retroactive relief consists of:

- (1) all relative foster care providers, non-related legal guardians and licensed foster family homes who
- (2) provided foster care services as defined by applicable law and regulation to a foster child or children placed in their care, and who
- (3) received non-fraudulent foster care overpayments, and who
- (4) on or after April 1, 1992, were assessed such overpayments by CWDs. And who
- (5) reimbursed the county for overpayments assessed.

PROCESSING CLAIMS FOR RETROACTIVE RELIEF

A follow up order in the Bass v. Anderson case was issued by the court on March 17, 1998. It sets forth the terms of the retroactive relief in this case and requires the CDSS to instruct counties on how to proceed.

The CDSS will identify the subject class from a computer database and send to each subject class member an **Notice and Claim form**. The **Notice and Claim form** will advise the potential class member of his or her potential eligibility for overpayment reimbursement. The **Notice and Claim form** will instruct the potential claimant to return the Notice and Claim form to the county that issued the original overpayment assessment within 60 days if all the questions on the **Notice and Claim form** can be answered "yes." The notice further explains that if any questions are answered "no," there is no eligibility and the potential claimant need take no further action. "Yes" questions pertain to class membership. A copy of the **Notice and Claim form** is attached.

County Welfare Departments (CWDs) will have 30 days from the end of the month in which the claim is received to process the claim, unless additional information is requested as set forth below. In all cases where additional information is requested, CWDs will have 30 days from the end of the month in which the additional information is received to process the claim.

The CWDs may only approve and pay one foster family home provider per overpayment claim. If two providers jointly provided care and are no longer together, the provider who first submits a claim and meets the eligibility requirements set forth in this ACL will be the sole eligible claimant.

The CWDs will review each returned claim form notice in order to determine eligibility and reimbursement amounts and send the claimant either an **Approval Notice of Action**, a **Request for Information Notice of Action**, or a **Denial Notice of Action** as follows:

- a. If all the boxes on the claim are marked "Yes" and the CWD is able to confirm eligibility and the amount of reimbursement the claimant is entitled to receive, the CWD will send an **Approval Notice of Action** informing the claimant of the repayment amount and the expected date of receipt. The **Approval Notice of Action** will include the telephone number for more information and will inform the claimant of a right to a hearing. A copy of the **Approval Notice of Action** is attached.
- b. If all the boxes on the claim are marked "Yes" and the CWD is unable to determine eligibility because the returned claim form did not contain sufficient information or because county records are incomplete or missing, the CWD will issue a **Request for Information Notice of Action**, appropriately marked, to the claimant. Prior to issuing the **Request for Information Notice of Action** the county shall conduct a record review. The **Request for Information Notice of Action** informs the claimant that the claim will be denied unless the claimant provides additional information as specified to establish eligibility within 30 days. It also provides a CWD telephone number for the claimant to call for more information. A copy of the **Request for Information Notice of Action** is attached and lists the types of verification claimants may submit to establish eligibility where county records are incomplete or missing.
- c. A **Denial Notice of Action** will be issued under the following circumstances:
- (1) If one or more of the boxes on the claim form are marked "No".
 - (2) If county records and/or verification documentation submitted by the claimant indicate that the claimant is not a class member (i.e. , did not provide foster care for a California foster child, was not charged with an foster care overpayment by a county between April 1, 1992, and the present, or did not repay any part of the overpayment to the county.
 - (3) The claimant was not paid foster care benefits by the county to which the claim form was submitted.
 - (4) If the claim was initially denied because it was submitted to the incorrect county, and was not resubmitted to the correct county along with initial denial notice within 30 days of the denial date.
 - (5) If the claimant does not submit a claim form within 60 days.
 - (6) If claimant does not provide the additional information requested by the **Request for Information Notice of Action** within 30 days.
 - (7) If county records indicate the overpayment was due to fraud. The definition of fraud to be used by CWDs is set forth below.

The **Denial Notice of Action** will specify the reason for the denial, appropriately marked, include a CWD telephone number for more information and inform the claimant of a right to a hearing. A copy of the **Denial Notice of Action** is attached.

TYPES OF VERIFICATION

Examples of verification to establish class membership include foster care agreements, court orders, and/or notices or statements from a county acknowledging eligibility for or receipt of foster care benefits. Examples of verification of overpayments assessed and repaid include overpayment assessment NOA's dated on or after April 1, 1992, and/or cancelled checks, bank records, county receipts or other county documents or records acknowledging payment.

FRAUD DEFINITION

The term "fraud" is defined in MPP 20-003.1. This definition currently provides:

" Fraud exists when a person, on behalf of himself or others, has:

- .11 Knowingly and with intent to deceive or defraud made a false statement or representation to obtain benefits, obtain a continuance or increase in benefits, or avoid a reduction of aid benefits.
- .12 Knowingly and with intent to defraud failed to disclose a fact which, if disclosed, could have resulted in denial, reduction or discontinuance of benefits.
- .13 Accepted benefits knowing he/she is not entitled thereto, or accepted any amount of benefits knowing it is greater than the amount to which he/she is entitled.
- .14 For the purpose of obtaining, continuing, or avoiding a reduction or denial of benefits, made statements which he/she did not know to be true with reckless disregard of the truth."

REIMBURSEMENT TO CLAIMANTS

Reimbursement checks must be mailed to claimants no later than the last day of the month following the month in which the claim is approved. A copy of the **Approval Notice of Action** previously sent must be included with the check.

FISCAL CLAIMING INSTRUCTIONS

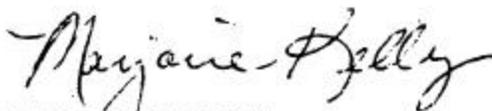
The Fiscal Policy Bureau will issue detailed claiming instructions to counties concerning allowable reimbursement from CDSS for checks issued via a separate upcoming County Fiscal Letter.

MATERIALS INCLUDED AS ATTACHMENTS TO THIS LETTER ARE:

- (1) Notice and Claim form**
- (2) Approval Notice of Action (NOA)**
- (3) Denial NOA**
- (4) Request for Information NOA**

If you have any questions concerning the letter or its instructions please contact your county foster care consultant at (916) 323-1263.

Sincerely,



MARJORIE KELLY
Deputy Director
Children and Family Services Division

Enclosures

c. CWDA

BASS v. ANDERSON NOTICE AND CLAIM FORM

THE FOSTER CARE PROGRAM MAY OWE YOU MONEY

BETWEEN APRIL 1, 1992, AND THE PRESENT TIME

- YES NO Did you provide foster care for a California foster child?
[] []
- YES NO Were you charged with a foster care overpayment by a California county?
[] []
- YES NO Did you repay any part of the foster care overpayment to a California county?
[] []

If you have answered "yes" to all three questions, you may be able to get back the money you repaid.

If you have answered "no" to any of the questions, you are not eligible for reimbursement. Do not return this form.

If you answered "yes" to all three questions please fill in the information below and return this claim form to the county welfare department that charged you the overpayment.

You must return this claim form within 60 days of the postmark date or your claim will be denied.

NAME-----
ADDRESS----- TELEPHONE NO.-----
NAME OF FOSTER CHILD-----
FOSTER CARE CASE NO. (if available)-----
DATE ASSESSED OVERPAYMENT (if available)-----
PERIOD FOR WHICH OVERPAYMENT WAS ASSESSED (if available)-----

DRAFT

DRAFT

NOTICE OF ACTION

COUNTY OF _____

STATE OF CALIFORNIA
HEALTH AND WELFARE AGENCY
DEPARTMENT OF SOCIAL SERVICES

Notice Date : _____
Case Name : _____
Number : _____
Worker Name : _____
Number : _____
Telephone : _____
Address : _____

(ADDRESSEE)

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Questions? Ask your Worker.

State Hearing: If you think this action is wrong, you can ask for a hearing. The back of this page tells how. Your benefits may not be changed if you ask for a hearing before this action takes place.

The county has denied your claim for foster care overpayment reimbursement dated _____

Here's why:

1. You checked a box marked "No" on your claim form.
2. You were not charged with an overpayment after April 1, 1992.
3. You did not repay the overpayment.
4. You did not submit your claim form within 60 days.
5. You did not supply the additional information requested within 30 days.
6. You did not get cash aid for a foster child from this county. The claim and proof you were eligible must go to the county where you got cash aid. You have 30 days from the date of this notice to file a claim in the appropriate county. You must attach this denial notice of action to your resubmitted claim in order for it to be processed.
7. You did not resubmit your claim to the proper county within 30 days of the initial denial notice date.
8. The county has determined that your overpayment was the result of fraud.
9. Other _____
County Welfare Department telephone number for questions _____

Medi-Cal: This Notice of Action does NOT change or stop Medi-Cal benefits. **Keep your plastic Benefits Identification Card(s).**

Rules: These rules apply; you may review them at your welfare office: MPP

YOUR HEARING RIGHTS

To Ask For a State Hearing

- You only have 90 days to ask for a hearing. The 90 days started the day after we gave or mailed you this notice.
- You have a much shorter time to ask for a hearing if you want to keep your same benefits.

To Keep Your Same Benefits While You Wait For a Hearing

You must ask for a hearing before the action takes place.

- Your Cash Aid will stay the same until your hearing.
- Your Medi-Cal will stay the same until your hearing.
- Your Food Stamps will stay the same until the hearing or the end of your certification period, whichever is earlier.
- Your CalWORKs Child Care benefits will **NOT** stay the same until your hearing.
- If the hearing decision says we are right, you will owe us for any extra cash aid or food stamps you got.

To Have Your Benefits Cut Now

If you want your Cash Aid or Food Stamps cut while you wait for a hearing, check one or both boxes.

- Cash Aid Food Stamps

To Get Help

You can ask about your hearing rights or free legal aid at the state information number.

Call toll free: 1-800-952-5253

If you are deaf and use TDD, call: 1-800-952-8349

You may get free legal help at your local legal aid office or welfare rights group.

Other Information

Child and/or Medical Support: The District Attorney's office will help you collect support even if you are not on cash aid. There is no cost for this help. If they now collect support for you, they will keep doing so unless you tell them in writing to stop. They will send you any current support money collected. They will keep past due money collected that is owed to the county.

Family Planning: Your welfare office will give you information when you ask for it.

Hearing File: If you ask for a hearing, the State Hearing Office will set up a file. You have the right to see this file. The State may give your file to the Welfare Department, the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. (W. & I. Code Section 10950).

HOW TO ASK FOR A STATE HEARING

The best way to ask for a hearing is to fill out this page. Make a copy of the front and back for your records. Then, send or take this page to:

Your worker will get you a copy of this page if you ask. Another way to ask for a hearing is to call 1-800-952-5253. If you are deaf and use TDD, call: 1-800-952-8349.

HEARING REQUEST

I want a hearing because of an action by the Welfare Department of _____ County about my

- Cash Aid Food Stamps Medi-Cal Child Care
 Other (list) _____

Here's why: _____

Check here and add a page if you need more space.

I want the person named below to represent me at this hearing. I give my permission for this person to see my records or come to the hearing for me.

NAME _____

ADDRESS _____

I need a free interpreter.
My language or dialect is: _____

My name: _____

Address: _____

Phone: _____

My case number: _____

My signature: _____

Date: _____

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STATE OF CALIFORNIA
HEALTH AND WELFARE AGENCY
DEPARTMENT OF SOCIAL SERVICES

Notice Date : _____
Case Name : _____
Number : _____
Worker Name : _____
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The county is unable to process your claim for foster care overpayment reimbursement dated _____

Here's why:

The county needs more facts.

Please provide any of the following to show you provided care:

- Signed foster care agreement.
- Court order regarding placement.
- Notice of Action (NOA) regarding placement.
- A statement from the county showing either eligibility for, or receipt of, foster care benefits.

Please provide any of the following to show that you were assessed and repaid an overpayment on or after April 1, 1992.

- Overpayment NOA or other county records indicating that an overpayment was assessed.
- Cancelled checks, bank records or county receipts showing repayment of a foster care overpayment.
- Other county records verifying repayment of foster care overpayment.

YOU MUST PROVIDE THIS INFORMATION WITHIN 30 DAYS OF THE DATE OF THIS NOTICE OR YOUR CLAIM WILL BE AUTOMATICALLY DENIED.

County Welfare Department telephone number for questions.

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The county has approved your overpayment reimbursement claim for the month(s) of _____. The county has approved a repayment amount of \$_____.

Here's why:

You paid back an overpayment that a court has now said the county did not have the right to ask you to repay.

The repayment amount is shown on this notice.

A check will be sent to you within 2 months.

County Welfare Department telephone number for questions, _____.

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