



CDSS

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ARNOLD SCHWARZENEGGER  
GOVERNOR

November 19, 2008

ALL COUNTY INFORMATION NOTICE NO.I-66-08

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY CalWORKs WELFARE-TO-  
WORK COORDINATORS  
ALL CalWORKs PROGRAM SPECIALISTS

REASON FOR THIS TRANSMITTAL

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

SUBJECT: GOOD CAUSE EXCEPTION FROM LATE FILING OF HEARING AND REHEARING REQUESTS

The purpose of this letter is to advise participants in the state hearing process of statutory changes to Welfare and Institutions Code (W&IC) Sections 10951 and 10960 that provide good cause exceptions to the 90-day period for filing a hearing request and the 30-day period for filing a rehearing request.

Assembly Bill (AB) 921 was signed into law by Governor Schwarzenegger and became effective January 1, 2008. This bill amended W&IC Sections 10951 and 10960 to grant jurisdiction over late filings of requests for hearings and rehearings if good cause is established for the late filing. Late filing means a request for hearing filed more than 90 days after receipt of an adequate and language-compliant Notice of Action (NOA). Late filing for a rehearing means a request for rehearing filed more than 30 days after receipt of a hearing decision.

**W&IC Section 10951 – Time Limit for Requesting a Hearing**

W&IC Section 10951 deals with the time limit to request a hearing. It has been amended to permit a person to file a hearing request beyond the 90-day time period if good cause exists for the late filing, as defined below.

**“Good cause” means a substantial and compelling reason beyond the party’s control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language-compliant notice, in and of itself, shall not constitute good cause.**

The 90-day deadline to file an appeal can be extended to 180 days for good cause.

W&IC Sections 10951(b)(3) and 10960(f)(3) state that nothing in this statute precludes the application of equity principles as otherwise provided by law. This means that an Administrative Law Judge (ALJ) can use equity principles (e.g. equitable estoppel) to find an otherwise untimely hearing request to be timely and that the ALJ has jurisdiction to hear the merits of the claim.

The amendments to W&IC Section 10951 do not change CDSS' regulations regarding the deadline for filing a timely hearing request. Pursuant to MPP §22-009.11, when a claimant receives an adequate and language-compliant NOA, the claimant has 90 days from the date the NOA is mailed or given to him/her to file a timely hearing request, absent good cause.

### **W&IC Section 10960 – Time Limit for Requesting a Rehearing**

W&IC Section 10960 deals with the time limit for parties to request a rehearing and the actions to be taken by the Department on rehearings. It has been amended to permit a person to file a rehearing request beyond 30 days from the date the decision is received if good cause exists for the otherwise late filing or if the applicant or recipient did not receive a copy of the decision. Good cause is the same as stated in W&IC Section 10951.

Grounds for requesting a rehearing are as follows:

- (1) The adopted decision is inconsistent with the law.
- (2) The adopted decision is not supported by the evidence in the record.
- (3) The adopted decision is not supported by the findings.
- (4) The adopted decision does not address all of the claims or issues raised by the parties.
- (5) The adopted decision does not address all of the claims or issues supported by the record or evidence.
- (6) The adopted decision does not set forth sufficient information to determine the basis for its legal conclusion.
- (7) Newly discovered evidence, that was not in custody or available to the party requesting rehearing at the time of the hearing, is now available and the new evidence, had it been introduced, could have changed the hearing decision.
- (8) For any other reason necessary to prevent the abuse of discretion or an error of law, or for any other reason consistent with the provisions of Section 1094.5 of the Code of Civil Procedure.

There is a 180-day time limit for filing a rehearing request even if there is good cause for the late filing. The notice granting or denying the rehearing request shall explain the reasons and legal basis for granting or denying the request for rehearing.

The time frame for granting or denying rehearing requests has been extended from 15 working days to 35 working days and the reference to a rehearing request being deemed denied if not acted upon by the Director of the Department has been deleted.

### **Good Cause**

Examples of good cause reasons for failing to file a hearing request within the 90-day filing period would include the following:

An adequate and language-compliant NOA was received in the claimant's home on January 5. The claimant was hospitalized in serious condition at the time and did not return home until April 7. The claimant did not open the mail until April 8 and filed the hearing request on April 12.

Although the April 12 hearing request was filed more than 90 days after the NOA was mailed, an ALJ would have discretion to establish a good cause exception to the 90-day filing period considering the diligence of the claimant and prejudice to the county or Department of Health Care Services.

An adequate and language-compliant NOA was mailed to the claimant on February 10. Although the NOA was correctly addressed, it was not received by the claimant until April 23 because it was initially delivered to the claimant's neighbor who forwarded the NOA to the claimant on April 23. The claimant files the hearing request on May 15. If the claimant can establish he/she exercised due diligence in filing the hearing request, but could not file it by May 11 (i.e., the 90<sup>th</sup> day after the NOA was mailed), an Administrative Law Judge could exercise discretion to permit a good cause exception to the late filing.

An unmarried mother and father receive CalWORKs and food stamp benefits for themselves and three children. On March 1, the County sends an overpayment NOA demanding repayment to their address. The NOA is in both names.

On March 30, the father moves out of home. On July 15, the mother requests a hearing. The mother testifies that the father did not show her the March 1 NOA and she did not learn about the overpayment or demand for repayment until the county sent a second NOA on June 1. In this case, an ALJ could exercise discretion to permit a good cause exception to the late filing.

If the county fails to issue an adequate and language-compliant NOA, the 90-day period for filing a timely hearing request never begins to run and the hearing request will be deemed timely (see MPP §22-009.11).

## **Equitable Considerations**

W&IC Section 10951(b)(3) and Section 10960(f)(3) state:

“Nothing in this section shall preclude the application of the principles of equity jurisdiction as otherwise provided in law.”

The reference to equity jurisdiction was added to confirm that ALJs have authority to apply equitable principles (e.g., equitable estoppel) in appropriate circumstances where the hearing request is not filed within the time limits set out in regulation and statute, even if the hearing request was filed more than 180 days from the NOA. An ALJ would only apply equitable estoppel if there was no remedy at law. A determination of good cause for an otherwise untimely filing is a legal remedy and would be applied before a judge would consider equitable estoppel.

In cases where the county has misled a claimant into filing a late hearing request, judges may evaluate whether there was good cause for the late filing or may apply equity principles.

## **Factors an ALJ Will Consider in Cases Involving Hearing Requests Not Filed Within 90-Day Time Frames**

Effective January 1, 2008, ALJs will evaluate the following factors when a claimant has filed an untimely hearing request:

- Was the NOA received by the claimant?
- Was the NOA adequate?
- Was the NOA language-compliant?
- Was there good cause for the late filing?
- Is there a basis to apply equitable principles such as equitable estoppel?

If good cause applies, the hearing request still must be filed within 180 days of the date an adequate and language-compliant NOA was received.

## **MPP Sections Impacted**

MPP Section 22-009.1 provides that a request for hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied.

MPP Section 22-054.32 states that a hearing request shall be dismissed if it is filed beyond the time limit set forth in Section 22-009.

These MPP Sections now must be considered in light of W&IC Section 10951 that permits a late filing of a hearing request for good cause.

MPP Section 22-065.11 provides that a hearing request must be made in writing within 30 days of receipt of the hearing decision.

This MPP Section now must be considered in light of W&IC Section 10960 that permits a late filing of a rehearing request for good cause.

If you have any questions about this All County Information Notice, please contact Barry Bernstein of the State Hearings Division at (213) 833-2200.

Sincerely,

***Original Document Signed By:***

Manuel A. Romero  
Chief Administrative Law Judge  
State Hearings Division