

DEPARTMENT OF SOCIAL SERVICES  
744 P Street, Sacramento, CA 95814



November 22, 1985

ALL-COUNTY INFORMATION NOTICE NO. I-99-85

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: SIMON v. McMAHON

REFERENCE: ACIN NO. I-84-85

In ACIN No. I-84-85 you were informed that on October 17, 1985, the California Supreme Court issued an injunction in the case of Simon v. McMahon.

Attached for your INFORMATION ONLY is a draft All-County Letter (ACL) and detailed instructions to implement the Simon injunction. On November 5, 1985, the Department sent the attached ACL to the Department of Finance (DOF) to obtain legislative and DOF approval to issue the letter. The Budget Act requires the Department to obtain such approval since this ACL would add to the program costs funded from the General Fund in excess of \$500,000 on an annual basis. We will release a final version of the letter as soon as we obtain legislative and DOF approval for implementation. The advance copy is being sent to you for planning purposes only.

If you have any questions regarding the Simon injunction, please contact Michiyo Laing at (916) 322-5387 or (ATSS) 492-5387.

A handwritten signature in black ink, appearing to read "Robert A. Horel".

ROBERT A. HOREL  
Deputy Director

Attachment

cc: CWDA

744 P Street, Sacramento, CA 95814

ALL-COUNTY LETTER NO.

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: SIMON v. McMAHON

REFERENCE: ACIN NO. I-84-85 (MPP 40-118.11, 42-213.20, 44-205.413  
AND 44-205.42)

We previously informed you in ACIN No. I-84-85 that on October 17, 1985, the California Supreme Court issued an order in the case of Simon v. McMahon. The order enjoins the Department from enforcing the above-cited regulations prospectively. These regulations require the consideration of income and/or property of potentially eligible children in determining AFDC eligibility and grant amount regardless of whether such income and/or property is restricted to the use and benefit of a particular child (e.g., Social Security benefits, child support, bank accounts, etc.). ACIN No. I-84-85 also suggested that the counties begin flagging the affected cases effective October 17, 1985. The purpose of this letter is to provide you with specific instructions necessary to implement the terms of the Simon injunction. The implementation will be effective November 1, 1985 for ongoing cases and October 17, 1985 for cases that were denied, terminated or granted at less than the MAP on or after October 17, 1985.

The attachment specifies actions which the counties must take in order to implement the terms of the Simon injunction. The counties must identify and notify all cases in which aid has been reduced, denied, terminated or granted at less than the MAP due to the effect of the challenged regulations. The affected families must be given the option of excluding children with restricted income and/or property from the assistance unit before any grant adjustment or reinstatement of aid is made without the application of the challenged regulations.

The following implementation materials and additional instructions related to these materials will be mailed separately as soon as possible:

- A reproducible copy of the informing notice to affected cases.

- Notices of Action
- Statistical Report
- Claiming Instructions

If you have any questions regarding the implementation, please call Mrs. Michiyo Laing at (916) 322-5387 or (ATSS) 492-5387.

ROBERT A. HOREL  
Deputy Director

Attachments

cc: CWDA

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IMPLEMENTING INSTRUCTIONS

(Simon v. McMahon)

1. Definition of Affected Cases

Cases affected by the Simon injunction are all families in California whose AFDC grant has been reduced because of the consideration of the restricted income and/or property of one or more children who were or could have been excluded from the assistance unit prior to the implementation of current MPP Sections 40-118.11, 42-213.2q, 44-205.413 and 44-205.42, as well as all families whose AFDC grant was terminated or whose application for AFDC was denied or granted at less than the MAP on and after October 17, 1985 because the family was unwilling to apply for a child in the home who has restricted income and/or property or because of the inclusion of restricted income and/or property of the child.

For purposes of this definition, restricted income or property is any resource received by or on behalf of a particular child under legal conditions which restricts the availability of such a resource to the use and benefit of a particular child (e.g., Social Security benefits, child support payments, insurance settlement payments, bank accounts, etc.).

## 2. Prospective Implementation

In order to comply with this court order, counties must immediately cease the following activities prospectively:

- a. Requiring, as a condition of application for AFDC, that families apply for related child(ren) residing in the home who has restricted income and/or property (MPP 40-118.11 and 44-205.413); and,
- b. Reducing, denying or terminating AFDC benefits for families applying for or receiving AFDC when the basis of the reduction, denial or termination is the treatment of a child's restricted income and/or property as a family resource when the family would choose to have the child with restricted income and/or property removed from the assistance unit (MPP 42-213.29 and 44-205.42).

The Simon injunction does not prohibit the counties from notifying families who have been overpaid, or collecting or attempting to collect overpayments through grant adjustment or any other method, for months prior to October 1985 for overpayments resulting from the nonapplication of the challenged regulations which were in effect at the time.

3. Grant Adjustment for Current Cases and Reinstatement of Aid for Cases Denied or Terminated

Counties must take the following action within the specified time frame below:

- a. For family members whose AFDC grant has been reduced as a result of the inclusion of restricted income and/or property of a potentially eligible child who is not currently in the assistance unit:
- 1) identify affected cases (if you have not already done so);
  - 2) rescind the action specified above;
  - 3) restore benefits to the amount to which they would otherwise have been entitled effective with their November grant;
  - 4) send an appropriate notice of action.
  - 5) The actions specified in 1) through 4) above must be taken within 60 days of receipt of this letter.
- b. For families whose AFDC grant has been reduced because of the mandatory inclusion in the assistance unit of a child who has restricted income and/or property, as well as families whose AFDC grant was terminated or whose application for AFDC was denied or granted at less than the MAP on and after October 17, 1985 because

the family was unwilling to apply for a related child in the home who has restricted income and/or property or because of the inclusion of restricted income and/or property of the child:

- 1) Within 60 days of receipt of this letter, identify affected cases (if you have not already done so) and notify them of their potential eligibility for AFDC or a larger grant amount without the mandatory inclusion in the assistance unit of related children with restricted income and/or property;
- 2) upon receipt of the response from the affected families that they are interested in pursuing this matter, promptly contact the family by telephone or mail and set up a personal interview. The purpose of the face-to-face meeting is to explain to the claimant the options of including or excluding potentially eligible children with restricted income and/or property and to document in the case record the claimant's decision regarding this option;
- 3) within 45 days of receipt of the response from the affected families:
  - a) for current cases, rescind the action required by the challenged regulations, restore benefits to the amount to

which they would otherwise have been entitled effective with their November grant and send an appropriate notice of action;

- b) for cases that were denied or terminated, rescind the previous action of denial or termination, redetermine their eligibility and grant amount without counting the restricted income and/or property of related children, grant aid if found eligible, and send an appropriate notice of action. A CA 7 must be taken for each of the months for which aid will be granted. For cases denied, a CA 2 shall be taken if it is not present in the case file;
- c) for new cases whose application for AFDC was granted on or after October 17, 1985 at less than the MAP, increase benefits to the amount to which they would otherwise have been entitled without the application of the challenged regulations effective the original beginning date of aid.
- d) For purposes of determining the beginning date of aid for cases denied, the denial date shall be considered as the date of authorization and determine the beginning date of aid according to MPP 44-317.11. (For example, if the application of October 18, 1985 was denied October 30, 1985, aid shall be granted effective October 30, 1985. If this application was denied November 5, 1985, aid

shall be granted effective November 1, 1985.) For cases terminated, the action shall be rescinded and aid restored effective the date of termination (the earliest date would be November 1, 1985).

- e) For purposes of implementing the Simon injunction, a claimant whose application was denied because of the application of the challenged regulations, shall not be required to retroactively meet eligibility conditions such as WIN registration, Social Security enumeration, etc.

4. Treatment of Payments Made Under the Simon Injunction

For purposes of determining continuing AFDC eligibility and grant amount, the retroactive payments issued as a result of the implementation of the Simon injunction shall not be considered as income or as a property in the month paid nor in the month following receipt in accordance with MPI 44-340.6. Please refer to appropriate regulations regarding the treatment of these payments under the Food Stamp and Medical programs.

5. Statistical Reporting

Submit to the SDES the following statistical information on or before June 1, 1986:

- a. the total number of grant adjustments and the total amount of the increased grants;
- b. the total number of restorations of aid and the total amounts paid; and
- c. the total number of aid payments granted to previously denied cases and the total amounts paid.

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