



CDSS

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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES



ARNOLD SCHWARZENEGGER
GOVERNOR

February 27, 2009

ALL COUNTY LETTER NO. 09-05

TO: ALL COUNTY WELFARE DIRECTORS
ALL CalWORKs PROGRAM SPECIALISTS
ALL FOOD STAMP COORDINATORS
ALL COUNTY WELFARE-TO-WORK SPECIALISTS
ALL MEDI-CAL PROGRAM SPECIALISTS
ALL REFUGEE PROGRAM COORDINATORS
ALL COUNTY CHILD CARE COORDINATORS
ALL CONSORTIUM PROJECT MANAGERS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS
(CalWORKs) INFORMATION REGARDING CALIFORNIA REGISTERED
DOMESTIC PARTNERS (RDPs) AND SAME-SEX SPOUSES

REFERENCE: ASSEMBLY BILL (AB) 205 (STATUTES 2003, CHAPTER 421),
WELFARE AND INSTITUTIONS CODE SECTIONS 10553, 10554,
FAMILY CODE SECTIONS 297.5, 298 AND
In re Marriage Cases (2008), 43 Cal.4th 757, DEPARTMENT OF
HEALTH CARE SERVICES (DHCS) ALL COUNTY WELFARE
DIRECTOR LETTER (ACWDL) 09-03 & ACWDL 09-04.

The purpose of this All County Letter (ACL) is to provide policy direction regarding eligibility of same-sex married spouses to the CalWORKs, Food Stamp, and Refugee Cash Assistance (RCA) programs. As many similarities are found with the eligibility criteria for RDPs, this ACL also provides a clarifying reminder of the regulatory changes associated with AB 205.

This letter also contains comprehensive instructions regarding eligibility for Medi-Cal, which requires a separate determination of eligibility and a separate aid code for a RDP or same-sex married spouse. DHCS has issued ACWDL 09-03 and ACWDL 09-04 under separate covers with additional instructions regarding this Medi-Cal eligibility determination process.

REASON FOR THIS TRANSMITTAL

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

As a reminder, the regulatory changes that implement provisions of AB 205 were effective July 27, 2007 and are available on the California Department of Social Services (CDSS) web site at <http://www.dss.cahwnet.gov/ord/PG302.htm> . Attachment 1 contains a summary of the regulatory changes that were made as a result of AB 205.

Attachment 2 has examples of the use of aid code 3S when the Assistance Unit (AU) meets all eligibility requirements for CalWORKs and the RDP/same-sex spouse requests to be in the AU or opts out.

This letter also includes other administrative instructions and Attachment 3 provides sample budget calculations for these families in CalWORKs.

Eligibility of RDPS/Same-Sex Married Spouses to CalWORKs

AB 205 broadens the legal definition of RDPs to extend to RDPs the same rights and responsibilities that are granted and imposed upon civil marriages. The California RDP is an individual who has a declaration of domestic partnership registered with the California Secretary of State. AB 205 also extends these rights and responsibilities to a member of a legal union validly formed in another jurisdiction that is equivalent to a California RDP. For CalWORKs program purposes, RDPs have the same rights and responsibilities as stepparents of the children of their partners and shall be treated as such for the purposes of determining eligibility and grant amount.

On May 15, 2008, the California Supreme Court, in the court case *In re Marriage Cases*, determined that it is impermissible under the California Constitution to limit marriage only to opposite-sex couples. However, voters passed Proposition 8 in November 2008, a constitutional amendment which states that "only marriage between a man and a woman is valid or recognized in California." The passage of Proposition 8 took effect on November 5, 2008. Subsequently, same-sex marriages are no longer allowed in California. In addition, Proposition 8 no longer allows California to recognize same-sex marriages that were entered into outside of California subsequent to that date. Currently, there are pending legal challenges to the implementation of Proposition 8. The Department will issue further policy instructions should any of the legal challenges to Proposition 8 affect CDSS policy.

Pending judicial resolution, all same-sex marriage licenses issued between June 16, 2008 (when the *In re Marriage Cases* became final) and November 4, 2008 are deemed to be valid on the basis of marriage for the purposes of CalWORKs eligibility. Massachusetts and Connecticut also permit same-sex marriages. Same-sex marriages that occurred in Massachusetts and Connecticut during that time period are also valid, pending judicial resolution. For CalWORKs program purposes, same-sex spouses shall be treated as stepparents, and all the following rules included in this letter shall apply to same-sex couples who were issued marriage licenses between June 16, 2008 and November 4, 2008.

Welfare to Work

The CalWORKs Welfare-to-Work (WTW) program requirements were not changed as a result of AB 205. If the RDP/same-sex spouse has not adopted the child(ren), he or she is treated as a stepparent and the family would be considered a single-parent AU with a 32-hour-per-week participation requirement. These hours may not be shared, but either adult can fulfill the work participation requirement. If both adults are non-disabled, and if the RDP/same-sex spouse has adopted the child(ren), the family is considered a two-parent AU with a 35-hour-per-week participation requirement. These hours may be shared between the two aided adults pursuant to Manual of Policies and Procedures (MPP) Section 42-711.421.

Child Care

Eligibility for CalWORKs Stage One child care services does not change as a result of AB 205. Eligibility requirements for Stage One are based on a client's participation in required WTW activities and the availability of care. Child care is considered available and the client is not eligible for subsidized child care when there is an able and available parent, legal guardian, or adult member of the AU in the home.

The same rules that are applied to stepparents in determining membership in the AU will be applied to RDPs/same-sex spouses who do not adopt the eligible child(ren). In these cases, the CalWORKs parent will have the option, as they do with stepparents, to include or exclude the RDP/same-sex spouse in the AU, which could impact the availability of child care in the home. If a RDP/same-sex spouse adopts the eligible child(ren), the RDP/same-sex spouse will be considered a parent and a member of the AU, so the same eligibility requirements for two-parent families will be applied.

Food Stamp

The Food Stamp Program eligibility and household concept does not change as a result of AU members being RDPs/same-sex spouses. Individuals who customarily purchase and prepare meals together continue to define a food stamp household. A "household" can be defined as one person who lives alone or a group of persons related or unrelated, who live together, provided that meals are purchased and prepared together. Categorical eligibility rules continue to require that households in which all members receive or are authorized to receive CalWORKs cash aid or General Assistance (GA) benefits are considered categorically eligible for food stamps.

Refugee Cash Assistance

Refugee Cash Assistance (RCA) program eligibility does not change as a result of AU members being RDPs/same-sex spouses. For eligibility purposes, the RCA program has the same requirements as CalWORKs. Individuals that have an immigration status

of refugee, asylee, Cuban/Haitian Entrant, Amerasian, or Special Immigrant Visa (SIV) holder, are eligible to receive RCA program benefits. Individuals certified as a victim of a severe form of trafficking by the federal Office of Refugee Resettlement, and eligible family members of a certified trafficking victim that have a Derivative T Visa are eligible to receive RCA program benefits. Eligibility for RCA benefits is limited to a maximum of eight months, with the exception of SIV holders from Afghanistan whose eligibility is limited to a maximum of six months.

Medi-Cal Eligibility

Medi-Cal has both state-only funded programs and state-federally funded programs. RDPs/same-sex spouses are not eligible for federal Medi-Cal benefits unless they are a natural or adoptive parent of a child in the AU, the name of both RDPs/same-sex spouse appear on the child's birth certificate, or they can establish eligibility on their own behalf (e.g. by being aged, blind, disabled, pregnant, etc.) The RDP/same-sex spouse may be eligible for specific state funded Medi-Cal programs because he/she is treated as a spouse under state law.

When the RDP/same-sex spouse is not the natural or adoptive parent of a child in the AU, but he/she is eligible for CalWORKs, a separate Medi-Cal determination must be made for that RDP/same-sex spouse and in some instances for the rest of the family, as explained in Attachment 2.

Aid code 3S has been established for those who are eligible for CalWORKs but who will not receive automatic CalWORKs-based Medi-Cal. Use of aid code 3S ensures that RDPs/same-sex spouses are not inappropriately considered or claimed as cash-linked Medi-Cal recipients. Since Medi-Cal is no longer categorical to CalWORKs, there are times when a separate Medi-Cal determination must be made for the entire AU.

CalWORKs Forms

The following CalWORKs forms will be revised to add the term "registered domestic partner" where "spouse" is used and to add "domestic partnership" as a marital status when asked on a form. These changes will be made when stock is depleted, when other changes are made, or if the form is a master only.

CW 2.1Q	Support Questionnaire
CW 5	Veterans Benefits Verification and Referral
CW 8	Statement of Facts For An Additional Person
CW 8A	Statement Of Facts To Add A Child Under 16
CW 81	Lien Agreement
CW 82	Coversheet - Agreement To Sell Property
CW 88	Diversion Services Agreement CalWORKs Program
QR 3	Mid-Quarter Status Report For Cash Aid And Food Stamps

QR 7	Eligibility/Status Report - Quarterly For Cash Aid and Food Stamps
QR 7A	How To Fill Out Your QR 7 Quarterly Eligibility/Status Report
QR 22	Sponsored Noncitizens Applying For Or Receiving Cash Aid And/Or Food Stamps
QR 72	Sponsor's Quarterly Income And Resources Report
SAWS 2	Statement Of Facts For Cash Aid, Food Stamps, And Medi-Cal/34-County Medical Services Program (CMSP)

Aid Codes for AB 205 Families

There are no changes to the current CalWORKs aid code designations and reporting processes unless the RDP/same-sex spouse is a natural parent of one or more of the children or becomes an adoptive parent of one or more of the children; otherwise the RDP/same-sex spouse would still be a stepparent. If the RDP/same-sex spouse adopts one or more of the child(ren) in the AU, the case would be considered a two-parent family case and reported under aid code 35.

As a stepparent to his/her partner's child(ren), the RDP/same-sex spouse is related to the children as a step-relative within the fifth degree, even after the RDP has been terminated by death or dissolution. If either the parent or the RDP/same-sex spouse is otherwise ineligible for aid, (e.g., they are receiving Supplemental Security Income (SSI), are undocumented non citizens or a drug felon) the county shall assign the appropriate aid code to designate that case.

Fiscal Claiming/ Data Reporting

There are no changes to the current assistance and county expense claim processes. Allowable grant, administrative, and services costs for eligible RDPs/same-sex spouses should be claimed as are any other allowable CalWORKs All Other Families (aid code 30) case. There are no changes to the current data report forms. Data collection for eligible RDPs/same-sex spouses should be reported as any other individual within the CalWORKs All Other Families caseload.

Contacts

If you have any questions or need further information, please contact the following persons:

CalWORKs	Your CalWORKs County Consultant
Welfare to Work	Employment Bureau (916) 654-2137

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Food Stamp

Sharon Campbell (916) 654-0737
sharon.campbell@dss.ca.gov

Refugees Services

Refugee Programs Bureau (916) 654-1516

Fiscal Claiming:

Assistance.Claims@dss.ca.gov

Data Reporting

Data Systems and Survey Design Bureau
(916) 928-7899

Medi-Cal

Sherilyn Walden (916) 552-9502
SWalden@dhs.ca.gov

Sincerely,

Original Document Signed By:

CHARR LEE METSKER
Deputy Director
Welfare to Work Division

c: CSAC
CWDA

Attachments

Summary of AB 205 Regulation Changes

- Manual of Policy and Procedures (MPP) Section 40-118.15 – amended to add the term “California domestic partner” to the list of relatives who must be included in the filing unit of a SSI/SSP child.
- MPP Section 40-118.16 – amended to add the term “California domestic partner” to the list of relatives who can be sanctioned by the GAIN program.
- MPP Section 40-118.19 – amended to add the term “California domestic partner” to the list which provides that the spouse of a person mandatorily included in the filing unit must be included on the Statement of Facts.
- MPP Section 43-103.3 – establishes a definition for a California registered domestic partner.
- MPP Section 43-103.6 – establishes a definition for a California domestic partner.
- MPP Section 43–103.61 – establishes a definition of an individual who has a Declaration of Domestic Partnership with the California Secretary of State.
- MPP Section 43–103.62 – establishes a definition of a legal union, other than marriage validly formed in another jurisdiction, and substantially equivalent to a California registered domestic partner.
- MPP Section 44-209.31 – amended to add the term “California domestic partner” as an essential person for purposes of claiming federal participation.
- MPP Section 80-301(c) (1) – amended to define the term “California registered domestic partner.”
- MPP Section 80-301 (c) (1) (A) – establishes a definition of the term “California domestic partner” who has a “Declaration of Domestic Partnership.”
- MPP Section 80-301(c)(1)(B) – amended to add the term “California registered domestic partner” to the definition of a legal union, other than marriage validly formed in another jurisdiction.
- MPP Section 80-301(s) (9) – amended to add the term “California domestic partner” to the definition of a stepparent.
- MPP Section 82-808.112 – amended to add the term “California domestic partner” as a caretaker relative to the CalWORKs filing unit.
- MPP Section 82-808.113 –amended to add the term “California domestic partner” as a spouse even after the marriage or domestic partnership has been terminated.
- MPP Section 82-808.141 – adds Declaration of Domestic Partnership certificate and Termination of Domestic Partnership certificate to the list of acceptable evidence necessary for verifying a caretaker relative relationship to a CalWORKs child.

Sample Budgets Using Aid Code 3S

Following are examples of the use of aid code 3S when the RDP/same-sex spouse requests to be in the AU or opts out. In all three examples the family consists of mom, two children, and a RDP/same-sex spouse, which is an AU of four. The RDP/same-sex spouse wants to be included in the AU in the first two examples. Two preliminary budgets must be completed.

Example One: The first budget would include mom and the two children. The AU is CalWORKs eligible and eligible for CalWORKs-based Medi-Cal as aid code 30.

Under the second budget, the RDP/same-sex spouse is added, and the AU is still eligible for CalWORKs. However, the RDP/same-sex spouse is not eligible under federal rules for CalWORKs-based Medi-Cal and would be designated as aid code 3S. The rest of the AU would be coded with the Medi-Cal aid code of 30 and the RDP/same-sex spouse must be referred for a separate determination for Medi-Cal eligibility.

Example Two: The first budget includes mom and two children. The budget computation indicates no eligibility for CalWORKs based on excess income for mom and the two children.

The second budget adds the RDP/same-sex spouse who has little or no income. By including the RDP/same-sex spouse, the AU is now increased to four which results in the mom and two children becoming eligible for CalWORKs. Mom and the two children can be immediately put into aid code 3N, the Section 1931 (b) only aid code, as long as the sole reason for CalWORKs ineligibility was due to excess income. The RDP/same-sex spouse must be coded under aid code 3S. The RDP/same-sex spouse will receive CalWORKs but not automatic CalWORKs-based Medi-Cal, and must be referred for a separate determination of Medi-Cal eligibility.

The following is the rationale for the instruction to place adoptive or natural parent and children (referred to in this explanation as the federal family) immediately into aid code 3N when: (1) they are not eligible for CalWORKs due to income, but (2) are eligible for CalWORKs when the RDP/same-sex spouse is added as a family member.

The CalWORKs income standard is based on the Minimum Basic Standard of Adequate Care (MBSAC) that varies according to family size. The income test for Section 1931(b)-only applicants is based on the federal poverty level (FPL) for the size of the Medi-Cal family budget unit (MFBU). The FPL increases by family size. Medi-Cal also

uses the poverty level test, or may use a test based on the highest MBSAC used in CalWORKs with income deductions similar to but slightly higher than those of CalWORKs if earned income exists.

The amounts established for the MBSAC levels used in CalWORKs are less than the 100 percent of poverty level used for the same family size used in determining Medi-Cal eligibility. Furthermore, the MBSAC amount for a family size is always less than the poverty level for a MFBU family one individual smaller.

Consider the above scenario where a federal family of three is ineligible for CalWORKs due to excess income, but is eligible for CalWORKs when it includes the RDP/same-sex spouse because it becomes a family size of four. The federal family is income eligible for Section 1931(b)-only when its countable income is less than 100 percent of the poverty level for three. The scenario states that the federal family plus the RDP/same-sex spouse are eligible for CalWORKs. This means that their income must be less than the MBSAC for a family of four. The MBSAC level for a family of four is always less than the poverty level for a family of three so that the federal family meets the income test for Section 1931(b). If they are otherwise eligible for CalWORKs, they would be eligible for Section 1931(b)-only.

This methodology is consistent through increases in family size.

Example Three: The first budget includes mom and two children. The RDP/same-sex spouse declines to be in the AU. A preliminary budget indicates that the AU will not be income eligible without the other RDP/same-sex spouse being included in the AU. In this situation, the county will discuss the option of adding the RDP/same-sex spouse to the AU. If the RDP/same-sex spouse still declines to be included, the AU will be denied CalWORKs for being financially ineligible. As with any case that applies for CalWORKs and is denied, the case must be referred to Medi-Cal for a separate Medi-Cal determination. Until that determination is completed the aid code 3S would be used for the entire family.

CalWORKs Budgeting for Domestic Partner/Same-Sex Spouse AU

For CalWORKs budgeting purposes, a RDPs/same-sex spouses' income and needs are treated in the same manner as those of a stepparent. The RDP/same-sex spouse is considered an optional person in the determination of the number of the persons in the AU. Should the RDP/same-sex spouse choose to be included in the AU, his or her income and needs are counted as a member of the AU in accordance with MPP 44-133.1. If a RDP/same-sex spouse chooses not to be included in the AU, his/her income and needs are considered when that person is living in the home in accordance with regulations in MPP 44-133.511. The following examples illustrate these two scenarios:

Example One: A nonexempt family of five (mom, her three children and a RDP/same-sex spouse). Mom has earned income of \$200 a month. The RDP/same-sex spouse has earned income of \$475 per month with no other income and chooses to be included in the AU. The family lives in Region 1.

\$675	Earned Income for the family (\$200 + \$475 = \$675)
<u>-225</u>	\$225 Income Disregard
\$450	Subtotal
<u>-225</u>	50% Earned Income Disregard
\$225	Total Net Nonexempt Income
\$980	Nonexempt AU MAP for Five
<u>-225</u>	Net Nonexempt Income
\$755	Potential Grant Amount

Example Two: RDP/same-sex spouse chooses not to be in the AU: A nonexempt family of 5 (mom, her three children and RDP/same-sex spouse). Mom has earned income of \$200 a month. The RDP/same-sex spouse has earned income of \$475 per month with no other income and chooses not to be included in the AU. The family lives in Region 1.

\$675	Earned Income for the family (\$200 +\$475 = \$675)
<u>-225</u>	\$225 Income Disregard
\$450	Subtotal
<u>-225</u>	50% Earned Income Disregard
\$225	Total Net Nonexempt Income
\$980	“Family” MAP for Five
<u>-225</u>	Net Nonexempt Income
\$755	Potential Grant Amount
\$862	Nonexempt AU MAP for Four
\$755	Actual Grant Amount (lesser of potential grant amount or AU MAP)