DEPARTMENT OF BENEFIT PAYMENTS

July 10, 1974

ALL-COUNTY LETTER NO. 74-122

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: FOOD STAMP PROGRAM AND SSI/SSP RECIPIENTS

REFERENCE:

In response to questions from many counties and the Food Stamp Management Bureau, Food and Nutrition Service, USDA, has provided further clarification regarding the determination of Food Stamp Program eligibility and basis of issuance of households residing with an SSI recipient.

Income and Resources

The income and resources of an SSI/SSP recipient residing with persons eligible for the Food Stamp Program are to be considered unavailable to the eligible members. This rule applies even in those instances where the SSI/SSP payment is the only income to the household and thus may result in the eligible members participating at the zero purchase level, even though it is clear that funds from the SSI/SSP payment are being expended to meet their needs.

There are, however, situations where payments are received by the SSI/SSP recipient which are specifically meant for meeting the needs of persons eligible for the Food Stamp Program. Common examples of those kinds of payments to SSI/SSP recipients on behalf of FSP eligibles could include, but are not limited to, AFDC grants for dependent children, foster care payments, support payments from divorced or separated parents, income from trust funds, endowments, investments, pensions, insurance and social security survivors benefits. The SSI/SSP recipient receiving such payments may be functioning strictly in the caretaker, conservator, guardian, or disbursement capacity. In such cases, the payment must be considered as income to the benefited members who are eligible for the Food Stamp Program. Conversely, deductible expenses paid with such funds must be allowed to the food stamp members such funds were intended to benefit.

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Deductions

Deductible expenses paid from the SSI/SSP grant or from funds in the possession of the SSI/SSP recipient which were not specifically received to meet the needs of persons eligible for the Food Stamp Program are not to be allowed in determining the purchase requirement of the eligible members. If deductible expenses are shared by the SSI/SSP recipient with persons eligible for the Food Stamp Program, the FSP members shall be allowed a deduction based on the proportion of the expense which they actually bear. If deductible expenses are paid from the pooled income of the SSI/SSP recipient and other persons eligible for the Food Stamp Program to the extent that exact identification of the source of the expended funds is impossible, the eligibility worker should exercise prudent judgment as to the reasonableness of the division of such deduction that is proposed by the Food Stamp members.

Boarders

The effect of a boarder on a household residing with an SSI/SSP recipient is dependent upon to whom the boarder payment is made.

For Food Stamp Program purposes, when the boarder payment is made to an SSI/SSP recipient, the program eligibility and purchase requirement of persons residing with the SSI/SSP recipient are unaffected by either the presence of or the amount paid by a boarder. If, however, the boarder payment is made to a member of the food stamp household, the effect of the boarder on the household's eligibility and basis of issuance will be in accordance with present requirements.

Persons Eligible for SSI/SSP

In some instances, there are persons who either do not apply for SSI/SSP benefits, though they would be eligible if they did apply, or who refuse an SSI/SSP grant to which they are entitled. Persons in those categories may apply for participation in the Food Stamp Program as nonassistance households.

Persons certified to receive SSI/SSP benefits are ineligible for the Food Stamp Program from the date of SSI/SSP certification forward regardless of when the first benefits are actually received. Persons experiencing delays or nonreceipt of such SSI/SSP benefits are not eligible to participate in the Food Stamp Program.

Persons who have had their SSI/SSP certification discontinued, voluntarily or otherwise, may apply or reapply for the Food Stamp Program.

Questions may be directed to the Food Stamp Management Bureau at (916) 445-6907.

Sincerely,

DENNIS O. FLATT
Deputy Director
Welfare Program Operations

cc: USDA, FNS
CWDA

DEPARTMENT OF BENEFIT PAYMENTS

July 9, 1974

ALL-COUNTY LETTER NO. 74-121

TO: ALL DISTRICT ATTORNEYS

SUBJECT: OBTAINING INFORMATION REGARDING ABSENT PARENTS

REFERENCE:

It is the responsibility of the Department of Benefit Payments to insure that welfare assistance is provided as required by law; and that duty extends, of course, to observance of the restrictions imposed by the Doe and Taylor judgments which require that cooperation cannot be considered a requirement for eligibility. It is not the policy of this Department, however, to allow the noncooperation of some welfare applicants and recipients to create a situation which fosters disrespect for family responsibilities or adds unnecessarily to the welfare rolls. This Department is committed to the idea that the support of minor children should rest with their natural parents and not be shifted to the taxpayer, and we have always encouraged law enforcement officials to make use of all legally proper remedies to enforce support obligations.

While the Doe and Taylor orders provide that welfare eligibility cannot be conditioned on the cooperation of the applicant or recipient, nothing in those orders relieves district attorneys or welfare departments from the duties statutorily imposed on them by Welfare and Institutions Code §§ 11350 and 11476. These duties include securing child support payments and taking affirmative action to locate absent parents - and these duties must be fulfilled whether the applicant is cooperative or not.

Several counties have brought to our attention new and innovative ideas that are being employed in cases of noncooperation. These counties report an increase in their ability to elicit information in these cases. Since the first step in the enforcement of support obligations is obtaining the necessary information on which to proceed, I am passing on to you a couple of these

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ideas that I think would be beneficial for you to consider.

We have recently approved a proposal submitted by Los Angeles County to vary the intake procedure slightly and allow welfare applicants to be referred to the district attorney staff at the beginning of the application process, rather than after the application for welfare is completed. District attorney personnel will now have the duty of informing applicants of their rights pursuant to Doe and Taylor, as well as securing absent parent information. After the necessary information is secured by the district attorney staff the applicant will return to the welfare department to complete the application procedure.

It is expected that placing the applicant in contact with district attorney personnel at this time will impress on the applicant the fact that securing child support is a necessary law enforcement function. This should emphasize the necessity for enforcing the support obligation and underscore the fact that cooperation is expected from the applicant.

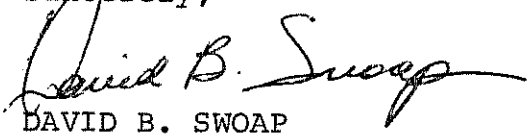
A second idea which has the support of this Department is the use of a form letter which can be sent to applicants or recipients who indicate they will not supply information regarding the absent parent or who refuse to come into the district attorney's office for an interview. This letter should explain the necessity for cooperation with law enforcement officials and should make the recipient aware of the legal sanctions that may be imposed if information is not given. A few counties already use a letter like this, and all report a significant degree of success.

I am attaching a copy of the form letter presently being used by the Family Support Division in Orange County. I feel this letter is particularly good since it conveys its message in a definite manner but without coercion, and meets all legal requirements. The Orange County Family Support Division reports a success rate of 40 percent in cases where this letter is used, and there is no doubt that it could allow all counties to realize a significant increase in the results of their child support efforts. I strongly urge all law enforcement and welfare officials to consider adoption of this type of program in their respective counties.

The second paragraph of this form letter refers to the authority of the district attorney to subpoena the applicant or recipient as a witness to give testimony in a court of law or at a deposition. In these cases, an action is brought pursuant to Welfare and Institutions Code § 11476 to establish paternity. Ancillary to that action a Petition of Guardian ad litem for the child or children is filed. At the paternity hearing the mother is subpoenaed as a witness and is questioned under penalty of contempt regarding the identity of the absent parent, and if an answer is not given the witness may be held in contempt of court until such time as the information is received. The use of this civil contempt remedy as a means of obtaining information has been used successfully in several counties. I encourage law enforcement officials to consider § 2034 of the California Code of Civil Procedure, and to evaluate its potential for use in their respective counties.

Noncooperation does not mean that the case is closed or that enforcement activities are to cease. It simply means that more ingenuity and greater effort will be required to obtain necessary information and to get the job done. Enforcement of support obligations is a matter of great importance to us all, and the first step in effective enforcement is obtaining the necessary information on which to proceed. I hope all county agencies will attempt to increase the results of their child support efforts by making use of available resources to the maximum extent possible.

Sincerely,



DAVID B. SWOAP
Director

Attachment

cc: All County Welfare Directors
CWDA

CECIL HICKS
DISTRICT ATTORNEY

ALPHONSUS C. NOVICK
DIVISION CHIEF

OFFICE OF THE DISTRICT ATTORNEY

Orange County Courthouse
700 Civic Center Drive West
Santa Ana, California

ADDRESS REPLY TO:
FAMILY SUPPORT DIVISION
POST OFFICE BOX 448
SANTA ANA, CALIFORNIA 92702

TELEPHONE (714) 834-3610

Re:

Dear

As required by State Law, the Welfare Office has referred your case to the District Attorney.

During your application for welfare you were informed that you cannot be denied assistance if you fail or refuse to cooperate with law enforcement officials in obtaining support for your child(ren) from the absent parent. You were also informed that law enforcement officials are required by law to take steps to gain support from the absent parent and/or to establish paternity.

You have not come to the District Attorney's Office for an interview and your assistance will not be denied because of that fact. On the other hand, the District Attorney is authorized by law to bring a lawsuit to enforce the absent parent's obligation to support the child(ren) and/or to establish paternity. Under the law, we can:

1. Subpoena you as a witness to give testimony in a court of law.
2. Subpoena you as a witness to answer questions before trial.

Your cooperation in taking care of this as soon as possible may avoid the necessity of a subpoena at a future date.

As our first step in that direction, we are requesting that you complete the enclosed counterform and bring it to this office to enable us to legally enforce the father's liability to support the child(ren), if that action is appropriate.

Interviews are conducted daily, Monday through Friday, 7:30 a.m. to 2:30 p.m. If you are not able to come to this office by _____, _____, please call and we will arrange a specific time and date.

Very truly yours,

Alphonsus C. Novick

ALPHONSUS C. NOVICK
Deputy District Attorney

Enclosure

The attached Los Angeles County Guidelines were approved by the Department of Benefit Payments subject to the following conditions:

1. That the District Attorney makes a formal request to the Director of the Department of Public Social Services, in accordance with item 7 of the fourth paragraph of Welfare & Institutions Code § 11476, "that all cases involving parents absent from the home be referred to him immediately upon receipt of the application for assistance."

2. That Los Angeles County continues to comply with the instructions contained in the All-County letters of December 3, 1973 [subject: Doe v. Carleson; Taylor v. Martin] and December 5, 1973 [subject: Revision of Forms WR-2 and WR-3], including the requirement that the warning statement accompanying the All-County letter of June 26, 1973 [subject: Doe v. Carleson; Taylor v. Martin] be read by or to the applicant or recipient at the time of referral by the Department of Public Social Services to the District Attorney;

3. That, following the interview with District Attorney personnel, the WR-2.1 form be completed in all cases; and

4. That the District Attorney has, or will adopt, a policy of filing a civil or ciminal action to establish paternity or provide support in appropriate cases when a recipient fails to cooperate, so that there is no misrepresentation when an applicant or recipient is informed that such actions may be filed and that she may be called as a witness and subjected to penalties for contumacious behavior.

LOS ANGELES COUNTY GUIDELINES

Pursuant to the most recent decisions in the area of denial or termination of AFDC benefits on account of noncooperation of recipients, the following guidelines are to be followed.

Regional Office personnel have an affirmative duty to inform recipients that their cooperation or lack of cooperation within the meaing of W&IC 11477 will not effect their eligibility. The specific elements of W&IC 11477 which have been ruled out as far as affecting eligibility are as follows:

1. The recipient cannot be penalized for:

   a. Refusing to be interviewed by the District Attorney.

   b. Refusing to sign a criminal complaint against the absent parent, or for

   c. Requesting dismissal of a criminal complaint, and/or

   d. Refusing to disclose the identity or whereabouts of the absent parent.

The reason the recipient cannot be compelled to make disclosures or to assist in the prosecution of the absent parent or to be restrained from requesting dismissal of criminal proceedings is that the State cannot narrow the class of eligible individuals entitled to welfare by imposing additional eligibility requirements over and above those requirements specified in the Social Security Act.

It is mandatory that Regional Office personnel do not threaten explicitly or implicitly the noneligibility, reduction, or termination of welfare benefits on account of noncooperation by the recipient regarding the four above-mentioned areas.

Pursuant to Carleson v. Taylor (1971) 404 U.S. 980, the eligibility worker has a duty to inform the potential recipient that it is not mandatory that he or she cooperate in the identity, location, or prosecution of the absent parent as a condition of eligibility. A suggested outline for the interview is as follows:

1. Before we go into the details of your case, it is my duty to inform you that you will not be penalized and it will not affect your eligibility if you refuse to be interviewed by a member of the District Attorney's Office or refuse to sign a criminal complaint against the absent parent or, in the event that you did sign a complaint, request the dismissal of that complaint, or if you refuse to disclose the identity or whereabouts of the absent parent.

2. Now we want to acquire some information which may be beneficial to you and to us regarding the securing of additional benefits to you and reimbursement to this agency for expenditures made on your behalf.

3. Now, if the absent parent has not been helping you to support your children, I want you to understand he has a duty to do so under the law and that this duty exists whether or not you are receiving aid. Therefore, it is in your best interests and the best interests of your children to secure a court order for him to make payments for child support, knowing that this order will continue even when you are no longer eligible for, or receiving, public assistance.

   a. In the case of Civil Paternity:

   Now is the time to get a court order establishing the identity of the father of your child. The reason for this is that it becomes more difficult with the passage of time to prove that he is the father. Also, at this time, you will have the services of a competent attorney (a member of the District Attorney's Office), free of charge, to help you prosecute a civil case which otherwise you would be required to do through private counsel. As you know, the hiring of private counsel can be an expensive proposition.

   Not only would a paternity judgment assist you in obtaining support from the father, but it will also provide benefits to your children; an example would be that if, after the securing of a paternity judgment, the father were to die, your children would be eligible for Social Security benefits.

   b. W&IC 11350:

   Information to be provided when applicable.

   c. W&IC 11484:

   Information to be provided when applicable.

d. Penal Code 270:

The purpose of the criminal proceeding is for the court to make a finding that the absent parent has a duty to support the children and has the ability to do so and has wilfully failed and refused to provide reasonable support. This is a crime and may be punished as a felony or a misdemeanor. As a practical matter, if the absent parent is found guilty of wilfully refusing to provide support, the court makes an order that he shall pay reasonable support.

On the first offense the court generally does not put the absent parent in jail, but rather puts him on summary probation for a period of one to three years, with a condition of probation being that he make the required support payments. This means that the court gives him added incentive to make the payments because if he does not he will be in violation of probation and a warrant will issue for his arrest which will probably result in his going to jail. Thus, this gives added weight to the support order and the absent parent has a greater motivation to make his child support payments.

e. Reciprocal Cases:

If the absent parent does not reside in the County of Los Angeles, we have a proceeding known as the Uniform Reciprocal Enforcement of Support Act. In this situation we petition another county, state, or possibly another country where the absent parent resides for that jurisdiction to obtain an order for support. He is ordered to make payments to his local agency who then forwards the money to Los Angeles on your behalf.

4. (In the event that the recipient fails to cooperate):

a. I should inform you that even though your lack of cooperation will not affect your eligibility to receive aid from this agency, you may, through either civil or criminal court proceedings, be subpoened to give testimony as to the identity, location and other information regarding the absent parent. Your refusal to honor the subpoena or to give the required testimony may result in a finding that you are in contempt of court and this may result in your being forced to pay a fine or to be jailed for failure to comply with the court's order.

Your cooperation is very beneficial to you.

5. (Complete the questionnaire and obtain as much information regarding the absent parent as is possible.)