STATE OF CALIFORNIA - HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814
(916) 322-5387

July 23, 1981

ALL-COUNTY LETTER NO. 81-78

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: ELIGIBILITY OF THE UNBORN CHILD

REFERENCE:

Recently several counties have asked for policy concerning the AFDC eligibility of the unborn child.

I. Eligibility of the Unborn Child of Undocumented Parent(s)

In this situation, the primary factor in an eligibility determination is one of residence. Unless the mother can be documented as a legal and/or eligible resident alien, pursuant to MPP Section 42-431.2 she cannot have the legal intent to remain. Consequently, the unborn child cannot be considered a resident of the state because he/she cannot have an intent other than that of the mother. The unborn child is ineligible for aid in this situation irrespective of the father's citizenship status because the mother (and child) are subject to deportation at any given moment. However, if there are other children in the family who are citizens or legal aliens, these children could be aided if otherwise eligible - i.e., a separate determination of the residence status of each of these children would have to be made.

Unlike the situation involving an unborn child, it is possible for the child of undocumented parents to acquire a residence separate from his/her parents.

A child born in California acquires U.S. citizenship regardless of the parents' status. However, this child may or may not be a resident of this state depending upon the intent of the parent for that child. For example, a citizen child of an unmarried, undocumented mother can be regarded as a resident if the mother intends for the child to remain in the state even if she herself is deported. In such a situation, she may want her child to live with relatives or the child's citizen/eligible alien father.

II. Eligibility of the Unborn Child for the AFDC-FC Program

A second situation on which clarification has been sought relates to policy regarding eligibility for unborns of AFDC-FC mothers. Section 11401 of Assembly Bill 2749 (Chapter 1166, Statutes of 1980) and the regulations to implement the bill specify four authorities for placement for AFDC-FC eligibility: court order, relinquishment, legal guardianship, or voluntary placement. Since none of these authorities would exist for an unborn, there would be no separate AFDC-FC eligibility for the unborn.

Should you have further questions regarding these policies, please contact your AFDC Management Consultant at (916) 445-4458.

Sincerely,

Claude Finn for:
KYLE S. McKINSEY
Deputy Director

cc: CWDA