STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814
916/322-7247

July 30, 1987

ALL COUNTY LETTER NO. 87-104

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: (1) CALENDARING OF FOOD STAMP ADMINISTRATIVE DISQUALIFICATION (INTENTIONAL PROGRAM VIOLATION) HEARINGS; AND

(2) IMPLEMENTATION OF FOOD AND NUTRITION SERVICE (FNS) POLICY CHANGE REGARDING NOTICE TO RESPONDENTS

The purpose of this letter is to notify counties that the Administrative Adjudications Division (AAD) will resume hearing Food Stamp Administrative Disqualification Hearings (ADH) in July 1987 and to provide instructions regarding a revised federal notice policy.

As a result of a change in Food and Nutrition Service (FNS) policy, an ADH cannot be held in the absence of the respondent, or the respondent's representative, unless the State has evidence of receipt of the advance notice of hearing by the respondent, or has evidence that the respondent refused receipt of the notice. Before proceeding with the hearing, the State must also ensure that the advance notice was received by the respondent 30 days prior to the date of the hearing.

The most immediate consequence of this change in policy was the necessity for AAD to review all case files (for those hearings that had already been conducted but not yet submitted to the Director) to determine if the respondent had received notice of the hearing. Effective September 22, 1986, the date the State was initially advised of the FNS change, we have taken no further action on any case in which there is no proof of receipt of notice by the respondent. This means that a State hearing decision will not be rendered even though a state hearing has already been conducted. All of these cases have been identified and a list will be sent to each affected county. If the county confirms the respondent's address or provides our office with a new address for the respondent, we will schedule a new hearing.

Cases noted on this list fall into the following categories:

(a) The hearing notice packet was returned by the U.S. Postal Service as unclaimed, undeliverable, etc.;

(b) The return receipt was never returned to the State; or

(c) The return receipt was signed by an individual other than the named respondent. In cases where the hearing request named two respondents, such as husband and wife, a decision has been rendered only for the individual who actually signed the return receipt. A new hearing will automatically be scheduled for the other respondent subject to the new notice procedure.

As for the cases which will be calendared beginning July 1987, we are implementing a number of changes in our procedures to ensure compliance with the FNS directive. These changes include the following:

(a) All Food Stamp ADH notices shall be sent to all identified respondents by certified mail, RESTRICTED DELIVERY, return receipt requested. This means that only the party to whom the notice is sent can sign for the notice. The restricted delivery option will permit the State to obtain the necessary evidence establishing the particular respondent's actual receipt of the notice. Hearings will then be conducted for all respondents who have signed the return receipt regardless of whether they appear for the scheduled hearing.

(b) When a county has identified two or more individuals as co-respondents in a request that is now with the State, we will mail individual notices to each respondent.

In all future requests, counties should cease the practice of requesting one hearing for more than one respondent. Effective immediately, counties should request separate hearings for each respondent even if two respondents are married.

(c) All ADHs will now be scheduled 45 - 50 days in advance to allow sufficient time for the signed return receipt to be returned to our office well before the date of the hearing.

When the notice has been returned as unclaimed, undeliverable, etc., we will hold the county's request for a period of 30 days following the scheduled hearing date.

If the county obtains a current address during this period of time, we will schedule a new hearing. If we do not hear from the county, we will close the case and return the request to the county. If the county subsequently learns of the respondent's location, the county may file a new request for a hearing.

If the returned mail receipt indicates that the respondent refused to accept delivery, that receipt will be considered as equal to proof of receipt and the hearing will go forward regardless of whether the respondent appears for the scheduled hearing.

The new FNS policy may make it difficult for counties to disqualify respondents either who cannot be located or who refuse to accept the notice. It is anticipated that FNS will establish an information network that will enable the states and counties to identify these potential respondents. However, it is suggested that counties consider taking the following interim actions:

(a) Counties should notify the Calendaring Unit of any address changes for (1) those requests that are currently pending in our office that have never been scheduled and (2) cases identified on the lists returned to you that have a notice-related problem.

(b) Counties should attempt to identify a respondent's current address PRIOR to expending its resources on investigating and fully developing its case.

(c) Each county should establish a list entitled "Potential Administrative Disqualification Hearing Respondents" which sets forth the name and social security number of all persons for whom a hearing cannot be held because of a notice-related problem.

Our office will be contacting respective counties before actually scheduling these hearings. We will keep you informed of future developments in this area. If you have any questions or suggestions, please contact Laurence Geller, Supervising Administrative Law Judge, at 916/324-4500.

THOMAS S. WILCOCK
Chief Administrative Law Judge
Administrative Adjudications Division

cc: CWDA