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

September 17, 1997

ALL COUNTY LETTER NO. 97-55

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS

REASON FOR THIS TRANSMITTAL

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

SUBJECT: BASS V. ANDERSON - OVERPAYMENT COLLECTION

SUPERSEDES: ALL COUNTY INFORMATION NOTICE (ACIN) I-20-90

The purpose of this All County Letter (ACL) is to inform counties of the Bass v. Anderson lawsuit concerning recovery of non-fraudulent overpayments related to child ineligibility in the Aid to Families with Dependent Children-Foster Care (AFDC-FC) Program and to provide counties with the information necessary to implement court orders pursuant to Bass v. Anderson.

More specifically, the Superior Court of Alameda County ruled in Bass v. Anderson that the State does not have authority under either State or federal law to collect non-fraudulent overpayments of AFDC-FC benefits from individual foster parents.

BACKGROUND

All County Information Notice ACIN I-20-90, issued March 15, 1990, advised counties that Welfare and Institutions Code (WIC) Section 11004 requires the safeguarding of public funds and that AFDC-FC benefits are subject to overpayment collection when appropriate. Counties were advised that they could continue collecting AFDC-FC overpayments by requesting voluntary repayment or pursuing civil remedies subject to due process requirements set forth in the Manual of Policies and Procedures.

COURT DECISION

The Court ruled in Bass v. Anderson that WIC Section 11004 provides insufficient authority for the recoupment of non-fraudulent overpayments from individual foster parents. Accordingly, the Court ordered that California Department of Social Services (CDSS) and its agents "discontinue their policy and practice of attempting recoupment from petitioners of funds the State erroneously paid to children in their charge, to rescind all actions to collect such overpayments and to notify petitioners of their rescission of actions to collect such overpayments." These orders do not effect Foster Family Agency (FFA), Adoption Assistance or group home overpayment collection policies, or recovery of overpayments resulting from fraud. Until such time as statutory or regulatory authority is established to collect non-fraudulent overpayments from individual foster parents, fraud is defined as the intentional failure to notify a county of any changes affecting eligibility as required, including but not limited to the failure to actually provide foster care services for the period in question without informing the county. The notice and hearing provisions set forth in Division 22 are applicable where an overpayment is assessed in the foster care program on the basis of fraud.

REQUIRED COUNTY ACTION

Effective the date of the Court's order, June 6 , 1997, ACIN I-20-90 is rescinded. Further, counties are directed as follows:

1) Discontinue practice of pursuing recovery of non-fraudulent overpayments from relative and licensed foster family homes.

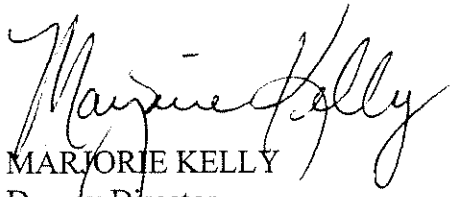
2) Identify and rescind all current actions to recover non-fraudulent overpayments from relative or licensed foster family homes.

3) Notify all relative and licensed foster family home providers currently subject to overpayment recovery actions of the rescission of actions to collect such overpayments.

The above directives will remain in place until such time as specific authority has been established to collect non-fraudulent overpayments from relative or licensed foster family home providers in the AFDC-FC Program. The CDSS will advise counties of subsequent actions in this area, and a follow-up ACL, to issue in approximately 90 days, will address the issue of retroactive reimbursement of overpayments previously collected. Again, these orders do not affect FFA, Adoption Assistance or group home overpayment collection policies, or recovery of overpayments resulting from fraud.

If you have any questions about this letter or foster care eligibility in general, please contact your Foster Care Policy Consultant at (916) 323-1263.

Sincerely,



MARJORIE KELLY
Deputy Director
Children and Family Services Division

c: CWDA
Region IX