

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



January 12, 2005

Regulation Package #0404-02

CDSS MANUAL LETTER NO. CFC-04-01

TO: HOLDERS OF THE CONFIDENTIALITY, FRAUD, CIVIL RIGHTS AND STATE HEARINGS  
MANUAL, DIVISION 22**Regulation Package #0404-02****Effective 7/1/04****Sections 22-071, 22-072, and 22-305**

This manual letter has been posted on the Office of Regulations Development website at  
[http://www.dss.cahwnet.gov/ord/Confidenti\\_615.htm](http://www.dss.cahwnet.gov/ord/Confidenti_615.htm).

These regulations implement and make specific Assembly Bill (AB) 444 (Chapter 1022, Statutes of 2002), AB 692 (Chapter 1024, Statute of 2002), and AB 1402 (Chapter 398, Statutes of 2003) which provide authority for the Quarterly Reporting/Prospective Budgeting (QR/PB) reporting system. These regulations consist of a tandem regulation format which allows for the operation of both Monthly Reporting/Retrospective Budgeting (MR/RB) and QR/PB during counties' staggered implementation of Quarterly Reporting (QR) in accordance with the QR/PB Director's Declaration as specified in AB 444 (Chapter 1022, Statutes of 2002). This format is necessary to maintain current monthly reporting (MR) regulations for those counties that are pending QR implementation and will remain in place until all counties have implemented the QR system.

These regulations were adopted on an emergency basis effective July 1, 2004 and were considered at the Department's public hearing held on August 28, 2004.

**FILING INSTRUCTIONS**

**Revisions to all manuals are indicated by a vertical line in the left margin.** The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Confidentiality, Fraud, Civil Rights, and State Hearings Manual changes was CFC-03-01.

<u>Page(s)</u>	<u>Replace(s)</u>
130 through 135	Pages 130 through 135
138 and 139	Pages 138 and 139
175.1 and 175.2	Page 175.1
176 and 177	Pages 176 and 177

Attachments

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**22-069 COUNTY WELFARE RESPONSIBILITY 22-069**

- .1 Each county shall furnish to the State Hearings Division the name of an individual who, in coordination with the Chief Administrative Law Judge, is responsible for discharging the requirements of Sections 22-069 through 22-078.

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- .11 Sections 22-069 through 22-078 describe the responsibilities of the county in the state hearing process.

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- .12 The county responsibility shall include:
- .121 Investigation of the case and assistance to the claimant prior to the hearing; and
  - .122 Presentation of the county's position during the hearing; and
  - .123 Compliance with state hearing decisions.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

**22-070 EXPLANATION OF RIGHT TO STATE HEARING 22-070**

- .1 At the time of application, the county agency shall provide the applicant with the following:
- .11 A thorough explanation of the right to request a state hearing.
  - .12 Pamphlet PUB 13 (1/98), "Your Rights Under California Welfare Programs," prepared by the Department concerning client rights, complaints and state hearings.
- .2 The county shall also provide the explanation required in Sections 22-070.11 when a claimant makes an informal complaint with the county agency.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

## 22-071 ADEQUATE NOTICE

22-071

- .1 Except as provided in Section 22-071.2, the county shall give the claimant adequate notice as defined in Section 22-001a.(1) in the following instances:
  - .11 When aid is granted or increased.
  - .12 Section 22-071.12(MR) shall become inoperative and Section 22-071.12(QR) shall become operative in a county on the date Quarterly Reporting/Prospective Budgeting (QR/PB) becomes effective in that county, pursuant to the Director's QR/PB Declaration.  
  
(MR) When aid is denied, decreased, suspended, cancelled, discontinued, or terminated.  
  
(QR) When aid is denied, decreased, not changed following a recipient mid-quarter report, cancelled, or discontinued.
    - .121 A decrease shall include an overpayment adjustment and balancing.
  - .13 When the county demands repayment of an overpayment or a food stamp overissuance.
  - .14 When the county takes action after the claimant has conditionally withdrawn a request for a state hearing (see Section 22-054).
  - .15 When a food stamp application is pended (see Section 63-504.24).
  - .16 When the county determines that immediate need does not exist (see Section 40-129).
  - .17 When the county takes action regarding compliance related issues resulting from state hearing decisions (see Sections 22-001c.(3) and 22-078).
  - .18 When the county takes action to change the manner or form of payment to a protective or vendor payment.
  - .19 When the county demands repayment of an overpayment from a Transitional Child Care provider.
- .2 The adequate notice requirement is not applicable to certain actions involving Social Services (Division 30) and Food Stamps (MPP Section 63-504.266).
- .3 In all cases, the notice shall be prepared on approved Department forms or a county substitution which has been approved by the California Department of Social Services, including but not limited to a county-developed computer equivalent.
- .4 The notice shall be prepared in clear, nontechnical language.

**22-071      ADEQUATE NOTICE      22-071**  
(Continued)

- .5    If a claimant submits a request for a state hearing on the back of the notice, a duplicate copy of the notice shall be provided to the claimant on request.
- .6    When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10613, 11209, 11265.2, 11265.3, and 11511(a), Welfare and Institutions Code; and 45 CFR 255.4(j)(1) and 256.4(b).

**22-072      TIMELY NOTICE - AID PENDING HEARING      22-072**

- .1    Except as provided below, in all instances where the county action would result in a discontinuance, termination, suspension, cancellation, or decrease of aid, or in a change in the manner or form of payment to a protective or vendor payment, the county shall mail timely and adequate notice as defined in Sections 22-001a.(1) and 22-001t.(1) to the persons affected.
  - .11    The provisions of Section 22-072 shall not apply to certain actions involving Social Services (see Division 30).
  - .12    In the Food Stamp Program the provisions of Section 22-072 shall be limited and modified by Sections 63-504.266, .267, 63-804.6, and 63-107.9.
  - .13    When either state or federal law requires automatic grant adjustments for classes of recipients, the Department shall provide timely and adequate notice to the persons affected or shall direct the county to give such notice at least ten days prior to the effective date of the adjustment.
- .2    Timely notice shall not be required in the following instances, although the county shall send adequate notice no later than the effective date of the action:
  - (a)    The county has factual information confirming the death of the person affected.
  - (b)    The county receives a clear written statement signed by the person affected that:
    - (1)    He/she no longer wishes aid, or

<b>22-072</b>	<b>TIMELY NOTICE - AID PENDING HEARING</b> (Continued)	<b>22-072</b>
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- (2) Gives information which requires discontinuance or reduction of aid and the person has indicated, in writing, that he/she understands that this must be the consequence of supplying such information.
  
- (c) The person affected has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state's plan.
  
- (d) The person affected has been placed in a skilled nursing facility, intermediate care facility or long-term hospitalization.
  
- (e) The whereabouts of the person affected are unknown and the county mail directed to him/her has been returned to the Post Office indicating no known forwarding address.
  - (1) The person's aid payment shall be made available to him/her if his/her whereabouts become known during the payment period covered by the returned check.
  
- (f) A CalWORKs child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his/her parent or legal guardian.
  
- (g) The person affected has been accepted for aid in a new jurisdiction, and that fact has been established by the county previously providing aid.
  
- (h) A change in level of medical care is prescribed by the recipient patient's physician or modified by utilization review.
  
- (i) A special allowance granted for a specific period is terminated, and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.
  
- (j) Section 22-072.2(j)(MR) shall become inoperative and Section 22-072.2(j)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.
  
- (MR) The county receives a complete Monthly Eligibility Report (CA 7) after the eleventh calendar day of the report month and the county's action to discontinue or decrease aid is a result of the information on the CA 7 or the recipient's failure to submit a timely or complete report of earnings without good cause as specified in Section 40-181.23(MR).

**22-072**      **TIMELY NOTICE - AID PENDING HEARING**      **22-072**  
(Continued)

(QR) The county receives a complete Quarterly Eligibility Report (QR 7) after the eleventh calendar day of the QR Submit Month and the county's action to discontinue or decrease aid is a result of the information on the QR 7 or the recipient's failure to submit a timely or complete report of earnings without good cause as specified in Section 40-181.23(QR).

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(1) Subsection (j) is enjoined by the injunction in Saldivar v. McMahon.

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(k) The CWD has made a presumption of mismanagement of CalWORKs funds based upon a recipient's nonpayment of rent.

(1) A presumption of mismanagement based upon nonpayment of rent includes the inability of a recipient to provide verification that CalWORKs Homeless Assistance was spent on shelter/housing, in accordance with Section 44-211.514(e).

(l) Section 22-072.2(l)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's AR/PB Declaration.

(QR) The county determines there will be no change in a recipient's cash aid as a result of a recipient mid-quarter report.

.3 If timely notice is not required under the provisions of Section 22-072.2, and the claimant requests a state hearing within ten days of the required adequate notice, aid shall be reinstated retroactively, according to the provisions of Section 22-072.5.

.31 Aid shall not be reinstated retroactively if the CWD has made a presumption of mismanagement of CalWORKs funds based on the claimant's nonpayment of rent.

.4 In computing the notice period required by Section 22-072.1, the 10-day period shall not include the date of mailing, or the date that the action is to take effect.

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.41 Thus, if the effective date of the action is to be June 1, the notice shall be mailed no later than May 21.

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<b>22-072</b>	<b>TIMELY NOTICE - AID PENDING HEARING</b>	<b>22-072</b>
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(Continued)

- .75 The claimant is granted a postponement of the hearing by the Administrative Law Judge at the hearing for a reason that does not constitute good cause as specified in Section 22-053.1.
  - .751 This provision shall not apply to the Food Stamp Program.
- .76 In the Food Stamp Program, the certification period expires (see Section 63-804.642(a)).
- .8 After the hearing, and within ten days from receipt of the aid paid pending decision, the claimant or the county may submit a written request to the State Hearings Division for reconsideration of the aid paid pending decision.
  - .81 Each party shall be notified of the request and the result of the reconsideration.
- .9 Nothing in this chapter shall prohibit the county from instituting any appropriate changes in the recipient's grant while a state hearing is pending, provided that the factual basis of the proposed action is different from the action upon which the recipient is receiving aid pending.
  - .91 All such actions shall otherwise be subject to the provisions of this chapter.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10613, 11209, 11265.1, 11501.1(a), 11501.5(a), and 11511(a), Welfare and Institutions Code; 45 CFR 205.10; 45 CFR 255.2(h)(2); 45 CFR 256.2(c); and 45 CFR 256.4(d).

**22-073****COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE  
STATE HEARING****22-073**

- .1 Upon receipt of a request for hearing or notice from the Department that a recipient has filed a request for a state hearing, the county shall provide aid pending the state hearing in accordance with Section 22-072, when entitlement exists.
  - .11 Such payment shall be either placed in the U.S. Mail or available for hand-delivery to the recipient (if agreed to by the county and recipient) within five working days of the receipt of the hearing request by the appropriate agency as specified in Section 22-004, or the date the regular scheduled aid payment would otherwise have been paid to the recipient, whichever is later.
  - .12 If the claimant is not entitled to aid pending the hearing, the county may continue with its proposed action.
    - .121 Unless the evidence indicates otherwise, the receipt date for purposes of providing (issuing) aid paid pending shall be determined as follows:
      - (a) The date the written request is received by the CWD for county administered aid programs or the date the request is received by the Department for all other state aid programs.
      - (b) The date the oral request is received by the Department in Sacramento.
    - .122 The CWD shall compute the five day time limitation for paying aid paid pending from the date:
      - (a) A written request for a state hearing is received by the CWD.
      - (b) The CWD is notified by the State Hearings Division that it has received a written request for a state hearing.
      - (c) An oral request for hearing is received by the Department in Sacramento.

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(a) To determine what constitutes an IPV, CDSS recognizes a distinction in the following:

(1) Handbook Section 22-305.422(a)(1)(MR) shall become inoperative and Handbook Section 22-305.422(a)(1)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.

Intentional concealment or willful misrepresentation which may result in an IPV.

(MR) EXAMPLE: In completing the Monthly Eligibility Reports (CA 7), respondent checks the box indicating family has no income. Respondent also checks box indicating that no one had started employment that month. County evidence indicates respondent did start work during the month it was reported that no one had started work. Respondent also did receive earnings in each of the months under review.

(QR) EXAMPLE: In completing the Quarterly Eligibility Report (QR 7), respondent checks the box indicating the family has no income. Respondent also checks box indicating that no one had started employment in the Data Month. County evidence indicates respondent did start work during the Data Month, but it was reported that no one had started work. Respondent also did receive earnings in each of the months under review.

(2) Handbook Section 22-305.422(a)(2)(MR) shall become inoperative and Handbook Section 22-305.422(a)(2)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.

Incorrect representation, negligence, or omissions because of a mistake or a lack of understanding of eligibility requirements which do not result in an IPV.

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(MR) EXAMPLE: Respondent reports that he/she began employment the last week of the reporting month, and that he/she will be paid every two weeks. Respondent completes the next CA 7 and checks the: "No" box for income received in the month.

(QR) EXAMPLE: Respondent reports that he/she began employment the last week of the Data Month, and that he/she will be paid every two weeks. Respondent completes the next QR 7 and checks the "No" box for income received in the month.

(3) Handbook Section 22-305.422(a)(3)(MR) shall become inoperative and Handbook Section 22-305.422(a)(3)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.

The CWD's omission, neglect, or error in explaining requirements for assistance or in processing information, which does not result in an IPV.

(MR) EXAMPLE: Respondent completes CA 7 without answering question relating to household's receipt of income during the month. Respondent does this for five months and CWD fails to return the CA 7 as incomplete. Evidence establishes respondent had income in each of these months.

(QR) EXAMPLE: Respondent completes QR 7 without answering question relating to household's receipt of income during the Data Month. Respondent does this for two quarters and the county fails to return the QR 7 as incomplete. Evidence establishes respondent had income during the Data Month.

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**STATE HEARING AND REQUEST FOR REVIEW**

**Regulations AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL 22-305 (Cont.)**

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**22-305 GENERAL PROVISIONS 22-305**  
(Continued)

- .43 Notice of Hearing - Means the written notification, as specified in Section 22-315.5, which initiates an ADH and is provided as follows:
  - .431 At the state level, CDSS shall provide written notification to the respondent and the CWD and
  - .432 At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.
  
- .44 Respondent - Means the member(s) of the assistance unit (AU) who the CWD has determined may be subject to administrative disqualification. To the extent that the provisions of Chapter 22-000 relating to state hearings apply to administrative disqualification hearings, all references to "claimant" in such regulations shall be deemed to refer to "respondent" for purposes of the ADH.

**22-305 GENERAL PROVISIONS 22-305**  
(Continued)

- .45 Sufficient Evidence - Means the documentary and other evidence in the CWD's possession that the CWD determines may establish that the respondent has committed an IPV based on a preponderance of evidence as the standard of proof.
- .5 The following provisions of Chapter 22-000, State Hearings - General, shall be applicable to ADHs:
- (a) Section 22-002 relating to determination of time limit;
  - (b) Section 22-010 relating to authorized representatives;
  - (c) Section 22-023.13 relating to assignment of county representatives;
  - (d) Sections 22-023.2 and .3 relating to duties of county representatives prior to and at the hearing;
  - (e) Section 22-027 relating to situations where the hearing is held in a county other than the responsible county;
  - (f) Sections 22-045.1 and .2 relating to the time and place of the hearing;
  - (g) Section 22-049 relating to general rules and procedures at the hearing, excluding .11;
  - (h) Section 22-050 relating to evidence;
  - (i) Section 22-051 relating to the examination of records and issuance of subpoenas;
  - (j) Section 22-052 relating to witness fees and mileage;
  - (k) Section 22-053.2 relating to continuances for additional evidence;
  - (l) Section 22-055 relating to disqualification of ALJs;
  - (m) Section 22-059 relating to communications after the hearing.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 11265.1, 11265.2, and 11265.3, Welfare and Institutions Code; and 45 CFR 235.112(b) and .113(b)(2).