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August 17, 2009

Regulation Package #0309-03

CDSS MANUAL LETTER NO. CFC-09-01

TO: HOLDERS OF THE CONFIDENTIALITY, FRAUD, CIVIL RIGHTS AND STATE
HEARINGS MANUAL, DIVISION 22

Regulation Package #0309-03

Effective 7/1/09

Sections 22-001, 22-003, and 22-009

This manual letter has been posted on the Office of Regulations Development website at <http://www.dss.cahwnet.gov/ord/PG604.htm>

An amendment to the definition of Claimant was done to identify foster care providers, including group home and foster families agencies as those persons or entities identified as a claimant, who request a hearing to challenge an overpayment under Sections 45-304, 45-305, 45-306.

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. The amended regulations clarify that by entering into a voluntary repayment agreement, the provider has agreed that the overpayment determination and the overpayment amount are correct; therefore, it is not necessary to place a financial burden on conducting hearings where the provider has agreed to the overpayment determination and the overpayment amount. They further clarify the timeframes between informal and formal hearing requests.

These regulations were adopted on an emergency basis effective July 1, 2009, and were considered at the Department's public hearing on August 12, 2009.

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-07-01.

Page(s)

92 and 93
96 through 98
101 and 101.1

Replace(s)

Pages 92 and 93
Pages 96 through 98
Pages 101 and 101.1

Attachments

EV

22-001 **DEFINITIONS** (Continued) **22-001**

- (5) Attorney - an active member of the California State Bar.
- (6) Authorized Representative - An individual or organization that has been authorized by the claimant or designated by the Administrative Law Judge or Department pursuant to Sections 22-085 and 22-101 to act for the claimant in any and all aspects of the state hearing or administrative disqualification hearing.

HANDBOOK BEGINS HERE

- (A) An authorized representative may include an attorney, a relative, a friend, or other spokesperson.

HANDBOOK ENDS HERE

- (B) Any references to claimant shall also apply to the authorized representative unless otherwise stated.

- (C) Repealed by Manual Letter No. CFC-07-01, effective 1/24/07.

(b) Reserved

(c) (1) Chief Administrative Law Judge - The person designated and employed by, and directly responsible to the Director of the California Department of Social Services and charged with the administration of state hearings and administrative disqualification hearings.

(2) Claimant - The person who has requested a state hearing and is or has been any of the following:

(A) An applicant for or recipient of aid, as defined in Section 22-001a.(3).

(B) A foster parent or foster care provider who requests a hearing on behalf of the foster child where the CWD takes action to affect the child's aid and the child resides with or has resided with the foster parent or foster care provider.

1. There is no right to a state hearing concerning the placement or removal of a foster child. For grievance procedures applicable to the placement or removal of a foster child, see Section 31-020.

2. There is no right to a hearing concerning group home rates established by the state. For administrative review procedures concerning group home rates established by the state, see Section 11-430 et seq.

22-001	DEFINITIONS (Continued)	22-001
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- (C) A representative of the estate of a deceased applicant or recipient (see Sections 22-004.4 and .5).
 - (D) The relative caring for a child with regard to the child's application for or receipt of aid.
 - (E) The guardian or conservator of an applicant or recipient.
 - (F) The sponsor of an alien, see MPP Sections 43-119, 44-353, and 63-804.1.
 - (G) A foster care provider, including group homes and foster family agencies, who request a hearing to challenge a county action to recover an overpayment under Sections 45-304, 45-305, and 45-306, except for overpayments requests made by a county pursuant to Section 45-304.124.
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- (3) Compliance issue - An allegation by the claimant that the county has failed to abide by a state hearing decision concerning issues clearly resolved in the order where the county did not have to make further determinations regarding the claimant's eligibility or amount of benefits.
 - (4) Compliance related issues - Issues which were not resolved in the prior state hearing decision or resulted from the prior hearing decision requiring the county to make further determinations regarding the claimant's eligibility or amount of benefits.
 - (5) County or CWD - For purposes of this division, "county" or "CWD" generally refers to the county welfare department. The term "county welfare department" is used in Sections 22-001c.(7), 22-003 and 22-073 to mean the welfare department in the county in which the recipient resides or the county that has taken the action or inaction with which the recipient is dissatisfied. Any references to "county" or "CWD" may also refer to any state department or contractor whose actions may be subject to a state hearing. For purposes of Sections 22-053.165, 22-073.13, 22-073.252, .253, and .254, "county" or "CWD" shall not include the California Department of Health Services.
 - (6) County Action - All actions which require adequate notice (see Section 22-071) and any other county action or inaction relating to the claimant's application for or receipt of aid.
 - (7) County or CWD Representative - An employee who is assigned the major responsibility for preparing and/or presenting a hearing case on behalf of the CWD. (See Section 22-073.13.)
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- (d) (1) Days - Days shall refer to calendar days unless otherwise specified.

22-001 DEFINITIONS (Continued)

22-001

- (2) The claimant previously identified a primary language other than English to the county and contacts the county about that notice of action prior to the deadline for a timely request for hearing on an adequate notice of action.

HANDBOOK BEGINS HERE

Section 21-115.2 provides as follows:

“Forms and other written material required for the provision of aid or services shall be available and offered to the applicant/recipient in the individual’s primary language when such forms and other written material are provided by CDSS. When such forms and other written material contain spaces (other than “for agency use only”) in which the CWD is to insert information, this inserted information shall also be in the individual’s primary language.”

HANDBOOK ENDS HERE

(m) Reserved

(n) Reserved

(o) Reserved

(p) (1) Precedent Decision - A decision or part of a decision that is designated and indexed as such by the Director, pursuant to the California Administrative Procedure Act, because it contains a significant legal or policy determination of general application that is likely to recur.

(2) Proposed Decision - The decision prepared by the Administrative Law Judge concerning a state hearing case which he/she recommends to the Director for adoption.

HANDBOOK BEGINS HERE

(A) A proposed decision has no effect unless it has been adopted by the Director or adopted by operation of law. (See Section 22-062, Action by the Director.)

HANDBOOK ENDS HERE

22-001	DEFINITIONS (Continued)	22-001
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- (q) Reserved
- (r) Reserved
- (s) (1) State Hearing - A form of administrative hearing mandated by federal and state law whereby a dissatisfied claimant may obtain an impartial review of a county action.
- (t) (1) Timely Notice - A written notice that is mailed to the person affected at least 10 days before the effective date of the action. See Section 22-072.4 for computation of the 10-day period.
- (u) Reserved
- (v) Reserved
- (w) Reserved
- (x) Reserved
- (y) Reserved
- (z) Reserved

NOTE: Authority cited: Sections 10553, 10554 and 10604, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33. Reference: Sections 10051, 10613, 10950, 10963, 11209, 11323.6, 11323.8, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; Sections 6700, 6701, 11425.10, and 11425.60, Government Code; 45 CFR 205.10; 45 CFR 205.10(a)(4)(i)(B); and 45 CFR 255.4(j)(1) and Part 256.

22-002 DETERMINATION OF TIME LIMITS**22-002**

- .1 If the last day for the performance of any act required by these regulations is a holiday, then such period shall be extended to the next day which is not a holiday.

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

22-003 RIGHT TO A STATE HEARING**22-003**

- .1 A state hearing shall be available to a claimant who is dissatisfied with a county action and requests a hearing in the manner set forth below.
- .11 There is no right to a state hearing regarding a Food Stamp or CalWORKs administrative disqualification, unless the issue is the CWD's method of implementing a Food Stamp or CalWORKs administrative disqualification hearing decision. (See Division 22, Chapters 22-200 and 22-300, Division 20, Chapter 20-300, and Division 63, Section 63-805.)
- .12 Notwithstanding any other regulation, there is no right to a state hearing when either state or federal law requires automatic grant adjustments for classes of recipients, unless the reason for the request for the state hearing is incorrect grant computation.
- .121 In the event of such automatic grant adjustment, the State Hearings Division shall promptly review the requests for a state hearing to determine whether the basis for a request is the automatic grant adjustment. See Section 22-054.
- .122 In the CalWORKs Program, all those who request a hearing when the change is because either state or federal law required an automatic grant adjustment shall be treated as though the subject of the hearing was not a law change until the time of the hearing.
- (a) If the Administrative Law Judge determines that the subject of the hearing was the wisdom or validity of such a law change, the request shall be permitted to be dismissed pursuant to Section 22-054.31.

22-003 **RIGHT TO STATE HEARING (Continued)** **22-003**

- .13 Complaints as to discourteous treatment by a county employee shall not be subject to the state hearing process.

- .14 There is no right to a state hearing regarding child custody and child welfare service issues while that child is under the jurisdiction of the juvenile court. All issues regarding the child’s custody shall be heard by the juvenile court, including but not limited to those issues left to the discretion of the welfare department or probation department by the juvenile court.

- .15 There is no right to a state hearing regarding overpayments made to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement, or where the county requested voluntary repayment under MPP Section 45-305.231.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33. Reference: Sections 10613, 10950, 11209, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; 45 CFR 205.10; 45 CFR 235.112(c)(2); 45 CFR 255.4(j)(1) and 256.4(b); and Madrid v. McMahan (1986) 183 Cal. App. 3rd 151, In Re Jennifer G. (1990) 221 Cal App. 3rd 752 and In Re Moriah T. (1994) 23 Cal. App. 4th 1366.

22-009 **TIME LIMIT ON REQUEST FOR A STATE HEARING** **22-009**

- .1 The request for a state hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied.

- .11 Except as provided for in Section 45-306.3 if the claimant received an adequate and language-compliant notice of the county action, the request for hearing shall be filed within 90 days after the notice was mailed or given to the claimant. If adequate notice was required but a notice was not provided, or if the notice is not adequate and/or language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed to be a timely hearing request.

- .12 In the Food Stamp Program, the time limits for state hearing requests are set forth in Sections 63-802.4 and 63-804.5.

- .2 A recipient shall have the right to request a state hearing to review the current amount of aid. At the claimant's request, such review shall extend back as many as 90 days from the date the request for hearing is filed and shall include review of any benefits issued during the entire first month in the 90-day period. This review shall only apply to facts that occurred during the review period.

HANDBOOK BEGINS HERE

- .21 Example #1: The county issues the claimant adequate and language-compliant notice on January 20, 2005 advising him/her that the Medi-Cal share of cost is increased from \$100 to \$200 effective February 1, 2005. The claimant receives this notice but does not request a hearing until July 6, 2005. Although the claimant's hearing request is filed more than 90 days after the January 20, 2005 notice was issued, the claimant has the right to a state hearing to review the share of cost for the current month (i.e., July 2005) and the review will extend back 90 days to include all of April, May and June 2005. There can be no review of the February or March 2005 share of cost because the hearing request is untimely as to those months. The review will be based only on the relevant facts that occurred during April, May, June, and July, 2005, including the claimant's income and deductions for those months as relevant to the share of cost. The review will not include facts that occurred prior to the review period.

- .22 Example #2: The county issues an adequate and language-complaint notice of action on March 15, 2005. The notice advises the recipient of a first instance sanction in the CalWORKs program effective May 1 for failure to participate in welfare-to-work. A first instance sanction lasts until the recipient complies with welfare-to-work requirements or becomes exempt from participation. The recipient receives the notice of action but does not request a hearing until October 25, 2005.

HANDBOOK CONTINUES

22-009	TIME LIMIT ON REQUEST FOR A STATE HEARING	22-009
	(Continued)	

HANDBOOK CONTINUES

The recipient's hearing request is untimely under Section 22-009.1, but the recipient is entitled to a hearing on the current amount of aid under Section 22-009.2, limited to the facts that occurred during July, August, September and October, 2005. The ALJ will not review whether the sanction action was correct, nor the recipient's sanction from April through June. The recipient will be entitled to have the CalWORKs grant reviewed for July, August, September and October, as appropriate, and may be added back to the assistance unit (AU) effective in those months if facts establish that the recipient was exempt or welfare-to-work compliant during those months.

HANDBOOK ENDS HERE

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33. Reference: Sections 10950, 10951, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code and Morales v. McMahon (1990) 223 Cal App. 3rd 184, 272 Cal. Rptr. 688.

22-010	AUTHORIZED REPRESENTATIVE	22-010
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Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.