

SHD Paraphrased Regulations - CalWORKs

060 Age

062-1

A child 18 years of age is eligible for CalWORKs (formerly AFDC) only if he/she is enrolled as a full-time student (as defined by the school) in high school or, if he/she has not completed high school, in a vocational or technical training program which cannot result in a college degree, provided he/she can reasonably be expected to complete either program before reaching age 19. (§42-101.2)

062-2

In *Fry v. Saenz*, the CDSS was sued because it discontinued CalWORKs benefits to disabled children who were 18 years old when those children could not reasonably be expected to complete high school graduation requirements by age 19. The California Court of Appeal, Third Appellate District, held that the application of the general rule (§42-101.2) to the disabled children violated the Americans with Disabilities Act (ADA) (see 42 United States Code (USC) §12101 et seq.) and the Rehabilitation Act of 1973 (see 29 USC §794 et seq.). The Appeals Court remanded the matter to the Superior Court to determine whether the CDSS would have to provide CalWORKs benefits to such disabled children. The CDSS would have the burden of persuasion that the granting of benefits to those disabled children would impose an undue financial hardship on the State. If the CDSS failed to meet its burden, then the disabled plaintiffs would be entitled to continuing CalWORKs past the normal eligibility period. (*Fry v. Saenz* (2002) 98 Cal. App. 4th 256)

062-2A ADDED 9/04

A writ was issued in *Fry v Saenz* on July 7, 2004. The court ordered the CDSS to implement by All County Letter (ACL) and regulation, a reasonable accommodation to provide CalWORKs to otherwise eligible 18-year olds who are attending school full-time and are not expected to graduate before age 19 due to their disability.

Counties must immediately cease denying, discontinuing or reducing CalWORKs for all otherwise eligible 18-year olds (and their parent/caretaker relatives) who are attending school full-time and not expected to graduate by age 19 regardless of the reason that the 18-year old is not expected to graduate. Counties are instructed to flag cases impacted by *Fry* for future review until the teen turns 19, graduates or the instructions defining disability are issued by CDSS.

CDSS will issue a second ACL on or before November 12, 2004 to define "disability".

Counties are instructed to issue retroactive payments back to July 7, 2004, for any case with an otherwise eligible 18-year old (and their parent/caretaker relative) who is attending school full-time and not expected to graduate before age 19 if cash aid were lost since July 7, 2004 solely because of current age requirement regulations.

(All County Letter 04-33, August 27, 2004)

062-3 REVISED 8/05

Otherwise eligible 18-year olds who attend school full-time and are considered disabled shall continue to be eligible for CalWORKs until they graduate, turn 19 or stop attending school full-time, whichever comes first.

The following 18-year olds are considered disabled:

- Children who currently receive or have in the past received SSI/SSP benefits. Parent/caretaker relatives shall cooperate with the county to obtain verification of receipt of SSI/SSP benefits. (§42-101.3)
- Children who currently receive or have in the past received services through a Regional Center program pursuant to the Lanterman Act. Parent/caretaker relatives shall cooperate with the county to obtain verification of receipt of services. Verification may include a statement from the Regional Center stating that the child is currently receiving or has in the past received services. (§42-101.4)
- Children who currently receive services at school in accordance with their Individual Education Plan (IEP) or receive services under/pursuant to Section 504 of the rehabilitation Act (e.g., a Section 504 Plan or Section 504 Accommodation Plan) or have received such services in the past. Parent/caretaker relatives can provide a copy of the IEP or Section 504 Plan or cooperate with the county to obtain verification from the school. (§42-101.5)
- When a child's disability cannot be verified by the above criteria, the parent/caretaker relative can provide independent verification of a current or past disability by a health care provider or a trained, qualified learning disabilities evaluation professional. The county may also be authorized to use the CW61 to obtain information to verify the child's disability. (§42-101.6)

(All County Letter 04-50, November 18, 2004, §42-101)

062-3A ADDED 2/05

Within 120 days of this All County Letter, counties are instructed to implement procedures for identifying and aiding all active cases that have been continued under *Fry v. Saenz* to determine if the 18-year old is considered disabled under the processes and standards of this All County Letter. Counties must implement these processes and standards for applicants as soon as possible but no later than 120 days

After the date of this All County Letter. (All County Letter 04-50, November 18, 2004)

062-4 ADDED 2/05

When it is determined that the 18-year old in those cases continued under ACL 04-33 does not meet the standards for being considered disabled under *Fry v Saenz*, counties shall discontinue the assistance unit or decrease the grant as appropriate.

Overpayments will not be assessed against any 18-year old and their parent/caretaker relative who received cash aid based on the instructions in ACL 04-33 if it is determined that the 18-year old does not meet the disability criteria set out in this ACL.

(All County Letter 04-50, November 18, 2004)