

SHD Paraphrased Regulations - CalWORKs

000 Hearing Procedures

001-1

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted.

001-1A

For purposes of this decision, W&IC is the abbreviation for the Welfare & Institutions Code.

001-1B

Any reference to the AFDC program Family Group & Unemployment Programs in the W&IC shall be deemed to refer to the CalWORKs program. (W&IC§10063(b))

001-1C

The CDSS may implement the provisions of Assembly Bill (AB) No. 1542 through All-County Letters or similar instructions from the Director through June 30, 1998. As of July 1, 1998 regulations shall be issued, and may be issued on an emergency basis. (AB No. 1542§185)

001-1D

The California Work Opportunity and Responsibility to Kids Act is contained in Chapter 2, Part 3, Division 9 of the W&IC (commencing with§11200 and ending with§11526) and may be cited as the CalWORKs program. (W&IC§11200)

001-2

In CalWORKs (formerly AFDC), the general rule is that when the claimant files a request for a state hearing prior to the effective date of the Notice of Action, aid shall be continued in the amount that the claimant would have been paid if the proposed action were not to be taken, providing the claimant does not voluntarily and knowingly waive aid. (§22-072.5)

001-3

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or the claimant which they have jointly agreed to discuss. (§22-049.5)

001-5

All state hearings shall be decided or dismissed within 90 days from the date of the request for state hearing except in those cases when the claimant waives such requirement. In the Food Stamp Program, the time limit for deciding cases is 60 days from the hearing request. (§22-060.1)

001-6

The Administrative Law Judge (Judge) or Director shall take official notice of those matters which must be judicially noticed by a court under§451 of the Evidence Code. (§22-050.41)

The Judge or Director may take official notice of those matters set forth in§451(f) and§452 of the Evidence Code and technical facts relating to the administration of public social services.

Generally, Evidence Code§451(f) provides that official notice may be taken of facts and propositions that are not reasonably subject to dispute because they are universally known.

Generally, Evidence Code§452 provides that official notice may be taken of the decisional and statutory laws of other states, regulations and legislative enactments, legislative acts, court records, and facts and propositions not reasonably subject to dispute and capable of immediate and accurate determination. (§22-050.42, .43)

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When official notice is taken under Evidence Code Sections 451(f) and 452 and these matters are of substantial consequence to the determination of the action, each party shall be given reasonable opportunity to present relevant information. (§22-050.44)

001-7

The state hearing decision shall determine only those circumstances and issues existing at the time of the county action in dispute or otherwise agreed to by the parties. (§22-062.4)

001-8

After the hearing has been closed, the Administrative Law Judge (Judge) shall submit a proposed decision for review by the Chief Judge and submission to the Director, or shall adopt a final decision pursuant to the authority delegated to the Judge by the Director, in which case the decision is considered final when the Judge signs and dates the decision. If the decision is a proposed decision, the California Department of Social Services shall be deemed to have received the proposed decision on the date such decision has been certified for the review of the Chief Judge. (§22-061)

001-9

The Director, after receiving the proposed decision, shall adopt the decision in its entirety; decide the matter on the record, including the transcript, with or without taking additional evidence; issue an alternate decision; or order a further hearing to be conducted. (§22-062.1)

001-10

If the Director fails to act in the manner specified by §22-062.1 within 30 days after receipt of the proposed decision by the Department, the proposed decision shall be deemed adopted. (§22-062.2)

001-11

A decision adopted by the California Department of Social Services or the California Department of Health Services may be appealed by requesting a rehearing or through judicial review pursuant to §1094.5 of the Code of Civil Procedure. (W&IC §10960 and 10962)

001-11A ADDED 6/04

A request for rehearing shall be in writing and shall be filed with the State Hearings Division not more than 30 days after receipt of the hearing decision. (§22-065-11)

001-12 REVISED 3/07

Prior to January 24, 2007, a rehearing decision shall not be subject to further state hearing. (§22-065.6 prior to January 24, 2007)

Effective January 24, 2007, a rehearing decision shall not be subject to a rehearing except on an issue that was decided for the first time on the merits in the rehearing decision (§22-065.61)

001-12A ADDED 3/07

A hearing request that was dismissed without a hearing pursuant to §22-054.4 shall not be subject to a rehearing. (§22-065.62)

001-13

A rehearing request shall be permitted to be withdrawn any time before the Department has

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acted upon the request. §22-065.8) Once the rehearing request has been granted, it shall be permitted to be withdrawn by the requesting party subject to the approval of the Chief Judge, his/her designee, or the Judge. §22-065.9)

001-14 REVISED 3/07

If a jurisdictional issue is raised at the hearing, the county must be prepare a position statement on both jurisdictional and substantive issues and both parties must be prepared to submit evidence on the jurisdictional and substantive issues unless prior to or at the hearing the parties agree to discuss only the jurisdictional issues, the case is bifurcated by the State Hearings Division or the case is dismissed without hearing prior to the hearing. §22-049.53)

001-14A ADDED 3/07

Prior to the hearing, a party may request in writing to the regional Presiding Administrative Law Judge that a hearing be limited to the jurisdictional issue. A copy of that request shall be sent to the other party. The Presiding Administrative Law Judge shall make a preliminary determination and inform the parties that:

- (a) the hearing shall proceed only on the jurisdictional issue; or
- (b) the hearing shall proceed on both the jurisdictional and substantive issues

§22-049.531)

002-1

At the time of the hearing, the recipient has a right to raise the adequacy of the county's notice of action as an issue. If the Administrative Law Judge (Judge) determines that adequate notice was provided, the recipient shall agree to discuss the substantive issue(s) or the case shall be dismissed. If the Judge determines that adequate notice was not provided, the case will be postponed unless the recipient waives the adequate notice requirement and agrees to discuss the substantive issue(s) at the hearing. If the notice was not adequate and involved termination or reduction of aid, retroactive action shall be taken by the county to reinstate aid pending. (W&IC§10967)

002-2 REVISED 3/07

When the claimant contends he/she is not adequately prepared to discuss the issues because he/she did not receive adequate and/or language-compliant notice, this issue shall be resolved by the Administrative Law Judge (Judge) at the hearing. If the Judge determines that adequate and language-compliant notice was provided, the claimant shall agree to discuss the substantive issue(s) or the case will be dismissed. If the Judge determines that adequate and/or language-compliant notice was not provided, the case shall be postponed unless the claimant waives the adequate and language-compliant notice requirement for purposes of proceeding with the hearing, and agrees to discuss the substantive issue(s) at the hearing. If the notice was not adequate and/or language-compliant and involved a discontinuance, suspension, cancellation, termination, or reduction of aid other than those referred to in §22-072.1 through .13, aid shall be reinstated retroactively and the provisions of §22-072.5 shall apply. §22-049.52, as modified January 24, 2007, and §22-072.1)

The references to language-compliant notices only apply to notices of action issued after January 24, 2007 when these regulations were filed with the Secretary of State) §22-901)

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003-1

"Public social services" are those activities and functions of state and local government administered or supervised by the CDSS or the CDHS and involved in providing aid or services or both to those people of the state who, because of their economic circumstances or social condition, are in need thereof and may benefit thereby. (W&IC§10051)

003-5

A request for hearing shall be dismissed if the issue is not within the jurisdiction of a state hearing as defined in §22-003.1 and W&IC§10950. §22-054.31)

003-7 REVISED 3/07

"Aid" includes all public assistance programs subject to a state hearing. These programs include CalWORKs (formerly AFDC), the state-administered programs for recipients of SSI/SSP contained in Division 46, the RRP, the CHEP, the FS Program, Medi-Cal, the social services programs described in Divisions 30 and 31, AFDC-foster care, Kin-GAP, Stage one child care, the AAC and AAP Programs, and the MSSP. §22-001(a)(3)(A)

003-7A

CalWORKs (formerly AFDC) regulations define "aid" as cash grants for maintenance needs and medical assistance under the Medi-Cal program, and Medi-Cal only. §40-103.3)

003-8

"Public assistance" and "public assistance programs" refer to those public social services programs provided for in Part 3 of this Division. (W&IC§10061)

The Food Stamp Program is contained in Part 6 of this Division. Child welfare services are covered in Part 4 of this Division, as are the Aid for Adoption of Children and Adoption Assistance Programs.

003-9

A county action is one which requires adequate notice, as well as any other county action or inaction relating to the claimant's application for or receipt of aid. §22-001(c)(5))

003-10

A state hearing shall be available to a claimant who is dissatisfied with a county action and requests a state hearing. §22-003.1)

003-11 REVISED 3/07

A "claimant" is a person who has requested a state hearing and is or has been either an applicant for or recipient of aid; a foster parent or foster care provider where the County Welfare Department takes action to affect the child's aid and the child resides with or has resided with the foster parent or provider; a representative of the estate of a deceased applicant or recipient; the relative caring for a child with regard to the child's application for or receipt of aid; the guardian or conservator of an applicant or recipient; or the sponsor of an alien; §22-001(c)(2))

003-11B ADDED 6/04

There is no right to a state hearing concerning the placement or removal of a foster child. §22-001(c)(2)(B)(1))

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003-12

A request for hearing or portion thereof shall be dismissed by written hearing decision when the person who requests the hearing does not have standing to request the hearing. Those persons who have standing to request the hearing are set forth in §22-001(c)(2). §22-054.35)

003-13

A request for hearing shall be dismissed by written hearing decision when the Judge fails to receive a written authorization permitting the purported representative to represent the claimant, when such authorization is required by §22-085.2. §22-054.36)

003-13A REVISED 3/07

The claimant may authorize a person or organization to represent him/her during all aspects of the hearing process by signing and dating a written statement to that effect or by stating at the hearing that the person is so authorized. If the claimant is not present at the hearing, the written statement authorizing a representative to act on behalf of the claimant for hearing purposes shall be signed and dated by the claimant on or after the date of the action or inaction with which the claimant is dissatisfied. §22-085.1) The authorization is presumed to be valid. §22-085.11)

If the claimant is not present, and the written authorization does not meet the requirements set forth in §22-085.1, the Administrative Law Judge (Judge) may proceed with the hearing if the circumstances indicate that the claimant wishes to proceed. In such cases, an amended authorization shall be submitted after the hearing as set forth in §22-085.221 and .222. §22-085.12)

- If the person is an active member of the California state bar and he/she states on the hearing record that the claimant is mentally competent and has authorized him/her to act as authorized representative regarding the issue(s) to be addressed at the hearing, the attorney shall be recognized as an authorized representative without being required to submit an authorized representative form. §2-085.21)
- If the person is not an attorney, and he/she swears, affirms or otherwise states under penalty of perjury that the claimant is mentally competent and has authorized him/her to act as claimant's authorized representative, and the Administrative Law Judge determines the person is so authorized, the non-attorney may represent the claimant at the hearing subject to the following:

The written authorization must be submitted within ten days from the hearing, unless time is extended by the Judge, or the case shall be considered abandoned and shall be dismissed by written decision after the hearing, pursuant to §22-054. §22-085.22 and .221)

If the person cannot swear or affirm that the claimant has authorized him/her to act as authorized representative because the claimant is incompetent, comatose, suffering from amnesia or a similar condition, the hearing may proceed at the judge's discretion if the person is a relative, or a person who has knowledge of the claimant's circumstances and who completed and signed the Statement of Facts on behalf of the claimant. §22-085.23)

If the attorney or non-attorney does not state on the hearing record that the claimant is mentally competent and has authorized him/her to act as authorized representative, the attorney or non-attorney shall not be recognized as authorized representative, the hearing will not proceed and

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the hearing request shall be dismissed by written decision unless §22-085.23 regarding mentally incompetent persons applies. (§22-085.24)

003-13B REVISED 3/07

Whenever the claimant is represented by an authorized representative, the authorized representative shall be furnished a copy of all notices and decisions concerning the state hearing which are provided to the claimant. (§22-085.3)

After a person or organization has been authorized to represent the claimant, the county, after notification of the authorization, shall send copies of any subsequent notices and correspondence that it has with the claimant regarding the state hearing, to the claimant and the authorized representative.

The county duty shall include the requirement to send to the authorized representative any notices and correspondence related to a conditional withdrawal or compliance with a state hearing decision. (§22-085.4)

003-14

If there is a deceased applicant or recipient, the request for state hearing may be filed by the legal representative of the estate; or if there is no legal representative, the request may be filed by an heir of the deceased applicant or recipient. (W&IC§10965)

003-15 REVISED 3/07

When the claimant dies after requesting a state hearing, but before the hearing has been held, the proceeding may only be continued by, or on behalf of, the decedent's estate by the legal representative of that estate. The legal representative is the executor/executrix, or administrator/administratrix. When the decedent's estate is not in probate, the representative may also be an heir of the deceased claimant. These same rules of representation exist when the prospective claimant dies before filing a state hearing request. (§22-004.4 and .5)

003-16 REVISED 3/07

Complaints as to discourteous treatment by a county employee shall not be subject to the state hearing process (§22-003.15 renumbered to §22-003.13 effective January 24, 2007)

003-17 ADDED 3/07

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.

(§22-003.14 effective January 24, 2007)

004-1 REVISED 3/07

A request for state hearing must be filed within 90 days of the action or inaction with which the claimant is dissatisfied. In the Food Stamp Program, the appropriate time limits are set forth in §3-802.4 and 63-804.5. If the claimant received an adequate and language-compliant notice of the action, the date of the action is the date the notice was mailed or given to the claimant. If adequate notice was required but 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 a timely hearing request. (§22-009.1 revised effective January 24, 2007)

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The references to language-compliant notices only apply to notices of action issued after January 24, 2007 when these regulations were filed with the Secretary of State) (§22-901)

004-1A REVISED 3/07

Prior to January 24, 2007, when a request for a state hearing concerns the current amount of aid the request shall be filed within 90 days, but the period of review shall extend back to the first of the month in which the first day of the 90-day period occurred. (§22-009.12)

Effective January 24, 2007, a recipient shall have the right to request a 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 hearing request 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. (§22-009.2 effective January 24, 2007)

004-1B

A notice of action must be adequate before the 90-day time limit for filing a state hearing request begins to run. The fact that the recipient knows, or should have known, of the action does not start the running of the time period. (*Morales v. McMahon* (1990), 223 Cal. App. 3d 184, 272 Cal. Rptr. 688)

004-1C ADDED 9/06

Question: Must a Notice of Action (NOA) be issued when a request for a domestic abuse waiver is denied or granted?

Answer: Yes. The CWD must issue an adequate and timely NOA when it grants or denies a waiver request. It is critical that counties follow NOA requirements when denying an applicant or recipient a request for a waiver of program requirements. Currently, the State has not issued a NOA for county use specific to domestic abuse waiver requests. Therefore, counties must use a county designed NOA for this purpose. All NOAs must include the state hearing notice, NA back 9.

Question: Must an individual request a domestic abuse waiver of a rule or policy within 90 days of receiving notice from the county that the WTW rules are being applied to him/her or within 90 days of the date the recipient learns that he/she may request a waiver?

Answer: No. There is no time limit for an individual to request a domestic abuse waiver. The 90-day deadline limits only the individual's right to request a State hearing after receipt of a written NOA.

All County Information Notice I-02-06, January 9, 2006 questions and answers 9 and 10)

004-1D ADDED 3/07

A "Language-Compliant Notice" is a notice of action that meets the applicable requirement in (a) or (b) below:

- (a) For notices of action provided by the California Department of Social Services (CDSS) in the claimant's primary language:

A written notice of action that complies with the requirements of Section 21-115.2 for a

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claimant who chose to receive written communications offered in his/her primary language pursuant to Section 21-116.21. There shall be a rebuttable presumption that a claimant chose to receive written communications offered in the claimant's primary language if the claimant identified a primary language other than English to the county pursuant to Section 21-201.211.

- (b) For CDSS notices of action that CDSS does not provide in the claimant's primary language:

The county must offer and provide interpretive services for the notice of action if either of the following applies:

- (1) The claimant contacts the county about that notice of action prior to the deadline for a timely request for hearing on an adequate notice of action and indicates a need for interpretive services; or
- (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.

§22-001(l)(1) effective January 24, 2007)

004-1E ADDED 3/09

Statutory changes to Welfare and Institutions Code (W&IC) sections 10951 and 10960 allow for good cause exceptions to the 90-day period for filing a hearing request and the 30-day period for filing a rehearing request.

Assembly Bill (AB) 921 was signed into law by Governor Schwarzenegger and became effective January 1, 2008. This bill amended W&IC Sections 10951 and 10960 to permit Administrative Law Judges to retain jurisdiction over late filings of requests for hearings and rehearings if good cause is established for the late filing.

(All County Information Notice I-66-08, November 19, 2008)

004-1F

- (a) No person shall be entitled to a hearing pursuant to this chapter unless he or she files his or her request for the same within 90 days after the order or action complained of.
- (b) (1) Notwithstanding subdivision (a), a person shall be entitled to a hearing pursuant to this chapter if he or she files the request more than 90 days after the order or action complained of, and there is good cause for filing the request beyond the 90 day period. The director may determine whether good cause exists.
- (2) For purposes of this subdivision "good cause" means a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language compliant notice, in and of itself, shall not constitute good cause. In no event shall the department grant a request for a hearing where the request is filed more than 180 days after the order or action complained of.

(Welfare and Institutions Code (W&IC)§10951)

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004-2 REVISED 8/04

The county is required to provide adequate notice when aid is granted, increased, denied, decreased, not changed following a recipient mid-quarter report, cancelled or discontinued. Adequate notice must also be provided when the county demands repayment of an overpayment or Food Stamp overissuance. Adequate notice is defined as written notice informing the claimant of the action that the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested. 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. In CalWORKs (formerly AFDC), the notice shall state that if the county action is upheld, aid pending must be repaid. In all cases, the notice is to be prepared on a standard form approved by the California Department of Social Services. The notice shall be prepared in clear, nontechnical language and if a claimant submits a request for a state hearing on the back of the notice, a duplicate copy shall be provided to the claimant on request. §22-071.1 and 22-001(a)

004-2A ADDED 9/06

Although the printed Notice of Action forms designed for specific types of action will help the county provide adequate notice, filling in the appropriate blanks and checking the appropriate boxes on a notice of action form will not assure that the notice is adequate.

In broadest terms, the recipient needs to know and understand what is happening to the family's aid. The recipient needs enough information to be able to judge whether or not the action is correct—including the detail of computation affecting the amount of aid. The recipient should be informed of what facts were used and how they were used so that he or she can make an informed decision whether or not to request corrective action or to appeal the action.

(All County Information Notice I-151-82, November 23, 1982)

004-2B ADDED 9/06

Notices should be complete if they are to be adequate. The notice itself must state all of the required information. The verbal explanation is not a substitute for adequate written notice. (All County Information Notice I-151-82, November 23, 1982)

004-3

The county must provide adequate notice when the county has taken action after the claimant has conditionally withdrawn a request for state hearing. §22-071.14)

004-4

Generally, where the county action would result in a discontinuance, termination, or decrease of aid, the county shall mail timely and adequate notice to the persons affected. The notice shall be mailed to the person affected at least ten days prior to the effective date of the proposed action. §22-072.1)

004-4A

If an applicant has not provided an item which must be verified (e.g., income) and has also not completed the fingerprint imaging process, it is the CDSS position that two separate notices of action must be sent, denying aid because of each of the failures to provide the required information. (All-County Letter No. 00-32, May 11, 2000, Question 23)

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004-5

All written requests for hearing shall be date-stamped by the agency on the day the request is received. Unless the evidence indicates otherwise, the filing date of the claimant's written request for a state hearing shall be determined as follows:

- (1) If the request is mailed to the State Hearings Division (SHD) or to the County Welfare Department (CWD), the postmark date of the envelope.
- (2) If the request is delivered by hand to the SHD or to the CWD, the date stamped on the request for hearing.
- (3) If the date cannot be determined by the methods described above, three days before the request was stamped "received" by the SHD or the CWD.
- (4) If the date cannot be determined by the methods above, the date the request was signed. When a written request is filed erroneously with the SHD or with a CWD other than the county of responsibility, these same procedures shall apply. §22-001(f)(1))

004-6

If the last date for the performance of any act required by the regulations is a holiday, then such period shall be extended to the next day which is not a holiday. §22-002.1) "Holiday" formerly meant Saturday, Sunday or the holidays specified in Government Code (Gov. C) §6700 et seq., per §22-001(h)(1). Effective May 12, 1995, this Section was modified to define "holiday" as a Saturday, Sunday, and the holidays specified in Gov. Code §700 et seq. which result in a postal holiday or the closing of Department or county offices.

In addition to Saturdays and Sundays, the following are considered holidays: January 1, February 12, July 4, September 9, November 11 and December 25. If these dates fall on a Sunday, the following Monday is a holiday. If November 11 falls on a Saturday, the preceding Friday is a holiday. Holidays also include the third Monday in February, the last Monday in May, the first Monday in September, the second Monday in October, and every day appointed by the President or Governor for a public fast, Thanksgiving or holiday. See Gov. Code §6700 and 6701

Other potential "holidays" include Cabrillo Day (September 28), Dr. Martin Luther King, Jr., Day (January 15), Arbor Day (March 7), Japanese American Evacuation Day (February 19), California American Indian Day (fourth Friday in September), John Muir Day (April 21) and Pearl Harbor Day (December 7). (Gov. Code §706-6716)

004-7

If any city, county, state or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under California Code of Civil Procedures (CCP) §12 and 12a. (CCP §12(b))

004-8

A request for hearing may be either written or oral. It may be in any form including, but limited to reverse side of the Notice of Action. The request for hearing should identify the aid program involved and the reason for the dissatisfaction with the particular action or inaction involved in the case.

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A written request concerning county administered state aid programs shall be filed with the county. All other written requests, and all oral requests, shall be filed with the CDSS in Sacramento. (§22-004.2)

004-9

If a withdrawal is conditional, it shall be accompanied by an agreement signed by the claimant and the county. The agreement shall provide that the actions of both parties will be completed within thirty days from the date both parties sign, and the form is received by the county. After the county issues notice of its redetermination, the claimant must reinstate the hearing request within the time limits set forth in §22-009, or the request will be dismissed. (§22-054.211(b)(3))

004-10

A request for hearing shall be dismissed if the request for hearing is filed beyond the time limit set forth in §22-009. (§22-054.32)

004-11

The Director shall grant or deny the request for rehearing no earlier than five nor later than 15 working days after it is received by the Chief Administrative Law Judge. If the Director does not act within this period, the request for rehearing shall be deemed denied. (§22-065.3)

004-12

"Timely notice" is a written notice that is mailed to the person affected at least ten days before the effective date of the action (§22-001(t)(1)). The ten-day period shall not include the date of mailing, or the date the action is to take effect. (§22-072.4)

004-12A ADDED 6/04

Timely notice is not required when an AFDC child is removed from the home as the result of a judicial determination, or voluntarily placed in foster care by a parent or legal guardian, although adequate notice is required (§22-072.2(f))

004-13

Effective January 1, 1990, all CalWORKs (formerly AFDC) notices of action concerning overpayments, or FS notices of action concerning overissuances, must include substantially the following language:

WARNING: If you think this overpayment is wrong, this is your last chance to ask for a hearing. The back of this page tells how. If you stay on aid, the county can collect an AFDC overpayment by lowering your monthly grant. It can lower your food stamps to collect an overissuance unless it was the county's fault. If you go off aid before the overpayment or overissuance is paid back, the county may take what you owe out of your state income tax refund.

(*Anderson v. McMahon*, Alameda County Superior Court, Case No. 620039-4; All-County Letter No. 90-14, February 9, 1990)

005-2

A hearing request shall be dismissed when the identical issue which the claimant is protesting has already been the subject of a previous state hearing involving the claimant. (§22-054.34)

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006-1 REVISED 3/07

A "compliance issue" is 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. §22-001(c)(3))

A "compliance related issue" is an issue which was not resolved in a prior state hearing decision, or an issue which the prior hearing decision resolved in favor of the claimant but which required the county to make further determinations. §22-001(c)(4))

006-2

A claimant may request a state hearing on a "compliance related issue." The time limit for filing such a request is set forth in §22-009. §22-078.5) There is no right to a state hearing on a "compliance" issue, e.g., when the county has been ordered to pay the claimant a specific amount of benefits. §22-078.31)

006-3

Immediately upon receipt of a decision of the Director, the county shall initiate action to comply with such decision even if a rehearing is requested and granted. §22-078.1)

006-4

A request for hearing or portion thereof shall be dismissed by written hearing decision when the request for hearing raises a "compliance" issue, as "compliance" is defined in §22-078. §22-054.37) A "compliance" issue is an issue resolved in a prior state hearing decision which does not require the county to make further determinations regarding the claimant's eligibility or amount of benefits. §22-001c.(3))

007-1 REVISED 3/07

Prior to January 24, 2007, a request for hearing shall be dismissed if it is abandoned. The claimant has a ten-day period from the date of the scheduled hearing in which to reinstate the hearing request, and to establish good cause for the failure to appear at the hearing. If the claimant does not appear at the scheduled hearing, and does not request reinstatement of the hearing within ten days, the hearing shall be dismissed by written decision. §22-054.22 prior to January 24, 2007)

007-1A ADDED 3/07

Effective January 24, 2007, a request for hearing shall be dismissed by written decision if it is abandoned. The claimant shall have the right to request the dismissal decision be set aside and have a new hearing if good cause is established for not attending the hearing. Such request must be made within 15 days of the date the dismissal decision is received. §22-054.22 effective January 24, 2007)

007-2 ADDED 3/09

The criteria for good cause (for not attending a hearing) shall include, but not be limited to:

(1) The failure of the claimant to receive notice of the time and place of the hearing. The notice of the time and place of the hearing shall be mailed to the claimant's last known address and good cause shall not be established if the claimant failed to notify the county or Department of any change of address while the appeal was pending.

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(2) The criteria set forth in Section 22-053.113.

§22-054.222(a))

007-2A REVISED 3/07

Good cause to grant a postponement is established if the claimant or authorized representative (AR) establishes that the case should be postponed due to reasons that include but are not limited to a death in the family, personal illness or injury, sudden and unexpected emergencies which prevent the claimant or AR from appearing, a conflicting court appearance that cannot be postponed, the claimant contends and the Administrative Law Judge determines that the claimant is not prepared because he/she did not receive adequate and/or language-compliant notice, or when the county has not made the position statement available two days prior to the hearing or has modified the position statement after providing it to the claimant (and the claimant has waived time). §22-053.113)

The references to language-compliant notices only apply to notices of action issued after January 24, 2007 when these regulations were filed with the Secretary of State) §22-901)

008-1

A request for hearing shall be dismissed if it is withdrawn. Such a withdrawal shall be in writing. If the claimant verbally withdraws, and the withdrawal is unconditional, the Department shall send the claimant a letter confirming the withdrawal. The letter shall serve as the written withdrawal. §22-054.21)

008-2

A request for hearing shall be dismissed if the Administrative Law Judge determines at the hearing that the claimant or authorized representative is unwilling to present his or her case. §22-054.33)

008-3

The county is not prohibited from instituting any appropriate changes in a recipient's grant while a state hearing is pending if the factual basis of the action is different from the action upon which the recipient is receiving aid pending. §22-072.9)

009-1

The Director of the Department of Social Services was precluded by the doctrine of equitable estoppel from denying retroactive benefits to a recipient of Aid to the Totally Disabled for payment of Social Security on behalf of her provider of attendant care. That request for relief would otherwise have been barred by the statute of limitations. (*Canfield v. Prod* (1977) 67 Cal.App.3d 722, 137 Cal. Rptr. 27)

This case contains a thorough discussion of the doctrine of equitable estoppel and its application to government agencies. The decision notes first that four basic elements must be present in order to apply the doctrine of equitable estoppel:

- (1) The party to be estopped must be apprised of the facts;
- (2) The party must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;

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- (3) The other party must be ignorant of the true state of facts; and
- (4) The other party must rely on the conduct to his injury.

Additionally, in regard to the estoppel of government agencies, the case held that application of estoppel will be applied when justice and right require it but that an estoppel will not be applied when to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. Further, in determining whether estoppel is applicable to a government agency, the more culpable or negligent the agency or its representatives have been, and the more serious the effect of the advice on the claimant, the more likely the doctrine is to be applied.

(*Canfield v. Prod, supra*; see also *City of Long Beach v. Mansell* (1970) 3 Cal. 3d 462)

009-1A

In the *Canfield* case cited above, the Court of Appeal analyzed each of the elements of equitable estoppel as that doctrine was applied in this specific case against the Department of Benefit Payments. The court stated:

"In the instant case, the Director, through his agent the County, was apprised of the facts. He recognizes that during the period in question the County had the responsibility of informing recipients of their duty to pay social security taxes for household employees and that Canfield was entitled to receive a larger grant in 1969 and 1970 because of such liability. We observe that the requirement that a party must be apprised of the facts encompasses not only actual knowledge but to conduct consisting of silence and acquiescence where the party ought to have known the real facts or where ignorance of such facts was occasioned by culpable negligence. (See *City of Long Beach v. Mansell*, 3 Cal.3d 462, 491, fn. 28, 91 Cal.Rptr. 23, 476 P.2d 423.)

"It is further concluded that the facts of this case satisfy the second requirement, i.e., that the party to be estopped must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended. There is no question but that the County intended that Canfield would rely on its conduct. Subdivision (c) of [Welfare and Institutions Code] section 11004 provides: 'Any person who makes full and complete disclosure of those facts as explained to him pursuant to subdivision (a) is entitled to rely upon the award of aid as being accurate, and that the warrant he receives currently reflects the award made,' Subdivision (a) provides: 'Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his responsibility for reporting facts material to a correct determination of eligibility and grant.'

"Adverting to the third requirement, we observe that there is no question that Canfield was ignorant of the true facts, i.e., that she was obligated to pay social security taxes as an employer and that she was eligible to receive a grant of additional sums in order to pay such taxes. Nor is there any question that the fourth requirement is satisfied, i.e., that she relied on the County's conduct to her injury.

"With respect to the application of equitable estoppel to the government the established rule is that the doctrine may be applied against the government where justice and right require it, but that an estoppel will not be so applied if to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. (*City of Long Beach v.*

Mansell, supra, 3 Cal.3d 462, 493, 91 Cal.Rptr. 23, 476 P.2d 423.) Although we are not privy to the legislative intent in enacting subdivision (g) of section 11004, we do not perceive that the statute is declarative of a strong rule of policy adopted for the benefit of the public. We may speculate that the statute was enacted to prevent a recipient from receiving a windfall in the sum of a lump sum payment not related to the present needs of the recipient. Such a contention was rejected in *Bd. of Soc. Welfare v. County of L.A.*, *supra*, 27 Cal.2d 81, 85-86, 162 P.2d 630, wherein it was held that the obligation to pay benefits becomes a debt due from the county to the applicant as of the date the latter was entitled to receive the aid. The reviewing court pointed out that the clear public purpose is to secure to those entitled to aid the full payment thereof from the date they were entitled thereto regardless of errors or delays by local authorities. (At p. 86, 162 P.2d 630.)

"We observe that section 10000 provides that the purpose of public social services is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life,' We apprehend that Canfield's receipt of retroactive payments directly relate to her present needs in view of the tax lien on her home and the possibility of a loss of that home to satisfy the lien. Accordingly, we do not perceive that the raising of an estoppel will result in a significant frustration of public policy but that to apply the doctrine of equitable estoppel in the present case is required by justice and right and is in keeping with the declared paramount public purpose of providing protection, care and assistance to those in need.

"We observe, further, that in determining whether an estoppel may be raised against a public agency an important consideration is the degree of 'culpability or negligence of the public agency or its representatives in their conduct or advice' and 'the seriousness of the impact or effect of such conduct or advice on the claimant.' (*Driscoll v. City of Los Angeles, supra*, 67 Cal.2d 297, 306, 61 Cal.Rptr. 661, 667, 431 P.2d 245, 251) In the instant case Canfield was a person who purported to have no knowledge or training which would aid her in determining her rights. The public agency, on the other hand, purported to be informed and knowledgeable with respect to attendant care grants and the obligations of the recipient of such grants.

"There existed a confidential relationship between the County and Canfield entitling Canfield to repose trust and confidence in the County whose representatives were cognizant of this fact. (See *Driscoll v. City of Los Angeles, supra*, at p. 308, 81 Cal.Rptr. 661, 431 P.2d 245; *Vai v. Bank of America* 56 Cal.2d 329, 338, 15 Cal.Rptr. 71, 364 P.2d 247.) Under these circumstances the conduct of the public agency may be deemed to have been unreasonable and to have had a serious impact or effect on Canfield.

"It is concluded, therefore, that the Director was estopped to assert the provisions of subdivision (g) of section 11004."

(*Canfield v. Prod* (1977) 67 Cal.App.3d 722 at 730-733)

009-2

The California Supreme Court has held that, under appropriate circumstances, a recipient of

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welfare benefits may raise the defense of equitable estoppel in state administrative hearings. (*Lentz v. McMahon* (1989), 261 Cal. Rptr. 310)

009-3

The California Supreme Court stated, in dicta, that no court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations. (*Longshore v. County of Ventura* (1979), 25 Cal.3d 14, 157 Cal. Rptr. 706, 598 P.2d 866)

009-4

A maxim of jurisprudence is that which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom performance is due. (California Civil Code §529)

009-5

When the county has computed a CalWORKs (formerly AFDC) administrative error overpayment, the Judge may consider the amount of FS benefits the claimant would have received if the county had issued the correct CalWORKs payment rather than the overpaid CalWORKs. If this computation results in a larger FS allotment than the claimant actually received, the Judge may instruct the county to reduce the CalWORKs overpayment by the amount of the increased FS allotment.

Under equitable estoppel, the lost FS benefits are a measure of the injury which the claimant suffered due to the county error.

(All-County Information Notice I-60-96, November 26, 1996)

009-7

In discussing whether equitable estoppel could be applied against public agencies, the Appellate Courts have offered the following guidelines:

"The courts of this state have been careful to apply the rules of estoppel against a public agency only in those special cases where the interests of justice clearly require it. [citations omitted] However, if such exceptional case does arise and if the ends of justice clearly demand it, estoppel can and will be applied even against a public agency. Of course, the facts upon which such an estoppel must rest go beyond the ordinary principles of estoppel and each case must be examined carefully and rigidly to be sure that a precedent is not established through which, by favoritism or otherwise, the public interest may be mulcted [defrauded, swindled] or public policy defeated. [citations omitted]." *City of Imperial Beach v. Algert* (1962) 200 Cal.App.2d 48, 52)

"Factors to be considered in a claim of estoppel against a public agency include consideration of the degree of negligence or culpability of the public agency (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 307), whether and to what extent the agency is certain of the knowledge or information it dispenses (see *Phillis v. City of Santa Barbara* (1967) 229 Cal.App.2d 45, 60), whether it purports to advise and direct or merely to inform and respond to inquiries (see *Tyra v. Board of Police etc. Comms.* (1948) 32 Cal.2d 666, 670), and whether it acts in bad faith. (See *Lorenson v. City of Los Angeles* (1953) 41 Cal.2d 334, 340)." (*Lee v. Board of Administration* (1982) 130 Cal.App.3d 122, 134)

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009-8

The Court of Appeals, in *Crumpler v. Board of Administration Emp. Retire. Sys.*, relied on the Supreme Court as to the manner of applying equitable estoppel against the government. The *Crumpler* court cited *City of Long Beach v. Mansell*, 3 Cal.3d 462, 91 Cal.Rptr. 23, 476 P.2d 423.

“The court there declared it to be settled that '[t]he doctrine of equitable estoppel may be applied against the government where justice and right require it' but that an estoppel will not be applied against the government if to do so would effectively nullify 'a, strong rule of policy, adopted for the benefit of the public...' (At p. 493, 91 Cal.Rptr. at p. 45, 476 P.2d at P. 445.) The court observed that '[t]he tension between these twin principles makes up the doctrinal context in which concrete cases are decided.' After a review of a number of cases the court phrased the rule governing the application of equitable estoppel against the government as follows: '... The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel' (See *Crumpler v. Board of Administration Emp. Retire. Sys.* (1973) 32 Cal.App.3d 578, 580)

The *Crumpler* court went on to analyze whether equitable estoppel should be applied to prevent the retroactive reclassification of plaintiffs, animal control officers:

“All of the requisite elements of equitable estoppel are present insofar as the city is concerned. The city was apprised of the facts. The city knew that petitioners were being employed by the police department as animal control officers at the time it erroneously advised them they would be entitled to retirement benefits as local safety members. The fact that the advice may have been given in good faith does not preclude the application of estoppel. Good faith conducts of a public officer or employee does not excuse inaccurate information negligently given. (*Driscoll v. City of Los Angeles, supra*, 67 Cal.2d 297, 307-308, 61 Cal.Rptr. 661, 431 P.2d 245; *Orinda-County Fire Protection Dist. v. Frederickson and Watson Co.*, 174 Cal.App.2d 589, 593, 344 P.2d 873.) ‘In a matter as important to the welfare of a public employee as his pension rights, the employing public agency ‘bears a more stringent duty’ to desist from giving misleading advice.’ (*Driscoll v. County of Los Angeles, supra*, 67 Cal.2d 297, 308, 61 Cal.Rptr. 661, 431 P.2d 245.) In the instant case the erroneous representations that petitioners would be entitled to local safety memberships if they accepted city employment was given without verifying its accuracy either by advice from the board or any other qualified person.

“All of the other requisite elements of equitable estoppel against the city were established by uncontradicted evidence. The city manifestly intended its erroneous representations to be acted upon and petitioners relied upon the representations to their injury by relinquishing other employment to accept city employment and by paying over the years the greater contributions required of safety members. Petitioner Crumpler served as animal control officer for over 20 years. During those years he paid safety member contributions and arranged his personal financial affairs in the expectation he would ultimately receive the retirement benefits of a safety member. Petitioner Ingold relinquished federal civil service employment with 15 years accrued federal pension

rights to accept city employment on the representation that his city pension rights would be that of a safety member.

"The board virtually concedes the city would be estopped but urges that estoppel may not be invoked against the board because it had no knowledge that petitioners were employed as animal control officers and not policemen until a routine investigation in 1968 revealed the true facts. We reject the board's position.

"The relationship between the city and the board is such that estoppel of the city is binding on the board. An estoppel binds not only the immediate parties to the transaction but those in privity with them. [citations omitted]... (*Crumpler*, supra, 32 Cal.App.3d at 581, 582)

"Petitioners' contention that the board is forever precluded from reclassifying them because they have a vested right to be classified as local safety members is devoid of merit. It is true that upon acceptance of public employment provisions of the applicable pension law become an integral part of the contract of employment, and that any modifications affecting earned pension rights of active employees must be reasonable, related to the theory of a sound pension system, and any changes detrimental to the individual must be offset by comparable new advantages. However, correction of an erroneous classification cannot be equated to a modification or alteration of earned pension rights. Petitioners have no vested right in an erroneous classification. Indeed, as we have noted, the act expressly provides for correction of errors such as occurred in the instant case. The provisions of section 20180 being as much a part of the contract of employment as other provisions of the retirement act, exercise of the power conferred by the section involves no violation or impairment of petitioners' contractual or vested rights.

"It is our conclusion that the board is estopped from reclassifying petitioners for the period of membership prior to the board's decision of August 18, 1971, but is not so estopped from reclassifying petitioners to miscellaneous membership prospectively from the date of that decision."

(*Crumpler*, supra, 32 Cal.App.3d at 585)

009-9

The California Court of Appeal, Third District, discussed the doctrine of "laches" in the case of *Lam v. Bureau of Security and Investigation Services*:

"Statutes of limitation and the doctrine of laches are both designed 'to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'" [Citations.]' (*Brown*, supra, 166 Cal.App.3d at p. 1161.) These policies also guard against other injuries caused by a change of position during a delay. While a statute of limitations bars proceedings without proof of prejudice, laches "requires proof of delay which results in prejudice or change of position." (*Ibid.*) Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. (*Id.* at p. 1159.) What makes the delay unreasonable in the case of laches is that it results in prejudice. (*Ibid.*)"

(*Lam, supra*, 34 Cal.App. 4th 29, 36-37)

009-10 ADDED 6/04

The court of appeals in *Fleice v. Chualar Union Elementary School District* discussed equitable estoppel as it applies against the government.

Chualar Union erroneously classified Fleice as a permanent employee after only one year of probationary service. After discovering its mistake, the District reclassified her as probationary and later decided not to rehire her for the next school year.

Fleice attempted to apply equitable estoppel against Chualar noting that in reliance on being made a permanent employee she declined one invitation to interview with another district. She also alleged she took classes in order to obtain supplementary teaching credentials.

The court in *Fleice* citing *City of Long Beach v. Mansell* (1970) 3 Cal 3d 462 and *Longshore* said the following:

“The doctrine of equitable estoppel may be applied against the government where justice and right require it.” “This general principle, however, has two important qualifications. The first is the ‘well established proposition that an estoppel will not be applied against the government if to do so would effectively nullify ‘a strong rule of public policy, adopted for the benefit of the public’ (*City of Long Beach v. Mansell, supra*, 3 Cal 3d at p. 493). The second qualification is the rule that estoppel cannot expand a public agency’s powers Thus, principles of estoppel are not invoked to contravene statutes and constitutional provisions that define an agency’s powers.”

The court in *Fleice* denied the estoppel claim and said the following:

“Both qualifications apply here. The tenure statute, as already discussed, limits the District’s powers by establishing a mandatory two-year probationary period. Thus even if District’s conduct and Fleice’s reliance upon it satisfied the estoppel doctrine’s prerequisites, the doctrine still would not apply.”

(*Fleice v. Chualar Union Elementary School District* (1988) 206 Cal App 3d 886