



CDSS

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April 4, 2013

REASON FOR THIS TRANSMITTAL

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

ALL COUNTY LETTER NO. 13-27

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL FOSTER CARE MANAGERS
ALL ADMINISTRATIVE LAW JUDGES
TITLE IV-E AGREEMENT TRIBES

SUBJECT: STATE HEARING DIVISION PROCEDURES IN
PROCESSING THE HEARING REQUESTS THAT INVOLVE
HARRIS v. California Department of Social Services (CDSS)

REFERENCE: Welfare and Institutions Code (W&IC) sections 10950 through
10967; CDSS Manual of Policies and Procedures (MPP)
sections 22-001 through 22-085; *GOMES v SAENZ* updated
by Assembly Bill 717 (Chapter 468, Statutes of 2011, c. 468
[A.B. 717]), All County Letter (ACL) number 12-71.

This All County Letter (ACL) provides counties with instructions and information regarding procedures for state hearings with the the State Hearings Division (SHD) regarding the court Writ issued in the case of *Harris v. California Department of Social Services (CDSS)*.

PROCEDURAL BACKGROUND:

On April 23, 2012, the Superior Court in Sacramento County issued an order in *Harris v. CDSS*. The CDSS was ordered to provide state hearings, conducted in compliance with Welfare and Institutions Code (W&IC) sections 10950 through 10967, in cases where a county child welfare agency denied a relative or nonrelative extended family member (NREFM) approval to provide care to a juvenile court dependent.

A relative caregiver is a person within the fifth degree of kinship to the minor, which includes great-great grandparents/aunts/uncles as well as first cousins once removed. (See W&IC section 319(f)(2).)

A NREFM, while not related by blood or marriage to the dependent, is any adult with an established familial or mentoring relationship with the minor or non-minor dependent. (See W&IC section 362.7.)

These hearings (“*Harris* hearings”) are subject to the hearing procedures currently established for state hearings in the Manual of Policies and Procedures (MPP), including the timeliness requirements under Division 22. Hearing procedures previously applied to these types of cases set forth in Division 31-020 are no longer applicable.

JURISDICTION FOR A STATE HEARING UNDER *HARRIS* v. *CDSS*:

In cases that involve minor or non-minor dependents, a state hearing shall be available to those relatives or NREFMs, or those purporting to be a relative, for whom the county child welfare agency, under authority of Title 22 of the California Code of Regulations, sections 89318 through 89388, has determined the following:

- A. The relative or NREFM did not meet the qualifications to be a caregiver;
- B. The relative, NREFM resident adult(s) or adult(s) with significant contacts to children was not approved under this state’s Community Care Licensing laws, and;
- C. The relative’s or NREFM’s home does not meet health and safety requirements, or
- D. The relative or NREFM did not complete required orientation and/or training.

There is no right to a *Harris* hearing to dispute an agency’s submittal of an alleged severe neglect or abuse incident(s) onto the Child Abuse Central Index (CACI) maintained by the California Department of Justice (DOJ), or a dispute requesting the removal of the incident(s) from the CACI. Such disputes continue to be grieved through the appropriate county pursuant to Division 31 of these regulations, sections 31-021.1 through 31-021.86.

Pursuant to MPP section 22-001 subdivision (c)(2)(B)(1), there is no right to a *Harris* hearing concerning the placement or removal of a foster child. The county grievance procedures set forth under MPP, section 31-021, apply.

CALENDARING OF THE STATE HEARING:

ISSUANCE OF HARRIS NOTICE OF ACTION: Upon denial of a relative's or NREFM's home, the county shall issue the relative or NREFM a Notice of Action (state form NA 1271). This notice will inform the denied relative or NREFM of the basis for the denial and his or her right to a state hearing under Division 22 of the MPP governing the state hearing process for the CDSS in compliance with W&IC sections 10950 through 10967.

FORWARDING A REQUEST FOR A STATE HEARING TO STATE HEARINGS DIVISION (SHD): The notice of action will direct the individual receiving the notice to send the request for a *Harris* hearing directly to the CDSS's SHD. In some cases, however, the individual may send the request for a *Harris* hearing to the county. In such cases, the county has an obligation to forward the request for a *Harris* hearing to the SHD. Entry of the case into the state tracking and hearing calendaring system by SHD staff will then occur.

RESOLUTION OF LIMITED CASES ON THE WRITTEN RECORD: Where a claimant has requested a *Harris* hearing and the basis for denial is a non-exemptible offense, the county may request that the assigned Administrative Law Judge (ALJ) resolve it solely on the basis of the written record and without a hearing.

To initiate a request that the ALJ resolve the matter solely on the basis of the written record and without a hearing, the county must:

- A. make a written request to the SHD,
- B. provide the SHD with all documents relevant to a resolution on the record and,
- C. provide a copy of the written request and all documents to the claimant and claimant's Authorized Representative (AR).

Once the county makes a request that the matter be resolved solely on the basis of the written record and without a hearing, the SHD shall issue a letter to the claimant and claimant's AR, notifying the claimant of the county's request. A claimant who has received notice that the county has made such a request shall have 20 calendar days from receipt of the notice to respond. The claimant may respond to the SHD by:

- A. denying the county's request to proceed solely on the basis of the written record and without a hearing, in which case a *Harris* hearing shall be scheduled; or
- B. agreeing to proceed solely on the basis of the written record and without a hearing.

In the event that the claimant agrees to proceed solely on the basis of the written record and without a hearing, the claimant shall have ten calendar days from the date of his or her response to provide any additional documentation to the SHD that the claimant believes to be relevant to the ALJ's determination.

SCHEDULING – HEARING NOTICE:

PRE-HEARING CONFERENCE AND HEARINGS: With every *Harris* hearing request, an acknowledgement letter will be issued to the claimant and/or claimant's AR, as well as the county's hearings representative. The letter will explain the *Harris* hearing process, and include a copy of "State Hearings Information" (Publication 412) that explains the claimant's rights as to how the hearing may proceed, whether by telephone, video-conference or in person.

The letter shall further inform the parties that the ALJ assigned to the case will contact the parties in order to schedule a prehearing conference.

At the prehearing conference, the ALJ assigned to the case shall set the date and time of the hearing, and manner in which the hearing shall be conducted; determine whether any language assistance may be needed; identify and clarify the issues in dispute and the witnesses anticipated to testify and discuss other relevant matters promoting a prompt and orderly hearing that protects the due process rights of the parties.

Subsequent to the prehearing conference, hearing notices shall be issued to the parties.

DOCUMENTS SUBMITTED AT HEARING:

The county holds the burden to a preponderance of the evidence to establish that an adult in the claimant's home, or an adult with significant contact with minors, has a criminal or child abuse background that resulted in the county's decision not to approve the home under California Community Care Licensing laws, and/or resulted in the county's decision that the claimant's home does not meet the appropriate health and safety standards.

The gathering of evidence necessary to determine whether the home should be approved is a responsibility of the county. The county has the duty and burden to produce at the hearing all documents relevant to assessing the home, or relied upon in determining relationship (either as a relative or NREFM).

Some or all of the following documents are likely to be relevant to the case and should be submitted at a *Harris* state hearing:

- A. A statement of position prepared by the county consistent with MPP section 22-073.25. That section generally requires that prior to a hearing, the county representative shall prepare a typewritten statement summarizing the facts of the case and set forth the regulatory justification for the county's action and, with some exceptions, attach copies of documentary evidence and a list of witnesses whom the county intends to use during the hearing. Some documents, such as certain law enforcement records, may not be attached to the statement of position.
- B. The claimant or claimant's AR may also submit a statement of position and other documents; however, this will be at the discretion of the claimant.
- C. If the matter in dispute addresses criminal or child abuse allegations, the following documents should be provided if possible:
 - 1. "Approval of Family Caregiver Home" (state form SOC 815).
 - 2. Criminal Exemption Request, Denial and/or Grant (under W&IC section 361.4).
 - 3. "Out-Of-State Disclosure & Criminal Record Statement" (state form LIC508D) executed by the claimant; and if applicable, "Out-of-State Child Abuse/Neglect Report Request" (state form LIC 198B) and response thereto.
 - 4. Log entries and/or notes from social workers or other county staff persons processing the exemption(s).
 - 5. Character reference letters provided by the claimant in support of a criminal exemption.
 - 6. Child Welfare Services/Case Management System incident reports and investigative narratives.
 - 7. Evidence establishing criminal activity, such as certified Superior Court records of the criminal case, Arrest Disposition Form(s) provided by DOJ, party testimony, party admissions or stipulations in fact.
 - 8. Relevant juvenile records – such as detention reports, status review reports, etc. (See below discussing the impact of the W&IC section 827 privilege for juvenile records.)
- D. If the matter in dispute addresses whether the claimant's home failed to meet health and/or safety standards, these documents should be provided:

1. "Checklist of Health and Safety Standards for Approval of Family Caregiver Home" (state form SOC 817), or "Checklist of Health and Safety Standards for Approval of Family Caregiver Home – Nonminor Dependent" (state form SOC 817NMD).
 2. "Approval of Family Caregiver Home" (state form SOC 815).
 3. Log entries and/or notes from from social workers or other county staff persons processing home approval.
 4. Notice of Deficiency(ies) and Corrective Action Plan(s).
 5. Documented Alternative Plan Approval or Denial.
- E. If the matter in dispute addresses whether the claimant failed to meet caregiver qualifications, these documents should be provided:
1. "Relative or Non-Relative Extended Family Member Caregiver Assessment" (state form SOC 818), or "Relative or Non-Relative Extended Family Member Caregiver Assessment – Nonminor Dependent" (state form SOC 818NMD).
 2. "Approval of Family Caregiver Home" (state form SOC 815).
 3. Log entries and/or notes from from social workers or other county staff persons processing home approval.
- F. If the matter in dispute addresses whether the claimant failed to meet orientation and training requirements, these documents should be provided:
1. "Approval of Family Caregiver Home" (state form SOC 815).
 2. Log entries and/or notes from from social workers or other county staff persons processing home approval.

PRIVILEGES/CONFIDENTIALITIES SPECIFIC TO *HARRIS* CASES:

PRIVILEGED JUVENILE RECORDS (W&IC section 827):

The CDSS has concluded that the SHD is an appropriate repository for all juvenile records privileged under W&IC section 827 that are relevant to the *Harris* hearing, as provided under section 827, subdivision (a)(1)(I). That subdivision states:

(a) (1) Except as provided in section 828, a case file may be inspected only by the following:...

(l) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with section 10000), and Part 5 (commencing with section 7900) of Division 12, of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, section 10850.4 and paragraph (2).

The CDSS concluded that *Harris* extended the SHD's duties under W&IC section 10950, which falls within Division 9 of the code. In order to adjudicate home denials, the SHD has a full right to be provided section 827 privileged documents relevant to conducting state hearings as a function to "oversee and monitor county child welfare agencies."

ESTABLISHING CRIMINAL ACTIVITY:

Generally the best evidence submitted by counties to establish criminal activity of the relative or adult residing in the home, or with significant contacts to minors, relevant to a home denial are certified court records. Insofar as certified court documents are public records, even the criminal record of an adult who is not the claimant may be introduced at hearing without breaching confidentiality.

The CDSS has determined that Arrest Disposition Forms provided by the DOJ may also be introduced.

Moreover, certified copies of records of any state penitentiary, reformatory, county or city jail, or federal penitentiary in which the subject adult has served, may be introduced at the hearing. (See Penal Code section 969b).

However, the CDSS has concluded that DOJ or Federal Bureau of Investigations reports provided through the Live Scan process are both not admissible and cannot be relied upon for establishing an individual's criminal status at the hearing.

SPECIAL CONCERNS FOR RELATIVES OR ADULTS WITH REPORTED INCIDENTS ON THE CACI:

The CDSS does not have jurisdiction to review an agency's submission of an incident to the CACI. Any adult who wishes to challenge such a submission must continue to grieve the CACI submission using the appropriate county procedures pursuant to MPP sections commencing with 31-021.1, as established under the *Gomez v. Saenz* case and as updated by Assembly Bill 717 (Chapter 468, Statutes of 2011), effective January 1, 2012.

Therefore, counties should inform claimants who wish to challenge a CACI submission that they must first grieve the CACI submission through the process outlined under *Gomez v. Saenz* with the appropriate county prior to proceeding to a *Harris* hearing conducted to resolve other problems with approval of the relative's or NREFM's status.

The county should offer to assist the claimant with entering into a conditional withdrawal of the hearing request by postponing the *Harris* hearing pending the outcome of the CACI grievance.

Questions about the relative/NREFM approval process should be directed to the Foster Care Support Services Bureau at (916) 651-7465.

Questions regarding the state hearing process for these specific cases only should be directed to the *Harris* Coordinator at (916) 651-0927, or ALJ II Specialist Albert Bresticker at (213) 833-2200.

Sincerely,

Original Document Signed By:

MANUEL A. ROMERO
Deputy Director
State Hearings Division