

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



January 8, 2001

ALL COUNTY INFORMATION NOTICE NO. I-03-01

TO: ALL COUNTY WELFARE DIRECTORS
ALL CalWORKs PROGRAM SPECIALISTS**REASON FOR THIS TRANSMITTAL**

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

SUBJECT: DEEMING RULES FOR SPONSORED NONCITIZENS; AMENDS MPP
42-205.5, 43-119.21, 44-133.7, and 44-353

This letter is transmitting the amended CalWORKs regulations regarding deeming rules for sponsored noncitizens. The attached regulation package was filed on an emergency basis and is effective January 8, 2001.

The new deeming rules require counting all of a sponsor's (and the sponsor's spouse, if applicable) income as opposed to the previously prorated formula. Currently deeming lasts for only three years. With the new rules, deeming lasts until the sponsored noncitizen achieves citizenship, 40 qualifying quarters of employment, leaves the country permanently, dies or the sponsor dies. Finally, the new rules do allow exceptions for battered and indigent sponsored noncitizens.

If you have any questions regarding this letter or the attached regulations, please contact Kevin Campbell of the CalWORKs Eligibility Bureau at (916) 654-2130.

Sincerely,

*Original document signed by
Charr Lee Metsker
on 1/03/01*

CHARR LEE METSKER, Chief
Employment and Eligibility Branch

c: CWDA
CSAC

Attachment

Amend Section 42-205.5 to read:

42-205 DETERMINING OWNERSHIP OF REAL AND PERSONAL PROPERTY 42-205
(Continued)

.5 Sponsored ~~Aliens~~ Noncitizens

For purposes of this section, “sponsored ~~alien~~ noncitizen” applies ~~only to those aliens noncitizens~~ who are sponsored by an individual(s) ~~and not those aliens who are sponsored by any public or private agency or organization~~ (see Section 43-119.2).

~~.51~~ The resources of the ~~alien's~~ noncitizen's sponsor and the resources of the sponsor's spouse who lives with the sponsor as provided in Section 43-119.22, shall be deemed to be the sponsored ~~alien's~~ noncitizen's resources. ~~These resources are determined as follows:~~

~~.512~~ Determine the total value of real and personal property of the sponsor and the sponsor's spouse as if they were applying for aid (for real property, see Section 42-215.1; for personal property and vehicles, see Food Stamp regulations at Manual of Polices and Procedures Section 63-501.5);

~~.52~~ ~~Reduce the amount determined in .51 by \$1,500;~~

~~.53~~ If a person is the sponsor of more than one ~~alien~~ noncitizen, divide the amount determined in ~~.52~~ Section 42-205.52 above by the number of sponsored ~~aliens~~ noncitizens receiving CalWORKs cash aid, including the number of sponsored ~~aliens~~ noncitizens in the applicant's AU. This amount shall be deemed to be the resources of each applicant or recipient who is a sponsored ~~alien~~ noncitizen. If the deemed resources alone or in combination with other property of the AU exceed the property limits described in Section 42-207, ineligibility results, but only for the sponsored ~~alien(s)~~ noncitizen(s).

~~.54~~ These resources shall not be considered as the resources of other applicants or recipients in the family who are not sponsored ~~aliens~~ noncitizens, unless such resources are actually available to these other persons, e.g., the sponsor establishes a trust fund that is available to meet the current needs of the family.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 11008.135, 11155, 11155.1, 11155.2, and 11257,
Welfare and Institutions Code; and 8 U.S.C. 1631(a).

Amend Section 43-119 to read:

43-119 SPONSORED ALIENS NONCITIZENS

43-119

Sponsored ~~Alien~~ Noncitizen - Definition (Continued)

.12 The provisions of Sections 43-119.2 and .3 do not apply if the ~~alien~~ noncitizen is:
(Continued)

.126 A sponsored noncitizen that entered the country with an I-134 Affidavit of Support.

Individual Sponsors

.21 The provisions of Section 43-119.2 apply only to ~~aliens~~ noncitizens: (Continued)

.212 Who are not exempt under Section 43-119.12; and

.213 ~~Who apply for AFDC for the first time after September 30, 1981; and~~

.2143 For a period of three years from the date established by Immigration and Naturalization Service as the date of entry for permanent residence. Until such time as the noncitizen:

(a) Achieves United States citizenship through naturalization pursuant to the Immigration and Nationality Act (8 U.S.C. 1421 et seq.); or

(b) Has worked 40 qualifying quarters of coverage under Title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, and

(1) In the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefit, as provided under 8 U.S.C. 1631, during any such period.

(c) Leaves the country permanently; or

(d) The sponsor or noncitizen dies.

.22 All the income and resources of the sponsor who is not receiving AFDC CalWORKs, SSI or other public cash assistance payments (such as General Assistance) and the income and resources of the sponsor's spouse who lives with him/her and who is not receiving such public assistance payments shall be deemed to be the income and resources of the sponsored alien noncitizen. See Sections 44-133.10 44-133.7 for the determination of the amount of this income, and Section 42-205.5 for the determination of the amount of resources. The following are exceptions to the deeming provisions:

.221 If a determination is made by the county that a sponsored noncitizen would go hungry and homeless without aid, the sponsored noncitizen is determined to be indigent. The exceptions to the deeming provisions that are permitted for indigence are as follows:

- (a) In these cases, the amount of income and resources of the sponsor or the sponsor's spouse that is attributed to the sponsored noncitizen shall not exceed the amount actually provided.
- (b) This exception applies for a period beginning on the date of such determination and ending 12 months from that date.

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- (c) When a sponsored noncitizen is unable to provide the necessary information regarding their sponsor and the county can not establish contact with the sponsor and it is determined the sponsored noncitizen would go hungry and homeless without aid, the sponsored noncitizen is ruled indigent.

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.222 For a 12-month period, the noncitizen shall be exempt from this deeming provision if:

- (a) In the case of an abused noncitizen or an abused parent of a noncitizen child:

The noncitizen or parent demonstrates that he/she has been battered or subjected to extreme cruelty in the United States by a spouse or a parent; or by a member of the spouse or parent's family who are residing in the same home as the noncitizen, and the spouse or parent consented to or acquiesced to such battery or cruelty.

(b) In the case of a noncitizen whose child is abused:

The noncitizen child has been battered or subjected to extreme cruelty in the United States by the spouse or parent or family members of the noncitizen (without the active participation of the noncitizen in the battery or cruelty).

(c) After a 12-month period, the exception to the provision under Section 43-119.222 continues regarding the batterer's income and resources only, if the noncitizen demonstrates that such battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service.

.223 For the application of Section 43-119.222, there must exist, in the opinion of the county providing aid, a substantial connection between the battery or extreme cruelty and the need for the aid.

.224 Section 43-119.222 shall not apply to aid for a noncitizen during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual who was subjected to such battery or cruelty.

.23 As a condition of eligibility, the sponsored ~~alien~~ noncitizen has the following responsibilities:

.231 To provide upon county request, information and documentation concerning his/her sponsor which may be necessary to make the determination under Section 44-133.40.7 and Section 42-205.5; and information and documentation which the ~~alien~~ noncitizen and his/her sponsor provided in support of the ~~alien's~~ noncitizen's immigration application. (Continued)

.24 In the event of the death of an ~~alien's~~ noncitizen's sponsor(s), verification of death(s) shall be required only when the information reported is questionable. In the absence of evidence to the contrary, the sponsored ~~alien's~~ noncitizen's statement under penalty of perjury is to be accepted and the sponsored ~~alien~~ noncitizen provisions shall no longer apply.

.2 ~~Agency or Organization Sponsors~~

~~.31 The provisions of 43-119.3 apply only to aliens who are sponsored by an agency or organization and who are not exempt under Section 43-119.12.~~

~~.32 For a period of three years from the date established by the Immigration and Naturalization Service (INS) as the date of entry for permanent residence, the alien shall be ineligible for AFDC unless the following occurs:~~

~~.321 The county determines in accordance with standards and procedures specified in Sections 43-119.33 through 43-119.35 that:~~

~~.351—The sponsor no longer exists, or~~

~~.352—The sponsor is no longer able to meet the alien's needs in accordance with standards specified in 43-119.35.~~

~~.33—A sponsoring agency or organization shall be considered to exist unless the applicant states that the agency or organization no longer exists. This statement shall be verified when the county determines it is necessary based on the provisions of Section 40-157. If documentation cannot be obtained the alien's sworn statement to this effect shall be accepted. See Section 40-115.22.~~

~~.34—The following standards shall be used to determine whether a sponsoring agency or organization is able to meet the needs of the sponsored alien:~~

~~.341 If an assistance unit consists only of aliens, all of whom are sponsored by the same agency, the agency must be able to contribute the MBSAC amount plus the value of any special need(s) for the number of persons in the assistance unit (see Section 44-207.3) whether or not the agency is actually providing this amount.~~

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~~Example: A family of four applies for AFDC. All four are sponsored by the same agency. The sponsoring agency must be able to provide the MBSAC plus the value of any special need(s) for four persons.~~

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~~.342 If an assistance unit has more than one sponsor or if less than all members of the assistance unit are sponsored by the agency, each sponsoring agency must be able to contribute a prorated portion of the total MBSAC amount plus the value of any special need(s) which reflects the number of persons in the assistance unit who are sponsored by that agency or organization. This figure is calculated by determining the applicable MBSAC for the entire assistance unit and prorating this amount based on the number of aliens sponsored by each agency and adding the value of any special need(s) for those aliens.~~

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~~Example: An assistance unit of five applies for AFDC. Three of them were sponsored by one agency; the other two were sponsored by a different agency or an individual sponsor. The first agency must be able to provide at least 3/5 of the~~

MBSAC amount plus the value of any special need(s), and if it is able, these three members of the unit would be ineligible for AFDC. If the second agency is able to provide at least 2/5 of the MBSAC amount plus the value of any special need(s), the other two members would also be ineligible. If on the other hand, these two members were sponsored an individual sponsor, that sponsor's income would be deemed to be an assistance unit of two and applied against MBSAC/MAP for two (assuming the other three members of the unit are ineligible).

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~~.35—An existing sponsoring agency or organization shall be considered able to meet the alien's needs unless the alien provides to the county a statement (CA 24/see Section 40-128.13) signed by the director (or any other person authorized to act on behalf of the agency or organization) that the agency or organization is no longer able to meet the alien's needs. This statement shall affect the alien's eligibility as follows:~~

~~.351—If the sponsoring agency states it is unable to meet any of the alien's needs, the alien if otherwise eligible, shall be aided.~~

~~.352—If the sponsoring agency states it is able to meet only part of the alien's needs (less than the applicable MBSAC amount plus the value of any special need(s)), the alien, if otherwise eligible, shall be aided and the actual amount provided by the sponsor shall be treated as income to the alien. Any in-kind income received by the alien shall be treated in accordance with Section 44-115.8.~~

~~.353—If the sponsoring agency states it is able to provide at least the amount specified in 43-119.341 or .342, the alien shall be ineligible.~~

~~.354—If the sponsoring agency fails or refuses to provide the aliens with a signed statement of its inability to meet all or a part of the alien's needs, the county welfare department shall attempt to obtain a statement from the agency in accordance with Section 40-157.213. If both the alien and the CWD are unable to obtain a signed statement from the sponsoring agency, the alien shall not be eligible for AFDC assistance.~~

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.3 Guidance Issued by the U. S. Attorney General for Determination of Substantial Connection Between Battery/Cruelty and Need for Aid (62 FR 65285) paraphrased to relate to the CalWORKs program.

Below is a list of examples to assist counties in making substantial connection determinations between battery or extreme cruelty and the need for the aid.

- .31 When aid is needed to enable the applicant, the applicant's child, and/or (in the case of a noncitizen child) the applicant's parent to become self-sufficient following separation from the abuser.
- .32 When aid is needed to enable the applicant, the applicant's child, and/or (in the case of a noncitizen child) the applicant's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant's child, or the applicant parent from the abuser.
- .33 When aid is needed due to a loss of financial support resulting from the applicant's, his or her child's, and/or his or her parent's separation from the abuser.
- .34 When aid is needed because as the result of battery or extreme cruelty, the applicant loses his/her job, earns less, or is required to leave his or her job for safety reasons. Results of battery/extreme cruelty include: separation from the abuser, work absences, lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating to it (child support, child custody, and divorce actions).
- .35 When aid is needed because the applicant, applicant's child or parent of noncitizen child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
- .36 When aid is needed because the loss of a dwelling or source of income or fear of the abuser following separation jeopardizes the applicant or parent of the noncitizen child to care for his or her children. (This includes the inability to house, feed, or clothe the children or to put the children into a day care for fear of being found by the abuser.)
- .37 When aid is needed to alleviate nutritional risks or need resulting from the abuse or following separation from the abuser.
- .38 When aid is needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with the applicant, the applicant's child, and/or the parent of the noncitizen child; and/or to care for the resulting children.
- .39 When medical coverage and or health care services are needed to replace medical coverage or health care services the applicant had when living with the abuser.

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Authority Cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

Reference: Sections 10553, 10554, ~~and~~ 10604, 11008.13, and 11008.135, Welfare and Institutions Code; 8 U.S.C. 1183a; 8 U.S.C. 1421 et seq.; 8 U.S.C. 1631; 8 U.S.C. 1641(c); 8 U.S.C. 1645; 42 U.S.C. 401 et seq.; 8 CFR 213a.2(e)(1); and 62 FR 61344, 61370.

Amend Section 44-133 to read:

44-133 TREATMENT OF INCOME - CALWORKS (Continued)

44-133

.7 Income in Cases Where an ~~Alien~~ Noncitizen Has Been Sponsored for Entry into the United States

.71 When an ~~alien~~ noncitizen is sponsored by an individual as defined in Section 43-119.2 the income of his/her sponsor who is not receiving cash aid, SSI or other public cash assistance payments (such as General Assistance) and the income of the sponsor's spouse who lives with the sponsor and who is not receiving such public cash assistance payments shall be deemed to be the sponsored ~~alien's~~ noncitizen's income. This income is determined as follows:

~~(a).~~ 711

Determine the total amount of unearned income of the sponsor and his/her spouse.

~~(b).~~ 712

Determine the total amount of income received by the sponsor and his/her spouse, such as wages or salary, or as net earnings from self-employment. See Section 44-113.212.

~~.355~~ Subtract from the amount in Step (b) either 20 percent or \$175, whichever is less.

~~.356~~ Add the amount in Step (a) to the amount in Step (c).

~~.357~~ Subtract from the amount in Step (d):

- ~~(1)~~—The ~~MBSAC~~ amount for the sponsor, and persons living in the sponsor's home who are or could be claimed by him/her as dependents for purposes of the sponsor's federal personal income tax liability.
- ~~(2)~~—Any amounts paid by the sponsor or his/her spouse to persons not living in the sponsor's home who are or could be claimed by the sponsor as dependents for purposes of determining the sponsor's federal personal income tax liability.
- ~~(3)~~—Any child support and alimony payments made by the sponsor or his/her spouse to persons not living in the sponsor's home.

~~(f)~~.713

If the sponsor is the sponsor of more than one ~~alien~~ noncitizen, divide the ~~remainder after Step (e)~~ total gross income by the total number of sponsored ~~aliens~~ noncitizens who are applying for or receiving cash aid. This amount shall be deemed to be the income of each applicant or recipient who is a sponsored ~~alien~~ noncitizen.

~~(g)~~.714

When the sponsored ~~alien~~ noncitizen is not included in the AU (see Section 82-832), the portion of his/her income, which has been deemed from the sponsor, shall not be used in determining his/her contribution to the AU unless such income is actually available to the AU.

~~(h)~~.715

When the sponsored ~~alien~~ noncitizen is a member of the ~~FBU~~ AU, this deemed income from the sponsor shall be treated as unearned income in accordance with Sections 44-113 and 44-315.4.

~~(i)~~.716

If the sponsor is either an excluded parent or stepparent, his/her income shall be treated in accordance with the excluded parent or stepparent deeming computation. See Sections 44-133.3 and 44-133.63. (Continued)

Authority Cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

Reference: Sections 10063 (~~Ch. 270, Stats. 1997~~), 10553, 10554, 10604, 11008.14 (~~Ch. 270, Stats. 1997~~), 11254, 11450, 11452, 11453, 11486, 18937 (~~Ch. 329, Stats. 1998~~), and 18940 (~~Ch. 329, Stats. 1998~~), Welfare and Institutions Code; 45 CFR 205.50(a)(1)(i)(A); 45 CFR 233.20(a)(1)(i); 45 CFR 233.20(a)(3)(ii)(C), (a)(3)(vi)(B), (a)(3)(xiv), (a)(3)(xiv)(B), and (xviii); 45 CFR 233.50(A)(c); and 45 CFR 233.90(c)(2)(i); Family Support Administration Action Transmittal 91-15 (FSA-AT-91-15), dated April 23, 1991; and Omnibus Budget Reconciliation Act (OBRA) of 1990; U.S. Department of Health and Human Services Federal Action Transmittal No. FSA-AT-91-4 dated February 25, 1991; Simpson v. Hegstrom, 873 F.2d 1294 (1989); Ortega v. Anderson, Case No. 746632-0 (Alameda Superior Court) July 11, 1995; and Federal Register, Vol. 58, No. 182, pages 49218 - 20, dated September 22, 1993; 8 U.S.C. 1631; and 42 U.S.C. 602(a)(39).

Repeal Section 44-353 to read:

44-353 OVERPAYMENTS TO SPONSORED ALIENS

44-353

~~.1—Liability for Overpayments~~

- ~~a.—The sponsor of an alien and the alien are jointly and individually liable for any overpayment due to the sponsor's failure to provide correct information for determination of eligibility or grant amount except as provided below.~~
- ~~b.—If it is determined that the sponsor is without fault or had good cause for failure to report correct information, then the sponsor shall not be liable for the overpayment.~~
- ~~c.—A sponsor will be without fault or have good cause for not providing correct information only when the sponsor has met all his/her reporting responsibilities but the alien has not.~~
- ~~d.—A sponsor shall not be liable for an administrative error overpayment.~~

~~.2—Recoupment of Overpayments~~

- ~~a.—An overpayment for which the sponsor and the alien are liable shall be recovered from either the sponsor or the alien by any method described in Section 44-352.4.~~
- ~~b.—An overpayment for which the sponsor is not liable shall not be recovered from the sponsor.~~

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 11056 and 11008.13, Welfare and Institutions Code; 8 U.S.C. 1183a; and 8 CFR 213a.