

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



February 1, 1982

ALL-COUNTY INFORMATION NOTICE I-15-82

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: *HONDA VS SCHWEIKER*

REFERENCE:

This is to inform you of the current status of the recent court cases challenging the Department's implementation of the federal Omnibus Budget Reconciliation Act.

Honda v. Schweiker - Plaintiffs have challenged the ability of the Department of Health and Human Services to promulgate regulations implementing provisions of the Omnibus Reconciliation Act without public comment. Plaintiffs are seeking to enjoin the enforcement of the new federal regulations and the corresponding state regulations. Plaintiffs' request for a temporary restraining order was denied on December 30, 1981 by Federal District Court Judge Thelton Henderson. A hearing on plaintiffs' request for a preliminary injunction has not yet been set. AFDC regulations implementing P.L. 97-35 reductions remain in effect.

The Honda case raises the same issue involved in federal district court in Pennsylvania in the case of Philadelphia Citizens in Action v. Schweiker. In that case the district court judge granted the preliminary injunction but it was stayed pending appeal. On January 15, 1982, the Court of Appeal issued a decision which upheld the validity of the implementation of the federal regulations as interim final regulations without the opportunity for pre-publication notice or comment.

Clutchette v. Brown - This case originally challenged the ability of the Governor to overrule the finding of the Office of Administrative Law that there was no "emergency" to implement those parts of the federal act which were not inconsistent with state AFDC law. The Superior Court in Los Angeles issued a Temporary Restraining Order prohibiting the filing of the regulations. The TRO was dissolved when the Legislature acted to authorize filing of the regulations on an emergency basis. The regulations were then filed on November 10, 1981. Plaintiffs then additionally claimed that the regulations are

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invalid under state law. The court denied plaintiffs' request for a preliminary injunction. Plaintiffs petitioned the California Supreme Court seeking a reversal of the decision of the Superior Court. The Supreme Court denied plaintiffs' petition.

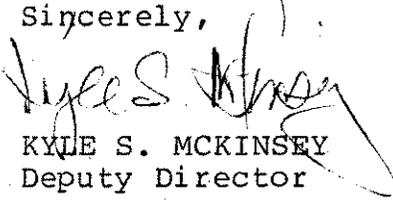
Welfare Recipients League of Santa Clara v. Brown - This action attacked the emergency regulations of SDSS regarding the new Food Stamp Act rules. Prior to the Office of Administrative Law approving or rejecting the emergency basis of the regulations, the plaintiffs asked the Superior Court of San Francisco to enjoin them on the basis that no emergency existed. The court refused to issue the TRO and subsequently denied a motion for preliminary injunction. Emergency regulations were filed and are currently in effect.

Balderas v. Woods - This case involves a challenge to the Department's authority to terminate, rather than suspend, AFDC recipients who fail to return their CA-7 in a timely manner. A preliminary injunction was issued against the Department which was modified in part in a supplemental order. Plaintiffs now seek to vacate the supplemental order. In addition they are seeking to amend their original complaint to include a challenge to the Department's implementation of the penalty (loss of earned income disregards) for failure of a recipient to return a complete CA-7 in a timely manner. Plaintiffs have asked to have the preliminary injunction reinstated and modified to prevent implementation of the earned income disregard penalty. At a hearing on January 26, the court took these matters under submission.

Valencia v. Merz - At issue in this case is the provision of the Omnibus Budget Reconciliation Act that exempts the value of a home from consideration in determining eligibility for AFDC. The Department has not implemented this provision due to conflicting state law, Welfare and Institutions Code Section 11255. Plaintiff seeks to require the Department to implement the federal provision regardless of state law. This differs from the other cases which seek to prevent the Department from implementing the federal provisions. A temporary restraining order was issued in this case providing relief only to the named plaintiff. A hearing on plaintiff's request for a preliminary injunction has been set for February 16, 1982.

We will keep you informed of further developments in these cases.

Sincerely,


KYLE S. MCKINSEY
Deputy Director

cc: CWDA