



CDSS

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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

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EDMUND G. BROWN JR.
GOVERNOR

REASON FOR THIS TRANSMITTAL

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

December 14, 2012

ALL COUNTY LETTER NO. 12-71

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: RELATIVE AND NONRELATIVE EXTENDED FAMILY MEMBER
 (NREFM) ASSESSMENT/APPROVAL – IMPLEMENTATION OF THE
HARRIS v WAGNER LAWSUIT DECISION

REFERENCE: *HARRIS vs CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL.*, (Sacramento County Superior Court Case No. 34-2010-80000438-CU-WM-GDS); Welfare and Institutions Code (W&IC) sections 10951 through 10967.

This All County Letter (ACL) provides county child welfare and probation departments and Title IV-E tribes (hereinafter collectively known as “agencies”) with instructions and information regarding the court Writ issued in the case of Harris v. California Department of Social Services (CDSS) et al. on June 13, 2012. The lawsuit and Writ concerned due process for a relative or NREFM who is denied assessment or approval to provide care to a youth or young adult under the jurisdiction of the juvenile court.

The Writ provides that a relative or NREFM who seeks approval to provide care to a dependent minor or nonminor dependent and who experiences an adverse decision (aka “denial”) must be provided with a state hearing as defined by W&IC sections 10951 through 10967. Although it is not specifically addressed in the lawsuit, an individual who is denied assessment due to lack of standing as a relative or NREFM, is also to be afforded a state hearing.

BACKGROUND

The Petitioners filed this action in Sacramento County Superior Court on February 9, 2010, which challenged the State rules that limited a relative or NREFM who is denied foster care approval to an informal grievance hearing pursuant to Manual of Policies and Procedures (MPP) section 31-020.

The Petitioners' statutory claim was that a denial of a relative's or NREFM's application for approval to provide foster care was a denial of social services which triggers state hearing rights under W&IC section 10950. The Petitioners' constitutional claim was that the informal grievance hearing procedure pursuant to MPP section 31-020 did not meet constitutional standards for adequate due process. Having decided in the Petitioner's favor on statutory grounds, the Court determined it was unnecessary to render a decision on the constitutional claims.

LAWSUIT RESOLUTION

On April 20, 2012, Sacramento County Superior Court Judge Michael Kenny ruled that relative/NREFM home approval decisions are public social services within the meaning of W&IC section 10950. As such, relatives and NREFMs who have been denied assessment or approval (not denial of a placement decision) are to be afforded a state fair hearing. Petitioners requested that fair hearings, as well as tracking, of denied relatives be retroactive to June 13, 2012. However, CDSS and the Petitioners negotiated the following provisions to resolve the lawsuit.

- A. Notice. Agencies must begin to provide notice of denial which indicates the right to a state hearing to a denied relative or NREFM:
 1. From December 1, 2012 through December 17, 2012, **only** if the relative or NREFM was denied **and** the child has been placed in a licensed care facility (including a licensed foster home or Foster Family Agency certified home);
 2. From December 18, 2012 and continuing thereafter, if the relative or NREFM was denied **regardless of where the child was placed.**
- B. Request for Hearing. The denied relative or NREFM referred to in numbers 1 and 2 above may request a state hearing to be held by the CDSS State Hearings Division on or after January 1, 2013.

- C. Hearings. Beginning no later than January 1, 2013, the CDSS State Hearings Division will commence convening state hearings for denied relatives and NREFMs.

In order to not disadvantage an applicant who was denied assessment or approval between December 1, 2012 and the issue date of this ACL, the notice of denial and right to grievance provided to the denied applicant pursuant to Division 31-020 should be rescinded and a notice of denial and right to a state hearing (*NA 1271*) should be issued consistent with this letter (see below). Agencies would not conduct a grievance hearing for these denials; these denials would instead be heard by the CDSS State Hearings Division after January 1, 2013.

The right to a state hearing does not apply to placement decisions. An approved relative or NREFM who is denied placement consistent with Division 31-020 is afforded a grievance review hearing.

IMPLEMENTATION INSTRUCTIONS/PROCEDURES

A grievance review hearing under MPP section 31-020 is no longer the appropriate due process procedure for a denied relative or NREFM assessment/approval. The *Harris* Decision requires notice of the right to a state hearing be provided to a denied relative or NREFM as described above, and be provided if requested.

Previously, agencies had discretion in how a relative or NREFM was informed of a denied assessment/approval and the right to a grievance hearing under MPP 31-020. However, beginning December 1, 2012, agencies are now required to use the new *Notice of Action-Denial of Home Assessment/Approval (NA 1271)* form to provide notice of denial and the right to a state hearing to the population of relatives and NREFMs as described in items *A*, *B* and *C* above.

NOTE: As this ACL has been issued subsequent to the December 1st effective date, agencies are to extend notice and hearing rights retroactively back to December 1, 2012, and December 17, 2012, for the impacted populations as required in this letter.

A copy of the *NA 1271* form is attached and is available at <http://www.cdss.ca.gov/cdssweb/entres/forms/English/NA1271.pdf> and in the Child Welfare Services/Case Management System (CWS/CMS) as a fillable Word template. The fillable areas have limited space to enter text, so be mindful not to enter too much text and disrupt formatting on the second page. If more room is needed, please use an additional page and attach to the Notice. A Spanish version of the *NA 1271* is available at this link: http://www.cdss.ca.gov/cdssweb/FormsandPu_274.htm.

Completing the NA 1271 Form

The fillable areas on page one of the form is to be completed by the agency worker. The form is then mailed to the denied applicant, who completes page two and returns it to the CDSS State Hearings Division as indicated on the form.

Agency workers are to do the following:

- A NA 1271 must be provided to each relative or NREFM applicant who is denied assessment or approval.
- Complete the first page of the form:
 - Provide date of notice, case number and worker contact information.
 - Provide name and mailing address of intended recipient.
- Check the box(es) next to all the pertinent bases for denial.
 - An example of “Other” may be the denied criminal history exemption for an adult with significant contact.
- Provide specifics in the “Additional Details” section of the NA 1271 to sufficiently inform the relative/NREFM of the reason(s) for denial in order for the relative/NREFM to make an informed decision about requesting a hearing. Include applicable statute(s) and/or regulation(s).
 - **NOTE:** When the basis for denial concerns the criminal background of the relative or NREFM (applicant), the criminal offender record information (rap sheet) may be used as the source of detailed information for completing the “Additional Details” section; it is permissible to disclose the code section(s), the date, and disposition.

When the basis of denial concerns the criminal background of another adult in the home or an adult with significant contact, the rap sheet may not be used as the source of detailed information for completing the “Additional Details” section. The rap sheet is a confidential document; it and/or its contents must not be disclosed except to the “owner” of the criminal history as specified in regulation and statute. In this instance, it is advisable that the “Additional Details” section state: “An individual residing or associated with you/your home has criminal background for which an exemption could not be granted.” Identifying information should not be specified; no name or code citations, etc. However, specific details can be disclosed when the non-applicant adult:

- Made an admission of having a criminal conviction (such as a disclosure on the LIC 508D (*Out-of-State Disclosure & Criminal Record Statement*) or a written statement describing a crime);
- The county has obtained a certified copy of a Judgment of Conviction of a criminal conviction;
- The county has an arrest disposition; or,
- The county has a statement from a reliable third party regarding a conviction.

In the case of a Tribal placement, the county is responsible for providing notice of a denied approval or assessment on behalf of the tribe and completing the *NA 1271*. If the denial is initiated by the Tribe, the Tribe must provide information to the county agency in order to complete the *NA 1271*. The county agency should keep the Tribal agency apprised of the hearing date in order to have a Tribal representative appear at the hearing. If the denial is based on criminal history, the county agency completes the *NA 1271* and is cautioned to not share details of criminal history with the Tribal agency consistent with current practice and statutory confidentiality provisions; the county should complete the *NA 1271* as indicated above.

STATE HEARING PROCESS

Instructions concerning an agency's role in providing administrative support to the state hearing process are forthcoming in a separate ACL. For questions about the state hearing process, please call the CDSS State Hearings Division at (916) 657-3550.

FUNDING

Starting in Fiscal Year 2011/12, the funding for "Grievance Review for Relatives" was realigned to counties. Because this funding is realigned the state share has been shifted to the Local Revenue Fund, and funding would be applied in accordance with Government Code section 30026.5. Questions regarding funding should be directed to fiscal.systems@dss.ca.gov.

If you have any questions about this ACL or the new *NA 1271* form, please contact the Kinship Care Policy and Support Unit at (916) 651-7465.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

Attachment

NOTICE OF ACTION -- DENIAL OF HOME ASSESSMENT/APPROVAL

Notice Date: _____

Case Name: _____

Case No.: _____

Worker Name: _____

Telephone: _____

Address: _____

ADDRESSEE

Questions? Ask your Worker.

STATE HEARING: If you think this action is wrong, you can ask for a hearing. The second page tells you how.

THE COUNTY HAS DENIED YOUR REQUEST FOR HOME ASSESSMENT. HERE'S WHY:

- You were determined not to be a relative of the minor or nonminor dependent as defined in Welfare and Institutions Code section 319(f).
- You were determined not to be a nonrelative extended family member (NREFM) to the minor or nonminor dependent as defined in Welfare and Institutions Code section 362.7.

THE COUNTY HAS ASSESSED YOU/YOUR HOME AND HAS DENIED APPROVAL. HERE'S WHY:

- Your criminal background and/or child abuse history could not be cleared/exempted. See details below.
- The criminal background and/or child abuse history of someone living in your home could not be cleared/exempted. See details below.
- Your home did not meet health and safety requirements for the reason(s) described below.
- You did not meet the qualifications to be a caregiver as described below.
- You did not complete required orientation and training. See details below.
- Other (explain):

ADDITIONAL DETAILS REGARDING DENIAL:

YOUR HEARING RIGHTS

You have the right to ask for a hearing if you disagree with the county action on page 1. You have only 90 days to ask for a hearing. The 90 days started the day after the county gave or mailed you this notice.

PLACEMENT DECISIONS

If the hearing results in a reversal of the county's decision to deny your request for home approval, the county is not required to place a child with you. You do not have a right to request a state hearing regarding a placement decision.

TO ASK FOR A HEARING:

- **Fill out this page.** Make a copy of both pages for your records. If you ask, your worker will get you a copy of these pages. **Send, fax or take this page to:**

State Hearings Division
744 P Street, M.S. 9-17-81
Sacramento, CA 95814
FAX: 916-651-5210

OR

- **Call toll free: 1-800-952-5253 or 1-800-743-8525** for hearing or speech impaired who use TDD, **call 1-800-952-8349.**

To Get Help: You can ask about your hearing rights or for a legal aid referral at the toll-free state phone numbers listed above. You may get free legal help at your local legal aid or welfare rights office.

If you do not want to go to the hearing alone, you can bring a friend or someone with you, including a representative or attorney.

HEARING REQUEST

I want a hearing due to an action by the county child welfare agency or probation department about my denied relative or nonrelative extended family member (NREFM) assessment/home approval.

I am requesting a hearing because (optional) _____

- Check here if you need more space and add page(s) as needed.**
- Check here if you need an interpreter at no cost. (A friend or relative cannot interpret at the hearing.)
My language or dialect is: _____
- Check here if you would like a telephone hearing.

NAME OF PERSON WHO WAS DENIED		
BIRTH DATE	PHONE NUMBER	
STREET ADDRESS		
CITY	STATE	ZIP CODE
SIGNATURE		DATE
NAME OF PERSON COMPLETING THIS FORM	PHONE NUMBER	

I want the person named below to represent me at this hearing. I give my permission for this person to see my records or go to the hearing for me. (This person can be a friend or relative but cannot interpret for you.)

NAME	PHONE NUMBER	
STREET ADDRESS		
CITY	STATE	ZIP CODE

Hearing File: If you ask for a hearing, the State Hearings Division will set up a file. You have the right to see this file before your hearing and to get a copy of the county's written position on your case at least two days before the hearing. The state may give your hearing file to the county child welfare agency or probation department and the U.S. Department of Health and Human Services.