

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



November 18, 2004

ALL COUNTY LETTER NO. 04-50

TO: ALL COUNTY WELFARE DIRECTORS
ALL CalWORKs PROGRAM SPECIALISTS
ALL WELFARE-TO-WORK COORDINATORS
ALL CAL-LEARN COORDINATORS
ALL CAL-LEARN CASE MANAGEMENT AGENCIES
ALL CONSORTIUM PROJECT MANAGERS

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: IMPLEMENTATION OF FRY V. SAENZ LAWSUIT IN CALWORKS

REFERENCE: All County Letter (ACL) 04-33; ACL 01-77; All County Information Notice (ACIN) 1-71-02

The purpose of this ACL is to provide county welfare departments (CWDs) with further instructions as required by the judgment and writ issued on July 7, 2004, in the Fry v. Saenz lawsuit. This ACL provides the process and standards for identifying otherwise eligible 18-year-olds for whom aid is to be provided under the provisions of Fry v. Saenz.

Fry v. Saenz challenged state law (Welfare and Institution Code Section 11253) prohibiting the granting of California Work Opportunity and Responsibility to Kids (CalWORKs) cash aid to children who have reached 18 years of age, unless the child can reasonably be expected to graduate before age 19. The lawsuit claimed that this provision violates the Americans with Disabilities Act because it discriminates against recipients who would not graduate before age 19 due to a disability. The court ordered the California Department of Social Services (CDSS) to implement initially by ACL, a reasonable modification of the law to provide CalWORKs cash aid to otherwise eligible 18-year-olds who are attending school full-time and are not expected to graduate before age 19 due to a disability.

OVERVIEW

ACL 04-33, dated August 30, 2004, instructed CWDs to immediately cease denying, discontinuing or reducing the cash aid for all otherwise eligible 18-year-olds (and their parent/caretaker relatives) who are attending school full-time and are not expected to graduate by age 19. CWDs were further instructed to flag cases impacted by Fry v. Saenz for future review until the teen turns 19, graduates or the instructions setting forth the process and standards for identifying otherwise eligible 18-year-olds for whom aid is to be provided under the provisions of Fry v. Saenz were issued by the CDSS.

As directed in ACL 04-33, CWDs should continue to aid all otherwise eligible 18-year-olds (and their parent/caretaker relatives) who are attending school full-time and are not expected to graduate by age 19 until the procedures for identifying and aiding students are fully implemented in accordance with the instructions in this ACL.

PROCEDURES FOR IDENTIFYING AND AIDING 18-YEAR-OLDS IDENTIFIED AS DISABLED WHO ARE ATTENDING SCHOOL FULL-TIME

1. Children who currently receive or have in the past received SSI/SSP benefits shall be considered disabled. Parent/caretaker relatives shall cooperate with the CWD to obtain verification of receipt of SSI/SSP benefits. Past or present 18-year-old recipients of SSI/SSP benefits who attend school full-time shall continue to be considered an eligible child in their parent/caretaker relative's Assistance Unit (AU) and aid shall continue for the otherwise eligible parent/caretaker relative until the child graduates, turns 19 or stops attending school full-time, whichever occurs first.
 - To determine if the SSI/SSP child who is turning 18-years-old is attending school full-time, verification shall be obtained in accordance with Manual of Policies and Procedures (MPP) Section 40-105.5 (b).
2. Children who currently receive or have in the past received services through a Regional Center Program pursuant to the Lanterman Act shall be considered disabled. Parent/caretaker relatives shall cooperate with the CWD to obtain verification of receipt of services. Verification may include a statement from the Regional Center stating that the child is currently receiving or has in the past received services. Otherwise eligible 18-year-olds who attend school full-time and are considered disabled under this criterion, shall continue to be eligible for CalWORKs benefits until they graduate, turn 19 or stop attending school full-time, whichever occurs first.
3. Children who currently receive services at school in accordance with their Individual Education Plan (IEP) or receive services under/pursuant to Section 504 of the Rehabilitation Act (e.g., a Section 504 Plan or Section 504 Accommodation Plan) or have received such services in the past, shall be considered to be disabled. Otherwise eligible 18-year-olds who attend school full-time and are considered disabled under this criterion, shall continue to be eligible for CalWORKs benefits until they graduate, turn 19 or stop attending school full-time, whichever occurs first.
 - Parent/caretaker relatives can provide a copy of the child's IEP or Section 504 Accommodation Plan/Section 504 Plan or cooperate with the CWD to obtain verification from the school (MPP 40-105.5 (b)) that there is or has been in the past an IEP or Section 504 Accommodation Plan/Section 504 Plan in place for the student. The county's request for a verification form that is sent to the schools requesting verification that the student will graduate before age 19 should be modified and a question added requesting—"If the student is not going

to graduate before age 19, does the student currently have or has ever had an IEP or Section 504 Accommodation Plan/Section 504 Plan in place?"

4. When a child's disability cannot be verified by the criteria described above, the parent/caretaker relative can provide independent verification of a current or past disability by a health care provider or a trained, qualified learning disabilities evaluation professional. They may also authorize the county's use of the CW 61 to obtain information to verify the child's disability.
 - Otherwise eligible 18-year-olds who attend school full-time and are considered disabled under this criterion, shall continue to be eligible for CalWORKs benefits until they graduate, turn 19 or stop attending school full-time, whichever occurs first.

IMPLEMENTATION TIMEFRAMES

ACTIVE CASES

Within 120 days of the date of this ACL, CWDs are instructed to implement the procedures for identifying and aiding all active cases that have been continued under Fry v. Saenz and as directed in ACL 04-33 to determine if the 18-year-old is considered disabled under the processes and standards set forth in this ACL.

APPLICANT CASES

As soon as administratively possible, but no later than 120 days after the date of this ACL, CWDs are instructed to implement the processes and standards set forth in this ACL for applicant cases.

DISCONTINUANCES AND GRANT REDUCTIONS

When it is determined that the 18-year-old in those cases continued under ACL 04-33 does not meet the standards for being considered disabled under Fry v. Saenz, CWDs shall discontinue the AU or decrease the grant in accordance with Quarterly Reporting requirements and take action at the end of the quarter after timely notice. Notice of Action (NOA) messages are attached to this ACL. If the parent/caretaker relative fails to cooperate with the CWD in providing requested verification and the disability status under Fry v. Saenz cannot be determined, the CWD shall discontinue or reduce the grant in accordance with Quarterly Reporting requirements.

PREGNANT AND PARENTING TEENS

Pregnant or parenting teens who are 18 or are approaching their 18th birthday and are not expected to graduate from high school or vocational school by age 19, continue to have the option of establishing his or her own AU. These teens must continue to be informed of their

possible continuing eligibility options. See ACL 01-77 dated November 7, 2001, and ACIN I-71-02 dated September 23, 2002.

OVERPAYMENTS

Overpayments will not be assessed against any 18-year-old and their parent/caretaker relatives who received cash aid based on the instructions in ACL 04-33, if it is determined that the individual does not meet the disability criteria established by the CDSS in this ACL and cash aid was paid in the interim between this ACL and ACL 04-33.

CAMERA READY COPIES AND TRANSLATIONS

If your office has internet access, you may obtain copies of the English Notice of Actions (NOAs) from the CDSS web page at: www.dss.cahwnet.gov/cdssweb/On-lineFor_271.htm. For questions on the English NOAs, please call Forms Management Unit at (916) 657-1907.

For copies of NOAs in other languages, including Spanish, you may go to the CDSS web page at: www.dss.cahwnet.gov/cdssweb/formsandPU_274.htm. Translated materials are posted on an ongoing basis as soon as they are completed. For questions on translated materials, please contact Language Services at (916) 445-6778.

If you have any questions about this letter or the court order, you may contact Chris Minnich of the CalWORKs Eligibility Bureau at (916) 654-1322 or at chris.minnich@dss.ca.gov.

Sincerely,

CHARR LEE METSKER
Acting Deputy Director
Welfare to Work Division

Attachments

c: CWDA
CSAC