

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

The proposed regulations implement changes consistent with policies set forth in All County Letters (ACLs) 12-02, 12-23 and 12-66, and the settlement agreement reached in *Hartley v. Lightbourne*. These changes reorganize legal and regulatory requirements under which the California Work Opportunity and Responsibility to Kids (CalWORKs) program is operated.

Sections 44-352.32, .34, and .35:

Specific Purpose:

This section is amended and adopted to conform to ACLs 12-02, 12-23 and 12-66 and the settlement agreement reached in *Hartley v. Lightbourne*.

Factual Basis:

These amendments are necessary to comply with ACLs 12-02, 12-23 and 12-66 and the settlement agreement reached in *Hartley v. Lightbourne*. Previously, County Welfare Departments (CWDs) were able to collect overpayments (OPs) from any person who had been in the Assistance Unit (AU) when the overpayment was incurred. This meant that children in an AU, once emancipated or attaining majority, could be held accountable for OPs. In addition, if a child in an overpaid AU moved to a new AU, the CWD could collect the overpaid AU's overpayment from the child in the new AU.

The ACL 12-02 released January 6, 2012, terminated all existing collection actions from adults or emancipated minors that were minors receiving cash aid in an assistance unit when an overpayment (OP) occurred via grant reduction, tax intercept or other collection methods, from that date forward.

The ACL 12-23 released May 12, 2012, directed CWDs to cease and desist from all existing collection actions from minors who moved from an overpaid AU to a new AU, via grant adjustment or other collection methods from that date forward.

The ACL 12-66 released December 5, 2012, provided follow-up instructions to ACLs 12-02 and 12-23 and final implementation guidelines for the settlement in the *Hartley v. Lightbourne* litigation.

b) Identification of Documents Upon Which Department Is Relying

1. ACL 12-02
2. ACL 12-23
3. ACL 12-66
4. *Hartley v. Lightbourne*, Case No. RG11605702 (November 5, 2012, Alameda Superior Court)

c) Local Mandate Statement

These regulations do impose a mandate on local agencies. If the Commission on State Mandates determines that these regulations contain reimbursable costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government code.

d) Statement of Alternatives Considered

The *Hartley v. Lightbourne* Settlement Agreement was reached after considerable negotiations between the California Department of Social Services (CDSS) and opposing counsel. The Settlement Agreement represents both parties' consideration of alternatives and the compromise reached was considered best for the affected population.

The CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed actions or would be more cost effective to affected private persons and equally effective in implementing that statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because this action only pertains to the CWDs' ability to collect CalWORKs overpayments.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: California residents' health and welfare benefit will be marginal as the only persons who will be affected are the former and current CalWORKs clients who will not have overpayments established against them. It is anticipated that there will be no benefit to worker safety and the state's environment as a result of this regulatory action.

The following documents were relied upon in proposing the regulatory action: The *Hartley v. Lightbourne* Settlement Agreement, ACL 12-02, ACL 12-23 and ACL 12-66.

g) Benefits Anticipated from Regulatory Action

The primary benefit and intent of this regulatory action was to prevent harm to the very persons the CDSS seek to help, the children aided by CalWORKs. For minors and former minors against whom overpayments were established, enactment of this regulation will benefit them immediately as they will no longer be liable for those overpayments. For minors and former minors against whom overpayments would be established in the future, they will no longer have that burden to contend with.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.

i) Testimony and Response March 12, 2014

These regulations were considered at the public hearing held March 12, 2014, in Sacramento, California. Written testimony was received from the following during the 45-day comment period from January 24, 2014, to 5:00 p.m. March 12, 2014.

Public Interest Law Project (PILP)

Section 44-352.34

Comment:

“The PILP submits these comments to the proposed amendments to the CalWORKs overpayment regulations. PILP, along with the Western Center on Law and Poverty, represented the Petitioners in the recent litigation, *Hartley et al. v. Lightbourne*, Case No. RG11605702, November 5, 2012, Alameda Superior Court. We endorse the regulatory amendments in so far as they implement the Hartley settlement, stopping the collection of CalWORKs overpayments from persons who were minors at the time the overpayment occurred (the former minors) and from current minors who are living in a new Assistance Unit.

The Harley case was limited to CalWORKs overpayment collections, and did not address the propriety of seeking collection of old, pre-1997 AFDC overpayments from these minors and former minors. However, there is neither a legal requirement nor a sound policy reason to continue collection efforts from former minors for old AFDC overpayments. Instead, the

reasons relied upon to stop the collection of CalWORKs overpayments from the former minors apply equally, if not more, to these old AFDC overpayments.

As the Department accurately described the anticipated benefits from these regulations, “the CDSS anticipates that these proposed regulations will benefit needy and vulnerable adults and children who were receiving cash aid in a previous AU when an OP OCCURRED.” This is equally true for those in a previous AU when an AFDC OP occurred. The proposed amendment at 44-352.35 states:

Section 44-352.34 shall not apply to collections of overpayments made under the former AFDC program as required by federal law.

If adopted, it will require counties to continue collection efforts against these former minors who were children living in AFDC households, where the overpayment occurred eighteen years ago¹. It unnecessarily burdens the former minors who are not responsible for the overpayment (the very persons CDSS seeks to help), and creates confusion for the counties about what is or is not required under federal law. We urge the Department to eliminate this proposed language from the regulation.

A. Counties May Not Pursue Collection of AFDC Overpayments from Persons Who Are Not Responsible for the Overpayment.

The Hartley settlement was based upon an agreed upon interpretation of Welfare and Institutions Code Section 11004(h), which limited the overpayment collection to ‘other individuals responsible for the overpayment.’ The Department has correctly determined that this statutory provision describing responsibility for the overpayment ‘does not apply to collections from minors because a minor child is not an individual responsible for an overpayment.’ Find of Emergency for adoption of these Regulations. There is no reason to believe that a minor child is any more responsible for an AFDC than a CalWORKs overpayment. Nor does no longer extant federal law require it. (See B. below).

B. There is No Federal Requirement that the State Pursue Collection of AFDC Overpayments from Former Minors that occurred Eighteen plus Years ago.

Prior to October 1, 1996, when an AFDC overpayment occurred, states were required to promptly correct the overpayment and remit the federal share to the federal government. 45 C.F.R. § 233.200(a)(13)(i)(A). With the repeal of the AFDC statute, there has been confusion about how AFDC overpayments recovered by the states are allocated between the state and federal government, but nothing has removed the ‘promptness’ requirement and it is clear that delays of 18 and more years is not prompt.

The federal guidance contained in TANF-ACF-PI-2006-03 (June 2006) made clear that to the extent that AFDC overpayments were collected, the state must remit the AFDC federal share to the federal government, ‘To reiterate, *as long as the State collects AFDC overpayments*, checks should be submitted to ACF no less than quarterly.’ *Id.* at 5 (emphasis added). However, the ACF instruction does not prevent a state from applying a reasonable time period, for example, that set forth in existing state debt collection procedures, after which a debt under the AFDC program would no longer be subject to

active collection attempts. 45 C.F.R. § 233.20(a)(13)(vi). Using California's six year general statute of limitations, any AFDC overpayment for which collection had not commenced against that individual should be moved to "inactive status" and collection activities can cease. This would reduce counties' administrative burden, protect the former minors whom the Department has determined are not the individuals responsible for the overpayment, and fit within current federal guidance.

While the federal share of recovered AFDC funds must be returned to the federal government, because the AFDC program no longer exists, there are no penalties for determining that collection efforts are no longer prompt or cost-effective. This would also be consistent with the Department's interpretation of the overpayment recovery statute as properly excluding the former minors from recovery efforts because they were not 'individuals responsible for the overpayment.'

Footnote: The Personal Responsibility and Work Opportunity Act of 1996 repealed the AFDC statute, effective October 1, 1996, almost eighteen years ago. A former minor who was a newborn at the time the AFDC OP occurred, is not just reaching the age of 18. There is no reason why this young adult should now be saddled with this repayment obligation."

Response:

The CDSS appreciates this comment; however, collection of AFDC overpayments remains a requirement of federal law pursuant to 45 CFR 233.20(a)(13) unless the overpayment is determined not to be cost effective in accordance with those provisions. Also, inclusion of an additional separate group of persons into the excluded group is outside the scope of this regulation package.

j) 15-day Renotice Statement

The CDSS did not renotice these regulations because no changes requiring renotice were made to the regulations following the public hearing.