E-Note # 138 CalWORKs Caretaker Relative Eligibility When Parents Share Joint Physical and Joint Legal Custody

Date: October 23, 2015

References: §82-808.2, §82-808. 3; §82-808.4

This E-Note is intended to clarify caretaker relative eligibility in the CalWORKs Program when parents share joint physical and legal custody of a child.

In those cases where it is undisputed that a child spends an equal amount of time with each parent and each parent exercises an equal share of care and control responsibilities, who can be the caretaker relative under the CalWORKs Program often depends on which parent applies for CalWORKs first.

This E-Note does not address those cases where factual findings have to be made about which parent the child spends more time with or which parent has majority responsibility for care and control of the child.

Hypothetical:

A Superior Court custody and visitation order indicates that Mom and Dad have joint physical and legal custody of their child. Mom applies for and receives Medi-Cal and CalFresh benefits for herself and the child. Dad later applies for CalWORKs for himself and the child.

Question: Is Dad a potentially eligible caretaker relative under the CalWORKs Program in this situation?

Answer: Yes. Dad would be granted CalWORKs cash aid for himself and his child if he is otherwise eligible for CalWORKs. Mom would continue to receive Medi-Cal and CalFresh benefits for herself and child.

§82-808.412 provides that when the child spends an equal amount of time with each parent and each parent exercises an equal share of care and control responsibilities, the parent who applies for aid shall be the caretaker relative, providing that the child's other parent is not currently applying for or receiving aid for the child. §82-808.4(d) provides that if the parent cannot reach agreement on the designation of a caretaker relative, the parent who first applied for aid for the child shall be the caretaker relative. The term “aid” as used in §82-808.412 and .413(d) refers to CalWORKs benefits only.

Therefore, when both parents share joint physical and legal custody of their child, one parent can receive Medi-Cal and/or CalFresh benefits for their child while the other parent can be designated the caretaker relative for the purpose of the CalWORKS Program pursuant to §82-808 provided that s/he applied first for CalWORKs.

Regulatory Authority:

§82-808.2 Determining the Caretaker Relative
county shall determine who the caretaker relative is by reviewing actual circumstances in each case to determine who exercises care and control responsibility for a child.

.3 Care and Control
The following factors shall be considered when Factors determining responsibility for care and control. A single factor may not be determinative. The factors include, but are not limited to:
.31 Deciding where the child attends school or child care.
.32 Dealing with the school on educational decisions and problems.
.33 Controlling participation in extracurricular and recreational activities.
.34 Arranging medical and dental care services.
.35 Claiming the child as a tax dependent.
.36 Purchasing and maintaining the child's clothing.

§82-808.4 Alternating Arrangements The determination of the caretaker relative relationship, when the child stays alternately with different persons, shall be made as follows:
.41 Less than One Month
If a child stays alternately for periods of one month or less with each of his/her parents who are separated or divorced, the caretaker relative shall be determined as follows:
.411 Where Child Stays
In most circumstances, the parent with whom the child stays for the majority of the time shall be the caretaker relative. The temporary absence of the parent or the child from the home does not affect this determination.
(a) The parent with whom the child stays for less than the majority of the time may be the caretaker relative, if that parent can establish that he/she has majority responsibility for care and control of the child.
.412 Applying Parent
When the child spends an equal amount of time with each parent and each parent exercises an equal share of care and control responsibilities, the parent who applies for aid shall be the caretaker relative, providing that the child's other parent is not currently applying for or receiving aid for the child.
.413 Equal Time
When each parent exercises an equal share of care and control responsibilities, and each has applied for aid for the child, the caretaker relative shall be determined in the following order:
(a) The parent designated in a current court order as the primary caretaker for purposes of public assistance, under Civil Code Section 4600.5(h).

HANDBOOK BEGINS HERE
Civil Code Section 4600.5(h) states:
In making an order of joint physical custody or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.
HANDBOOK ENDS HERE
(b) When no court order designation exists and only one parent would be eligible for aid, the parent who would be eligible shall be the caretaker relative.
(c) When both parents would be eligible, the parents shall designate one parent as the caretaker relative. The agreement shall be documented by a CA 13.
(d) If the parents cannot reach agreement on the designation of a caretaker relative, the parent who first applied for aid for the child shall be the caretaker relative.

E-Note #137
Federal Kinship Guardianship Assistance Payment Program (Kin-GAP); Successor Guardian
September 28, 2015

Public Law (P.L.) 113-183; Federal Preventing Sex Trafficking and Strengthening Families Act of 2014;
Assembly Bill (AB) 12;
Welfare and Institutions Code (W&IC) §§ 11386(i) and 11391(c);
Eligibility and Assistance Standards (EAS) Manual § 41-430;
All County Letter (ACL) 11-15 (January 31, 2011) - New Kinship Guardianship Assistance Payment Program (Kin-GAP) Requirements;
All County Letter (ACL) 11-86 (March 1, 2012) – Extension of Kinship Guardianship Assistance Payment Program (Kin-GAP) Benefits and Adoption Assistance Program (AAP) payments to age 21

The purpose of ACL 15-66, Federal Kinship Guardianship Assistance Payment Program (Kin-GAP); Successor Guardian (September 28, 2015), is to provide counties with information and instructions regarding new provisions of the federally-funded Kin-GAP Program when the current relative guardian is replaced with a successor guardian. Federal law now provides for the continuation of Title IV-E Kin-GAP eligibility if the relative guardian dies or is incapacitated and the successor legal guardian is named in the agreement or any amendments to the agreement.

Federally-Funded Kin-GAP Benefits and Successor Guardians:

A successor guardian is a guardian who is appointed by the Superior Court in the event of death or incapacity (…a physical or mental illness, defect, or impairment that reduces substantially or eliminates the parent's ability to support or care for the child…and which is supported by acceptable evidence…) of the previous relative guardian.

Unlike the state-funded Kin-GAP program, federal law did not provide a provision for the federally-funded Kin-GAP Program and did not permit federal eligibility to continue when another guardian was appointed by the court. As such, for federally-funded cases where a new guardian was appointed the funding was moved to the state-funded Kin-GAP Program.

The successor guardian does not have to be a relative or non-relative extended family member (NREFM) to be eligible for Kin-GAP funding under the new federal law. Documentation of the relationship between the child and the proposed successor guardian is not required for naming a successor guardian or for funding purposes, but it may be required for establishing the guardianship. Nothing in federal law precludes the kinship guardian from identifying more than one successor guardian.

To ensure eligibility is maintained for federally-funded Kin-GAP cases, it is strongly recommended that a successor guardian be named when executing the initial Kin-GAP agreement. If the current guardian is not able, or is unwilling, to identify a successor guardian at the time of the initial agreement, a successor guardian may be subsequently named in an amendment to the agreement.

The named successor guardian and the home must be assessed as required pursuant to W&IC section 11386(i). A new period of six months in placement with the successor guardian is not required; however, the Kin-GAP payments cannot resume until the successor guardian meets all eligibility requirements. A new Kin-GAP agreement between the successor guardian and the responsible county must be signed prior to the court's appointment of the successor guardian.

In instances where federal eligibility was terminated due to the appointment of an alternate or co-guardian prior to the issuance of this ACL, the case may not be re-evaluated for federal eligibility or re-established under the federal program. Counties will be informed of the effective date of claiming, following approval of the state plan amendment.

No Change for State-funded KinGAP:

California has had a state-funded Kin-GAP Program since 2001. This program allows for the continuation of the program payment in the event a new guardian (referred to in statute as "co-guardian" or "alternate guardian") is appointed. As such, there are no changes to the state-funded Kin-GAP program.

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E-Note #136 - General Assistance Housing Subsidy Is Excluded Income

October 1, 2015

References: 7 CFR §273.9(c)(4); §63-502.2(f); §63-502.141(a); ACIN I-91-06 (December 5, 2006)

CalFresh Program has recently clarified that it considers a General Assistance housing subsidy to be loan under the authority set forth below. As such, a General Assistance housing subsidy is considered excluded, non-countable income when computing CalFresh benefits.

CalFresh Program indicated the following:

"Even though General Assistance is treated as countable income pursuant to §63-502.141(a), the General Assistance housing subsidy program requires additional steps beyond those of the regular General Assistance program. This fact, along with the high rate of repayment, indicates this is a loan program and, therefore, shall not be considered as income for CalFresh purposes."

Legal Authority:

7 CFR § 273.9(c)(4) provides the following:

Income and Deductions:

(c) Income exclusions. Only the following items shall be excluded from household income and no other income shall be excluded:

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

§63-502.2(f) provides the following:

Income Exclusions. Only the following items shall be excluded from household income:

(f) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred as specified in Section 63-502.2(e).

ACIN I-91-06 - FOOD STAMP QUESTIONS AND ANSWERS (Q&As) -- provides the following in pertinent part:

QUESTION:

If a food stamp participant makes a verbal agreement to repay a loan, would the loan be excluded from income, or does the agreement have to be in writing?

ANSWER:

“All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.....” shall be excluded from income per MPP 63-502.2(f). The county may elect, on a county-wide basis, to require verification in writing if they so choose, per MPP 63-300(f). If the county wants written verification, the following would apply: “the county welfare department may verify liquid resources and whether monies received by the households are loans. When verifying whether income is exempt as a loan, a legally binding agreement is not required. A simple statement signed by both parties which indicates that the payment is a loan and must be repaid shall be sufficient for verification....”MPP 63-300.5(f)(2).

E-Note #135 - Clarification of E-Note #94

September 30, 2015

On March 22, 2013, E-Note #94 was issued about a nonparty's right to a hearing on an overpayment or overissuance issue.

That E-Note states, in pertinent part, the following in italics:

The Department's position is that if one member of the CalFresh household or the CalWORKs assistance unit receives a legally adequate and language-compliant notice of action, this meets the legal requirement for notice for all members of the household and assistance unit during the overissuance and overpayment period. This is because there is no federal or state law that requires that the county give individual notice to household and assistance unit members of their state hearing rights or the right to an administrative review prior to the interception of one's tax refund, and because household and assistance unit members are jointly and severally liable for an overissuance or overpayment. In the CalFresh Program, 7 CFR 273.13 only requires notice to the household, not individual members of the household.

Since the issuance of that E-Note, the Department has clarified that while there is no federal or state law requiring the county give individual notice to each household and assistance unit member of an underlying overpayment/overissuance determination and his/her state hearing rights, there is federal law that requires a "debtor" be given individual notice of his/her right to an administrative review prior to the interception of his/her federal and state tax refund.

Pertinent federal regulations regarding this requirement prior to a federal tax refund intercept under the Tax Intercept Program (TOP) are 7 CFR §273.18, 31 CFR §285 et seq. and 31 CFR §285.6(k) (3).

State Administrative Manual (SAM) 8790 requires individual notice prior to a state tax refund intercept pursuant to Government Code §12419 et seq:

Offsetting is the process where an amount owed to a debtor is used to pay an outstanding account of the debtor. Before offsetting, departments must ensure collection procedures have been followed in accordance with SAM Sections 8776.6. ***In addition, prior to offset, departments must notify the debtor and provide them with an opportunity to present any valid objection to use of the offset procedure.*** (Emphasis added)

E-NOTE # 134 – ASSISTANCE DOG SPECIAL ALLOWANCE PROGRAM (ADSA)

September 29, 2015

References: Welfare and Institutions Code, Chapter 4, Emergency Payments and Special Circumstances for Aged, Blind and Disabled, Article 3, Special Circumstances, sections 12553 and 12554; MPP section 46-430.1(s)(2).

This E-Note is to inform judges about the expansion of the definition of a service dog in the Assistance Dog Special Allowance Program (ADSA), to include dogs that assist persons with psychiatric, intellectual, or other mental disabilities. The ADSA program will be initiating a regulatory change to reflect this expanded definition, but in the meantime, the new definition of a service dog, that is set forth in detail below, should be should be applied when deciding whether an individual's dog qualifies as a service dog for purposes of ADSA Program eligibility.

Pursuant to Welfare & Institutions Code (WIC) sections 12553 and 12554, recipients must have an eligible guide dog, signal dog, or other service dog to qualify for the ADSA Program. WIC sections 12553 and 12554 do not define "service dog". The California Department of Social Services' (CDSS) Manual of Policy and Procedures (MPP) section 46-430.1(s)(2) defines "service dog" as a dog that has been trained to meet a *physically* disabled person's requirements, including, but not limited to, minimal protection work, rescue work, pulling a wheel chair, or fetching dropped items. (Emphasis added.) Accordingly, dogs that assist individuals with psychiatric and/or mental disabilities are excluded from the definition of service dog in the MPP, which results in such individuals being excluded from the program.

The ADSA Program has determined that the MPP definition of "service dog", conflicts with the Americans with Disabilities Act (ADA). ADA regulations define service animals as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, *psychiatric, intellectual, or other mental disability*…" (28 C.F.R. 35.104, emphasis added.) Therefore, the current definition of "service dog" contained in the MPP is impermissibly narrow.

Expanded Definition of Definition of Service Animal

The following ADA definition of service animal should be applied when deciding whether an individual's dog qualifies as a "service dog":

> Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds,

> providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Pending the change in CDSS regulations, judges should write a decision that is in accordance with departmental policy. If a judge decides to write a decision that is not in accordance with departmental policy, the decision must be written as a proposed. Para-reg 815-1 will be revised in the next para-reg update.

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E-Note #133 – Effective Date of IHSS Program Benefits

April 30, 2015

References: MPP §30-009.231; §30-759.4; §30-757.198; Title 22 CCR §50197(a)

This E-Note is meant to clarify the effective date of IHSS Program benefits. "IHSS Program" refers to all four programs -- IHSS-R, PCSP, IHSS-IPO, and CFCO benefits (hereafter referred to as "IHSS benefits" or "benefits").

Often an issue in a case is the effective date of benefits. This can be an issue when an application has been filed, when there is an annual reassessment, or when there is a new assessment requested by the recipient based on a change in his/her medical condition or living arrangement.

This can also be an issue when there has been a conditional withdrawal or when there is a state hearing decision remanding the case to the county for further assessment.

Our IHSS para-regulations include §30-009.231 as the regulatory authority for the effective date of eligibility in service programs. Program has recently clarified that this regulation is ambiguous, inaccurate, and should not be cited.[1]

IHSS Program is in the process of revising the Application Process section (§30-759) of the IHSS regulations to clarify this issue. It is anticipated that the regulations will be finalized sometime in late 2015 or early 2016.

Pending regulation revisions, §30-759.4 is the regulation to cite for all four IHSS Programs:

.4 In-Home Supportive Services payment shall be made for authorizable services, as specified in Section 30-761.28, received on or after the date of application or of the request for services as provided in Section 30-009.224, if either the recipient or the provider does not qualify for PCSP. If the ineligible recipient/provider becomes eligible for payment under PCSP, payment shall be made from PCSP as soon as administratively feasible in lieu of IHSS.

This regulation is to be interpreted to mean that benefits are made ***effective as of the application date or reassessment date –*** the day the in-home assessment was conducted[2] **--** provided the following:

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[1] Our IHSS para-regulations will be revised accordingly.

[2] Depending on the particular facts of the case, it is possible that the effective date of benefits could be *prior* to the in home assessment. For example, if a recipient needed additional services as the result of an injury, the effective date would be the day the injury that triggered the need for additional services. Another example might be if a recipient was in a shared living arrangement, his/her roommate moves out, and this results in a reassessment of domestic services due to no longer prorating the hours in this category. Due to the change in living arrangements, the effective date would be the roommate's move-out date, not the reassessment date.

1. the applicant/recipient is Medi-Cal or SSI/SSP eligible as of the date of the application or reassessment; and
2. The applicant/recipient has been determined to have a need for benefits as of that date

The only exception to the above is in the case of paramedical services pursuant to §30-757.198:

> *In no event shall paramedical services be authorized prior to receipt by social services staff of the order for such services by the licensed health care professional. However, the cost of paramedical services received may be reimbursed retroactively provided that they are consistent with the subsequent authorization* and were received on or after the *date of application for the paramedical services.*

If the case involves the IHSS-Residual Program, §30-759.4 shall interpreted to mean that the applicant is eligible for IHSS benefits retroactive to the application date based on Medi-Cal rules that allow Medi-Cal eligibility to be retroactive up to 90 days preceding the month of application or reapplication if all of the eligibility requirements are met in that month. (Title 22 CCR §50197(a))