E- Note #142 – Reminder about The Procedure to Follow When a New Hearing Has Been Requested on the Identical Issue In A Previous Nonappearance Dismissal Decision

Date: October 27, 2017

References: "*Notes From the Training Bureau*" Item 07-11-2; para-regulations 007-1A; 007-2; §22-054.22 §22-054.222, and 22-054.222(a)

This E-Note is intended to remind judges of the good cause factual findings that must be made when there has been a dismissal decision issued for non-appearance, and the claimant requests a new hearing to review the identical issue in the previous hearing.

Training Note Item 07-11-2 discussed the procedure to follow and is set forth in pertinent part below, as well as the pertinent para-regulations to cite when this is an issue in the case.

Please note that a footnote has been added to Answer b. in the 2007 Training Note. Also, please note that the 15 days in which a person must request that a nonappearance decision be set aside and request a new hearing will be changed to 30 days, providing a revision to §22-054.222 is accepted.

ITEM 07-11-2: Division 22 Questions and Answers (November 28, 2007)

Non-Appearance Questions

5. Question: Does the new adoption date timeline run from the date of the request for a new hearing or the date a new hearing request is granted?

Answer: Prior to the change in MPP §22-054.2 effective January 24, 2007, the claimant requested a rehearing if he/she received a non-appearance decision. Now the claimant requests a new hearing instead of a rehearing.

In the case of a rehearing prior to January 24, 2007, the adoption due date was 60 days (for food stamp only cases) and 90 days (for all other cases) from the date the rehearing request was granted. That procedure has not changed under the new regulations even though the new hearing will have the same state hearing number as that used in the non-appearance decision. The adoption due date is 60/90 days from the date the new hearing is granted.

6. Question

a. If the claimant requests another hearing on the identical issue within 15 days after receiving the original non-appearance decision instead of requesting a new hearing to set aside the nonappearance decision, should a judge assigned to the case make the good cause determination on his/her own?

b. If the claimant's subsequent hearing request is made more than 15 days after he/she received the non-appearance dismissal decision, should the judge assigned to the case dismiss the claim as being the subject of a previous non-appearance dismissal decision?

c**.** Does it matter if the initial Notice of Action is inadequate or if the county issued no Notice of Action at all?

Answer:

a. If the claimant requested another hearing after he/she received the non-appearance decision instead of following the process set out in MPP §22-054.2 (and listed on the cover sheet of the hearing decision), the Administrative Law Judge should determine whether this new hearing request was filed within 15 days of the date the claimant received the nonappearance decision. This is a change from prior policy where the judge wrote a decision dismissing the claim and referred the matter to the State Hearings rehearing unit to determine if there was good cause for the non-appearance.

If the judge determines the claimant's new hearing request was filed within 15 days of the date he/she received the non-appearance decision or if the judge determines that the claimant did not receive the non-appearance decision, the judge should determine whether there is good cause for the non-appearance. If the judge determines there is good cause for the nonappearance (e.g., the claimant credibly testifies he/she never received notice of the hearing date) the judge should 1) write a decision that the claimant had good cause for not attending the first hearing and set aside the non-appearance decision and 2) write a decision on the merits.

If the judge determines there was no good cause for the claimant's non-appearance at the first hearing, the judge should write a decision upholding the dismissal of the claim.

b. If the claimant's subsequent hearing request is filed more than 15 days after he/she received the non-appearance decision, the judge must determine whether there was good cause for filing the request more than 15 days after the claimant received the non-appearance decision[1] AND whether there is good cause for the non-appearance. If the claimant cannot establish good cause for BOTH the late filing of the hearing request and the failure to attend the initial hearing, the judge should dismiss the claim.

If the claimant is able to establish good cause for both the late filing of the request for a new hearing despite receiving the non-appearance decision and for failing to attend the initial hearing, then the judge may write a decision on the merits after first concluding that the claimant had good cause for both the late filing and the non-appearance IF the subsequent hearing request was made within 180 days of the date of the initial non-appearance decision. While there is no specific authority for the policy set forth in the paragraph above, the State Hearings Division (SHD) has decided to adopt this policy in light of the revision to Welfare and Institutions Code (W&IC) sections 10951 and 10960. Section 10951 has been revised to permit a hearing request filed more than 90 days after receipt of the notice of action as long as the claimant had good cause for filing the hearing request untimely and as long as the hearing request was filed within 180 days from receipt of the notice.

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[1] This is presuming that the claimant received the non-appearance decision. There might be testimony presented that the state hearing decision wasn't received.

Section 10960 permits a rehearing request beyond 30 days if there is good cause for the late filing so long as the late filing is within 180 days from the date the decision is issued. Consistent with the good cause provisions of W&IC Sections 10951 and 10960, the SHD has decided to permit a judge to hear and write a decision on the merits on the same issue that was dismissed in a non-appearance decision in the limited circumstance where the claimant had good cause for both not attending the initial hearing and good cause for not filing a request for new hearing within 15 days.

c. No. The answers to 6a and 6b above apply to all cases regardless of whether the claimant received an adequate notice, an inadequate notice, or no notice at all. If the claimant requested a hearing and failed to appear at the scheduled hearing, the claimant has had an opportunity to be heard.

If the claimant received the non-appearance decision, the claimant was advised on the front page of the decision of the right and process to request a new hearing. Due process requirements have been met.

Para-Regulations:

007-1A New Rule: Hearing is dismissed if it is abandoned; new hearing scheduled and dismissal decision set aside if good cause established for abandonment (22-054.22, effective 1/24/07)

A request for hearing shall be dismissed by written decision if it is abandoned. The claimant shall have the right to request the dismissal decision be set aside and have a new hearing if good cause is established for not attending the hearing. Such request must be made within 15 days of the date the dismissal decision is received.

If a new hearing is granted and a decision dismissing the claim is set aside, any applicable aid paid pending shall be reinstated.

If a new hearing is not granted and a decision dismissing the claim is not set aside, the claimant shall be notified in writing as to the specific reasons the decision was not set aside and the right to appeal such dismissal in Superior Court.

The CDSS shall have authority to request a written declaration or other verification from the claimant to support the reason for the nonappearance.

(§22-054.22 effective January 24, 2007)

007-2 Good cause criteria for not attending a hearing (22-054.222(a)

The criteria for good cause (for not attending a hearing) shall include, but not be limited to:

(1) The failure of the claimant to receive notice of the time and place of the hearing. The notice of the time and place of the hearing shall be mailed to the claimant's last known address and good cause shall not be established if the claimant failed to notify the county or Department of any change of address while the appeal was pending.

(2) The criteria set forth in Section 22-053.113. These criteria are as follows:

1) a death in family;
2) personal illness or injury;
3) sudden and unexpected emergencies that prevent the claimant or the claimant's authorized representative from appearing;
4) a conflicting court appearance that cannot be postponed;
5) the claimant's contention that he or she was not adequately prepared due to non-receipt of an adequate and/or language-compliant notice, and the Administrative Law Judge determines that the required notice was not received by the claimant;
6) the county does not make a position statement available to the claimant at least two working days prior to the date of the scheduled hearing,
7) the county has modified the position statement after providing the statement to the claimant, and the claimant has waived decision deadlines contained in section 060: 90 days for public assistance and dual public assistance and CalFresh cases and 60 days for CalFresh only cases.

(§22-054.222(a))

E-Note #141 - Evidentiary Issues In Protective Supervision Cases

September 20, 2016

References: ACL 15-25 (March 19, 2015); E-Note #130 (March 31, 2015); *Notes from the Training Bureau* Item 00-03-01A (February 20, 2000); §22-073.36; §30-763.456(d)

This E-Note is intended to be a reminder about two important evidentiary issues pertaining to protective supervision cases, and as follow-up to ACL 15-25 *"Protective Supervision Clarifications,"* and E-Note #130.

I. "More Supervision" Requirement in Minor Child Protective Supervision Cases

ACL 15-25 provides a four-step analysis to apply when determining if a minor child is eligible for protective supervision.

Step 3 provides, in pertinent part, the following:

Does the child need more supervision than a minor of comparable age who is not mentally impaired/mentally ill pursuant to the Garrett v. Anderson court order? "More supervision" can be more time, more intensity, or both. The additional supervision required must be significantly more than routine child care, and not only be related to the functional limitations of the child, but also allow the child to remain safely in their own home with this assistance.

Therefore, in a case involving a minor child, particularly, a very young minor child, judges are reminded that if the evidence supports a finding that, as a result of the child's mental impairment/mental illness and nonself-direction, the child needs more supervision than a non-similarly disabled child of the same age, a finding to that effect should be made and the judge proceeds to step 4 of the analysis.

However, if the evidence indicates that the amount of additional supervision needed is not <u>significantly more</u> than routine child care or supervision, a finding to that effect should be made, and this would be the basis for determining that the child is not eligible for protective supervision under step 3.

In such a case, both the ACL and §30-763.456(d) -- *Protective supervision, as specified in Section 30-757.17, limited to that needed because of the functional limitations of the recipient. This service shall not include routine child care or supervision* – should be cited in the LAW section of the decision.

II. Burden of Proof Issue in PS Discontinuance Cases

E-Note #130 discusses evidentiary and burden of proof issues when the county has taken an action to discontinue protective supervision, and the claimant requests a hearing to dispute the discontinuance.[1]

As discussed in the prior E-Note, ACL 15-25 states:" *When the county discontinues Protective Supervision, it must establish the factual basis for the discontinuance."*

Program's position is that in cases where the county is discontinuing protective supervision previously authorized, it has the burden of proof in a state hearing to support its determination. Possible ways in which the county might meet this burden are set forth in E-Note #130.

It is the responsibility of the Administrative Law Judge to make a finding in a protective supervision discontinuance case that the county either has or has not met its burden of proof when determining whether the county action should be upheld. This might require that the judge ask questions of the county to obtain the evidence needed to make this finding.

Example 1:

A 52 year old recipient has been receiving protective supervision for the past 15 years. In the last annual assessment, the county determines that the claimant is no longer eligible for or needs protective supervision. However, the county fails to present any evidence about what has changed, if anything, to supporting its determination that the claimant is no longer eligible.

Best practice would be for the Administrative Law Judge to ask the county specific questions in order to obtain more evidence, e.g., has the county determined that the claimant's medical/mental condition has improved so that he no longer needs protective supervision? If so, what evidence does the county have to support that determination?

Example 2:

A 35 year old recipient has been receiving protective supervision for the past three years. The claimant has a self-injurious episode an average of one time per month.

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[1] E-Note #130 incorporates sections of "*Notes From the Training Bureau*" (NTB) Item 00-03-01A , which discusses the burden of proof on the county when it takes *any* reduction or discontinuance action in an IHSS case. The E-Note is limited to discussing only protective discontinuance supervision actions. Also, NTB Item 00-03-01A states that "it is the position of the State Hearings Division" that the county can meet this burden in one of the ways listed in the Note. However, the Adult Program Division (APD) reviewed E-Note #130 before it was released on March 31, 2015 and approved it. Therefore, these possible bases reflect Program's position, not just SHD's position.

ACL 15-25 states the following regarding fluctuating/episodic behavior:

Protective Supervision requires a 24/7 need, so if the behavior in question is considered predictable, and the need for supervision is at certain times of the day, there is no Protective Supervision eligibility because there is not a 24 hour-a-day need. Alternatively, unpredictable episodic behavior does meet the 24/7 requirement, as the need for supervision is constant. The unpredictable episodic behavior must be frequent and long enough that constant supervision is necessary.

With this clarification, the county determined that the claimant's self-injurious behavior does not happen frequently enough to qualify him for protective supervision.

The Administrative Law Judge must decide whether the county has met its burden based on establishing that there has either been a change in state policy, or that the policy has stayed the same but in its clarification, the county has correctly determined that it had misapplied state policy when it originally authorized protective supervision.

Example 3:

A 20 year old recipient has been receiving protective supervision for one year. At the second assessment, a different social worker from the social worker who did the original assessment determined that the claimant was not eligible for protective supervision. The county testified that at the original assessment, the social worker at that time incorrectly determined that the recipient is nonself-directing. It has now determined that the recipient is self-directing. The county presented no evidence that the claimant's condition has improved or changed in any way since she was authorized protective supervision a year earlier.

The Administrative Law Judge must consider whether the county has met its burden by establishing that the most recent assessment is more comprehensive, valid and reliable than the prior assessment. As stated in E-Note #130, "*The burden would be on the county to prove the superior validity, etc., of the new assessment by a preponderance of the evidence supported by an assessment that is more comprehensive, valid and reliable than the prior assessment. If the Administrative Law Judge makes such a finding regarding the superior validity of the current assessment, the finding must be set forth in the state hearing decision, together with the Administrative Law Judge's reasoning in support of the finding."*

It is essential to remember that in a protective supervision discontinuance case, different from a denial of protective supervision case, it is insufficient for the Administrative Law Judge to uphold the county's action based on a finding that the claimant presented insufficient evidence to establish that s/he is eligible for protective supervision, or that the claimant no longer needs protective supervision, but doesn't explain what that finding is based on.

Additionally, if the record does not include a specific factual finding by the Administrative Law Judge that the county has, or has not, met its burden of proof and the specific evidence that finding is based on, the case is more likely to be granted a rehearing if either party requests one.

E-Note #140 – Adequate Notice Requirements for Maximum Family Grant Notices of Action

May 16, 2016

Reference: All County Letter No. 00-78, November 30, 2000

The purpose of this E-Note is to remind judges about the adequacy requirements for Maximum Family Grant (MFG) Notices of Action (NOAs) as provided in All County Letter (ACL) No. 00-78 (November 30, 2000).

The purpose of ACL 00-78 was to inform county welfare departments of changes in policy in the application of the MFG rule to comply with the Nickols v. Saenz lawsuit settlement. Although this ACL was released more than 15 years ago and the notice form numbers have changed, the required content for these NOAs to be considered adequate has not changed.

Specifically, to be considered adequate, MFG NOAs must include information regarding all exemptions to the MFG rule. Effective immediately on November 30, 2000, counties were required to begin using the NOAs attached to the ACL, and reproduced below.

When a county has approved cash aid for a case in which the MFG rule applies, the following language is required for a NOA to be considered adequate:

> *MESSAGE:*
>
> *As of _____, the County has approved your cash aid and Medi-Cal. Your first day of cash is _____. You first month's cash aid amount is $_____.*
>
> *Your cash aid payment does not include _____, but he/she is eligible for Medi-Cal and Food Stamps.*
>
> *Here's why:*
>
> *The child was born into a family that got cash aid for ten months in a row right before his/her birth.*
>
> *The Maximum Family Grant (MFG) rule says that the child must meet one of the following exemptions to be included in the cash aid payment:*
>
> - *You were not told in writing about the MFG rule at least ten months before the child's birth.*
> - *The child is not living with either parent.*
> - *The child was conceived while either parent was an unaided non-parent caretaker relative.*
> - *The child was born as a result of birth control failure, incest, or rape.*

- *Your family's aid was stopped for at least two months in a row during the ten-month period before the child's birth. Months that your cash aid payment was suspended (stopped for one month) and/or lowered to $0.00, also count towards a two-month break in aid.*

The child does not meet any of these exemptions.

You were told about the MFG rule in writing on _____.

[ ] The cash aid payment for your first month of aid is only for a <u>part</u> of a month. It is for the time from your first day of cash aid, shown above, through the end of the month. If nothing changes, next month's cash aid will be for a <u>full</u> month.

[ ] You asked for an Immediate Need payment. Your immediate need is being met with a payment of your first month's cash aid within the immediate need time limit of one working day.

Your cash aid is figured on this page.

When a county has added a child to a case but the cash aid does not change because the MFG rule applies, the following language is required for a NOA to be considered adequate:

MESSAGE:

As of _____, the County has received your requested to add _____ to your assistance unit. Your cash aid will not go up, but the child can get Medi-Cal and Food Stamps.

Here's why:

The child was born into a family that got cash aid for 10 months in a row right before his/her birth.

The Maximum Family Grant (MFG) rule says that the child must meet one of the following exemptions to be included in the cash aid payment:

- *You were not told in writing about the MFG rule at least ten months before the child's birth.*
- *The child is not living with either parent.*
- *The child was conceived while either parent was an unaided non-parent caretaker relative.*
- *The child was born as a result of birth control failure, incest, or rape.*
- *Your family's cash aid was stopped for at least two months in a row during the ten-month period before the child's birth. Months that your cash aid payment*

was suspended (stopped for one month) and/or lowered to $0.00, also count towards a two-month break in aid.

The child does not meet any of these exemptions.

You were told about the MFG rule in writing on _____.

When a county has changed the cash aid amount for a case in which the county has determined a child is exempt from the MFG rule, the following language is required for a NOA to be considered adequate:

MESSAGE:

As of _____ the County is changing your cash aid from $_____ to $_____.

Here's why:

The child born into a family is exempt from the Maximum Family Grant (MFG) rule. The MFG rule says that aid does not go up for a child born into a family that got cash aid for ten months in a row right before his/her birth unless they are exempt.

The child meets the exemption(s) checked below and she/he can be included in the cash aid payment:

[ ] You were not told in writing about the MFG rule at least ten months before the child's birth.

[ ] The child is not living with either parent.

[ ] The child was conceived while either parent was an unaided non-parent caretaker relative.

[ ] The child was born as a result of birth control failure, incest, or rape.

[ ] Your family's aid was stopped for at least two months in a row during the ten-month period before the child's birth. Months that your cash aid payment was suspended (stopped for one month) and/or lowered to $0.00, also count towards a two-month break in aid.

Your new cash aid amount is figured on this page.

Therefore, in cases where the claimant has filed a late hearing request in response to an MFG notice of action, the judge must consider whether the notice contains the above described information when deciding whether there is jurisdiction to review the merits of the case.

ACL 00-78 may be viewed in its entirety at this link:

http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl00/pdf/00-78.PDF

E-Note #139 – ParaReg 241-2 Determination of when a parent and child are "living together" (CalFreshQUAD 402.1-1)

February 17, 2016

References: Manual of Policies and Procedures (MPP) §63-402.142; All County Information Notice (ACIN) I-85-02 (November 22, 2002); and ACIN I-54-09E (September 25, 2009)

CalFresh Program has recently clarified that CalFreshQUAD (CalFresh Question and Answer Distribution System) Number 402.1-1, which describes factors to consider in determining whether a dependent living situation exists between a parent and child, does not reflect current policy. CalFresh Program explained that, pursuant to §63-402.142 and All County Information Notices (ACIN) I-85-02 (November 22, 2002) and I-54-09E (September 25, 2009), separate household status cannot be granted to a child living with his or her parents unless the child is 22 years of age or older, regardless of whether the child customarily purchases food and/or prepares meals separately. ParaReg 241-2, which references the factors found in CalFreshQUAD 402.1-1, is therefore being deleted in the next para-regulation up-date as this is no longer current policy and should not be cited or relied upon in determining CalFresh household composition.

Legal Authority:

§63-402.142 provides the following:

State regulations provide that separate CalFresh household status shall not be granted to parents living with their children (including adopted and stepchildren) or children living with their parents (including adoptive or stepparents) unless a child is:

1. 22 years of age or older and purchases food and prepares meals for home consumption separately from his/her parents; or

2. Participating in the other parent's CalFresh household.

ACIN I-85-02 – FOOD STAMP QUESTIONS AND ANSWERS – provides the following in pertinent part:

HOUSEHOLD COMPOSITION

QUESTION #1:

There is a 19-year-old female who is married to a 22-year-old male. They live with her mother and his father who are also married. Mr. (Dad) claims to be the head of the household. Dad is the father to the 22-year-old male and the step father to the 19-year-old female. Dad's wife is the mother of the 19-year-old female and the step mother to the 22-year-old male.

To be a separate household, would both the younger individuals have to be 22 years of age?

ANSWER:

Yes. Based on MPP Section 63-402.14 and clarification provided in MPP Section 63-402.143, separate household status is not to be granted to an individual living with the household who is the spouse of a member of the household. Also, an individual 21years of age or younger who lives with a parent must be considered part of the parent's household, even though married and living with a spouse, living with a child or both. Therefore, the 19 year old daughter and the 22-year-old husband cannot be a separate household per the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) final rule, dated October 30, 2000.

ACIN I-54-09E – FOOD STAMP QUESTIONS AND ANSWERS (Q&As) – provides the following in pertinent part:

SEPARATE HOUSEHOLD STATUS

QUESTION:

A 21 year old and her two year old child are living with her elder mother. The elder mother is capable of purchasing and preparing her own food. On the application, the 21 year old states she purchases and prepares separately from her elder mother. During the interview, the worker explained the regulation requirement to the 21 year old that the elder mother must be included. MPP section 63-402.142 states parents living with their natural adopted or step children or children living with their natural, adopted or stepparents cannot have separate household status if the child is less than 22 years of age. How should this case be handled, denied or discontinued?

ANSWER:

At the time of the interview, the CWD should inform the applicant that the elder mother must be part of the household and request verification. After explaining the regulation, the applicant may withdraw the application or be given 30 days to provide all verification for the food stamp household. If the household fails to provide the required information to determine eligibility for the 21-year-old, the two-year-old, and the elder mother, deny the application for "failure to provide" information necessary to determine eligibility for benefits. See MPP section 63-301.42.

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))