

## SHD Paraphrased Regulations - CalWORKs

### 040 Citizenship-Aliens-Residency

040-1

State law provides that aliens shall be eligible for aid only to the extent permitted by federal law. An alien shall only be eligible for aid if the alien has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law. No aid shall be paid unless evidence as to eligible alien status is presented. (W&IC §11104)

041-1

Only citizens of the United States and certain categories of aliens are eligible for CalWORKs (formerly AFDC). Citizens must prove their citizenship and aliens must prove their eligible alien status. Aid shall not be authorized until eligible alien status is verified. (§42-430)

041-2

United States citizenship shall be documented by a birth certificate, baptismal certificate or similar proof of birth in the United States or United States territory, United States passport certificate of citizenship or naturalization provided by the Immigration and Naturalization Service, an identification card for use of a resident citizen in the United States or other evidence. Examples of other evidence include other types of formal records or affidavits, or declarations made under penalty of perjury by persons with direct knowledge of the date and place of the applicant's birth in the United States; or of the United States citizenship of the applicant's parents; or facts concerning the applicant which would not exist if he/she were not a citizen. A person who cannot supply the type of proof specified above shall, absent conflicting information, be eligible for a period of 90 days while verification is being obtained. If necessary, this period can be extended, but in no event shall extend beyond the next annual redetermination date. At that time, if no satisfactory proof of citizenship can be obtained, the recipient shall be terminated from aid. (§42-433.2)

042-1 REVISED 9/08

REVISED

6/11 To be eligible for CalWORKs a non-citizen must be lawfully admitted for permanent residence; or permanently residing in the United States under color of law, including aliens lawfully present in the United States as a result of the application of the provisions of Immigration and Naturalization Act §207(c), after March 31, 1980 (Aliens Admitted as Refugees), §208 (Aliens Granted Political Asylum by the Attorney General), and §212(d)(5) (Aliens Granted Temporary Parole Status by the Attorney General); aliens granted status as Conditional Entrant Refugees pursuant to §203(a)(7) of the Immigration and Naturalization Act in effect prior to April 1, 1980; aliens granted indefinite voluntary departure in lieu of deportation; and aliens granted an indefinite stay of deportation. (§42-431.2)

Effective January 1, 2007, a victim of trafficking, domestic violence or other serious crimes granted eligibility for certain public social services under the Trafficking and Crime Victims Assistance Program (TCVAP) also may be eligible for CalWORKs. (§42-431.23)

Eligible non-citizen trafficking or serious crime victims who meet all other eligibility criteria are eligible for CalWORKs (§42-431.3)

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042-2

State law provides that aliens shall be eligible for aid only to the extent permitted by federal law. An alien shall only be eligible for aid if the alien has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law. No aid shall be paid unless evidence as to eligible alien status is presented. (W&IC §11104)

042-4

For purposes of the CalWORKs program, "qualified aliens" are those:

1. Lawfully admitted for permanent residence, under the Immigration and Naturalization Act (INA);
2. Granted asylum, under INA §208;
3. Admitted as refugees, under INA §207;
4. Whose deportation is being withheld under INA §243(h) or §241(b)(3), as appropriate;
5. Paroled into the U.S. for at least one year, under INA §212(d)(5));
6. Granted conditional entry, under INA §203(a)(7), as in effect prior to April 1, 1980;
7. Cuban/Haitian entrants, as defined in Refugee Education Assistance Act of 1980;
8. Certain battered aliens, as defined in the PRWORA, Title IV, §431

(All-County Letter (ACL) No. 98-65, pp. 3, 7, August 14, 1998)

042-5

The United States Court of Appeals, 9th Circuit, has held that persons seeking asylum are not eligible for AFDC benefits in California. The court further concluded that Congress never intended to extend welfare benefits to aliens whose presence in the United States is unlawful and whose sole claim to entitlement rests on their filing applications for asylum with the Immigration and Naturalization Service. (*Sdomir v. McMahon* (1985) 767 F.2d 1456)

043-1

Residence in the state, but not in the county, is a requirement for receipt of CalWORKs (formerly AFDC). However, it is necessary to determine the county in which the applicant lives in order to establish county responsibility for payment of aid. (§42-400)

043-2

No durational period of residence in the state or county is required to be eligible for CalWORKs (formerly AFDC). (§42-401)

043-2A ADDED 6/04

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A person establishes residency by either:

Voluntarily living in the state with the intention of making his or her home for other than a temporary purpose. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

Living in the state at the time of application, not receiving assistance from another state, and having entered the state with a job commitment or to seek employment, whether or not currently employed. (§42-403.11)

043-3

Recipients of categorical aid from other states who move to California with the intent to make their homes here shall be granted aid promptly, if otherwise eligible. County Welfare Departments shall work out cooperative arrangements with other states to preclude any break in the receipt of assistance and to avoid the duplication of aid payments from two states. (§42-421)

043-4 ADDED 4/10

Residency in the state is an eligibility requirement. If the county learns that the AU has been or intends to be continuously absent from the state for 30 days or longer, the following steps should be taken to ensure that the AU intends to remain a resident of California:

1. The county must send a QR 3/SAR 3 form (Mid-Period Status Report) to the AU's last known address (which may include their temporary address) when the next aid payment is issued, asking the family to report a change of address per MPP Section 42-406.1. This notice will be sent in order to determine whether the AU intends to maintain California residency. The notice shall also advise the AU that failure to respond to the inquiry will result in ineligibility and termination of aid. It is important to note that a written response from the AU establishing intent to reside in the state of California is an acceptable form of evidence, unless the statement is inconsistent with other information known to the county per MPP Section 42-407.1

2. In accordance with MPP Section 42-407.22, if the AU establishes that he or she is no longer a resident of the state, the CWD must discontinue the case per MPP Section 44-316.331

3. Per MPP Section 42-407.21, if the AU does not respond to the county's inquiry within 30 days, it can be presumed that they do not intend to maintain California residency, and the county must discontinue the case immediately in accordance with MPP Section 42-407.21.

(All County Letter 10-01, January 29, 2010)

044-1

The responsibility for accepting the application and taking all actions necessary to determine eligibility or ineligibility and for granting or denying aid in the CalWORKs (formerly AFDC) Program rests with the county where the applicant lives. (§40-125.1) The county where the

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applicant lives is generally the county where the applicant is physically present when he or she makes the application. (§40-125.3)

044-2 ADDED 7/15

County residence is not a qualification for aid under any public assistance program. (W&IC §11102)

044-3 ADDED

7/15 Pursuant to the MPP Section 40-189, a recipient's home county is the county in which the recipient physically resides. Exceptions to this rule are listed. For instance, a recipient can temporarily reside in a county other than the home county for up to four months, provided the recipient has an intention of returning to the home county. However, living in another county for more than four months in and of itself does not create an overpayment unless the recipient is living in a county outside California.

(ACIN I-63-15)

046-1

The income and resources of the sponsor and his/her spouse who lives with him/her shall be deemed to be the income and resources of the sponsored alien. (§43-119.22)

046-1A

State law, as most recently amended by Assembly Bill No. 1542, provides that in determining the eligibility and amount of aid for an alien under the CalWORKs program, "the income and resources of the alien shall be deemed to include the income and resources of any person who has executed an affidavit of support on behalf of the alien and the spouse of that person as provided in Subtitle C (commencing with Section 421) of Title IV of Public Law 104-193 and any subsequent amendment thereto." (W&IC §11008.135(a))

046-2A

A sponsored alien is an alien whose entry into the United States was sponsored by a person or group which, as part of this sponsorship, executed an affidavit of support or similar agreement on behalf of the alien (who is not the child of the sponsor or of the sponsor's spouse) as a condition of the alien's entry into the United States. (§80-301s.(5))

046-3

The sponsored alien provisions do not apply if the alien is: Admitted to the United States under §203(a)(7) of the Immigration and Naturalization Act (INA), or under §207(c) of the INA; paroled into the United States as a refugee under §212(d)(5) of the INA; granted political asylum by the Attorney General under §208 of the INA; or a Cuban or Haitian entrant, as defined in §501(e) of the Refugee Education Assistance Act of 1980. (§43-119.1)

046-4

A person entering the United States as a refugee under §212(d)(5) of the Immigration and Naturalization Act (INA) is exempt from sponsored alien provisions, per §43-119.123. It is the

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position of the CDSS that parolees admitted under §212(d)(5) of the INA are exempt from the sponsored alien provisions only if an affidavit of support was not required as a condition of entry into the United States. (All-County Information Notice I-02-94, January 28, 1994)

046-5 REVISED 6/08

As a condition of eligibility, the sponsored noncitizen has the following responsibilities:

To provide upon county request, information and documentation concerning his/her sponsor which may be necessary to make the determination under Section 44-133.7 and Section 42-205.5; and information and documentation which the noncitizen and his/her sponsor provided in support of the noncitizen's immigration application.

- When a sponsored noncitizen is unwilling to provide the necessary information regarding their sponsor or when the information that is provided is not acceptable, the sponsored noncitizen is ineligible.

To obtain the cooperation from his/her sponsor which is necessary to make the determination under (Section 44-133.7) and Section 42-205.5.

To comply with reporting requirements specified in Section 40-181.25.

(§43-119.23)

046-5A

State law provides that, as "a condition of eligibility, the sponsored applicant or recipient shall provide information regarding the income and resources of any person, and the spouse of that person, who has executed an affidavit of support on behalf of the alien." (W&IC §11008.135(b))

046-5B ADDED 6/08

Sponsor noncitizen requirement provisions apply only to noncitizens:

Whose sponsor signed an I-864 Affidavit of Support;

Who are sponsored by individuals;

Who are not exempt under Section 43-119.12; and

Until such time as the noncitizen:

- (a) Achieves United States citizenship through naturalization pursuant to the Immigration and Nationality Act (8 U.S.C. 1421 et seq.); or

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- (b) Has worked 40 qualifying quarters of coverage under Title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, and
  - (1) In the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefit, as provided under 8 U.S.C. 1631, during any such period.
- (c) Leaves the country permanently; or
- (d) The sponsor or noncitizen dies.

(MPP §43-119.21)