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- (a) Ask the claimant if he received FS benefits.
- (b) If total ineligibility for AFDC exists, ask whether the claimant would have applied for GA or GR.
- (c) Ask the claimant if he would have applied for a RISP or Foster Care benefits where appropriate.
- (d) When the AU has been determined to be ineligible for AFDC and received an overpayment due to increased earnings or hours of employment, ask if the claimant had child care costs. If so, this may require a remand to the county to determine whether lost TCC benefits will reduce the overpayment.

California Department of Social Services - State Hearings Division
Notes from the Training Bureau - January 12, 2000

Item 00-01-01A Welfare to Work Questions and Answers
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Welfare to Work Questions and Answers

This *Notes from the Training Bureau* reproduces the Welfare to Work (WTW) portion of the training session conducted by Judges Pete Hemenway and Barry Bernstein in October 1999 at Asilomar. Included are a hypothetical fact pattern applicable to WTW and questions and answers concerning that fact pattern. Applicable regulations are also included.

Again, the Quality Improvement Bureau wishes to thank Milt Yee of the CDSS Employment Programs Bureau for his assistance in the preparation of the Asilomar Training Session and this *Notes*.

County Action and Issue

Norton County reduced the claimant's cash aid from \$565 to \$456 and then again to \$279 by deleting the claimant and his wife from the CalWORKs assistance unit effective November 1, 1998 because both the claimant and his wife did not sign a Welfare to Work (WTW) contract and did not attend orientation and appraisal.

County Evidence

Ralph Cramden receives CalWORKs benefits on behalf of himself, his wife, Alice, and his six-year-old daughter Trixie.

Ralph failed to attend an orientation/appraisal appointment on September 19 and did not call his WTW worker to reschedule the appointment. Ralph did not contact the county at any time and requested this hearing on October 31.

The county issued Ralph an NA 840 notice on September 19, 1998 deleting him from the assistance unit effective November 1, 1998 because he did not cooperate in WTW. The NA 840 advised Ralph that he could discuss the problem with his WTW worker Jane Meadows on October 5, 1998. On September 20, 1998, Norton County issued Alice an NA 845 deleting her from the AU effective November 1, 1998 because she did not sign a WTW plan. The NA 845 advised Alice that she could correct the problem by appearing at an interview on October 6, 1998.

Ralph did not attend his participation problem interview on October 5.

Alice did not attend her participation problem interview on October 6.

The county presents into evidence the NA 840 and NA 845 notices.

Claimant Evidence

Ralph's October 31 hearing request says that he did not attend the September 19 appointment because he was enrolled in a vocational program to learn to be a bus driver. In addition, the hearing request says that Ralph called and spoke to someone at the WTW office and was told that since he was enrolled in a vocational program, he did not have to attend the WTW appointment.

At the hearing, Ralph testifies that he could not get to the appointment in any event because he had to take his daughter to school as she had a cast on her leg and could not take the bus. He had to get her to school by 8:00 a.m., and the WTW appointment was for 8:00 a.m. Furthermore, his wife Alice has a suspended driver's license and could not drive Trixie to school.

No reason is given for Alice not signing a WTW contract.

County Conclusion

The county concludes that Ralph must be sanctioned because:

1. He was not in an approved SIP that was likely to lead to employment
2. No one at the WTW office would tell him not to come to the September 19 appointment without rescheduling the appointment.
3. Ralph did not tell the county he needed to take Trixie to school. Besides it is his responsibility to make arrangements to get Trixie to school and to get to his WTW appointments. Other parents do.
4. Alice is sanctioned because she did not cooperate and gave no reason for not cooperating.

As an Administrative Law Judge how would you decide this case?

1. What documents or other evidence should the county present to support its case?
2. What witnesses should the county bring to the hearing?
3. Did the county properly follow all procedures before sanctioning Ralph?
4. Did the county follow all procedures before sanctioning Alice?
5. Should Ralph's vocational school be an approved SIP?
 - a) Does it matter that Ralph did not attend orientation if the SIP is approvable?

For b) through d) below, assume Ralph did attend the appraisal appointment and that Norton County denied his SIP.

- b) What additional information do you need to know about the SIP?
 - c) What happens if the county has not provided Ralph with an updated list of approved SIPs?
 - d) If the county discovers that Ralph missed 10 bus driver classes, can the county sanction Ralph for lack of satisfactory participation in the SIP?
6. Assume the only reason Ralph missed the September 19 appointment was because he had to take Trixie to school at 8:00 a.m. Does it matter that Ralph did not tell the county that he had to take Trixie to school prior to missing the September 19 appointment?
7. If Ralph had been sanctioned in 1997 in the GAIN program, and the county written criteria states that any GAIN sanction that occurred prior to 1998 counts as a sanction in WTW, should the county sanction count as a first sanction or a second sanction?
8. What if Ralph Cramden is really Charlie Smith but thinks he is the reincarnation of Ralph Cramden from the Honeymooners?

Answers to WTW Questions

1. The county should submit the following into evidence at the hearing:
 - A copy of the notice advising Ralph of the September 19 appointment.
 - Evidence, if any, that Alice was given an appointment to cooperate with Welfare to Work before the county issued the NA 845 notice.

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- An affidavit from the unit receptionist or someone such as a duty worker explaining what is done when a WTW participant calls in to say he cannot attend an appointment, but is unable to reach his WTW worker.
 - Any county case contact sheet for the relevant time period if there has been any communication between the claimant and someone in the WTW unit.
 - If the county has a voice mail system where Ralph could leave a message for his assigned worker, the county should submit evidence explaining that system.

2. The county should be prepared to have the following witnesses at the hearing:

- The WTW worker assigned to Ralph's case.
- The phone receptionist or duty worker to rebut Ralph's testimony, if the county disputes such testimony that someone at the WTW office told him he did not have to attend the September 19 appointment.

Note: The county appeals worker should have a prehearing contact with Ralph to determine who is the "someone" who allegedly said told him not to come to the appointment. Such person, if identified, should testify as to his/her version of the call, or if there was such a call.

3. No.

- The county presented no evidence that it notified Ralph of the September 19 appointment.
- The county did not attempt a phone contact as required by MPP §42-721.25 after it issued the NA 840 notice.

4. No.

- There is no evidence the county sent a WTW 4 notice to Alice when it sent Ralph the NA 845 notice. The county may not sanction Alice if it has not sent the WTW 4 giving her an opportunity to cooperate. In addition, even if it had sent the WTW 4, it did not attempt the phone contact required by MPP §42-721.25 that would be required for Alice as well as Ralph.

5. a) Yes, because he has to sign the WTW 1 and WTW 2. However, if he had good cause for missing the September 19 appointment, the SIP may be approvable if he later attends an appraisal appointment (see ACL 99-32 Q and A 1). Also, per MPP Section 42-711.544, even if the SIP was approved, he would be required to concurrently participate in other WTW activities if participation in the SIP did not equal 32 hours per week, averaged monthly, in classroom, laboratory or internship activities.

b) When was Ralph enrolled in the SIP? The appraisal appointment was September 19. Per MPP §42-711.54 and ACL 99-32 Q and A 1, a recipient may continue in an approvable SIP for 18 or 24 months, as appropriate, if he is enrolled in the SIP at the time he was initially required to participate. Was Ralph enrolled in the SIP by September 19? Per MPP §42-711.541(a), if Ralph was enrolled by the date of the appraisal, he may continue in his SIP. Furthermore, per MPP§ 42-711.541 (a) (2), if Ralph had good cause for failing to attend the September 19 appraisal, he may continue in the SIP if he was enrolled in the SIP by the next scheduled appraisal. If Ralph had no good cause for missing the September 19 appraisal, he could not continue in the SIP even if he was enrolled in the SIP before the next scheduled appraisal appointment and complies with the appraisal requirements.

c) Per §42-711.543, a program leads to employment if it is on a list of programs that the county and local education agencies agree lead to employment. ACL 99-32, answer to question 3 provides that the county must establish a list of approvable SIPs.

It is the position of the CDSS that if the county fails in its obligation to provide the list of updated SIPs, in a state hearing, the county would have the burden of proving that the SIP that the client was enrolled in would not lead to employment. If the county did not present evidence in the hearing to demonstrate that the claimant's SIP did not lead to employment, it must allow the individual to continue in the SIP even if the county would not otherwise approve the SIP. However, if the SIP could not be approved under any circumstance, such as law school for a college graduate, the SIP would not be approved even if the county had not provided the updated list.

d) The county may not arbitrarily determine that Ralph has not satisfactorily participated in the SIP. Section 42-711.8 says that the criteria for satisfactory participation include regular attendance and satisfactory progress. (Section 42-711.635 says that the participant shall maintain satisfactory progress, but does not define the term.) Section 42-711.8 adds that if a participant is not satisfactorily participating, he is subject to compliance or sanctions. There are no defined criteria for satisfactory participation. The county would have to have written criteria (see ACL 98-58 and MPP§ 11-501.3) to define what is satisfactory participation. It is suggested that the county criteria delegate this determination to the school. In any event, the county would not be permitted to arbitrarily determine what is satisfactory participation or satisfactory progress without written criteria

6. Both MPP §42-713 and §42-721.3 refer to good cause for failure or refusal to comply with program requirements. These sections do not require the participant to communicate

the reasons for non-cooperation as long as the reason itself meets good cause criteria. Thus, while in an everyday work situation an employee who was sick but failed to call his employer to report the illness would be docked, there is no comparable requirement to report the reason for missing an appointment in WTW, nor was there such requirement in GAIN or WIN-DEMO.

A Judge would thus be free to conclude Ralph had good cause for not attending the September 19 appointment even though he did not tell his WTW worker about his need to miss the appointment.

A Judge could however conclude that Ralph's testimony is not credible because Ralph did not tell any county worker prior to the September 19 appointment that he had to take Trixie to school, but only testified about this reason for the first time at the hearing. A Judge could also determine that since Ralph did not advise the county before September 19 that he had to take Trixie to school, there is no good cause if the county can establish it could have assisted Ralph by scheduling the September 19 appointment at 8:30 a.m., or by arranging to take Trixie to school.

Note: If Ralph had testified he was sick on September 19 and the Judge found this credible, the Judge would determine that Ralph had good cause for missing that appointment since there is nothing the county could have done to assist Ralph so he could attend the appointment on that day.

7. Once a county begins to implement its WTW plan, the previous GAIN program ceases to exist. Any prior sanction in the GAIN program in effect prior to the county implementation of WTW should not be considered. As a result, the first time a CalWORKs recipient fails or refuses to cooperate in WTW and is sanctioned for such non-cooperation, it is a first sanction even if he/she had a prior GAIN sanction.

This is CDSS policy and is not stated in any regulation or All County Letter.

8. Section 42-721.32 says that the county shall take into consideration whether the claimant has a mental disability that caused or substantially contributed to the noncooperation. If a mental disability is found, the claimant would have good cause for not cooperating. Section 42-711.56 says that if there is a concern that a mental disability exists that will impair the ability of a recipient to obtain employment, he shall be referred to the county mental health department.

If Ralph came across at the hearing as delusional, the judge may require the county to refer him for a mental health assessment and may reverse a sanction if no such assessment was conducted before he was sanctioned.

In such case, the judge may reverse the sanction even though the county was unaware of Ralph's apparent mental impairment prior to the hearing. A judge would not, however have authority to declare Ralph mentally unfit to participate in WTW based upon his/her own observation

Welfare to Work Applicable Regulations

42-711 WELFARE TO WORK PARTICIPATION REQUIREMENTS

.5 Assignment of Recipients to Welfare-to Work Activities

.51 After aid has been granted, recipients who are not exempt in accordance with Section 42-712, shall participate in welfare-to-work activities.

.52 Appraisal

.521 Recipients are required to participate in the appraisal specified in Section 42-711.522.

.54 Self Initiated Programs

.541 Except as provided by Section 42-711.542, any recipient who is required to participate in welfare-to-work activities in accordance with Section 42-712.1, may continue in an undergraduate degree or certificate program that leads to employment for the 18 or 24 month time periods specified in Section 42-710, as applicable, if:

(a) He or she is enrolled, as defined in Section 42-711.549, as of the earlier of:

(1) The date he or she is appraised, or

(2) The date he or she would have been appraised if he or she had not failed, without good cause, to appear for the appraisal appointment.

(b) He or she is making satisfactory progress in that program;

(c) The CWD determines that continuing in the program is likely to lead to self-supporting employment for that recipient; and

(d) The welfare-to-work plan reflects that determination.

.543 A program will be determined to lead to employment if it is on a list of programs that the CWD and local education agencies or providers agree lead to employment.

(a) The list must be agreed to annually, with the first list completed no later than January 31, 1998.

(b) For recipients whose program is not on the list, the CWD shall determine if the program leads to employment.

(1) The recipient shall be allowed to continue in the program ... if the recipient demonstrates to the CWD that the program will lead to self- supporting employment for that recipient and documentation is included in the welfare-to-work plan.

(A) The CWD shall inform the recipient in writing of the process by which the recipient may demonstrate that a program not on the list of approved SIPs will lead to self- supporting employment.

(c) Any recipient in any degree, certificate, or vocational program offered by a private postsecondary training provider will not be approved in the self- initiated training or education program unless the program is either approved or exempted by the appropriate state regulatory agency and the program is in compliance with all other provisions of the law.

.544 If participation in a SIP, as determined by the number of hours required for classroom, laboratory, or internship activities, is not at least 32 hours, the CWD shall require concurrent participation in work activities, pursuant to Sections 42-716(a) through (j) inclusive and in accordance with Section 42-711.5, to reach the 32 hour requirement.

.545 Participation in the self-initiated education or vocational training program must be reflected in the required welfare-to-work plan.

(a) The welfare-to-work plan shall provide that whenever an individual ceases to participate in, refuses to attend regularly, or does not maintain satisfactory progress in this SIP, the individual shall participate in the welfare-to-work activities in accordance with Section 42-711.5.

.56 Mental Health Assessment

.561 Subject to appropriations in the Budget Act, the county mental health department shall evaluate the recipient and determine any treatment needs.

.6 Welfare to Work Plan

.635 The participant shall maintain satisfactory progress in the activities to which the participant is assigned, and the CWD shall provide the necessary supportive services as set forth in the plan.

.8 Satisfactory Participation

.81 The criteria for satisfactory participation in an assigned education or training activity include regular attendance and satisfactory progress. A participant who fails or refuses to

comply with program requirements for participation in the activities assigned pursuant to Section 42-711, and whose failure to make satisfactory progress is not due to a learning or medical problem, shall be subject to compliance and sanction requirements in accordance with Sections 42-721.2 and .4 respectively.

.811 The CWD or the service provider shall inform the participant of the standards for meeting the regular attendance and satisfactory progress requirements for the program to which they are assigned.

42-713 GOOD CAUSE FOR NOT PARTICIPATING

.1 A recipient shall be excused from participation in welfare-to-work activities for good cause in accordance with 42-713.2, when the CWD determines there is a condition or other circumstance that temporarily prevents, or significantly impairs, the individual's ability to be regularly employed or to participate in welfare to work activities.

.2 Conditions that may be considered good cause for not participating in welfare-to-work activities include, but are not limited to, any of the following:

42-721 NONCOMPLIANCE WITH PROGRAM REQUIREMENTS

.231 The notice of action shall inform the individual that a sanction will be imposed if the individual fails to either attend an appointment scheduled by the CWD within 20 calendar days of the notice or contact the CWD by telephone within 20 calendar days of the notice, and fails to do one of the following:

(a) Provide information to the CWD that leads to a finding of good cause for refusing or failing to comply with program requirements, or

(b) Agree to a compliance plan to correct the failure or refusal to comply.

.25 If the individual fails to attend the appointment, the CWD shall attempt to contact the individual by telephone at the time of, or after, the appointment to establish a finding of good cause or no good cause. If a finding of no good cause is made, the CWD shall develop a compliance plan to correct the instance of non-participation.

.3 Good Cause for Failure or Refusal to Comply with Program Requirements

.31 No sanctions shall be applied for failure or refusal to comply with program requirements for reasons related to employment, an offer of employment, an activity, or other training for employment including, but not limited to, the following reasons:

.316 Accepting the employment or work activity would cause an interruption to an approved education or job training program in progress. For purposes of this section, an education or job training program includes all welfare-to-work activities described in Section 42-716

.32 In determining whether good cause exists for a refusal or failure to comply with program requirements, the CWD shall take into consideration whether the participant has a mental disability that cause or substantially contributed to the refusal or failure to comply with program requirements. This determination shall be made, where appropriate, in consultation with the county mental health department.

.33 An individual shall have good cause for not participating in welfare-to-work activities if he or she meets the criteria described in Section 42- 713.

.451 If the sanctioned parent's spouse or the assistance unit's second parent is not participating in the program, ... both the sanctioned parent and the spouse and second parent shall be removed from the assistance unit.

.452 The CWD shall notify the spouse of the non-complying participant or second parent in writing at the commencement of the compliance procedures of his or her own opportunity to participate and the impact on sanctions of that participation.

*California Department of Social Services - State Hearings Division
Notes from the Training Bureau - December 5, 2000*

Item 00-12-02K

CDHS ACWDL 00-58 -- November 14, 2000 (Synopsis): 2001 MCCA Spousal Impoverishment Caps

2001 MCCA Spousal Impoverishment Caps

Effective January 1, 2000, the Community Spouse Resource Allowance (CSRA) is increased to \$87,000. The new Minimum Monthly Maintenance Need Allowance (MMMNA) is \$2175.

*California Department of Social Services - State Hearings Division
Notes from the Training Bureau - December 5, 2000*

Item 00-12-02J

CDHS ACWDL 00-57 -- November 14, 2000 (Synopsis): Aged and Disabled FPL Program

Aged and Disabled FPL Program

Effective January 1, 2000, there is a new \$0 share of cost program for aged and disabled persons. To be eligible for this program, the individual or couple must be aged or disabled and not in Long-Term Care.

To qualify for this program, a single individual will have an effective income limit of \$926 based on \$696 + a \$230 disregard. (The ACWDL does not specify if this income