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This ACL discusses eligibility of battered noncitizens for CalWORKs and food stamp benefits. Battered noncitizens are eligible for CalWORKs as PRUCOL (Permanently residing under color of law) if they have an INS document which indicates there is an approved or pending petition that sets forth a prime facie case that the person has been battered.

Battered noncitizens may be eligible for federally funded food stamps if they are "qualified aliens" and meet other food stamp requirements for noncitizens such as having a military connection, (e.g., be a veteran, be on active duty or be the spouse or child of a veteran or active military person) be lawfully in the U.S. on August 22, 1996 and currently under age 18, over age 65, blind or disabled.

This ACL describes certain types of petitions filed with the INS by noncitizens who have alleged they are battered by a spouse or parent. Specific requirements for federal eligibility include:

The noncitizen has an approved petition or pending petition from INS which sets forth a prime facie case that the petitioner has been battered; the noncitizen or parent or child has been battered in the U.S. by a spouse, parent or family member residing in the same household; there is a substantial connection between the abuse and the need for benefits; the noncitizen no longer resides with the batterer.

*California Department of Social Services - State Hearings Division  
Notes from the Training Bureau - April 20, 2000*

**Item 00-04-02A**

CDSS ACL 00-06 -- January 4, 2000 (Synopsis): Vehicles Used to Transport Disabled Persons

**Vehicles Used to Transport Disabled Persons**

Pursuant to a federal policy change, a vehicle used to transport a physically disabled household member is excluded as a resource, even if the disabled household member is an ineligible household member such as an SSI recipient.

In addition, counties are to exclude from the CalWORKs resource determination any vehicle used to transport a physically disabled individual living in the home whether or not the individual is included in the CalWORKs AU.

*California Department of Social Services - State Hearings Division  
Notes from the Training Bureau - March 27, 2000*

**Item 00-03-01A**

IHSS Questions and Answers

**ITEM 00-3-1: IHSS Questions and Answer**

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In November 1999, the State Hearings Division participated in a training session at Asilomar involving IHSS issues in state hearings. This session was attended by over 100 county social workers throughout the state. Part of that training session included two hypothetical fact patterns.

This *Notes* reproduces the questions that were discussed at the Asilomar session along with answers to those questions. The questions have been slightly modified and questions added for this *Notes*.

The State Hearings Division wishes to thank Vickey Walker and Desi Gonzales for their help in the preparation of this *Notes*.

## **Making Your Best Case at the State Hearing**

### **Hypothetical 1**

Facts to Consider:

On March 9, 1999, an IHSS application is made on behalf of Karen Smith, an 86 year old woman. Karen lives with her sister. She was diagnosed with arthritis, arteriosclerotic heart disease, high blood pressure and senility.

The county Social Worker made a home visit and conducted a detailed needs assessment on March 19.

On March 22, 1999, the county issued a Notice of Action authorizing 160 hours of IHSS monthly effective March 9<sup>th</sup>. No time was authorized for protective supervision.

Karen's provider asks for a hearing on October 26, 1999 and claims that Karen had a stroke in September 1999.

The hearing is held on November 22, 1999 in Karen's home. A recently obtained medical report regarding her condition was submitted at the hearing by the provider.

The provider says Karen needed protective supervision back to March 1999, and her condition is much worse since her stroke in September 1999.

### ***Question Number 1:***

***Should the provider be able to file a hearing request on behalf of the claimant?***

### ***Question Number 2:***

***If the county Social Worker did not reassess Karen's needs after the stroke, should the Judge review Karen's circumstances as they existed before the stroke, or should the Judge review Karen's circumstances since the stroke?***

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The provider, who does not live with Karen contends that laundry, food shopping, meal preparation and meal cleanup should not be prorated because she provides these chores separately for Karen and not for her sister.

The county's Social Worker contends that services must be prorated because there is no health or safety reason for the provider to provide these services separately for Karen.

***Question Number 3:***

***Should the services be prorated?***

Assume Karen lives with her adult daughter, daughter's husband and their two children. The daughter is the provider.

***Question Number 4:***

***Could Karen have meal preparation assessed as a separate need item if the daughter prepared meals separately solely because Karen does not like the food everyone else.***

Assume Karen is not senile, but is mentally competent and protective supervision is not at issue. Karen testifies that no time is allowed for assistance with dressing. Also Karen needs additional time for laundry and changing bed linen because she is incontinent. The Social Worker testifies that time was not authorized for dressing because Karen never told her that time was needed for dressing. She also never mentioned incontinence.

***Question Number 5:***

***Should time be allowed for dressing?***

***Question Number 6:***

***Should additional time be allowed due to Karen's incontinence?***

Assume Karen was mentally competent and admits she told the social worker at the March assessment that she did not need assistance with bathing but now said she did need assistance with bathing.

***Question Number 7:***

***Should time be authorized for bathing if the Judge finds such need existed since March?***

The provider testifies that Karen has severe senility. She cannot recognize her sister. She has never wandered outside the home but the provider testifies that Karen would be a danger to herself or would wander or turn on the stove if she ever was left alone.

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The county Social Worker acknowledges that Karen is mentally non-self directing but denied protective supervision because the claimant has never done anything to endanger herself.

***Question Number 8:***

***How should the Judge rule regarding protective supervision?***

Since her stroke, Karen is wheelchair bound. At the hearing, the Social Worker testifies that Karen could not be a danger to herself since she can no longer ambulate. The provider testifies that Karen is hooked up to several intravenous tubes and has pulled them out. The Social Worker suggests using arm restraints to prevent her from pulling out the tubes.

***Question Number 9:***

***Is Karen entitled to protective supervision?***

***Question Number 10:***

***If the county had authorized 160 hours of IHSS for Karen effective March 1999, what must the county prove in order to reduce her IHSS at the assessment for March 2000?***

**Hypothetical 2**

**Facts to Consider:**

Mark is three-year-old child with cerebral palsy, organic brain disorder and severe mental retardation.

Mom applies for IHSS for Mark and wants to be his provider.

She seeks maximum IHSS hours, including protective supervision.

The county denies IHSS because (1) the mother would have to provide care for any three-year old child (2) mom did not leave full time employment nor was she prevented from obtaining full time employment to care for Mark and (3) there are other suitable providers available.

***Question Number 11:***

***What factors must the county consider in assessing services other than protective supervision for Mark?***

***Question Number 12:***

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***What factors must the county consider in assessing protective supervision for Mark?***

***Can any three-year-old be authorized protective supervision?***

***Question Number 13:***

***May the county deny IHSS for Mark with mom as provider because mom did not leave full time employment nor was she prevented from obtaining full time employment?***

***Question Number 14:***

***May the county deny IHSS for mom as the provider for Mark because another suitable provider can provide IHSS for Mark?***

## **ANSWERS TO HYPOTHETICAL 1**

1. The provider may file a hearing request on behalf of Karen if Karen is mentally competent and later authorizes the provider to be her authorized representative. If Karen is mentally competent and appears at the hearing, she may authorize the provider to be her authorized representative at the hearing either verbally or in writing.

If Karen is mentally competent but does not appear at the hearing, the provider may still proceed if Karen has completed an authorized representative form and the provider gives it to the judge at the hearing. Note however that if the provider attends the hearing without Karen and does not provide an authorized representative form signed by Karen, the provider may not be recognized as authorized representative and a judge could dismiss the hearing request. Alternatively, the judge could conduct the hearing if he/she believed the provider's testimony that the claimant had authorized him/her to act as authorized representative. Then the judge would leave the record open for the authorized representative form. If no authorized representative form was received, the hearing request would be dismissed.

If Karen is not mentally competent, she in all likelihood would be unable to request a hearing on her own behalf. Someone would then have to request a hearing for her. The provider could make the hearing request and be recognized as Karen's authorized representative if she had knowledge of Karen's circumstances and if she completed the Statement of Facts (i.e., the IHSS application) on behalf of Karen.

If the provider did not complete the statement of facts on behalf of Karen, then Karen's sister or other relative may act as authorized representative on Karen's behalf or authorize the provider to act as the authorized representative.

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2. MPP§ 22-062.4 says: "The decision shall determine only those circumstances and issues existing at the time of the county action in dispute or otherwise agreed to by the parties". Thus if the SW did not reassess Karen's needs after the stroke in September 1999, a judge should not review her circumstances after the stroke unless the county agreed to add that issue. The judge should limit the review to the county action taken in March.

Since the provider refers to the September stroke in the hearing request, the county should conduct a needs assessment to reconsider Karen's needs after the stroke. The claimant would be entitled to a separate hearing on the new assessment.

If the judge does decide to consider Karen's needs after stroke, the judge should keep the record open and if necessary, conduct a continued hearing to allow the county to conduct an assessment based on Karen's current condition.

If the SW conducted the reassessment prior to the hearing, the judge would be able to decide the issue of Karen's needs, both before and after the stroke, if necessary. It serves everyone's interest to have all issues resolved in one hearing, instead of two hearings.

3. No, the services should not be prorated. MPP§30-763.322 addresses related services including meal preparation. It says: "When a service is not being provided by a housemate, and is provided separately to the recipient, the assessment shall be based on the recipient's individual need". The provider in this case is not a housemate. (see MPP §30-701(h)(2)). Thus, if she provides meal preparation separately to Karen, the needs should be assessed based on Karen's separate need and not prorated.
4. Yes. For purposes of question 4, the provider is Karen's adult daughter who is a housemate. MPP §30-763.321 says that when the need is met in common with those of other housemates, the need shall be prorated to all the housemates involved, and the recipient's need is his/her prorated share. It does not say what happens if the need is not met in common with other housemates. Nor does any other regulation or statute.

In the absence of any regulation or statute, Karen is entitled to have meal preparation assessed as a separate need item when the provider prepares meals separately for Karen. Once it has been established that Karen has a need for meal preparation, there is no requirement that Karen have a health or safety reason for eating meals separately from the rest of the family. Karen is entitled to have meal preparation (or any other related service) assessed separately solely because she chooses to have such need provided separately.

5. Yes, if it was apparent that there was a need for dressing. It is the responsibility of the SW at the assessment to ask Karen what are her needs. (see MPP §§30-760.2 and 30-761.26). It is also the responsibility of the SW to observe Karen and

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determine her needs. If based upon the SW's observations and medical condition it is apparent that Karen needs assistance with dressing, the SW would be expected to assess a need in this area even if Karen did not mention this need.

A judge is likely to authorize assistance with dressing if he/she finds such a need existed at the time of assessment even if Karen did not request this need.

6. It depends. While a SW would be expected to ask about dressing if there was an apparent need for dressing, a SW would not automatically ask each IHSS recipient whether he/she is incontinent. Absent any medical evidence, it may not be apparent that there is a need for IHSS services due to incontinence. The SW is only expected to assess a need if such need is apparent, or communicated. Apparent means it is obvious to the social worker at the assessment that a specific need exists or medical evidence indicates there is such a need.

Thus Karen may not have time authorized for services such as changing bed linen or extra time for laundry due to incontinence if she did not tell her SW about her incontinence or if such need was not apparent to the SW. Once Karen advises the county about her incontinence, the county could authorize services from that day forward for services needed because of the incontinence.

The SW however, should be alert to medical conditions that might result in incontinence. If Karen is elderly and suffers from a medical condition associated with incontinence, this would put a burden on the SW to ask about incontinence even if Karen does not mention her incontinence. The SW should be aware that many people would be embarrassed to admit incontinence to anyone other than a family member or a doctor.

7. Generally, no. It is the role of the judge to review the correctness of the county action based upon the information the county had or should have had at the time it assessed Karen's needs. The need must not only be present, but it must be apparent or communicated. If medical records indicate Karen had a need for bathing, a judge would consider this evidence. In such case, the judge would have discretion to authorize assistance with bathing if Karen could adequately explain why she said she had no need for bathing at the assessment.

Since Karen said she needed no time for bathing, no time should be authorized unless the need for bathing was apparent or Karen's medical records indicated that Karen had a need for assistance with bathing.

8. Karen does not need to actually have taken a self-endangering action if she would have acted to endanger herself if not prevented from doing so. Thus, for example, it is not necessary for Karen to have left her home and wandered away if the evidence is that she attempted to leave the home but was prevented from doing so and is not left alone because it is feared she would wander if left alone.

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9. Karen would be entitled to protective supervision. There is no dispute that she exhibits nonself-directing behavior. *Calderon v. McMahon* establishes that protective supervision is available to those IHSS beneficiaries who are nonself-directing and who would most likely engage in potentially dangerous activities. The county argues that Karen is not likely to endanger herself because she is wheelchair bound. If she is unable to walk and is unable to act in any dangerous way, the county would be correct.

However, when Karen is pulling out intravenous tubes out of her arm, she is endangering herself. If she is doing so without realizing what she is doing, she is a nonself-directing person who is engaging in potentially dangerous activities. She would be entitled to protective supervision.

It is the CDSS position that it is not a reasonable measure to use arm restraints to prevent Karen from pulling out the intravenous tubes.

10. If the county social worker had authorized 160 of hours of IHSS, in March 1999, the burden is on the county to establish why it is authorizing fewer hours at its March 2000 assessment. If the county fails to meet its burden, it may not reduce the IHSS hours. It is the position of the State Hearings Division that the county can meet this burden in one of the following ways:

- a. By establishing that there has been a change in law or misapplication of law requiring that a specific IHSS need(s) that was previously authorized no longer be authorized.

For example, if the county had authorized protective supervision for a recipient with no mental impairment, the county could correct that error at the next assessment.

- b. By establishing that there has been a change or misapplication in state policy requiring that a specific IHSS need no longer be authorized.

For example, if the county had authorized waiting time in the area of medical transportation contrary to state policy, the county could correct that misapplication of policy at the next assessment.

- c. By establishing that there has been a change in the claimant's medical condition requiring the reduction of IHSS hours from the prior assessment of IHSS.

For example, if four hours weekly had been authorized for ambulation at the prior assessment shortly after the claimant had had a stroke, the county could reduce her need for ambulation at the next annual assessment if her condition had improved and she had less need than previously assessed.



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- d. By establishing that the claimant or provider told the county social worker at the assessment that fewer hours of IHSS are needed than previously assessed in a particular need area or areas. In such case, the judge will make a finding as to the current need based on testimony at the hearing including testimony about the assessment, county records such as the written record of the assessment, and medical records.
  - e. If the first county social worker was incompetent and biased in favor of the claimant and as a result made a completely unreasonable assessment of hours. The burden would be on the county to prove the incompetence and unreasonableness of the first social worker.

If at hearing the county stipulates that there has been no change in the claimant's circumstances, but attempts to reduce IHSS hours alleging the previous assessment was in error, the judge will uphold the original assessment unless the county can establish one of the above.

## **ANSWERS TO HYPOTHETICAL 2**

11. The purpose of IHSS is to provide services to aged, blind and disabled persons that they are unable to provide for themselves and who would be unable to remain safely in their homes without such services (Welfare and Institutions Code (W&IC) §12300(a)).

CDSS has come up with age appropriate guidelines to consider when evaluating a child's needs. The age appropriate guidelines are CDSS policy. They are not regulations. There is no statutory authority for these guidelines.

Because these guidelines are not regulations, a judge would not be able to cite them as authority in writing a decision. However, since the purpose of IHSS is to provide services to a blind or disabled child and not to a child who is not blind or disabled, the county must evaluate Mark's needs based on his disability. That is, the county should authorize time for needs for three year old Mark if he requires assistance where a healthy three year old child would not need assistance.

The county could cite the age appropriate guidelines (including the Vineland study upon which the guidelines are based) as a factor for the judge to consider when determining if a healthy child could complete a task. For example, the age appropriate guidelines from 1997 indicate that a three year old is expected to be able to put on a coat unassisted, but that a four year old is expected to button the coat. If Mark's mom wants authorization for putting on and buttoning the coat, the county by following the age appropriate guidelines would authorize time for putting on Mark's coat, but would not authorize time for buttoning the coat.

While a judge could consider the age appropriate guidelines, the judge's decision would have to be based on whether services are needed due to Mark's disability rather than his age. Thus Mark's mom could present evidence that time should be authorized for putting

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on Mark's coat because of his disability rather than his young age. A judge could reasonably authorize time for putting on a coat as well as buttoning the coat for a three-year-old notwithstanding the guidelines.

It would be much more difficult for time to be authorized for Mark for many other services. In the case of laundry for example, the age appropriate guideline is 14 years old. At that age, a non-disabled child could be expected to do his or her own laundry. While a judge is not bound by that age guideline, a judge likely would conclude that time could not be authorized for laundry for Mark. That is, Mark's mom would do the laundry for any three-year-old. She thus would not be authorized IHSS for doing Mark's laundry.

However, what if Mark was age ten and incontinent? Suppose Mark's mom testified that she needs to do laundry three times a week for Mark instead of once a week because of his incontinence. According to age appropriate guidelines, a ten-year-old is not expected to do laundry. If age appropriate guidelines are followed, no time could be authorized for laundry.

While a judge may not authorize time for routine laundry, the judge may authorize the additional time needed for extra laundry that mom would do for a ten-year-old who is incontinent. In the above example, time may be authorized for laundry twice a week to account for the extra two days of laundry per week.

12. *Garrett v. Anderson* addresses protective supervision for children. This court case is addressed in All County Letter 98-87 dated October 30, 1998. It discusses several factors that a county must consider when evaluating whether a child is eligible for protective supervision. It must assess a minor for mental functioning.

The county is not permitted to "presume" that a child of any age has a mental functioning score of 1 (i.e., is completely independent and has no need). The county must assess the minor for mental functioning.

The county must determine whether a minor needs more supervision because of his/her mental impairment than would a child of the same age without a mental impairment. A child must not be denied protective supervision solely based on age or because he/she has incurred no injuries at home due to the mental impairment.

The county must allow the parent/guardian to provide medical or other information about the mental impairment and must evaluate that information.

Since the county is not permitted to presume that a child of any age has a mental functioning score of 1, it is possible for three year old Mark to have an established need for protective supervision. The parent/guardian would have to present both medical and testimonial evidence to support the contention that Mark required more supervision because of his mental impairment than would a three year old without such mental impairment.

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13. MPP §30-763.451(a) provides that in order for a parent to be a provider for her child, the parent among other requirements must either have left full time employment or be prevented from obtaining full time employment. In order for mom to be Mark's IHSS provider, she need not have worked in the past to meet this requirement. If she can establish that Mark has a need for IHSS, she can meet the requirements of MPP§ 30-763.451(a) by testifying that she is unable to obtain full time employment because she needs to provide care for Mark.

14. MPP §30-763.451(b) provides that in order for a parent to be a provider for her child, there must be no other suitable providers available. MPP§30-763.452 defines suitable provider as any person who is willing, able and qualified to provide the needed IHSS.

It is not enough for the county to allege that there are other suitable providers (other than the parent). The county must name a specific suitable provider or providers who can provide IHSS for this child instead of the parent.

If the county did provide such name or names, the parent could testify why he/she believes such provider(s) is not suitable.

*California Department of Social Services - State Hearings Division  
Notes from the Training Bureau - February 29, 2000*

**Item 00-02-03K**

CDSS ACL 99-111 -- December 27, 1999 (Synopsis): CalWORKs Questions and Answers Regarding Community Service

**CalWORKs Questions and Answers Regarding Community Service**

This ACL provides 12 questions and answers regarding the community service component of welfare-to-work (WTW). Community service is an allowable activity for any CalWORKs program participant. Counties are required to develop community service plans to serve CalWORKs recipients who have reached the 18 or 24 month time limit, but remain unemployed or employed less than the number of hours required (usually 32 hours for a one parent family) to meet the WTW work participation requirement.

Per MPP§ 42-780.12, any CalWORKs county plan must include a community service component. The county plan must describe several things including: community needs that may be met because of the community service activities to be performed by clients; which recipients are to be served; the agencies that will be involved in planning, administering and managing the community service program; the approximate duration of the community service placement; and supportive efforts such as job search, education and training activities that the county intends to provide to persons who have reached the 18 or 24 month time limits.