

Item 02-04-03A
Equitable Estoppel Update

Vang Case Decided

May an Administrative Law Judge apply equitable estoppel in a food stamp case? Based on a recent Court of Appeal decision, an Administrative Law Judge may not apply equitable estoppel in a food stamp case.

On March 20, 2002, the California Court of Appeal, Third Appellate District in Vang v. Saenz and Veneman, (Superior Court No. CV370072) reversed the Superior Court decision of 1993 which had held that equitable estoppel was an appropriate remedy in food stamp overissuance cases. The Court of Appeal held that federal law controls and precludes the application of equitable estoppel where the result would be to permit food stamp recipients to retain benefits for which they are not eligible.

Vang is an unpublished decision. The CDSS' request to have the case published was denied. The plaintiffs had not filed an appeal to the California Supreme Court as of the date this Notes was issued. Per CDSS, even though this decision is unpublished, it must be followed. (Note: Equitable estoppel has never been considered an appropriate remedy in a food stamp underissuance case. However, nothing precludes an Administrative Law Judge from applying equitable estoppel by considering the amount of food stamps the claimant lost due to receipt of CalWORKs and then reducing the amount of recoupable CalWORKs overpayment by the amount of lost food stamps.)

In the state hearing concerning Vang, an Administrative Law Judge wrote a proposed decision and applied equitable estoppel to preclude the county from recouping a \$3465 overissuance. CDSS issued an alternate decision reversing the judge's proposed decision.

In Vang at the Superior Court, the California Department of Social Services (CDSS) argued that equitable estoppel was never an appropriate remedy in a food stamp case because food stamps are 100% federally funded.

In concluding that equitable estoppel was an appropriate remedy, the Sacramento Superior Court concluded that Vang "does not present the issue of eligibility for food stamp benefits. It raises a question concerning collection of overissued benefits, a function Congress has delegated to the state."

In reversing the Superior Court decision, the Court of Appeal stated: "...resolution of this dispute does not turn on state principles of equitable estoppel, ... but on federal law." In citing the Appropriations clause of the United States Constitution, the court cited OPM v. Richmond (1990) 496 U.S. 414. Richmond in pertinent part stated: "As for monetary

claims, it is enough to say that this Court has never upheld an assertion of estoppel against the Government by a claimant seeking public funds...."

Plaintiffs argued that Richmond did not apply to Vang because Richmond involved a claim for benefits from the public treasury, whereas Vang involves an attempt by the Government to recover funds already paid. In rejecting plaintiffs' argument, the Court of Appeal stated: "Whether an aid recipient is seeking payment of funds to which he is not entitled, or whether the government is seeking return of funds erroneously paid, the effect is the same. The claimant is attempting to establish a right to funds that have not been appropriated to that purpose."

Judges are reminded that in food stamp cases, *Lomeli v. Saenz* may provide a legal remedy by limiting the amount of overissuance that may be recouped at least for those who are receiving or who could receive food stamps. Also, of note is that the Food and Nutrition Service (FNS) commented in the federal register at 65 FR 41675 that "State agencies are currently authorized to compromise claims when households are unable to pay because of hardship and similar reasons." However, by regulation California does not compromise claims. See MPP §63-801.222.

New Paraphrased Regulations

The following new paraphrased regulations have been added regarding equitable estoppel:

In discussing whether equitable estoppel could be applied against public agencies, the Appellate Courts have offered the following guidelines:

"The courts of this state have been careful to apply the rules of estoppel against a public agency only in those special cases where the interests of justice clearly require it. [citations omitted] However, if such exceptional case does arise and if the ends of justice clearly demand it, estoppel can and will be applied even against a public agency. Of course, the facts upon which such an estoppel must rest go beyond the ordinary principles of estoppel and each case must be examined carefully and rigidly to be sure that a precedent is not established through which, by favoritism or otherwise, the public interest may be mulcted or public policy defeated. [citations omitted]." *City of Imperial Beach v. Algert* (1962) 200 Cal.App.2d 48, 52)

"Factors to be considered in a claim of estoppel against a public agency include consideration of the degree of negligence or culpability of the public agency (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 307), whether and to what extent the agency is certain of the knowledge or information it dispenses (see *Phillis v. City of Santa Barbara* (1967) 229 Cal.App.2d 45, 60), whether it purports to advise and direct or merely to inform and respond to inquiries (see *Tyra v. Board of Police etc. Commrs.* (1948) 32 Cal.2d 666, 670), and whether it acts in bad faith. (See *Lorenson v. City of Los Angeles* (1953) 41 Cal.2d 334, 340)." (*Lee v. Board of Administration* (1982) 130 Cal.App.3d 122, 134)

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The Court of Appeals relied on the Supreme Court as to the manner of applying equitable estoppel against the government. The Crumpler court cited *City of Long Beach v. Mansell*, 3 Cal.3d 462, 91 Cal.Rptr. 23, 476 P.2d 423.

"The court there declared it to be settled that '[t]he doctrine of equitable estoppel may be applied against the government where justice and right require it' but that an estoppel will not be applied against the government if to do so would effectively nullify 'a, strong rule of policy, adopted for the benefit of the public...' (At p. 493, 91 Cal.Rptr. at p. 45, 476 P.2d at P. 445.) The court observed that '[t]he tension between these twin principles makes up the doctrinal context in which concrete cases are decided.' After a review of a number of cases the court phrased the rule governing the application of equitable estoppel against the government as follows:' ... The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel" (See *Crumpler v. Board of Administration Emp. Retire. Sys.* (1973) 32 Cal.App.3d 578, 580)

The Crumpler court went on to analyze whether equitable estoppel should be applied to prevent the retroactive reclarification of plaintiffs, animal control officers:

"All of the requisite elements of equitable estoppel are present insofar as the city is concerned. The city was apprised of the facts. The city knew that petitioners were being employed by the police department as animal control officers at the time it erroneously advised them they would be entitled to retirement benefits as local safety members. The fact that the advice may have been given in good faith does not preclude the application of estoppel. Good faith conducts of a public officer or employee does not excuse inaccurate information negligently given. (*Driscoll v. City of Los Angeles*, supra, 67 Cal.2d 297, 307-308, 61 Cal.Rptr. 661, 431 P.2d 245; *Orinda-County Fire Protection Dist. v. Frederickson and Watson Co.*, 174 Cal.App.2d 589, 593, 344 P.2d 873.) 'In a matter as important to the welfare of a public employee as his pension rights, the employing public agency 'bears a more stringent duty' to desist from giving misleading advice.' (*Driscoll v. County of Los Angeles*, supra, 67 Cal.2d 297, 308, 61 Cal.Rptr. 661, 431 P.2d 245.) In the instant case the erroneous representations that petitioners would be entitled to local safety memberships if they accepted city employment was given without verifying its accuracy either by advice from the board or any other qualified person.

"All of the other requisite elements of equitable estoppel against the city were established by uncontradicted evidence. The city manifestly intended its erroneous representations to be acted upon and petitioners relied upon the representations to their injury by relinquishing other employment to accept city employment and by paying over the years the greater contributions required of safety members. Petitioner Crumpler served as

animal control officer for over 20 years. During those years he paid safety member contributions and arranged his personal financial affairs in the expectation he would ultimately receive the retirement benefits of a safety member. Petitioner Ingold relinquished federal civil service employment with 15 years accrued federal pension rights to accept city employment on the representation that his city pension rights would be that of a safety member.

"The board virtually concedes the city would be estopped but urges that estoppel may not be invoked against the board because it had no knowledge that petitioners were employed as animal control officers and not policemen until a routine investigation in 1968 revealed the true facts. We reject the board's position.

"The relationship between the city and the board is such that estoppel of the city is binding on the board. An estoppel binds not only the immediate parties to the transaction but those in privity with them. [citations omitted]... (Crumpler, supra, 32 Cal.App.3d at 581, 582)

"Petitioners' contention that the board is forever precluded from reclassifying them because they have a vested right to be classified as local safety members is devoid of merit. It is true that upon acceptance of public employment provisions of the applicable pension law become an integral part of the contract of employment, and that any modifications affecting earned pension rights of active employees must be reasonable, related to the theory of a sound pension system, and any changes detrimental to the individual must be offset by comparable new advantages. However, correction of an erroneous classification cannot be equated to a modification or alteration of earned pension rights. Petitioners have no vested right in an erroneous classification. Indeed, as we have noted, the act expressly provides for correction of errors such as occurred in the instant case. The provisions of section 20180 being as much a part of the contract of employment as other provisions of the retirement act, exercise of the power conferred by the section involves no violation or impairment of petitioners' contractual or vested rights.

"It is our conclusion that the board is estopped from reclassifying petitioners for the period of membership prior to the board's decision of August 18, 1971, but is not so estopped from reclassifying petitioners to miscellaneous membership prospectively from the date of that decision."

(Crumpler, supra, 32 Cal.App.3d at 585)

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The California Court of Appeal, Third District, discussed the doctrine of "laches" in the case of *Lam v. Bureau of Security and Investigation Services*:

"Statutes of limitation and the doctrine of laches are both designed "to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."

[Citations.]" (Brown, *supra*, 166 Cal.App.3d at p. 1161.) These policies also guard against other injuries caused by a change of position during a delay. While a statute of limitations bars proceedings without proof of prejudice, laches "requires proof of delay which results in prejudice or change of position." (Ibid.) Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. (Id. at p. 1159.) What makes the delay unreasonable in the case of laches is that it results in prejudice. (Ibid.)"

(Lam, *supra*, 34 Cal.App. 4th 29, 36-37)

Decision Writing in Equitable Estoppel Cases

When an Administrative Law Judge writes a decision in an equitable estoppel case, it is necessary that the judge explain each element discussed and do so in a sequential order. Thus if the judge determines that the third element of equitable estoppel is not met, the judge needs to discuss at least briefly, that elements one and two are met before concluding that element three is not met.

In most cases involving CalWORKs overpayments and food stamp overissuances, the first three elements of equitable estoppel are met. For the first three elements, it is usually sufficient to explain how that element is met in one sentence each. When discussing elements four and five however, the judge needs to give more than a one-sentence explanation of how that element is met or not met. This is especially true when the fourth element is decided based on the issue of hardship.

The following are examples of discussions regarding the fourth and fifth elements of equitable estoppel that are not sufficiently explained in the decision:

"It is concluded based on the claimant's testimony that she has a hardship in repaying the overpayment. Therefore the fourth element of equitable estoppel is met."

"It is concluded that there is no hardship in this case. Therefore the fourth element of equitable estoppel is not met."

"In balancing the equities, the interest of the government in recouping the overpayment outweighs the interest of the claimant in claiming that he should not have to repay the overissuance.

"The interest of the claimant in not having to repay the overpayment clearly outweighs the interest of the government in recouping the overpayment. Therefore equitable estoppel applies in this case."

The following are examples of more appropriate discussions of the fourth and fifth elements of equitable estoppel:

The claimant has demonstrated that she has relied upon the county's conduct to her injury regarding the CalWORKs overpayment she received from August 2000 through May 2001. Even though the claimant was employed, her earnings are not sufficient to provide her with the means to pay the overpayment. She has to support four children. Her expenses substantially exceed her income on a monthly basis. It is therefore determined that the claimant will suffer a substantial hardship if she is required to repay the CalWORKs overpayment. The fourth element of equitable estoppel thus applies because of the claimant's hardship in repaying the overpayment.

It is determined that the justice and right require equitable estoppel be applied to preclude the county from recouping this CalWORKs overpayment. The claimant fully and completely reported her income to the county at all times at issue. The county failed to consider any of this reported information in computing the monthly grant in any month at issue. The overpayment persisted for ten months and resulted in a substantial amount of overpayment (over \$4500). The claimant not only reported all of her income on each monthly report for ten months, she specifically asked her eligibility worker whether the income she was receiving would cause her CalWORKs grant to be reduced. The eligibility worker told the claimant that she should not worry about the CalWORKs grant because she (the eligibility worker) knew what she was doing.

For all the reasons stated above, it is concluded that in balancing the interests of the claimant and the county, justice and right require that the doctrine of equitable estoppel to be applied in this case to preclude the county from recouping the overpayment in this case.

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Although the first four elements of equitable estoppel apply in this case, it is concluded that justice and right do not require that equitable estoppel be applied to preclude the county from recouping the CalWORKs overpayment in this case. The overpayment lasted only for two months, a relatively short period of time. The claimant is asked to repay a CalWORKs overpayment to which she is not entitled. In light of the benefit she received as a result of receiving the overpayment, she has not established that she is significantly worse off than if she had never received the overpayment

While this judge does not question that there will be some hardship for the claimant to repay the overpayment, the total amount to be repaid is \$431 which is not an exceedingly large amount. The claimant's testimony establishes that her monthly expenses slightly exceed monthly income. Nonetheless, pursuant to state regulations, the county is required to recoup the overpayment even though it was caused by county error.

This is not the type of exceptional or special case contemplated by *City of Imperial Beach v. Algert* when applying equitable estoppel against the government. In fact, it is a rather routine CalWORKs overpayment in that it lasted for a short period of time and was caused by a county failure to act on reported income. It is thus concluded that equitable estoppel does not apply to the facts of this case.

The claimant is free to negotiate with the county to try to reach a reasonable repayment agreement that takes into consideration that the claimant has limited resources and that the overpayment was caused solely by county error.