

# NOTES

FROM THE TRAINING BUREAU  
November 28, 2007

## **ITEM 07-11-2: Division 22 Questions and Answers**

Revisions were made to Manual of Policies and Procedures (MPP) Sections 22-000 et seq. to make the state hearing process more efficient and to clarify ambiguous or unclear language. Some of the most significant changes to MPP §22-000 et. seq. included:

Remedies available to limited-English-proficient claimants who receive Notices of Action (NOA) that do not meet the specified requirements. These include the tolling of the period to file for a hearing, the right to a postponement, and the right to aid paid pending,

Modification of the procedures where a recipient fails to appear for a hearing. The 10-day reopening period is eliminated, and a dismissal decision is immediately issued when the claimant does not attend the hearing. The claimant is given 15 days from receipt of the dismissal decision to request that the dismissal decision be set aside. If the dismissal decision is not set aside, the claimant is advised of the right to appeal in Superior Court.

The following questions and answers discuss how judges will address issues in these and other areas.

**The policy changes discussed in question and answer 6 below become effective immediately with the release of this Notes from the Training Bureau.**

The answers to all other questions are effective January 24, 2007 when the new Division 22 regulations became effective.

## **LANGUAGE-COMPLIANT QUESTIONS**

**Question 1:** When the county orally interprets a notice of action that CDSS does not provide in the claimant's primary language, must the interpretation include ALL information on the front and back of the notice, including *Anderson* warnings?

**Answer:** MPP Section 22-001(l)(1)(b)(1) and (2) provide for interpretive services, (which are oral) not translations (which are written) when a claimant contacts the county after receiving a NOA. If interpretive services are required, the county must interpret at least the elements that are required for an adequate NOA in MPP §22-001(a).

This would include the action the county intends to take, the reasons for the action, the specific regulations supporting the action, the right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if requested and, for CalWORKs that aid pending must be repaid if the county action is upheld. In addition, in the case of a CalWORKs overpayment

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or a food stamp overissuance, the county must interpret the *Anderson* warning language if the NOA is an initial NOA that provides such language.

This issue would only come up if the county had a duty to provide interpretive services, did in fact provide interpretive services yet the claimant filed an untimely hearing request. Since the interpretation is by definition oral, a judge would need to ask the parties about the interpretation that was provided and if necessary make a finding of fact whether the necessary interpretation was provided.

It is suggested that the county interpret at least the entire front side of the NOA and the portions of the reverse side of the NOA relating to the right to a state hearing and the requirements for requesting a state hearing.

**Question 2:** Once an oral interpretation is provided as required under §22-001(l)(b)(1) or (2), what is the period for filing a timely hearing request?

**Answer:** The timely filing period for a claimant to request a state hearing is 90 days from the date the county interprets the adequate NOA assuming the claimant contacted the county prior to the 90-day period for filing a request for hearing. If the notice of action being interpreted is inadequate, or if the interpretation does not include at least the elements of adequate notice as stated in answer 1, the 90 day period for filing a timely hearing request never begins to run.

**Question 3:**

- a) If a claimant calls the county to ask for interpretive services for an English language NOA (that CDSS does not provide in the claimant's primary language) more than 90 days after a NOA is mailed, is it too late for the claimant to request a hearing?
- b) Does the county have the burden to show it informed the claimant that free interpretive services were available?
- c) If so, what does the county have to show?

**Answer:**

- a) Yes. If the English language NOA was adequate, it is too late for the claimant to ask for a hearing, and the hearing request should be dismissed.
- b) The county does NOT have to show that it informed the claimant that interpretive services were available unless the claimant raises the issue that he/she was never advised of interpretive services. The judge should ask the claimant why he/she waited more than 90 days to request the hearing.

Absent a claimant's allegation and judge's determination that he/she was not advised of interpretive services, any hearing request beyond the standard time frame for filing a hearing request would be untimely.

- c) If the claimant alleges that interpretive services were not offered, then the county would have to present some evidence that such services were offered. This could include evidence of posters placed in the applicable county office.

**Question 4:**

- a) How does the presumption in the language-compliant definition work?
- b) How can the presumption be rebutted?
- c) Can the presumption be rebutted by evidence that the claimant is fluent in English?

**Answer:**

- a) This evidentiary rule allows the party who benefits from the presumption not to have to submit evidence to prove a particular fact, unless the other party first submits evidence to disprove the presumed fact.

The county's requirement to provide a language-compliant notice of action is triggered by the claimant's choice to receive written communications in his/her primary language. What the presumption means in the language-compliant definition is that the claimant does not have to submit evidence to prove that he/she actually chose to receive written communications in his/her primary language. The ALJ will presume that the claimant chose to receive written communications in his/her primary language if the claimant identified his/her primary language as a language other than English on his/her application (i.e. the SAWS 1).

- b) The claimant gets the benefit of the presumption as an initial evidentiary matter. This means the claimant does not have to submit evidence that he/she actually chose to receive written communications in his/her primary language.

However, the county can rebut the presumption that the claimant chose to receive written communications in the language the claimant listed as his/her primary language on the application.

The county can submit evidence to rebut the presumption to show that the claimant did not choose to receive written communications in his/her primary language. This evidence could include a language preference form signed by the claimant indicating that he/she prefers to receive written communications in English.

Even though the claimant gets the benefit of the presumption, he/she can rebut the presumption such as when Spanish is designated as the primary language on the SAWS 1, but the claimant later indicates on a language preference form that written communications should be issued in English.

- c) No. The presumption cannot be rebutted by evidence that the claimant is fluent in English. The county's obligation to provide written communications in a claimant's primary language does not depend on whether the claimant is fluent or not fluent in English. The county's obligation to provide language-compliant notices of action is triggered by the claimant's choice to receive written communications in his/her primary language.

Under CDSS civil rights regulations, a claimant is allowed to self-identify his/her primary language at application and his/her preferred language for communications. A claimant who is fluent in English has the option of identifying a non-English language as his primary language and/or preferred language for communications. The county is

then required to provide language-compliant notices of action based on that choice, not based on the county's perception of the claimant's English fluency or the claimant's actual English fluency.

## **NON-APPEARANCE QUESTIONS:**

**Question 5:** 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.

### **Question 6:**

- 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 non- appearance 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 non-appearance 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 non- appearance (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 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.

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.

## **Other**

**Question 7:** Do judges need to determine who is the legal heir of the estate? Section 22-004.41 states:

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.41 - The representative of a decedent's estate is the executor/executrix or administrator/administratrix of the estate. If the decedent's estate is not in probate, the representative may also be an heir (e.g., parents, spouse, children, siblings, grandparents or grandchildren of the decedent).

**Answer:** The reason the reference was changed from relative to heir is as follows:

- a) Under Welfare and Institutions Code Section 10965, an authorized legal representative may file a request for hearing on behalf of a decedent. The legal representative becomes authorized when testamentary letters are issued by the Superior Court. Until such time, an heir may file a request for hearing.
- b) Welfare and Institutions Code Section 10965 permits an heir to file a hearing request on behalf of a decedent if there is no legal representative. Since an heir is not necessarily a relative, the current reference in Section 22-004.41 to a relative is too restrictive.

Thus if there is a dispute as to who is an heir, then the judge would have to make that determination. If the parties do not dispute that the purported claimant is an heir, then the judge need not make that determination.