

Item 08-05-01A
Decision Writing

Since May 2007, the ALJ Specialists have been reviewing DSS State Hearing decisions when one party has requested a rehearing; approximately 350 decisions have been reviewed during this period. Although this review is neither methodical nor statistically accurate, it is the only organized review of our decisions currently in place and can be used to provide quality control.

To that end, the Specialists have noted specific areas where there are problems with the decisions being rendered by our Department. This Note is being issued to re-iterate decision writing standards as set forth in the ALJ manual.

The decision should contain the factual basis and the legal support necessary to withstand a challenge in Superior Court. To meet this standard a decision must:

1. Set forth all of the issues raised at the hearing. If an issue is discussed but the substance is not being decided, this should be reflected in some manner in the hearing decision. If the issue has been resolved or withdrawn by the claimant, the decision should so state. If the issue is being dismissed, the decision should set forth this conclusion.
2. Contain all of the relevant calculations unless they are specifically not at issue; if they are not at issue, the decision should so state. The calculations can be presented in narrative form; the decision does not need to include charts or tables. A statement by the ALJ that she or he has reviewed the calculations and found them to be correct is not sufficient without inclusion of the calculations.
3. Set forth in the FACTS section all of the facts required for making a correct legal conclusion; the facts cannot appear in the CONCLUSION section for the first time. If the facts are undisputed, this must be referenced in the FACTS section of the decision.
4. Reiterate in the ORDER the terms of any stipulations agreed to at hearing; the inclusion of the stipulation only in the body of the decision is insufficient.

The Specialists have also noted a significant number of typographical errors. ALJs are responsible for proofreading their decisions; this is not a clerical responsibility. We recognize that it is difficult to catch all of our own errors but greater attention needs to be paid to those things not caught by spell-check. On a voluntary basis judges may choose to review each others' decisions in order to catch more errors.

Item 08-05-01B Equitable Estoppel Reminder

Judges Must Write Decisions Evaluating Equitable Estoppel When Claimant Disputes Recoupment of CalWORKs Administrative Error Overpayment

Administrative error overpayments are a common issue in CalWORKs cases. In many instances, claimants are not disputing the existence of an overpayment, but are only disputing the county's right to recoup the overpayment. Where the claimant disputes the county's right to recoup an administrative error overpayment or overissuance, the judge must discuss equitable estoppel.

If a claimant is represented by a Legal Aid advocate, the authorized representative is likely to raise the issue of equitable estoppel. If the claimant is not represented or if the authorized representative is not a legal professional but is a friend or relative, it is unlikely that the claimant or representative on behalf of the claimant will mention the words "equitable estoppel". **It is not necessary for a claimant to specifically cite "equitable estoppel" for a judge to address the issue of equitable estoppel.**

If a claimant simply says something like "it is unfair" or "I should not have to pay back the overpayment because I reported everything", then the judge should evaluate whether equitable estoppel should be applied.

Notes from the Training Bureau 01-01-2E dated January 16, 2001 sets out the CDSS policy on equitable estoppel. That policy is still valid except for a couple of changes that have occurred since that *Notes* was issued. The items in *Notes from the Training Bureau* 01-1-2E are modified as follows:

- It is indicated that judges should consider whether a recipient lost the right to apply for a Reduced Income Supplemental Payment (RISP) or Transitional Child Care (TCC). **THIS IS NO LONGER ACCURATE** except in old cases, because those programs no longer exist. RISPs ended in the month a county implemented quarterly reporting. TCC ended effective January 1, 1998.
- It states that: "the collection of overissuances has been broadly delegated to the states, so that the state can equitably preclude collection of an overissuance." **THIS IS NO LONGER ACCURATE.** In the unpublished decision of *Vang v Healy*, **it was determined that equitable estoppel may not be applied in food stamp cases.**

Notes from the Training Bureau 02-04-3 is titled: Equitable Estoppel Update. It discusses the *Vang* case and also addresses decision writing in equitable estoppel cases.

All equitable estoppel overpayment decisions may be written as final decisions except cases involving overpayments in excess of \$5000.

All *Notes from the Training Bureau* may be found on the State Hearings Division website.

California Department of Social Services - State Hearings Division Notes from the Training Bureau
May 13, 2008

Item 08-05-01C**Overpayment Recovery from Non-aided Caretaker Relatives**

The county may **not recoup** a CalWORKs overpayment from a caretaker relative who was **not in the AU**. That means the county may not demand repayment from the caretaker relative who was not a member of the