

## 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 **THIS IS NO LONGER ACCURATE.** In the unpublished decision of *Vang v Healy*, **it was determined that equitable estoppel may not be applied in food stamp cases.**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*

<b>Item 08-05-01C</b> <b>Overpayment Recovery from Non-aided Caretaker Relatives</b>
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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

assistance unit at the time of the overpayment. If the non-aided caretaker relative is presently receiving CalWORKs on behalf of aided children who were in the overpaid assistance unit, then the county may recoup the overpayment by grant adjustment.

MPP Section 44-352.3 states:

Overpayments shall be recouped in the following priority order unless specifically exempted under Section 44-352.2.

.31 When the caretaker relative recipient was a **member of the AU at the time of the overpayment**, the county shall seek recoupment from the caretaker relative recipient.

.32 When the caretaker relative was **not** a member of the AU at the time of the overpayment, the county shall seek recovery from the members of the overpaid AU...

The following caretaker relatives are **not** members of the AU (unless erroneously aided):

- Undocumented immigrant (§82-832.1(b))
- Father of unborn when he is not parent/caretaker relative of aided child (§82-832.1(c))
- SSI/SSP or KinGAP recipient (§ 82-832.1(d))
- Fleeing felon/probation or parole violator/convicted drug felon (§§82-832.1(h) through (j))
- Person sanctioned for refusal to assign support rights (§82-832.21)
- Welfare to Work sanctioned person (§82-832.23)
- Timed out adult (§82-833)

The county may recoup an overpayment if the caretaker relative was **penalized** rather than sanctioned. This is so because even though the effect on the grant is the same, when a person is penalized he/she remains in the AU. When a person is sanctioned he/she is not in the AU.

Examples of penalties are:

- Intentional Program Violation (§40-105.17)
- Failure to meet immunization requirements (§40-105.4)
- Failure to meet school attendance requirements (§40-105.5)

If the county demands repayment from a caretaker relative who was not a member of the assistance unit at the time of the CalWORKs overpayment, an Administrative Law Judge should grant the claim and order the county to rescind its action demanding the repayment against the caretaker relative. It would not be appropriate for a judge to order the county to cancel the overpayment unless the judge has established that no overpayment exists.

In food stamps, the county may recoup from excluded household members because excluded household members are included in the household for the purpose of defining a household (§63-402.22) . Thus the county may recoup from the people listed above who were not members of the AU. The county may even recoup a food stamp overissuance from an SSI/SSP recipient, but not from the SSI/SSP grant.